

April 3, 2024
Sl. No.23
Court No.19
srm/s.biswas

CO 714 of 2022

Sri Ashis Kumar Bose
vs.
Sri Avijit Mukhopadhyaya

Mr. Buddhadev Ghoshal,
Ms. Ankita Mondal

... for the Petitioner.

Mr. Debjit Mukherjee,
Mrs. Susmita Chatterjee,
Mr. Kaustav Bhattacharyya,
Ms. Sinjini Chakraborty,
Ms. Priyanka Jana

...for the Opposite Party.

1. The revisional application arises out of an order dated March 7, 2022 passed by the learned Civil Judge (Junior Division), 7th Court, Howrah, in Title Suit No.530 of 2021.
2. By the order impugned, the learned court disposed of an application under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act), inter alia, directing the petitioner to deposit Rs.7,500/- along with interest per annum to be calculated up to date of the order excluding one month allowed for making payment and compliance of the order. Accordingly, the court arrived at a calculation of Rs.8,250/- as the arrear dues from October, 2019 to October, 2021.
3. According to Mr. Ghoshal, learned advocate appearing for the tenant, the calculation was

wrong. The learned court proceeded on the basis of Section 21 of the Act of 1997, instead of proceeding on the basis of Section 7(1) of the Act.

4. Attention has been drawn to the provision of Section 7 of the Act in order to substantiate the claim that the deposit in court of the admitted arrear along with interest should be sufficient compliance and the learned court ought to have adjusted the said amount against the arrears which were found due. Once the arrears were deposited in court at the rate admitted by the petitioner, the said deposits in court were valid deposits and the question of calculation would not arise.
5. It is further contended by Mr. Ghoshal that upon receipt of notice of termination of tenancy, the tenant was not required to pay rent, but pay to the landlord or deposit an amount equivalent to rent. It is also contended that even if the interest @10% was not deposited along with the admitted arrear rents the court had the power to make good the short deposit, subject to payment of additional interest.
6. Mr. Ghoshal relies on a decision of this court in **Kanailal Dutta vs. Kanailal Patra**

reported in 1967 CWN 334, **Lakpat Rai Marwari vs. Radheshyam alias Radhakissen Kanoria** reported in 1969 CWN 858 and **Ashok Kumar Bhagnani vs. Mansur Ahmed** reported in 2015 (4) CHN (Cal) 699.

7. It is vehemently contended that the calculation was incorrect and the learned court wrongly relied on the provisions of Section 21 of the said Act, inter alia, holding that tendering of cheque and payment by cheque were two different processes and payment by cheque was not supported by law. Thus, even if the tenant had sent the cheques to the landlord, the tenant was still in arrears. Such observation of the learned court was contrary to the provisions of law. The law permitted the tenant to pay equivalent of rent to the landlord in any manner whatsoever.
8. Mr. Mukherjee, learned Advocate appearing on behalf of the landlord/opposite party denies the contentions of Mr. Ghoshal. It is contended that the order passed in the application under Section 7(2) for payment of arrears was correctly passed as the admitted arrears deposited in terms of Section 7(1) of

the said Act were invalid deposits. The law enjoined a duty upon the tenant to deposit the arrear rent along with 10% interest, which was not done in this case. Interest approximately of around 8% was deposited along with the admitted arrears. Moreover, the court had the power to determine whether the admitted arrear, as deposited by the opposite party, was valid or not.

9. This Court finds that the decision in Ashok Kumar Bhagnani (supra) was passed by a learned co-ordinate Bench of this Court when the decision of the Hon'ble Apex Court in **Bijay Kumar Singh -vs- Amit Kumar Chamaria** reported in (2019) 10 SCC 660, had not been delivered. The coordinate bench permitted payment of deficit interest with additional interest at a late stage.
10. In the present position of law, as settled in Chamaria (supra), a tenant was required to deposit the admitted arrear rent along with 10% interest of the said amount in order to defend the suit and to seek protection from eviction. Only upon compliance of Section 7(1) of the said Act could an application under Section 7(2) of the said Act be decided. An application under Section 7(2) could not

be filed independently without compliance of Section 7(1) and such application was to be filed only if there was a dispute.

11. It was held as follows:

“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.

12. Admittedly, unless there was a dispute, the question of the petitioner filing an application under Section 7(2) for determination of the arrear rent would not arise. The tenant deposited the admitted arrears but not in terms of Section 7(1). Thus, the deposit under Section 7(1) was not considered by the learned court to be valid deposits and as such those were not directed to be adjusted against what was finally adjudicated by the court to be the rent due.
13. This Court agrees with Mr. Ghoshal to the extent that there could not be double deposit. Thus, the petitioner is at liberty to pray for withdrawal of the money which has been deposited in court in compliance of Section 7(1) of the said Act. The learned court shall allow the prayer for withdrawal of the deposit already made within a week from the date of filing of the same.
14. There is a further allegation of miscalculation with regard to the interest.

Thus, the direction for payment of 10% interest, as calculated by the court, is set aside. The rest of the order remain unaltered.

15. The arrears from October, 2019 to October, 2021 as has been adjudicated as Rs.7,500/- shall be deposited before the learned trial court within two weeks from date. The monthly rent as directed by the trial court, shall be deposited. The relevant direction is quoted below :-

“...Defendant shall continue to deposit rent month to month rent as to be paid under section 7 (1) WBPT Act, according to English calendar month, because admittedly he is a tenant in respect of suit premises under the land-lordship of the plaintiff at the rate of rent of Rs.300/-, according to English calendar month in the name of the plaintiffs.”

16. Whether there is any default or whether there are any dues, will be decided as an issue in the suit.
17. The disposal of the said applications by the learned court was only to grant protection to the tenant in so far as his right to defend the suit was concerned under Section 7 of the said Act. If a tenant does not comply with Sections 7(1) and 7(2) of the said Act, the tenant deserves his defence to be struck off.
18. The decisions in Kanailal Dutta (supra) and Lakpat Rai Marwari (supra) are not

applicable in the present case, inasmuch as, those decisions were rendered while deciding the liability of a tenant to pay rent, who has already suffered a decree of eviction.

19. Under such circumstances, the revisional application is disposed of with the above modification. The learned court shall proceed to dispose of the suit in accordance with law and expeditiously, as it appears to this Court that the suit is of 2021.

20. There shall be no order as to costs.

21. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)