05.03.2024
Sl. No.52(ML)
srm

C.O. No. 875 of 2023

Dindayal Kayan

Versus

Md. Shadav Alam

Mr. Sounak Bhattacharya,
Mr. Anirba Saha Ray,
Mr. Sounak Mandal

…for the Petitioner.

1. The revisional application arises out of an order dated January 17, 2023 passed by the learned Judge, 3rd Court, Presidency Small Causes Court at Calcutta, in Ejectment Suit No.79 of 2018.
2. By the order impugned, the learned court allowed an application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act) directing the defendant to pay arrear rent amounting to Rs.55,781/- and monthly rent of Rs.1727/- from February, 2023 month by month within the 10th day of each calendar month. The monthly payment included the rent comprising corporation tax and commercial surcharge.
3. Mr. Bhattacharya, learned Advocate appearing on behalf of the landlord/petitioner submits that the

learned court had misapplied the provisions of law. The admitted arrears were not paid and the learned court should have rejected the application upon striking off the defence. The decision of the Hon'ble Apex Court in the matter of Pushpa Sengupta vs. Sushama Ghosh reported in (1990)2 SCC 651 was not followed. The definition of the expression 'rent' would include not only what was strictly understood as rent, but also payments in respect of amenities or services provided by the landlord under the terms of the tenancy.

4. Mr. Bhattacharya further urged that the ratio in the decision of the Calcutta Gujrati Education Society & Anr. vs. Calcutta Municipal Corporation & Ors. reported in (2003)10 SCC 533, was that the expression 'tax' was fictionally treated as rent. Further reference is made to the decision of Abdul Kader vs. G.D. Gobindaraj reported in (2002)5 SSCC 51, in which the Hon'ble Apex Court held that there was no doubt that taxes which were agreed to be paid by the tenant to the landlord would be a part of the rent.

5. The petitioner as the landlord had filed the suit for eviction and recovery of khas possession.

6. The defendant filed applications under Sections 7(1) and 7(2) of the said Act. The defendant contended that in terms of the agreement, the rent payable was Rs.1,100/- plus maintenance charge @ 10%. The quarterly corporation tax and commercial surcharge were also to be paid to the corporation. The quarterly corporation tax was 27% of the rental amount and commercial surcharge was 20% of the rental amount. Prayer was made before the court to calculate the arrear rent, if any, and to allow deposit of the same. It was the specific contention of the defendant that the monthly rent as also the corporation tax and commercial surcharge had been paid and nothing was due and payable. It was contended that the monthly rent at the rate of Rs.1210/- per month was also being deposited as current rent.

7. It appears that the said applications were filed within time. It was the specific case in the applications that the current rent from April, 2018 was to be paid. Prayer was made in the application under Section 7(1) that the current rent be allowed to be paid. Prayer was made in the application under Section 7(2) that arrear if any be determined although there were no admitted

dues. Receipts upto March 2018 had been issued by the agent of the plaintiff. The specific contention of the defendant was that there was nothing due towards not only rent, but also the corporation tax and the surcharge. When the application under Section 7(2) was being disposed of, it was found that current rent from April 2018 to October 2022 had been deposited.

8. The landlord raised an objection that the corporation tax and surcharge would form a part of the rent and hence there were admitted arrears. The learned court held that the clauses in the lease agreement indicated that the obligation to pay the rent by the tenant to the landlord @ Rs.1,100/- with maintenance charge of 10%, i.e. Rs.110/- was separate and distinct from the requirement of the tenant to pay the corporation tax and the commercial surcharge. When the clauses were distinct and separate, the corporation tax and surcharge could not be taken to be included in the meaning of the expression 'rent', as contemplated under Section 3 of the said Act.

9. According to the learned court, it was a separate issue that the tax payable to the corporation could be recovered as arrears of rent, but such component

would not be rent, as contemplated under Section 3 of the said Act.

10. Relying on the decision of the Hon'ble Apex Court in the matter of Gujrati Education Society (supra) and the decision of the Calcutta High Court reported in (2016) 2 CLT 526 (HC) Eih Limited vs. Ms. Nadia A. Virji, the learned court held that the law had been clearly laid down that the corporation tax or commercial surcharge though fell within the obligation of the tenant under Section 5 of the said Act, it would not constitute rent for the purpose of Section 3 of the said Act, but would have to be paid for the purpose of protection from eviction.

11. The decision of the Hon'ble Apex Court was relied upon and it was held that only if the tenancy agreement specifically provided that the amount of rent would include taxes, such tax component would be a part of the rent and not otherwise. Thus, the learned court calculated the arrears upon finding discrepancies in the rent receipts and directed payment of arrear rent and arrear corporation tax and surcharge which was found due. According to the court, the rent receipts did not mention the period and

as such could not be taken as sacrosanct. Moreover, the current rent was being deposited without the tax and surcharge as the admitted rent, being Rs.1210/-. The court directed the surcharge and tax to be paid as arrears of rent along with the agreed rent and maintenance charges, while disposing of the application under Section 7(2) of the Act. According to the court, for protection under Section 7 of the said Act, those components were required to be paid. The court decided the dispute as to the rate of rent and the arrears due. The tenant contended that the tax and surcharge would not be treated as rent and they had deposited admitted rent only. Learned court held that although the components were not 'rent', but the dues were to be paid for protection under Section 7 of the said Act. Finding the arrears to be due and payable, in exercise of power under Section 7(2), the tenant was directed to deposit the arrears covering the tax and commercial surcharge.

12. Under such circumstances, the order does not suffer from any illegality. All the authorities have been considered in detail.

13. The Hon'ble Apex Court in Pushpa Sengupta (supra) held that rent would include payments in respect of the amenities and services provided by the landlord under the tenancy. The issue of tax or corporation tax or commercial surcharge was not decided. In Abdul Kader (supra) and Karnani Properties Limited reported in AIR 1957 SC 309, the Hon'ble Apex Court held that if the tenant agreed by any clause to pay the amount of tax as a part of the rent only then such taxes would be concluded to be within the definition of rent. In this case, clauses 1 and 7 of the lease agreement dealt with the provision for payment of rent and the provision for payment of corporation tax and commercial surcharge, respectively.
14. Accordingly, the revisional application is disposed of without any interference.
15. As the suit is for eviction and is pending since 2018, the suit should be expedited and disposed of within a year from the next date fixed.
16. There shall be no order as to costs.
17. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)