

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 1121 of 2022

Narayan Singh
Vs.
Dipak Das

Mr. Mani Sankar Chattopadhyay
... For the petitioner

1. Affidavits of service filed in Court today are taken on record.
2. In spite of service, none appears on behalf of the opposite party.
3. Challenge in this revisional application is the Order No.8 dated 20th January, 2020 passed in Ejectment Suit No.223 of 2018 by the learned Civil Judge (Junior Division), 4th Court, Alipore, South 24-Parganas, wherein the learned Judge dealt with an application under Section 5 of the Limitation Act along with applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'Act 1997').
4. Mr. Mani Sankar Chattopadhyay, learned counsel, appearing on behalf of the plaintiff/petitioner herein has submitted that the learned Judge has no power to condone the delay in filing the applications under Sections 7(1) and 7(2) of the Act 1997.

5. It has been further submitted by the learned counsel appearing on behalf of the petitioner that the learned Judge considered the illness delineated in the petition under Section 5 of the Limitation Act for the period from 7th May, 2018 to 5th December, 2018, but the learned Judge still condoned the delay of further three months as the application was filed on 7th March, 2019.

6. Learned counsel on behalf of the petitioner, in support of his contention, relied on a case of **Bijay Kumar Singh & Ors. v. Amit Kumar Chamariya & Ors.** reported in **(2019) 10 SCC 660** wherein the Hon'ble Apex Court relied on the principle handed down by the case of **Nasiruddin v. Sita Ram Agarwal** reported in **(2003) 2 SCC 577** wherein the Hon'ble Apex Court observed as follows:-

“... ..

40. Thus, on analysis of the aforesaid two decisions we find that wherever the special Act provides for extension of time or condonation of default, the court possesses the power therefor, but where the statute does not provide either for extension of time or to condone the default in depositing the rent within the stipulated period, the court does not have the power to do so.

41. In that view of the matter it must be held that in absence of such provisions in the present Act the court did not have the power to either extend the period to deposit the rent or to condone the default in depositing the rent.”

7. On scrutiny of the impugned order, I find that the defendant/opposite party herein filed applications under

Section 7(1) and 7(2) of the Act 1997 on 7th March, 2019 along with an application under Section 5 of the Limitation Act, which was disposed of by the impugned order. It was pleaded on behalf of the defendant that he remained ill from 7th May, 2018 to 5th December, 2018.

8. Learned Judge quoted the provision of Section 7(1) of the Act 1997 wherein time for making payment has been specified and the learned Judge relied on the case of **G.H. Mansukhria v. T.K. Nag** reported in **90 CWN 47** wherein it was held that “Under the law month is a space of time extending from any day to the corresponding day of the next calendar month”.

9. In view of the observation of the Hon’ble Apex Court in **Bijay Kumar Singh** (supra), I find that there is no scope for extension of time or condonation of default in depositing the rent within the stipulated period.

10. It is pertinent to mention here that Section 7(1) of the Act 1997 clearly mandates payment or deposit shall be made within one month from the service of summons on the tenant or where he appears in the suit without summons being served upon him, within one month of his appearance.

11. Therefore, I find that the learned Judge had hardly any scope to condone the delay ignoring the mandatory provisions of the Act 1997.

12. Alternatively, the learned Judge relied on the plea of illness taken by the defendant/opposite party herein but again the learned Judge considered the unexplained delay of three months from 5th December, 2018 to 7th March, 2019. From that point of view, I am also of the opinion that the learned Judge erred in coming to his conclusion.

13. In the aforesaid view of the matter, I am of the opinion that the impugned order suffers from irregularity as well as illegality and is liable to be set aside.

14. As a sequel, the impugned Order No.8 dated 20th January, 2020 passed in Ejectment Suit No.223 of 2018 stands set aside.

15. With the aforesaid observation, the revisional application, being CO 1121 of 2022, stands disposed of.

16. Interim order, if any, stands vacated.

17. Learned counsel appearing on behalf of the petitioner is at liberty to bring this order to the notice of the learned Civil Judge (Junior Division), 4th Court, Alipore, forthwith.

18. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

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

(Bibhas Ranjan De, J.)