

Item No.12
07.03.2024
Court. No. 19
GB

C.O.1305 of 2023

Sri Shankar Nath Dutta
VS
Tarun Baidya & Ors.

*Mr. Ayan Banerjee,
Mrs. Debshree Dhamali,
Ms. Sutapa Dutta*

...for the Petitioner.

1. Affidavit-of-service filed in Court today, be kept with the record.
2. The learned advocate who filed the caveat on behalf of the opposite parties was served on two occasions, but none appears. Notice of upgradation h was also served upon the learned advocate, but still none appears to oppose this application. Hence, the Court proceeds in the absence of the opposite parties.
3. The revisional application arises out of an order dated February 17, 2023, passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah in Ejectment Suit No.74 of 2015.
4. By the order impugned, the learned court allowed an application under Section 151 of the Code of Civil Procedure and recalled the order dated July 2, 2019 by which the application of the tenants/opposite parties under Section 7(2) of the West Bengal Premises Tenancy Act (hereinafter referred to as the 'said Act') was disposed of. The tenants were directed

to pay a sum of Rs.64,372/- within a month from the date of the order.

5. The plaintiff filed an application under Section 7(3) of the said Act and the tenants filed an application under Section 151 of the Code for recalling of the order dated July 2, 2019. Upon hearing the parties, the learned court by an order dated July 7, 2022 allowed the application under Section 7(3) of the said Act filed by the plaintiff but did not pass any orders with regard to the application for recalling.
6. Thereafter, upon expiry of considerable time, another application under Section 151 of the Code of Civil Procedure was filed by the tenants/opposite parties praying for recalling of the order dated July 2, 2019 on the ground that due to mishandling of the case by the erstwhile advocate, the rent deposit challans could not be produced and the order be recalled upon acceptance of the challans which would show that deposits had been made before the learned rent controller and thereafter before the court with regard to the period between February 2013 to May 2019. No arrears were payable.
7. Mr. Banerjee, learned advocate appearing on behalf of the petitioner submits that the order impugned does not record any reason as to why a second application for recalling could be allowed when no orders were passed in the first application for recalling. Instead,

the application under Section 7(3) of the said Act was allowed.

8. Having considered the order impugned and Mr. Banerjee's submissions, it appears to this Court that the learned trial court upon perusal of the challans and documents filed, had arrived at a conclusion that the tenants were not defaulters from February 2013 to May 2019 and those documents have been mentioned in the order impugned. The compliance of Section 7 of the said Act is the only way a tenant gets protection from delivery of possession upon eviction in a suit filed under Section 6 of the said Act, on any of the grounds stated therein.
9. Justice would demand that an opportunity should be given to the tenants to establish their case and the learned court has rightly found that the tenants should be given an opportunity to place the application under Section 7(2) of the said Act upon proving that the rents were deposited from February 2013 to May 2019, and there were no arrears.
10. If it was actually the fault of the learned advocate who was conducting the case and who had not produced the challans at the relevant point of time, for the ends of justice the learned court passed the correct order by recalling the order dated July 2, 2019. In my opinion, the application striking out the defence shall be kept with the record and shall be disposed of upon a fresh

adjudication of the application under Section 7(2) of the said Act.

11. It is made clear that all the copies of the challans and the documents which were filed before the learned court along with the application for recalling, shall be served upon the petitioner. The court shall allow inspection of the documents which were filed along with the said application, so that the petitioner can file his written objection to the said application by dealing with the documents. Further evidence shall be allowed to be led so that, the correctness of the contentions of the petitioner can be decided while disposing of the application under Section 7(2) of the said Act.
12. It is also made clear that the landlord has been suffering since 2015 and the suit has been dragged unnecessarily due to carelessness of the learned advocate, engaged by the opposite parties and/or opposite parties had persuaded the matter.
13. The question of imposition of cost shall also be decided by the learned court while disposing of the application under Section 7(2) of the said Act which the learned court has fixed for fresh hearing. On the result of the application under Section 7(2), the application under Section 7(3) which shall now be kept in abeyance, shall be disposed of. The entire exercise shall be completed within a period of two months from the date mandatorily, without granting any adjournment to any of the parties. If the opposite

parties are not available on the date fixed for hearing of the application under Section 7(2) of the said Act, the learned court shall proceed with the matter without granting further chance.

14. It is made clear that the suit shall be disposed of within a period of eight months from disposal of the application.
15. