

30.1.2024
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Ct. no. 652
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CO 935 of 2020

Subrata Banerjee
Vs.
Bidyut Kumar Roy Chowdhury & Ors.

Mr. Kajal Mukherjee
Mr. Saptarshi Dutt ...for the Petitioner

Affidavit of service filed by the petitioner is taken on record. In spite of service, opposite parties are not represented.

The present application has been directed challenging the order no. 15 dated 6.7.2019, order no. 16 dated 19.9.2019 and order no. 17 dated 4.12.2019 passed by the learned Civil Judge (Junior Division), 3rd Court, Purba Bardhaman in Title Suit no. 78 of 2017. By the impugned order, learned court below has been pleased to struck off the defence against delivery of possession invoking his power under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 (herein after called as the Act of 1997).

The case made out in the plaint is that the plaintiffs are owners of the suit property and plaintiff no. 3 inducted the defendant/petitioner herein as a monthly tenant, vide agreement dated 7.5.2003 at the monthly rent of Rs. 200/- and it was subsequently enhanced to Rs. 280/- per month. Further case of the

plaintiff is that the defendant defaulted in payment of rent from April, 2014. The defendant appeared in the said suit on 20th January, 2018 but did not take any step for filing any application under Section 7 of the Act of 1997. Thereafter, the court below fixed on 15.3.2018 for filing written statement by the defendant. However, on 23rd March, 2018, the defendant filed petition under Section 7(1) and 7(2) of the Act of 1997 with a put up petition. Thereafter, on 15.3.2019, was fixed for hearing of the petition under Section 7(1) and 7(2) of the Act of 1997. However, learned court below after hearing the petitioner's aforesaid application filed under Section 7(1) and 7(2) of the Act of 1997 was pleased to dismiss the said application by the order impugned and was further pleased to struck off the defence against delivery of possession.

Being aggrieved by that order, learned counsel for the petitioner submits that the court below erred in law and fact while passing the order impugned and failed to consider the fact that the defendant was suffering from prolonged serious ailments called "Chronic Neurological Diabetic Peripheral Suffering" which hampered his normal body movement and relied upon his Advocate but the Advocate practically failed to take necessary steps and for which the petitioner should not suffer for his lawyer's fault for which the suit was also fixed for ex parte hearing.

Learned court below also failed to consider the facts and contents of the application under Section 7(1), 7(1)(c) and 7(2) of the Act of 1997 and the amendment petition thereof and only accepted the written statement on payment of cost. The court below erred in law by not giving opportunity to place before the learned court below, the dispute as to the rate of rent and the period of default. Accordingly, the petitioner has prayed for setting aside the order impugned.

I have considered the submissions made by the petitioner and also the order impugned i.e. the order no. 16 dated 19.9.2019 and order no. 17 dated 4.12.2019. It appears from order no. 17 dated 4.12.2019 that the defendants did not press his application for amendment and accordingly, it was rejected. However, in connection with the application under Section 7(1) and 7(2) of the Act of 1997, it appears that the defendants in his application under Section 7(1) of the Act of 1997 has stated that he was inducted as a tenant in respect of the suit premises by way of an agreement dated 7.5.2003 at a monthly rent of Rs. 200/-. He has also not disputed that the rent was not paid since the month of April, 2018. Accordingly, when the defendant appeared in the said suit on 20th April, 2018, he was mandatorily required to deposit the admitted arrear rent along with 10% in order to avoid the eviction on account of non-payment of arrears of rent under Section 6 of the

Act. In the present case, the defendant has filed applications under Section 7(1) & 7(2) of the Act of 1997 on 23.3.2018 though he appeared in the suit on 20th January, 2018.

The Apex Court in the case of **Bijay Kumar Singh & Others Vs. Amit Kumar Chamaria & Anr.**, (2019) 10 SCC 660 held 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. In the said judgment, it was further held that the provision laid down in Section 7 of the Act of 1997 provides for a complete mechanism for avoiding eviction on the ground of arrears of rent provided that the tenant takes steps under Section 7(2) 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 and 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 defendant but the tenant has to deposit the arrears of rent as well.

In the present context, it appears that defendant in all his applications filed under Section 7 of the Act of 1997 has neither disputed plaintiff's claim of rate of rent nor the period of default as claimed by plaintiff, rather admitting both he wants to make deposit of the same as calculated by plaintiff, by filing aforesaid applications under Section 7 beyond the statutory period.

Article 227 of the Constitution of India provides for the power of superintendence which is administrative as well as judicial in nature in order to keep the courts below within the bounds of their authority and it can interfere mainly in the cases:-

- i) where court below acted arbitrarily
- ii) where court below acted in excess of jurisdiction vested in him
- iii) when the court below fails to exercise jurisdiction vested in them.

High court should not interfere for correcting mere error of facts or with a finding of the court below which is within jurisdiction of such court unless such finding is perverse in such a sense that no prudent person having the knowledge of law would not have arrived at such finding or the finding is not based on evidence or such finding results in manifest injustice or misdirection in law.

In the present case, in view of the mandatory provision laid down in Section 7 of the Act of 1997 and the law laid down on interpreting such provision by the Apex Court in ***Bijay Kumar Sing's case (supra)***, I do not find any perversity or illegality in the order impugned which calls for interference by this court invoking jurisdiction under Section 227 of the Constitution of India.

In such view of the matter, C.O. 935 of 2020 is accordingly, dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)