

4.3.2024
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Ct. no. 652
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CO 1338 of 2019

**Pushpa Biswas & Ors.
Vs.
Renuka Sarkar & Anr.**

Mr. Krishnendu Sarkar
Ms. Meghla Das ...for the Petitioners

Mr. Rwitendra Banerjee
Mr. Sandip Kundu ...for the opposite parties

In a suit for eviction of premises tenant filed by the opposite parties herein being T.S. 251 of 1975 under the provision of West Bengal premises Tenancy Act, 1956, the original defendant Dinabandhu Biswas appeared and filed applications under Section 17(1) and 17(2) of the Act of 1956.

It is submitted that he was the only person who used to look after the case. In the 1st week of August he became seriously ill due to age-old ailments and was not in a position to move and his suffering was so severe that he failed to inform his son Dilip to deposit monthly rent. Thereafter Dinabandhu died on 21.9.2014 and his only son Dilip became sole tadbirkar but Dilip also was bed ridden due to an attack of Hepatitis from 10th July 2015 to 9th December 2015. After recovery on 10th December, 2015 Dilip met with his lawyer, who

instructed to deposit rent from July 2014. Since there was delay of 16 months i.e. from July 2014 to October, 2015 defendants by filing application under section 5 of the Limitation Act, prayed for condonation of delay and to permit them to deposit the arrear rent.

The opposite parties/plaintiffs filed written objection contending that defendants did not pay rent month by month in time u/s 17(1) of the Act of 1956 and as such their defence has already been struck off under the provision of section 17(3) of the Act and their Application under section 5 of the Limitation Act is not maintainable in the eye of law.

Thereafter on 18th December, 2018, the defendants filed two petitions, one for hearing defendants aforesaid prayer for condonation of delay and another application with a prayer not to hear argument till filling of written statement by the defendants. On 20th December the defendants filed petition to put up the record and by another petition they contended that at the time of hearing of aforesaid petition defendants came to know that the prayer for condonation of delay was allowed on 09.08.2018 but the order was not communicated to the defendants, since there was no such entry in the cause list and the petitioner had an idea that said petition seeking condonation of delay has been kept

in abeyance by the court. In fact on 18.12.2018, the defendant for the first time came to know that said prayer for condonation of delay has already been allowed on 09.08.2018. Immediate after knowing about the order they deposited the arrear rent but there was delay of 4 months 9 days in depositing arrear rent from the date of order which is not intentional and as such they had prayed for condonation of delay.

However, by the impugned order, learned Trial court held that he had no power to extend the time for depositing arrear rent for more than three months and hence the petition seeking for condonation of delay was rejected by the court below.

Mr. Sarkar, learned counsel for the petitioners submits that the court below ought to have held that the defendants could no way be held liable for such delay and they had duly and diligently proceeded with the proceedings of the said suit and that they have duly filed an application under Section 5 of the Limitation Act and there was no laches or negligence on the part of the petitioners to deposit the same as the delay which has been caused, can no way be attributed to the negligence or laches on the part of the petitioners.

Accordingly, the petitioners have prayed for setting aside the order impugned.

In this context he relied upon following judgments:

i) *Rafiq and another Vs. Munshilal and another* reported in **AIR 1981 SC 1400**,

ii) *Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others* reported in **AIR 1987 SC 1353**,

iii) *Krishna Gopal Ghosal Vs. Mihir Baran Nandy & Ors.* reported in **1987 (2) CLJ 297**,

iv) *M/s. B.P. Khemka Pvt. Ltd. Vs. Birendra Kumar Bhowmick and another* reported in **AIR 1987 SC 1010**.

Mr. Banerjee, learned counsel for the opposite parties raised objection and contended that in the present case, it has been clearly reflected from the order impugned that the defendants earlier availed the opportunity under Section 17(4) of the Act and it is clear from the order no. 105 dated 9.8.2018 that the defendants were directed to deposit the arrear rent amount immediately without giving any further date for depositing the same. However, the defendants did not deposit the same and took adjournment on 3rd September, 2018, 3rd

October, 2018 and 12th November, 2018, though the petitioners were allowed to deposit the arrear rent. Moreover, on 7.12.2018, the added defendants adopted written statement already filed in compliance with the aforesaid order no. 105 and by another petition prayed for fixing the date of hearing of the petition seeking condonation of delay. Accordingly, it is clear that they were aware of the order regarding deposit of defaulted rent and the plea of ignorance taken by them is not sustainable either in the eye of law or on fact.

In this context, he relied upon proviso to Section 17(4) of the Act of 1956 and contended that the tenants shall not be entitled to benefit of protection under the sub-section if, having obtained such relief once in respect of the premises, he has again made default in the payment of rent for four months within a period of twelve months.

He also relied upon judgment in the case of **Harshavardhan Chokkani Vs. Bhupendra N. Patel and Others** reported in **(2002) 3 SCC 626** and contended that the interpretation of the sections does not depend on whether the default is willful or otherwise. If a court has no power to extend time then even in cases of small defaults or defaults for reasons beyond the control of the tenant, time could not be extended.

I have considered the submissions made by both the parties. On perusal of the impugned order, it appears that after considering the submissions made by both the parties, the court below held that the petitioners herein as defendants did not deposit rent within three months of passing order and relying upon the provisions of Section 7 of the West Bengal Premises Tenancy Act 1997 and also relying upon two judgments 2018(1) CLJ (Cal) 184 and 2018(1) CLJ (Cal) 83, the court below came to a finding that the court has no power to extend time for depositing arrear rent for more than three months.

It appears that while deciding the application under Section 17 of the West Bengal Premises Tenancy Act, 1956, the court below has confused the case with the provision under section 7 of West Bengal premises Tenancy Act, 1997 and of the case laws passed in connection with said principles under the West Bengal Premises Tenancy Act 1997 and thereby misdirected himself in passing the order impugned. Here lies the perversity of the order impugned. Accordingly, the impugned order dated 22.2.2019 is hereby set aside.

The court below is directed to hear defendants impugned application dated 20.12.2018 afresh in the light of the provisions as laid down in

Section 17 of the West Bengal Premises Tenancy Act, 1956 and to dispose of the said application after giving opportunity to both the parties to contest preferably within a period of three months from the date of communication of the order, without being influenced by any observation made herein.

C.O. 1338 of 2019 is accordingly disposed of.

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

(Ajoy Kumar Mukherjee, J.)