

May 16, 2024
Sl. No.23
Court No.19
s.biswas

CO 586 of 2024

Nilima Paul and others
vs.
Gajadhar Singh

Mr. Rajdeep Bhattacharya
Mr. Debasish Banerjee

... for the petitioners

Mr. Bratin Kumar Dey

... for the opposite party

1. The revisional application arises out of an order dated January 4, 2024 passed by the learned Civil Judge (Junior Division), 3rd Additional Court, Alipore, South 24 Parganas, in Ejectment Suit NO.117 of 2021.
2. After 16 months from receipt of summons, applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act) was filed by the tenant. The tenant had received summons on August 20, 2021, but did not take any steps allegedly, due to the laches of the learned advocate. The suit was fixed ex parte. The learned trial judge vacated the order by which the suit had been fixed for ex parte hearing, on the prayer of the tenant. Thereafter, the tenant/defendant filed the above applications.
3. The landlord filed an application seeking dismissal of the applications under Sections 7(1)

and 7(2) of the said Act, on the ground that the said application had not been filed within one month from receipt of summons and no admitted arrears had been deposited along with 10% interest. The dismissal was sought for on the strength of the decision of the Hon'ble Apex Court in the matter of ***Bijay Kumar Singh & Ors. vs. Amit Kumar Chamaria & Anr.*** reported in ***2020 (1) Indian Civil Cases 664 (SC)***.

4. The learned court was of the view that the applications were maintainable. The ground for delayed filing of the application was that steps had not been taken by the Advocate. The delay had been condoned when the order fixing the suit for ex parte hearing, had been recalled.
5. Mr. Bhattacharya, learned advocate for the petitioners/landlords submits the learned court may have vacated the order by which the suit was proceeding ex parte, but that would not entitle the tenant to file belated applications under Sections 7(1) and 7(2) of the said Act, without complying with the mandate of the Apex Court.
6. Section 7(1) of the Act had an inbuilt provision of time within which the applications under Sections 7(1) and 7(2) of the Act were required to be filed, along the admitted arrears and 10% interest thereon. Such period of limitation was

mandatory. Non-compliance of the said provision would result in striking off the defence of the tenant.

7. The Hon'ble Apex Court held that the provision of Section 5 of the Limitation Act would not be applicable in cases when the tenant did not file the applications and did not deposit the admitted arrears with 10% interest within one month from receipt of summons or within one month from date of appearance and the tenants' protection under the said section from delivery of possession on any of the grounds under Section 6 of the said Act, would not be available.
8. The relevant paragraphs of the decision are quoted below:-

***“19.** Sub section (1) of Section 7 of the Act relieves the tenant from the ejectment on the ground of non-payment of arrears of rent if he pays to the landlord or deposits it with the Civil Judge all arrears of rent, calculated at the rate at which it was last paid and up to the end of the month previous to that in which the payment is made together with interest at the rate of ten per cent per annum. Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the suit without the summons being served upon him, within one month of his appearance.*

***20.** Therefore, sub section (1) deals with the payment of arrears of rent when there is no dispute about the rate of rent or the period of arrears of rent. Sub section (2) of the Act comes into play if there is dispute as to the amount of rent including the period of arrears payable by the tenant. In that situation, the tenant is obliged to apply*

within time as specified in sub section (1) that is within one month of the receipt of summons or within one month of appearance before the court to deposit with the Civil Judge the amount admitted by him to be due. The tenant is also required to file an application for determination of the rent payable. Such deposit is not to be accepted, unless it is accompanied by an application for determination of rent payable. Therefore, sub section (2) of the Act requires two things, deposit of arrears of rent at the rate admitted to be due by the tenant along with an application for determination of the rent payable. If the two conditions are satisfied then only the Court having regard to the rate at which rent was last paid and for which tenant is in default, may make an order specifying the amount due. After such a determination the tenant is granted one month's time to pay to the landlord the amount which was specified. The proviso of the Act, limits the discretion of the court to extend the time for deposit of arrears of rent. The extension can be provided once and not exceeding two months.

