

November 8, 2024
Sl. No.28
Court No.36
s.biswas

RVW 114 of 2024
With
CAN 1 of 2024
CAN 2 of 2024
In
WPA 3190 of 2022
Bipul Kumar Roy
vs.
Debasish Roy

Mr. Saptarshi Roy
Ms. Kakali Das Chakraborty ... for the applicant
Mr. Siva Prasad Ghose
... for the petitioner/landlord

In re: CAN 1 of 2024

1. CAN 1 of 2024 is an application for condonation of delay in filing the memorandum of review.
2. Considering the explanation, this court finds that the petitioner has shown sufficient cause as to why the review application could not be filed within time. The delay of six days is condoned. CAN 1 of 2024 is allowed. The review application is registered.

In re: RVW 114 of 2024

3. The review has been filed against the order dated February 26, 2024 passed in CO 3190 of 2022. The ground for review is that the applicant/tenant could get hold of the challans later on and the challans which have been annexed to the CAN application filed with the memorandum of review would indicate that

Rs.74,624/- was deposited within a month from receipt of the summons. This fact could not be brought before the court when the order reviewed from, was passed. This court had taken into consideration only the deposit made sometime in December 2013. Such deposit was additionally made, in respect of the arrears from April 2004 to March 2005, amounting to Rs.13,992/-. Thereafter, when the application under Section 7(2) was disposed of, a further sum of Rs.14,496/- was directed to be paid by the learned trial court, which the petitioner claims to have paid within a month. At the time of hearing, such documents were not before the court and the applicant could not substantiate due compliance of the provisions of law.

4. Such are good grounds for review, inasmuch as, the tenant/applicant could not argue his case in its proper perspective and on its own merits in view of non-availability of relevant documents.
5. Mr. Ghose, learned advocate for the landlord/petitioner submits that according to the plaint case, the arrears of rent were from April 2004 to March 2005. The very fact that the applicant deposited the rent from April 2004 to March 2005 in 2013, would indicate that the applicant had not complied with the provision of

Section 7(1) of the West Bengal Premises Tenancy Act, 1997. Such belated deposit indicates that the applicant admitted that the amount of Rs. 13,992/- was also due and payable. The admitted dues could not be paid in instalments.

6. This court finds that the documents annexed to the application indicate that the arrears admitted by the applicant, were deposited within one month from receipt of summons. Thereafter, the trial court, upon adjudication of the application under Section 7(2) directed the applicant to deposit Rs.14,496/- which was also deposited within time as submitted by the applicant. The question is whether the additional deposit of Rs.13,992/- towards arrears from April 2004 to March 2005 in 2013, would amount to part payment of the remaining admitted arrears, which ought to have been deposited within a month from receipt of summons along with the amount of Rs.74,624/-.
7. The order was passed by this court without considering the documents which have been annexed to the application. The court proceeded on the basis of the averments made in the application under Section 7(1) and on the plaintiff's contention that the admitted arrears were deposited in December 2013.

8. The challans which have been produced before this court today, indicate that the admitted arrears of Rs.74,624/- was deposited on August 10, 2010. In addition, an amount of Rs.13,992/- was deposited on December 20, 2013 as arrears of rent due from April 2004 to March 2005. The question before this court is whether the subsequent deposit in 2013 would amount to an admission that the said amount was also due, but the petitioner had either miscalculated the admitted rent or had consciously deposited less than the amount admitted to be payable by him and tried to make good and regularize the deposit by a subsequent deposit after three years, or whether the subsequent deposit in 2013 was made by way of abundant caution, considering the plaint case, but the amount was not admitted by the tenant. In such a situation, whether the benefit under Section 7(1) should be given to the tenant, is the moot question to be answered in the civil revision.
9. Hence, the order passed by this court dated February 26, 2024 by setting aside the order passed by the learned trial judge, which did not clarify the position with regard to the deposit of amount within proper time, is recalled. Under such circumstances, the order dated February

26, 2024 is reviewed and recalled. The revisional application will be heard afresh on the basis of the documents, by the appropriate court. The documents brought on record require consideration.

10. The review application being RVW 114 of 2024 is allowed. The connected application being CAN 2 of 2024 stand disposed of.

11. All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)