

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 752 of 2022

Arshad parwez & Anr.

Vs.

Dindayal Kayan

With

C.O. 754 of 2022

Sanjeet Kumar @ Sanjeet Kumar Jaiswal & Anr

Vs.

Dindayal Kayan

For the petitioners/ Defendants :Mr. Swagata Datta, Adv.
Mr. Kaushik Chaudhury, Adv.
Ms. Busra Khatun, Adv.
Ms. Manisha Paswan, Adv.

For the Opposite Party/Plaintiff :Mr.Rahul Karmakar, Adv.
Mr. Iftekar Munshi, Adv.
Mr. Sounak Mukherjee, Adv

Heard On :27.06.2024

Judgment On : 09.07.2024

Bibhas Ranjan De, J. :

1. Both the revision applications having identical issue of rent are being taken up together for disposal by this common judgment.

CO. 752 of 2022

2. Challenge of this revision application is the order no. 23 dated 25.02.2022 passed in connection with Ejectment Suit no. 60 of 2018 passed by Ld. Judge (6th Bench), Presidency Small Cause Court, Calcutta wherein Ld. Judge struck out the defence invoking Section 7(3) of the West Bengal Premises Tenancy Act, 1997 (for short Act, 1997), for non-compliance of the provision of Section 7 (1) & 7 (2) of the Act, 1997.
3. On 06.04.2018 plaintiff/opposite party herein filed one Ejectment Suit no. 60 of 2018 against the defendants/petitioners. On 02.05.2018 defendants entered appearance by filing an application under Section 7 (1) & 7 (2) of the Act, 1997. The application under Section 7(1) was allowed. Application under Section 7 (2) of the Act, 1997 read with Section 151 of the Code of Civil Procedure (for short CPC) was filed with a prayer for deposit of arrear rents for the period

of from May 2017 to September 2017 along with current rent from May 2018. Petitioners/defendants were directed to pay at the rate at which rent was last paid and the period for which default may have been made by the defendants/petitioners. In compliance with the order dated 02.05.2018 by the Ld. Court the petitioners/defendants complied with the direction by depositing rent of the subject premises before the Ld. Court since May 2018 along with arrears rent.

- 4.** Subsequently, on 17.11.2021 petitioners/defendants preferred an application under Section 151 of CPC in the Ejectment Suit being no. 60 of 2018 with a prayer for making payment of corporation tax with effect from order dated 02.05.2018 passed in disposing application under Section 7 (1) of the Act, 1997.
- 5.** The aforesaid application dated 17.11.2021 was finally disposed of on 25.02.2022 by the Ld. Judge (6th Bench) Presidency Small Causes Court, Calcutta, by recording an order of rejection of the same and struck out the defence invoking 7 (3) of the Act, 1997 for non-compliance of the provision of Section 7(1) & 7(2) of the Act, 1997.
- 6.** Being aggrieved the instant revision application has been filed.

CO. 754 of 2022

7. The instant revision application has been preferred challenging the order no. 23 order dated 25.02.2022 passed in connection with Ejectment Suit no. 59 of 2018 passed by Ld. Judge (6th Bench), Presidency Small Cause Court, Calcutta wherein Ld. Judge struck out the defence invoking Section 7(3) of Act, 1997, for non-compliance of the provision of Section 7 (1) & 7 (2) of the Act, 1997.
8. On 06.04.2018 plaintiff/opposite party herein filed one Ejectment Suit 59 of 2018 against the defendants/petitioners. On 02.05.2018 defendants entered appearance by filing an application under Section 7 (1) & 7 (2) of the Act, 1997. The application under Section 7(1) was allowed. Application under Section 7 (2) of the Act, 1997 read with Section 151 of CPC was filed with a prayer for deposit of arrear rents for the period of from May 2017 to September 2017 along with current rent from May 2018. Petitioners/defendants were directed to pay at the rate at which rent was last paid and the period for which default may have been made by the defendants/petitioners within the specified time. In compliance with the order dated

02.05.2018 by the Ld. Court the petitioners/defendants complied with the direction by depositing rent of the subject premises before the Ld. Court since May 2018 along with arrears rent.

