

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 1170 of 2020

**Kabita Biswas & Ors.
Vs
Sadhan Dasgupta**

For the petitioners : Mr. Sounak Bhattacharya
Mr. E. Bhattacharya
Ms. Pooja Sah

For the Opposite party : Mr. Tarak Nath Halder

Heard on : 02.02.2024

Judgment on : 13.02.2024

Ajoy Kumar Mukherjee, J.

1. This application under Article 227 of the Constitution of India has been directed against order dated December 21, 2019 passed by the learned Additional Civil Judge (Junior Division), Sealdah, in Ejectment Suit no. 109 of 2014.

2. Petitioner contended that the opposite party herein as plaintiff filed aforesaid suit for eviction against the predecessor in interest of the petitioners, being the deceased father of the petitioners. Original defendant appeared in the suit and filed written statement denying all material allegations made in the plaint. He also filed application under section 7(2) of the West Bengal Premises Tenancy Act 1997 (Act of 1997) for determination

of arrear rent and rate of rent payable to the plaintiff/opposite party. Plaintiff /opposite party herein filed written objection and learned court below by an order dated 05.10.2018 disposed of the said application under section 7(2) directing the predecessor in interest of the petitioner to deposit a total sum Rs. 53,020/- within one month from the date of said order.

3. Petitioners further submit due to death of their father and for some other reasons the petitioners could not deposit the aforesaid arrear rent within time as determined by the court by the aforesaid order dated 05.10.2018 but they ultimately deposited the entire amount on 04.12.2018.

4. Petitioners further case is that due to poor health condition of the predecessor in interest of the petitioners, he could not deposit also the monthly rent for the month of December, 2018 to September, 2019 and the same was deposited on 4th November, 2019 along with statutory interest. Predecessor-in-interest of the petitioner accordingly filed two separate applications for acceptance of the said delayed deposits, thereby explaining as to why the deposit could not be made in time. The opposite parties/plaintiff filed written objection seeking dismissal of the said applications. Thereafter he also filed one application under section 7(3) of the Act of 1997 praying for striking off the defence of the defendants against delivery of possession.

5. The learned Trial Court after hearing the respective parties was pleased to reject both the aforesaid applications filed by petitioners/defendant under section 151 of the Code and was further pleased to allow the application of the opposite party filed under section 7(3) of the said Act of 1997.

6. Being aggrieved by the said order Mr. Sounak Bhattacharya learned counsel appearing on behalf of the petitioner submits that learned Trial Judge in exercise of his jurisdiction acted illegally and with material irregularity by rejecting the applications and allowing the plaintiffs prayer for striking off the defence of the defendant against the delivery of possession. He ought to have considered liberally, keeping in view the age and health condition of the defendant/petitioner. Mr. Bhattacharya further submits that it is true that defendant could not comply with the direction passed under section 7(2) of the Act of 1997 within a period of one month as directed by the Trial Judge but he had applied for an extension though not within one month but within the extended time limit as enumerated under the proviso appended to section 7(2) of the Act and also deposited the entire arrear amount within the extended period. He further submits that section 7(2) of the Act of 1997 is *pari materia* with the section 17(2) of the West Bengal Premises Tenancy Act 1956. On harmonious construction of both the two legislation it is clear that Trial Judge do have its jurisdiction to consider an application for extension of time to deposit the arrear rent calculated under section 7(2) of the Act of 1997, even if the said application for extension of time is not filed within the said period of one month but when such application for extension is filed within the extended period of time of two months as enumerated under the proviso appended to section 7(2), coupled with a deposit made thereon. Such exercise of jurisdiction can be made by the Trial Judge at any time during pendency of such proceeding even at the final stage. He accordingly submits that in the instant case since the application under section 7(2) was disposed of on 05th October, 2018

and an application for extension of time to comply with the direction passed by the said order was filed within the extended period and the deposit of such amount calculated under section 7(2) was made on 4th December, 2018, which may be beyond one month but within the extended period of two months as enumerated under the proviso appended to section 7(2) of the Act of 1997, the learned Trial Judge has erred in law by not exercising its jurisdiction to consider such an application for extension, merely on the ground that such application for extension of time is filed after a period of one month.