21. *Sub section (3) provides for consequences of non-payment of rent i.e. striking off the defence against the delivery of the possession and to proceed with the hearing of the suit. Such provision is materially different from sub sections (2A) and (2B) which was being examined by this Court in B.P. Khemka. Sub sections (2A) and (2B) of Section 17 of 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso of sub sections (2) and (3) of Section 7 of the Act. Therefore, the provisions of sub section (2) are mandatory and required to be scrupulously followed by the tenant, if the tenant has to avoid the eviction on account of non-payment of arrears of rent under Section 6 of the Act. There is an outer limit for extension of time to deposit of arrears of rent in terms of the proviso to sub section (2) of Section 7 of the Act. The consequences flowing from non-deposit of rent are contemplated under sub section (3) of Section 7 of the Act. Therefore, if the tenant fails to deposit admitted arrears of rent within one month of receipt of summons or within one month of*

appearance without summons and also fails to make an application for determination of the disputed amount of rate of rent and the period of arrears and the subsequent non-payment on determining of the arrears of rent, will entail the eviction of the tenant. Section 7 of the Act provides for a complete mechanism for avoiding eviction on the ground of arrears of rent, provided that the tenant takes steps as contemplated under sub section (2) of Section 7 of the Act and deposits the arrears of rent on determination of the disputed amount. The deposit of 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. In view thereof, tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not an application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.”

9. The learned advocate for the opposite party submits that in the decision of the ***Bahadur Singh Kathotia v. Purabi Basu***, reported in ***2023 SCC OnLine Cal 350***, another Co-ordinate Bench had held that the issue as to whether the provisions of the Limitation Act would be applicable in a case of like nature was not decided by the Hon’ble Apex Court in ***Chamaria (supra)***. His Lordship was of the view that the decision in ***Chamaria (supra)*** suffered from the doctrine of sub-silentio.

10. This ratio was referred by another Co-ordinate Bench upon differing with His Lordship. A Division Bench was constituted, where the issue has been answered in the following manner in

Smt. Binika Thapa (nee Rai) & Anr. Vs Smt. Damber Kumari Mukhia & Anr. decided in **2023 SCC Online Cal 5478**. The relevant paragraphs are quoted below:-

“14. The ratio decided in **Amit Kumar Chamariya (supra)** applies to all situations, when the tenant fails to comply with the provisions of Section 7 (1) and 7 (2) of the said Act, within the time frame as prescribed under Section 7 (1), itself. The law declared in **Amit Kumar Chamariya (supra)** extends to such point and the subsequent decision in **Debasish Paul (supra)** agrees with the ratio of the decision in **Amit Kumar Chamariya (supra)**. The decision is a binding precedent upon all courts, be it the trial court as well as High Court.

16. We proceed to discuss the ratio in **Amit Kumar Chamariya (supra)**. On institution of a suit by the landlord for eviction on any of the grounds referred to in Section 6 of the said Act, the tenant, subject to the provisions of sub-section (2) of the Section 7, was liable to pay to the landlord or deposit with the civil judge all arrears of rent calculated at the rate at which it was last paid and upto the end of the month previous to that in which the payment was made, together with interest at the rate of 10% per annum. Such payment or deposit was to be made within one month from the service of summons on the tenant or when the tenant appeared in the suit without summons being served, within one month from his appearance. Thereafter, the tenant was enjoined by law, to continue to pay to the landlord or deposit with the civil judge a sum equivalent to the rent at that rate, month by month within 15th of each succeeding month. In case of any dispute as to the amount of rent payable by the tenant, the tenant was liable to deposit with the civil judge, within the time specified in the sub-section, the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit could be accepted unless it

was accompanied by an application for determination of the rent payable. On receipt of the application, the civil judge, having regard to the rate at which the rent was last paid and the period for which default may have been made by the tenant, determine the dispute and pass an order within a period not exceeding one year, specifying the amount, if any, due from the tenant and thereupon the tenant was liable to pay to the landlord within one month from the date of such order, the amount so specified in the order along with the monthly rent at the rate so determined.

