

M/L 33
11.12.2024
Court. No. 5
Sourav

CO 1230 of 2024

Ayax Ahmed @ Ayaz Ahmed Bhatti
Vs.
Ashrafuddin Ahmed & Ors.

Mr. Dipak Das
Mr. Shiladitya Barma
Ms. Priyanka Ghosh

...for the petitioner.

1. The present revisional application under Article 227 of the Constitution of India has been filed challenging the order dated January 3, 2024 passed by the learned Civil Judge (Junior Division), 1st Court, Alipore, South 24 Parganas, in Ejectment Suit No. 64 of 2013 directing that the defence of the defendant in respect of delivery of possession be struck off in terms of the provisions contained in Section 7(3) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'said Act').
2. The learned advocate representing the petitioner would submit that in the instant case since, there was no liberty or a direction from the learned Court for making payment of rent, by an order passed under Section 7(2) of the said Act, the petitioner chose not to make payment of rent. He still further submits that by reasons of pendency of the application filed under Section 7(1) and 7(2) of the said Act, neither the arrears nor the current rent was deposited. He would also submit that there has been no determination of rent by the learned Court. Consequentially, no order

striking out the defence of the defendant in respect of the delivery of possession could have been passed. In support of his contention that unless a final determination is made under Section 7(2) of the said Act as regards the arrear, no finality to the order passed under Section 7(3) of the said Act striking out the defence against the delivery of possession can be attached, reliance has been placed on a judgment delivered by a Co-ordinate Bench of this Court in the case of ***M/s. Smart Enterprises Vs. Shree Ram Trust***, reported in **(2017)4 CHN139**

3. In the facts noted above, the petitioner prays that the aforesaid revisional application may be allowed by setting aside the order passed on January 3, 2024 and pending disposal, the same may be stayed.
4. In the instant case, it may be noted that the above Ejectment Suit was filed on December 6, 2013. The petitioner claims to have received the summons on December 7, 2013 and the application under Section 7(1) of the said Act seeking permission to deposit rent of the suit property at the rate of Rs. 190/- was filed admittedly beyond the time prescribed i.e., beyond one month from the date of the service of summons on the petitioner. On the petitioner's own showing there is a delay of two days. The petitioner appears to have filed an application under Section 7(2) of the said Act, *inter alia*, contending that the petitioner had paid rent for which rent receipt had been issued up to July, 2000, unfortunately, though the petitioner continued

to pay (tender) the rent to the plaintiff by hand, the plaintiffs/landlords refused to accept the same. It is, thereafter, the money was sent by money order which was returned with the remark 'absent'.

5. The said application further proceeds on the premise that although, an application under Section 21 of the said Act was filed which was registered as Case No. 406/21/2013, the same is still pending. In the circumstances as aforesaid, the petitioner has sought for adjudication of the arrear rents payable. Admittedly, the petitioner along with the application under Sections 7(1) and 7(2) did not make payment of the arrear rents on the basis of the computation available with the petitioner at the rate last paid up to the end of the month previous to that in which the payment is made together with the interest at the rate of 10 per cent per annum. The petitioner also did not choose to deposit the admitted rate of rent month by month by the 15th of each succeeding month at the rate last deposited, with the learned Court.
6. Although, the petitioner would contend that since no liberty was afforded to the petitioner by the learned Court, such payment was not made by placing strong reliance on paragraphs 7, 8 and 9 of the judgment delivered in the case of ***M/s. Smart Enterprise (Supra)***, I find that admittedly in the instant case the application filed by the petitioner under Sections 7(1) and 7(2) of the said Act is beyond the time prescribed. The petitioner also conveniently chose not to make

payment of the rent at admitted rate month by month as per English calendar month within 15th of the succeeding month, though there is no dispute as regards the rate of rent.

7. Such fact would corroborate from a perusal of the application under Section 7(1) of the said Act. Having regard thereto, there could have been no difficulty for the petitioner to deposit the rent at the rate last paid in terms of Section 7(1) of the said Act. I may note that in the judgment delivered by the Co-ordinate Bench in the case of *M/s. Smart Enterprise (Supra)*, the Co-ordinate Bench noting that the second limb of Section 7(2) of the said Act prohibits a lesser amount than the amount claimed in the plaint to be deposited in Court unless, such lesser amount is accompanied by an application for determination of rent payable, and it is in those facts that the Co-ordinate Bench had observed that although Section 7(1) though does not conceive of an application being made but by reasons of practical difficulty arising in connection with the deposit being made in Court without anything in writing, a practice has developed whereunder an application is made under Section 7(1) of the said Act if only to make good the default or pay the entire amount that is perceived to be due. The said judgment which deals with Section 7(1)(a) and Section 7(1)(b) read with Section 7(2) of the said Act, does not contemplate of a situation where despite there being no dispute of the rate of rent, any determination is to be

made or any order is to be passed for a deposit under Section 7(1)(c) of the said Act. The above judgment is otherwise distinguishable. In the instant case, the petitioner did not even bother to make payment of a single paisa despite receipt of summons, despite there being no dispute as regards the rate of rent. This apart Section 7(1)(c) of the said Act also does not contemplate extension of time for making payment of deposit of rent unlike Section 7(1)(a) and 7(1)(b) read with Section 7(2) of the said Act which permits a limited extension provided the original application under Section 7(2) of the said Act is filed within time and provided the admitted arrear amount and the rent at admitted rate under Section 7(1)(c) is paid.

8. In view thereof, I find no irregularity in the order, the petitioner could not identify any procedural irregularity or any jurisdictional error committed by the learned judge.
9. In view of the above observations, the revisional application fails and the same is, accordingly, dismissed.
10. There shall be no order as to costs.

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

(Raja Basu Chowdhury, J.)