7. With regard to the other issue involved in the instant Revisional Application regarding delayed deposit of current rent, Mr. Bhattacharya submits that the defendant petitioner could not deposit the current rent for the period of December, 2018 to September, 2019 i.e. for about 10 months in time but subsequently the same was deposited on 4th November, 2019 and thereafter an application under section 151 of the Code was filed with a prayer for acceptance of the said amount but the trial court unfortunately rejected the said prayer, observing that he does not have any jurisdiction to consider such an application, since the time limit mentioned in section 7(1) (c) of the Act of 1997 is inflexible.

8. Mr. Bhattacharya in this context Submits that section 7(1) (c) of the Act of 1997 only mentioned about continuous compliance with the direction as enumerated under section 7 (1) (a) and (b) of the Act of 1997, a sum equivalent to the rent at that rate month by month by the 15 of each succeeding month. Quoting section 148 of the Code of Civil Procedure he contended that said provision gives the power to the court to enlarge the

time and as such court below ought not to have held that such time limit is inflexible or that court has no power to condone the delay. He further submits that in the present context learned Trial Judge with a pre conceived mind that the provision of section 7 (1) (c) is an absolute inflexible rule, has refused to exercise its jurisdiction, inspite of the fact that the petitioner has justified the cause of delay with the help of medical documents. Accordingly he prayed for setting aside the order impugned. In this context he referred the following case laws:

- (a) **(2003) 2 SCC 577** (Nasiruddin & Ors. Vs. Sitaram Agarwal).
- (b) **(2013) 3 CLJ 556** (Sri Arup Kumar Atta Vs. Sri Susanta Kumar Ghosh).
- (c) **(2015) 3 CLT 384** (Smt. Bina Devi Binani Vs. Ramesh Kumar Gupta).
- (d) **(2018) 5 CHL 492** (Sri Amitava Sen Vs. Sri Anup Kumar Dey & Ors.)
- (e) **(1987) SCC Online Cal 188** (Mrs. V. Aviet Vs. Malik Zafar Ahmed & Anr.)

9. Mr. Halder learned counsel appearing on behalf of opposite party submits that under the Proviso of section 7(2) of the Act, the court below has the jurisdiction to extend the time granted by the original order only once and such extension shall not exceed a further period of two months. Accordingly an application for extension of time to deposit arrear rent must be made on or before the date of expiry of the period fixed by the original

order. In this context Mr. Halder, referring the provision laid down in section 7(3) of the Act contended that the accrual of right in favour of landlord under the said provision is by operation of law and as such the court below does not have the jurisdiction to entertain any application in terms of the proviso to Sub-Section (2) praying for extension of time to deposit the amount adjudicated by the original order after expiry of the period stipulated by the original order.

10. In respect of delayed deposit made by the petitioner herein in connection with deposit of current rent for 10 consecutive months from December, 2018 to September, 2019 which was deposited only on November, 4 2019, Mr. Halder contended, here also on a plain reading of the said provision stipulated in section 7(1) (c) of the Act of 1997, the court below has no scope to extend time for payment of current monthly rent. He further contended that using the word “shall” the legislature has made clear what is their intention. The word “shall” appearing in the second part of subsection (2) of Section 7 of the Act of 1997 is imperative and when the same word appearing in sub section (1) of section 7, it must be held to be imperative. Accordingly opposite party submits that the order impugned is absolutely legal and does not call for any interference.

11. In the present case by the order dated 05.10.2018 the court below disposed of defendant’s application under section 7(2) of the Act directing him to pay a sum of Rs. 53,220/- in favour of the plaintiff within one month from the date of the order. It is true that defendant did not deposit the aforesaid arrear of rent nor had prayed for extension of time for the payment of the said arrear amount within the stipulated date but it appears

that he deposited aforesaid arrear amount on 4th December, 2018 which is within extended time limit as enumerated in proviso and accordingly the first question that falls for consideration in the present application relates to the issue, if the tenant does not make any prayer for extension of time nor made any payment within the period fixed by original order i.e. within one month of the order but if he has made application for extension coupled with a deposit of arrear rent after expiry of stipulated period of one month of original order but within three months from the date of original order, whether court has discretion to Condone delay in deposit of arrear rent decided under section 7(2) of the Act.

