

05.09.2024
(D/L-10)
Ct.-19
(Susanta)

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

C.O. 1135 of 2024

**Jyoti Tandon
-Vs-
Asha Bansal & Ors.**

Mr. Rachit Lakhmani,
Mr. Shubham Gupta,
Mr. Raunak Shaw,

... For the Petitioner.

Mr. Meghnad Datta,
Mr. Savita Mukherjee Roychowdhury,
Mr. Anirban Saha Roy
Mr. Subhankar Chakraborty,

.... For the Opposite Parties.

The defendant in a suit for eviction being Ejectment Suit No. 55 of 2022 is the petitioner of the instant application under Article 227 of the Constitution of India, the said suit is pending before the learned Judge 12th Bench City Civil Court at Calcutta.

The learned Trial Judge by the order impugned dated March 05, 2024 has dismissed an application under Sections 7(1) & 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the “said Act of 1997” in short) for the failure of the defendant to deposit the admitted arrear rent in terms of the provision of Section 7(1) of the said Act of 1997 within the prescribed period of limitation.

The learned Trial Judge has found that the service of summons by registered post was effected upon the defendant on March 24, 2023 but the application under Section 7(1) of the said Act of 1997 was filed beyond one month from the date of such service, therefore, the defendant is not entitled to deposit admitted arrear rent and the current rent under the said provision of the said Act of 1997.

The service of summons by registered post was heavily disputed by the defendant, the order impugned is silent about the service of summons by Court bailiff.

Mr. Lakhmani learned advocate for the petitioner submits that the finding of the learned Trial Judge that the summons by the registered post was served upon the defendant on March 24, 2023 is erroneous since there is no acknowledgement due card on the record.

The date of service of summons upon the defendant being crucial to decide an application under Section 7(1) of the said Act of 1997 the findings in this regard must be clear but the order impugned lacks such clarity, therefore, it is set aside.

The application under Sections 7(1) & 7(2) of the said Act of 1997 requires a fresh consideration, the learned Trial Judge is requested

to decide it afresh in accordance with law, keeping in view with the observations made hereinabove.

C.O. 1135 of 2024 is disposed of with the above terms without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official website of this Court.

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

(Biswajit Basu, J.)