

07.03.2024

Sl no. 11

Ct no. 19

PB/P.M.

C.O. 641 OF 2023

Mrs. Talat Begum

- Vs -

Ms. Rabia Khatoon & Ors.

Md. Quddus,
Mr. Murari Chakraborty,
Mr. Mahesh Shaw

.... for the petitioner.

Mr. Saurabh Guhathakurata,
Ms. Nilanjana Sarkar,
Mr. A. Sarkar

... for the opposite party No. 1, 3 and 5.

1. The revisional application arises out of an order dated December 15, 2022 passed by the Learned Judge, 4th Bench, Presidency Small Causes Court, Calcutta, in Ejectment Suit no. 325 of 2019.
2. By the order impugned, the learned Court rejected the application of the petitioner under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 upon holding that there had been non-compliance of Section 7(1) of the Act.
3. I find that the reasoning given by the learned Court appears to be convoluted and confusing.
4. It was the finding of the learned Court that the last paid rent should have been at the enhanced rate which was available from the agreement. On such finding, the Court held that there was non-compliance of Section 7(1) of the West Bengal Premises Tenancy Act, 1997 as the last paid rent

was not deposited at the enhanced rate as the admitted arrears, but at the rate fixed during induction of the tenant. Section 7 of the said Act is a provision which permits the tenant to get the benefit of protection against eviction on a suit being instituted by the landlord on any of the grounds referred to the Section 6. The tenant shall, subject to the provisions of sub-Section 2 of the said Section, pay to the landlord or deposit in court all the 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 was made, together with interest at the rate of 10% per annum. Such payment was to be made within one month from receipt of summons or within a month from appearance, without receipt of summons.

5. Section 7(2) provides that upon compliance of section 7(1), in case of any dispute with regard to the quantum of rent payable, rate of rent and arrears of rent, the tenant may file an application for determination of such dispute.
6. Accordingly, the petitioner filed an application under Section 7(1) and 7(2), for such protection. It is the specific case of the petitioner/tenant that

the last paid rent was Rs. 705/- per month. Petitioner contends that challans had also been produced before the learned Court indicating that the rent was deposited at the rate last paid i.e. Rs. 705/- per month.

7. On the contrary, the plaintiff relied on the tenancy agreement, indicating that upon expiry of every three years there was supposed to be 20% enhancement of the rent. The tenant was bound to pay the enhanced rent.
8. The learned Court, upon perusing the tenancy agreement came to the conclusion that as per the clause relating to 20% enhancement of the rent every three years and the tenant was liable to pay a higher amount than what was deposited. Accordingly, the application under Section 7(2) was rejected on the ground that the tenant had not paid the agreed rent.
9. In my opinion, there appears to be a dispute with regard to the rate of rent. The Court was required to decide the dispute with regard to the arrear rent, rate of rent and period of rent which was deposited and if it was found that the tenant was in arrears, the calculation was to be made by the

court as per law and the tenant was required to pay the amount.

10. Unless it was before the Court that the last paid rent was more than Rs.705/- and the admitted arrears was not deposited at that rate, the question of non-compliance of Section 7(1) of the Act would not arise. Moreover, even if the Court was of the view that the agreement indicated that rent at a higher amount was to be paid, the Court ought to have calculated the amount and given a chance to the tenant to deposit the said amount. It appears that the application under Section 7(1) and 7(2) of the Act were filed within a month from the receipt of summons and the arrear rent of four months had been deposited at the rate of Rs. 705/- per month.
11. The order impugned is set aside. The learned Court is directed to hear the application under Section 7(2) and pass necessary orders upon considering all the above aspects and the rent deposit challans etc. If the Court finds that the petitioner was required to pay higher amount than what was admitted by him, an opportunity should be given to him to pay the amount in terms of proviso of Section 7(2) of the Said Act after the

Court quantifies the amount upon calculation thereof as per the provisions of law.

12. This Court has not gone into the merit of the revisional application.

13. This revisional application is, thus, disposed of.

(Shampa Sarkar, J.)