9. Subsequently, on 17.11.2021 petitioners/defendants preferred an application under Section 151 of CPC in the Ejectment Suit being no. 59 of 2018 with a prayer for making payment of corporation tax with effect from order dated 02.05.2018 passed in disposing application under Section 7 (1) of the Act, 1997.

10. The aforesaid application dated 17.11.2021 was finally disposed of on 25.02.2022 by the Ld. Judge, 6th Bench, Presidency Small Causes Court, Calcutta, by recording an order of rejection of the same and struck out the defence invoking 7 (3) of the Act, 1997 for non-compliance of the provision of Section 7(1) & 7(2) of the Act, 1997.

11. Being aggrieved by and dissatisfied with the said instant revision application has been filed.

Argument advanced:-

12. Ld. Counsel, Mr. Swagata Datta, appearing on behalf of the defendants /petitioners has contended that

defendants/petitioners are surely in obligation to pay the corporation tax but mistakenly not deposited along with the rent in compliance with the order passed under Section 7(1) of the Act, 1997. Mr. Datta, has tried to make this Court understand the rent cannot be inclusive of corporation tax which has to be paid in compliance with the relevant provision of KMC Act.

13. In support of his contention, Mr. Datta relied on a case of ***Team Consultants Private Limited vs. Swapan Lahiri and others reported in 2006 (3) CHN***

14. On the contrary, Ld. Counsel, Mr. Rahul Karmakar, appearing on behalf of the opposite party/plaintiff has contended that there is scope to split up the corporation tax from the rent admitted by the parties. Mr. Karmakar further referred to the petition under Section 7(1) & 7(2) in support of his contention of admitted rent. That apart, Mr. Karmakar has drawn my attention to the provision of Section 5(8) of the Act, 1997 whereby tenant is obliged to pay the share of Municipal Tax as an occupier of premises in accordance with the provision of KMC Act, 1980.

15. In support of his contention, Mr. Karmakar has relied on a following cases:-

- ***Mayank Poddar and others vs. Development Consultant Ltd. reported in AIR 2005 Calcutta 248***
- ***Popat and Kotech property and others vs. Ashim Kumar Dey reported in (2018) 9 Supreme Court Cases 149***
- ***Bijay Kumar Singh and others vs. Amit Kumar Chamariya and another reported in (2019) 10 Supreme Court Cases 660***

Decisions:-

16. The only issue before this Court is as to whether the liability of paying occupier corporation tax by the tenant is part of rent or not.

17. Before delving into the issue I would like to reproduce the provision of Section 7 the Act, 1997 which runs as follows:-

“Section 7

When a tenant can get the benefit of protection against eviction

(1) (a) On a proceeding being instituted by the landlord for eviction on any of the grounds referred to in section

6, the tenant shall, subject to the provisions of sub-section (2) of this section, pay to the landlord or deposit with the Controller 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 is made together with interest at the rate of ten per cent per annum.

(b) Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the proceeding without the summons being served upon him, within one month of his appearance.

(c) The tenant shall thereafter continue to pay to the landlord or deposit with the Controller month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

(2) If in any proceeding referred to in sub-section (1), there is any dispute as to the amount of the rent payable by the tenant, the tenant shall, within the time specified in that sub-section, deposit with the Controller the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of the application, the Controller shall, having regard to the rate at which rent was last paid and the period for which default may have been made by the tenant, make, as soon as possible within a

period not exceeding one year, an order specifying the amount, if any, due from the tenant and, thereupon, the tenant shall, within one month of the date of such order, pay to the landlord the amount so specified in the order:

Provided that having regard to the circumstances of the case an extension of time may be granted by the Controller only once and the period of such extension shall not exceed two months.

(3) If the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, the Controller shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the proceeding.

(4) If the tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant, shall be made by the Controller, but he may allow such cost as he may deem fit to the landlord: Provided that the tenant shall not be entitled to any relief under this subsection if, having obtained such relief once in respect of the premises, he again makes default in payment of rent for four months within a period of twelve months or for three successive rental periods where rent is not payable monthly.”