12. In *Smt. Bina Devi Binany Vs. Ramesh Kumar Gupta* reported in **(2015) 3 SCC Cal 384** where all the judgments of *Nasiruddin and others (supra)*, *Arum Kumar Atta (supra)*, *Subrata Mukherjee Vs Bikash Das*, **2012 1 WBLR Cal 595** and *Salem, Advocate Bar Association Vs. Union of India* reported in **(2005) 6 SCC 344** were referred, this Court in paragraph 19 of the said judgment observed that the word “extension” must relate to the date fixed by the original order under sub-section (2) of section 7 and the only conclusion that can be arrived at with regard to proviso to sub-section (2) of section 7 of 1997 Act, that an application for extension of time to deposit the arrear rent within the period fixed by the original order passed by the Civil Judge must be made on or before the date of expiry of the original period fixed by the Civil Judge. In paragraph 21, the Court further held that the accrual of the right in favour of the plaintiff landlord under subsection (3) of section 7 of the 1997 Act for striking out defence of the defendant/tenant against delivery of the possession is by operation by

law and if the contention of the tenant that he can file an application for obtaining extension of time to make payment under proviso to sub-section (2) of section 7 even after the expiry of the period stipulated by the original order under sub-section (2) then the right of the plaintiff landlord under sub-section (3) of section 7 would be depended upon the discretion of the Civil Judge and even in a given case, the tenant may apply for extension even after expiry of one year after the stipulated period fixed by the original order under sub-section (2) or long thereafter which shall be contrary to express provision contained in Sub-Section (2) of the section 7 of 1997 Act.

13. However one fact of the present case is distinguishable from **Binadevi Binani's case (supra)** where the court directed the tenant to deposit arrear rent by two instalments by July, 2011 and September, 15 2011 but the tenant did not make the payment within three months from the original order on the ground that his advocate did not inform him of the order for the payment of arrear rent and he also became ill and for which he could not make the payment. In our case though defendant tenant failed to make application within the stipulated period but he had made the deposit of arrear rent within two months of extended period.

14. Before going to further details let me reproduce section 7(2) of the West Bengal Premises Tenancy Act, 1997.

“(2) if in any suit 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 Civil Judge 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 Civil Judge 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 Civil Judge only once and the period of such extension shall not exceed two months."

15. Accordingly proviso to section 7(2) makes it clear that an extension of time "*may be granted*" by the Civil Judge, which can hardly be interpreted as must be granted by the court. Intention of legislature further reflected in the context of section 7 (3) of the act of 1997 which says '*or within such extended time as may be granted*'. So by using the term '*may be granted by civil judge*' twice in both section 7(3) and proviso to section 7(2), legislative intention manifested in favour of giving discretion to court on an issue of extension, and it is not a compulsion for the court to extend time in each and every case and he has discretion not to extend time also, exercising judicial discretion.

16. On perusal of the copy of application for extension dated 12th November, 2018 it appears that the tenant/defendant had taken a specific plea that defendant due to his sudden illness could not arrange the arrear amount to deposit the same as directed by the court and as such prayed for extension of one month time for depositing the same. When the court below had rejected the application for extension of time he had considered such ground for seeking extension and accordingly exercising his judicial discretion he chooses not to accept such ground as a cogent ground.

17. This is an application under Article 227 of the Constitution of India. The jurisdiction of High Court under that Article is vast and has to be exercised sparingly. It can be used to correct error of jurisdiction and not to upset pure finding of the fact which is within the domain of Trial Court

only. This is where power of revision comes into picture. The purpose of revision is to enable the Revisional court to satisfy itself as to the correctness, legality or propriety of any finding, or order recorded or passed and as to the regularity of any proceedings of the court below. The jurisdiction of article 227 cannot be used as a revision or appeal. If the trial court has the jurisdiction not to condone the delay on the ground which is not convincing, I find no material holding that there was any impropriety in exercising this jurisdiction under Article 227 of the Act.

18. There is other important aspect of the matter what prompted more to the court below to strike off defence of defendant against delivery of possession, invoking jurisdiction under section 7(3) of the Act. The defendant also defaulted in making deposit in compliance with section 7(1) (c) of the Act of 1997. In the present context, admittedly the defendant tenants did not deposit the current rent under section 7(1) (c) of the Act of 1997 for 10 consecutive months from December, 2018 to September 2019 and such current rent for the aforesaid period was deposited on November, 4, 2019 and by making an application under section 151 of the code defendants prayed for acceptance of such deposit on condonation of delay on November, 4 2019.