17.Moreover, the decision in ***Bahadur Singh Kathotia (supra)*** was rendered without consideration of the decision of the Division Bench in ***Calcutta Gujarati Education Society versus Sri Ajit Naraya Kapoor*** passed in C.O.175 of 2017, the Hon'ble Division Bench answered the reference in view of conflicting decisions of the Hon'ble Division Benches of this Court. The question formulated by the then Acting Chief Justice was as follows:-

“Does the view of the Division Bench of this court that section 5 of the Limitation Act can be applied to condone delay in making applications under sub-sections (1) and (2) of section 7 of the West Bengal Premises Tenancy Act, 1997, as held in the Subrata Mukherjee case (supra), survive in view of the decisions of the Hon'ble Supreme Court in the Nasiruddin case (supra), the Ashoke Kumar Mishra case (supra), Manjushree Chakraborty case (supra).”

18.The reference was whether Section 5 of the Limitation Act could be applied to condone delay in filing an application under sub-section (1) and sub-section (2) of Section 7 of the said Act and whether the decision in ***Subrata Mukherjee's case*** survived in view of the decision in Nasiruddin's case, Ashok Kumar Mishra's case and Manjushree Chakraborty's case. Upon taking note of the judgment of the ***Amit Kumar Chamariya (supra)*** the Division Bench held that the Limitation Act, 1963 had no application in respect of

an application by a tenant made under Section 7 of the said Act, for determining the arrear rent, as the Act of 1997 mandated that deposit of rent or where there is dispute regarding quantum of rent, deposit of admitted rent along with application for determination of rent must be made by the tenant within the time specified under the said section. In relation to a suit for eviction, where compliance with the deposit mandate would enable the tenant to seek protection against delivery of possession, compliance with the deposit mandate was essential. No assertive right of the tenant could be enforced. Section 6 of the said Act had a non-obstante clause on application of other laws regarding eviction and Section 40 of the said Act would be applicable, subject to the limitations provided in the said Act. The deposit of admitted rent, raising a dispute regarding quantum of rent, and filing an application for determination of rent, were to be made by the tenant within the specified time and could only be extendable as per the proviso to Section 7(2) of the said Act and the deposit mandate had to be followed by the tenant for protection from eviction.

19.If for any reason the tenant failed to pay/deposit rent month by month as laid down under Clause (c) of Sub-Section 1 of Section 7 of the Act or as directed by the court under Sub-Section 2 of Section 7, the tenant could get further extension of time for two months, to make such deposit.

20.In *Debasish Paul (supra)*, the Hon'ble Apex Court held that the Limitation Act, could not be used to expand the time prescribed by the legislation and the reasoning in *Amit Kumar Chamariya (supra)* could not be doubted. More so, the requirement for the tenant to file an application and to deposit the admitted arrear rents as well, were binding, which had not done in the said case.

21.The decision in *Amit Kumar Chamariya (supra)*, is the law governing the scope of Section 7 of the said Act. The question was framed in Paragraph 5 thereof. The same is binding on all courts.

The facts of the case do not make an iota of difference with the points of reference. In **Amit Kumar Chamariya (supra)** the Hon'ble Apex Court finally interpreted **Nasiruddin (supra)**, in paragraph 16 thereof. **B.P. Khemka (supra)** was also considered and distinguished in paragraph 18 and the Hon'ble Apex Court arrived at the conclusion that Section 5 of the Limitation Act would not apply in case the benefit of protection from eviction was sought by the tenant under Section 7 of the said Act. A conjoint reading of the paragraphs 19, 20 and 21 of **Amit Kumar Chamariya (supra)** would categorically reflect such finding.

22.Section 40 of the said Act makes the Limitation Act applicable to the provisions of the said Act, subject to other inbuilt periods of limitation prescribed. The Hon'ble Apex Court discussed the provision of law and held that Section 5 of the Limitation Act would not apply if the tenant failed to comply with the mandatory provisions of Section 7.