- 18.** To eschew the prolixity, I refrain myself to go into the details of the applications under Section 7 (1) & 7(2) of the Act, 1997 as well as the orders of the Court thereon while admittedly defendants/petitioners in connection with both the revision applications did not pay the corporation tax.
- 19.** Section 5 (8) of the Act, 1997 clearly mandates the liability of the tenants to pay the Municipal Tax as an occupier of the premises in accordance with the relevant provision of the KMC Act.
- 20.** In all pleadings including the applications under Section 7(1) & 7(2) of the Act, 1997 filed in connection with both the revision applications defendants/petitioners herein admitted the rent inclusive of monthly rent, maintenance charges as well as corporation tax. It is pertinent mention here that petitioners in connection with both the revision applications were directed by the Court to pay the admitted rent in disposing application under Section 17(1) of the Act 1997. Therefore, petitioners/defendants can be said to have not complied with the order of the Court for depositing admitted arrears rent.

21. In **Team Consultants** (supra) Hon'ble Division bench of this Court dealt with a case where admitted rent was at Rs. 2000/- a month which was supported by the notice to quit where rate of rent was described as Rs. 2000/- unlike the case at hand. Here in this case, defendants/ petitioners admitted the rent inclusive of maintenance charge as well as the corporation tax in written statement as well as application under section 7(1) 7(2) of the Act, 1997, whereas the tenant in **Team Consultance** (supra) asserted the rent as Rs.2000/- a month.

22. In **Mayank Poddar** (supra) Hon'ble Division Bench of this Court held in paragraph 27 & 28 which runs as follows:-

“27. In paragraph 13 of the application filed by the defendant/tenant being G.A. 1771 of 2001 there is a clear admission that the defendant had paid a sum of Rs. 52,76,861.96 paise and such payment would include the payment towards the Calcutta Municipal Corporation's consolidated rates and surcharges.

28. thus the defendant was merely disputing the correct apportionment of the amount of such payment. But on principle, the defendant did not dispute that the payment of municipal rates and tax and surcharge was included within the payment of rent.”

23. Popat and Kotech property (supra) held that:-

“ 9. The respondent tenant nowhere denied in any specific terms that the share of municipal taxes demanded was disproportionate or excessive or otherwise unauthorised in law. The argument advanced at the Bar that the landlord cannot apportion the municipal taxes among different tenants if the premises are to be occupied by more than one tenant and it is the Municipal Corporation who is the authority to separately assess the tax payable by each tenant does not find any support from the provisions of the 1980 Act.

10. This aspect of the matter came up for consideration before this Court in Calcutta Gujarati Education Society v. Calcutta Municipal Corpn. [Calcutta Gujarati Education Society v. Calcutta Municipal Corpn., (2003) 10 SCC 533] and the views expressed by this Court are found to be in para 45 of the said report which is extracted below : (SCC pp. 556-57)

“45. We find that the machinery provisions for assessment and recovery of tax basically involve the owner or the lessor who is “primarily liable” for the tax on property although in the course of assessment and recovery of portion of tax from the tenants, sub-tenants or occupants, their involvement is also directed. It is with the purpose to make the procedure of recovery of tax simpler that the owner or the lessor is proceeded against as the “person primarily liable”. The owner or lessor of the property is “primarily” required to satisfy the demand towards tax with right to recover it from the tenant, sub-tenant or the occupant. If the landlord or the owner is obliged to make payment of whole amount of tax inclusive of his own share and share of the tenant, sub-tenant or the occupant, the owner or lessor has to be conferred with the power to recover the portion of tax payable by the tenant, sub-tenant or occupant who is actually enjoying the property and putting it to use for commercial or non-residential purpose. The legislature has taken note of the fact that a large number of properties in the metropolitan city of Calcutta are in occupation of tenants, sub-tenants or occupants on a comparatively small amount of rent or lease money. In such a situation, to impose entire burden of tax on the owner or lessor, would be inequitable, more so when the tenancy law does not allow increase in rent beyond a particular limit and the right of eviction of the landlord is