19. On a plain reading of entire section 7 of the Act of 1997 it is clear that there is no scope for the learned court to extend the time for the payment of the current monthly rent beyond the period of the 15th day of each succeeding month as stipulated in section 7 (1) (c) of the Act of 1997. It is only the proviso to section 7 (2) of the Act which confers power to the civil judge to extend the time for deposit of the rent as directed under section 7

(2) of the Act that too for a period not exceeding two months. When the word 'shall' is used both in section 7 (1) and 7 (2), there is no scope to give different meaning for the said two provisions. The word 'shall' appearing in the second part of sub-section (2) of section 7 is imperative and as such the same word "shall" when appearing in sub-section (1) of section 7 of the Act of 1997, it also must be given an imperative meaning.

20. This court in ***Omprakash Thakur Vs. Bhola Shaw*** reported in **2018 ICC 37 (cal)** held in para 9 as follows:-

"Following the decision of the Supreme Court in the case of Nasiruddin (supra) and Subrata Mukherjee (supra), this court, in the case of Bina Devi Binani held that the word 'shall' used in section 7(3) of the Act of 1997 is imperative striking out of defence of the defendant-tenant takes place by operation of law. Even in an unreported decision dated December 15, 2016 passed in C.O. 3971 of 2016 (Jaladeb Guchait@ Jaladev Guchait V. Sankar Kumar Das) this court once again held that from a reading of the provisions of section 7 and the sub-sections thereunder, it is clear that it is only as per the proviso to section 7(2) of the Act of 1997 the court has the power to extend the time for payment of the arrear rent, adjudicated by it, only once but the Court has not power to extend the time for deposit of the current rent month by month by the 15th of each succeeding month under Section 7(1) (c) of the Act of 1997. Therefore, the learned Court below had no jurisdiction to exercise any discretion to extend the time to deposit the defaulted rent by the opposite party."

21. In *Jaladeb Gunchait @ Jaladev Guchait Vs. Sankar Kumar Das*, C.O. 3971 of 2016 this court was also of the view that it is only as per the provision of section 7(2) of the Act the court has the power to extend the time for payment of the arrear rent adjudicated by it once and court has no power to extend the time for deposit of current rent month by month by the 15th of each succeeding month under section 7(1)(c) of the Act and the words "or within such extended time as may be granted" appearing in section 7(3) relates to section 7(2) and the proviso thereto.

22. In ***Sourav Das Vs. Kartick Dutta and others***, reported in **2019 3 ICC 757** this court observed as follows:-

“27. It is evident from the scheme of Section 7 of the 1997 Act, that sub-section (1) contains no such proviso as accompanies sub-section (2). Therefore, in the event a tenant fails to avail of the proviso within the stipulated time, it will be deemed that, having chosen an adjudication under section 7(2), there is no further scope for extension of time to deposit even the current rent-equivalent.

28. once section 7(1) is waived by invoking section 7(2), and the outer time limit for extension of time under the proviso to the latter provision has expired, the tenant cannot be permitted to fall back upon sub-section (1) and seek the benefit of Subrata Mukherjee (supra) by asking for a further extension, thereby defeating the entire scheme of the proviso to sub-section (2).

29. In such view of the matter, even if the default was in respect of a subsequent current deposit and not arrears strictly in terms of sub-section (2) of section 7, having chosen to give a go-by to sub-section (1) and invoke sub-section (2) and having availed of the benefit of sub-section (2), the defendants/opposite parties could not invoke section 5 of the Limitation Act afresh, thereby seeking a lease of life specifically prohibited by statute. Giving such an opportunity would frustrate the scheme of the statute and tantamount to the tenant being given a relief indirectly, which she/he could not get directly in law.”

23. Since it is the consistent view as reflected in various judgments passed by this Court that the Court has no power to extend time for deposit of the current rent month by month by the 15th of each succeeding month under section 7 (1) (c) of the Act of 1997 and since the court below has no jurisdiction to exercise any discretion to extend the time to deposit the current rent within the stipulated period by the tenant/opposite party, I have no reason to interfere with the order impugned, which is neither arbitrary nor illegal nor is such where court below can be said to have passed order exceeding his jurisdiction.

24. In such view of the matter **C.O. 1170 of 2020** stands dismissed.

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

(AJAY KUMAR MUKHERJEE, J.)