23.According to the ratio in **Amit Kumar Chamariya (supra)**, the period of one month as mentioned in paragraph 7(1)(b) was treated to be the inbuilt period of limitation making Section 40 of the said Act inapplicable.”

11. In the matter of **Debasish Paul & Anr. vs Amal**

Boral reported in **2023 INSC 925**, the Hon'ble

Apex Court held as follows:-

“**16.** We have no doubt over the proposition that though generally the Limitation Act is applicable to the provisions of the said Act in view of Section 40 of the said Act, if there is a lesser time period specified as limitation in the said Act, then the provisions of the Limitation Act cannot be used to expand the same. It is in this context that in Nasiruddin⁶ case, it has been mentioned that the real intention of the legislation must be gathered from the language used. Thus, the reasoning in Bijay Kumar Singh⁷ case cannot be doubted more so as the requirement is for a tenant to file an

application, but he has to deposit the admitted arrears of rent as well, which has certainly not been done.

17. We are of the view that a combined reading of the two statutes would suggest that while the Limitation Act may be generally applicable to the proceedings under the Tenancy Act, the restricted proviso under Section 7 of the said Act, providing a time period beyond which no extension can be granted, has to be applicable. The proviso is after Sub-Section (2) of Section 7 but Sub-Section (2) of Section 7 in turn refers to Sub-Section (1) implying the application of the proviso to Sub-Section (1) too.

18. There is also a larger context in this behalf as the Tenancy Acts provide for certain protections to the tenants beyond the contractual rights. Thus, the provisions must be strictly adhered to. The proceedings initiated on account of non-payment of rent have to be dealt with in that manner as a tenant cannot occupy the premises and then not pay for it. This is so even if there is a dispute about the rent. The tenant is, thus, required to deposit all arrears of rent where there is no dispute on the admitted amount of rent and even in case of a dispute. The needful has to be done within the time stipulated and actually should accompany the application filed under Sub-Sections (1) & (2) of Section 7 of the said Act. The proviso only gives liberty to extend the time once by period not exceeding two months.

19. The respondent neither paid the rent, nor deposited the rent by moving the application nor deposited it within the extended time as stipulated in the proviso. The mere allegation of absence of correct legal advice cannot come to the aid of the respondent as if such a plea was to be accepted it would give a complete license to a tenant to occupy premises without payment of rent and then claim that he was not correctly advised. If the tenant engages an advocate and abides by his advice, then the legal consequences of not doing what is required to be done, must flow.

12. Under such circumstances, the order impugned is erroneous and is set aside. The application under Sections 7(1) and 7(2) are dismissed as not maintainable being barred by law. The suit shall proceed in accordance with law. The tenant will have the right to cross-examine the plaintiff, and demolish the plaintiff's case without setting up his own defence. The cross-examination shall not proceed in a manner that, by way of suggestion or otherwise, the tenant would be able to put forward his defence.

13. In the decision of the Hon'ble Apex Court in the matter of ***Modula India versus Kamakshya Singh Deo*** reported in ***(1988) 4 Supreme Court Cases 619***, the Hon'ble Apex Court had held that in a suit which was appearing undefended, the defendant may enter appearance by exercising a limited right to cross-examine the plaintiff's witnesses and to advance arguments to demolish the plaint case. Relevant paragraph is quoted below:-

“For the above reasons, we agree with the view of Ramendra Mohan Dutta, ACJ that, even in a case where the defence against delivery of possession of a tenant is struck off under [section 17\(4\)](#) of the Act, the defendant, subject to the exercise of an appropriate discretion by the court on the facts of a particular case, would generally be entitled:

- (a) to cross-examine the plaintiff's witnesses; and
- (b) to address argument on the basis of the plaintiff's case.

We would like to make it clear that the defendant would not be entitled to lead any evidence of his own nor can his cross-examination be permitted

to travel beyond the very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses.”

14. Accordingly, the revisional application stands disposed of.
15. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)