

Ct. No. 652
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C.O. 471 of 2020

**Nani Gopal Das
-Versus-
Hemlata Roongta
With
C.O. 1132 of 2020
With
C.O. 1133 of 2020
With
C.O. 472 of 2020**

Mr. Tarak Nath Halder

**...For Petitioner in C.O. 471 of 2020
and C.O. 472 of 2020
and Opposite Party
In C.O. 1132 of 2020
and C.O. 1133 of 2020**

**Mr. Iftekhar Munshi
Ms. Sutapa Mishra
Mr. Anam Zafaar**

**...For Petitioner in C.O. 1132 of 2020
and C.O. 1133 of 2020 and for the
Opposite Party in C.O. 471 of 2020
and C.O. 472 of 2020**

Due to commonality of the issues involved in all the above four Applications, they are being disposed of by this common order. The plaintiff / petitioner herein of C.O 471 & C.O 472 filed two suits being Ejectment Suit No. 84 of 2013 & 85 of 2013 seeking eviction, against the opposite parties of these two Applications, on the ground of default and reasonable requirement. The aforesaid opposite parties in the respective suits entered appearance by filing application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act of 1997). The petitioners herein in the aforesaid two Applications as plaintiffs contested the aforesaid application by filing written objection, denying the material allegations made therein.

Learned Civil Judge (Junior Division), Additional Court at Sealdah by order dated 16th June, 2015 was pleased to dispose of the respective applications filed under Section 7(2) of the said Act of 1997, directing the aforesaid opposite parties herein to make payment of Rs. 85,800/- within one month from date in their respective suits.

The opposite parties herein as defendants of the said two suits took out applications for review of the aforesaid order. But the said review application was also rejected vide order dated 10th April, 2017.

Challenging the said order of rejection, opposite parties moved revisional applications, being C.O. 2771 of 2017 & C.O 2772 of 2017 before this Court and this Court by an order dated 14th November, 2018 was pleased to dismiss the aforesaid revisional applications for default.

The respective opposite parties herein challenging the order dated 16th June, 2015, moved another revisional applications, being C.O 3343 of 2018 and C.O. 3344 of 2018 before this Court but the said applications were also dismissed as infructuous in view of order passed in C.O. 2771 of 2017 & C.O 2772 of 2017. The opposite parties again filed applications for restoration and/or recalling of the said order and this Court was pleased to allow the said prayer for recalling made in the applications and also

recalled the said order of dismissal dated 13th September, 2019 and directed the learned Trial Court to rehear the applications under Section 7(2) of the Act of 1997 upon giving ample opportunity of hearing to both sides and permitted the defendants of the respective suits/opposite parties herein to produce the rent control challans, if any, pertaining to deposit made prior to the suit by the opposite parties before the Rent Controller and thereafter to assess the actual arrears due from the opposite parties herein.

The petitioner submits that the respective opposite parties could not produce any document to show that prior to July, 2004, any rent was tendered to the petitioner. However, by an order dated 21st December, 2019, the court below disposed of the applications under Section 7(2) of the said Act of 1997, directing respective defendants to make payment of Rs. 63,250/- within one month in connection with the Ejectment Suit No. 84 of 2013 and Rs. 57,200/- in connection with the Ejectment Suit No. 85 of 2013.

Being aggrieved by the order dated 21st December, 2019 passed in aforesaid T.S 84 of 2013 & T.S 85 of 2013, petitioner/plaintiffs filed C.O 471 of 2020 & C.O 472 of 2020 and being aggrieved by self-same order defendant/tenant/as petitioner herein filed C.O 1132 of 2020 & C.O 1133 of 2020 Mr. Tarak Nath Halder, learned

Counsel appearing on behalf of the petitioner in C.O. 471 of 2020 and C.O. 472 of 2020 contended that the order passed by the Court below is illegal and without any jurisdiction. He further submits that by filing an application under Section 7(2) of the Act of 1997 the mandatory requirement for the petitioner to deposit the admitted arrear rent before the Court has not been complied. In the present context the defendants/opposite parties have neither complied the provision laid down under Section 7(2) of the said Act of 1997 nor they are paying rent month by month under Section 7(1)(c) of the said Act of 1997. Accordingly, they are not entitled to get any kind of protection and their defence is liable to be struck off.

Mr. Iftexhar Munshi, learned Counsel appearing behalf of the opposite party in C.O 471 of 2020 & C.O 472 of 2020 and as petitioner of C.O 1132 of 2020 & C.O 1133 of 2020 submits that the Court below has acted illegally and with material irregularities in refusing to take into consideration the challans demonstrating regular deposit of rent by defendant/tenant in respect of suit property with the Rent Controller since July, 2004 and he failed to appreciate that the order dated 21st December, 2019 suffers from an error apparent on the face of the record.

I have considered the submissions made by the

learned Counsel appearing on behalf of both the parties. Plaintiff in his plaint specifically alleged that the defendant is a defaulter in payment of rent since June, 2002. The defendants/opposite parties in their application under Section 7(2) of the said Act, has admitted the extent of tenancy as well as relationship of tenant and landlord and the rate of rent and they have also admitted that they have paid the rent up to May, 2002 but due to certain difficulties they could not pay rent with effect from June, 2002. He further stated that they have deposited the rent before Rent Controller with effect from July, 2004 and since then they alleged to have deposited the rent before the rent Controller from July, 2004 till December, 2005.

The Court below while passed the order also came to a finding that the tenant / defendant / opposite parties could not file any document to show that they have deposited the rent from June, 2002 to June, 2004 i.e. 25 months before filing the suit. Section 7(2) of the said Act of 1997 makes it clear that the defendant / tenant at the time of filing application under Section 7(2) of the Act is obliged to make payment of the admitted arrear rent along with interest at the rate of 10% p.a. Section 7(2) further provides that having regard to extension of time for filing of the suit, extension may be granted by the Civil Judge and the period

of such extension shall not exceed two months.

It has been the consistent view of this court in consonance with the Apex Court Judgement in *Bijay Kumar Singh Vs. Amit Kumar Chamaria & Others* reported in (2019) 10 SCC 660 that it is mandatory for the defendant to deposit admitted arrear rent along with an application for determination of rent payable under section 7(2) of the Act of 1997 and if the two things are not followed, the consequence as laid down in sub section (3) of Section 7 shall follow. In fact deposit of admitted arrear rent along with an application for determination of dispute is a pre-condition to avoid eviction on the ground of non-payment of arrears of rent and tenant will not be able to take recourse under Section 5 of Limitation Act.

In the present case since at the time of appearance in the aforesaid suits defendants have not admittedly deposited the admitted arrear rent at least from the month of June, 2002 to June, 2004, I find that they are not entitled to get benefit of protection against eviction.

In such view of the matter, the order impugned dated 21st December, 2019 is hereby set aside. The defence against delivery of possession of the tenant / defendant / opposite parties herein in the respective suits being ejectment suits 84 of 2024 & 85 of 2013 hereby struck off.

The Court below is directed to make every endeavour for expeditious disposal of the suit and make his best effort to conclude the entire proceeding preferably within a period of 4 (months) months from the date of communication of this order.

The revisional applications, being C.O. 471 of 2020; C.O. 1132 of 2020; C.O. 1133 of 2020 and C.O. 472 of 2020 along with the connected applications are accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)