*restricted to the grounds under the Tenancy Act. By the impugned provisions of the Act, therefore, the legislature has thought of apportioning the tax burden between owner or the lessor as one party and the tenant, sub-tenant or occupier as the other parties. The whole amount of tax is recoverable from the lessor and may also be recovered from the tenant or sub-tenant through attachment of the rent. In case where the lessor or landlord has paid the whole tax including the portion of tax payable by the tenant or sub-tenant, the landlord has to be equipped with the power to get himself reimbursed by recovery of the portion of tax paid by him on behalf of the tenant. Section 231 of the Act, therefore, creates a fiction that the “tax” apportioned on the tenant would be treated as “rent” and would be recoverable as such. The word “rent” has not been defined in the tenancy law and this Court has taken note of this legal position in *Puspa Sen Gupta v. Susma Ghose* [*Puspa Sen Gupta v. Susma Ghose*, (1990) 2 SCC 651] which arose out of the provisions of the Tenancy Act applicable to West Bengal. Rent is a compendious expression which may include lease money with service charges for water, electricity and other taxes leviable on the tenanted premises.”*

(emphasis in original and supplied)

As already seen, in para 45 of the report, extracted above, the provisions of Section 231 of the 1980 Act were also considered and it was held that municipal taxes would be a part of the “rent” payable by the tenant to the landlord.

11. *While the provisions of the 1980 Act make it very clear that an occupier as distinguished from the owner i.e. “person primarily liable” is entitled to pre-assessment notice and to participate in the assessment proceedings and also to question the same by way of an appeal, etc. assessment of a part of the premises in occupation of a tenant or different parts of such premises in occupation of different tenants is not contemplated under the 1980 Act. Rather, from the provisions of Section 230 of the 1980 Act, it is clear that the person to be assessed to tax is the person primarily liable to pay i.e. the owner who is vested with the right to recover the portion of the tax paid by him on behalf of the tenant, if required, proportionately to the extent that the value of the area occupied bears to the value of the total area of the property. Under the 1980 Act, in the event of any default on*

the part of the owner to pay the tax the rent payable by the tenant(s) is liable to be attached.

12. *In the present case, default on the part of the respondent tenant is clear and evident. The obligation to pay municipal taxes on the tenant being over and above the obligation to pay the rent by virtue of the provisions of Section 5(8) of the 1997 Act, the High Court could not have imposed on the landlord the requirement of obtaining a formal order of enhancement of rent from the Rent Controller.”*

24. In ***Bijay Kumar Singh*** (supra) it was observed that:-

“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 Section 7 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 Section 7 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 (2-A) and (2-B) which was being examined by this Court in B.P. Khemka [B.P. Khemka (P) Ltd. v. Birendra Kumar Bhowmick, (1987) 2 SCC 407] . Sub-sections (2-A) and (2-B) of Section 17 of the 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso to Section 7(2) and sub-section (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 subsection (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 precondition 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.

22. *In view of the judgment in Nasiruddin [Nasiruddin v. Sita Ram Agarwal, (2003) 2 SCC 577] , we do not find any error in the order passed by the learned Single Judge. The trial court shall proceed with the suit in accordance with law. The appeals are dismissed.”*

- 25.** Though there is no definite provision for rent in this case, Ld. Judge dealt with an admitted rent i.e admitted by the defendants/petitioners in connection with both the revision applications, by filing written statement as well as applications under Sections 7(1) & 7(2) of the Act, 1997.

- 26.** After analyzing the ratio of the cases referred to above along with the provision of Section 7 (3) of the Act, 1997, I find hardly any option left to the Ld. Trial Judge to condone the delay in depositing any portion of the admitted rent by the defendants/petitioners herein. In this case admittedly defendants/petitioners defaulted in complying with the provision of the Section 7(1) & 7(2) of the Act, 1997 and therefore the consequences flowing from non-deposit of rent are contemplated under sub Section (3) of Section 7 of the Act which is a mandatory provision leaving no further scope for extension of time.
- 27.** In the aforesaid view of the matter, I find hardly any reason to interfere with the well reasoned orders dated 25.02.2022 passed in connection with Ejectment Suit nos. 59 of 2018 & 60 of 2018 passed by Ld. Judge (6th Bench), Presidency Small Cause Court, Calcutta.
- 28.** Both the revision applications being no. CO. 752 of 2022 & CO 754 of 2022 stand dismissed. Without any order of costs.
- 29.** Interim order, if there be any, stands vacated.

- 30.** Ld. Trial Judge is requested to dispose of both the suits as expeditiously as possible.
- 31.** Connected applications, if there be any, stand disposed of accordingly.
- 32.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 33.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]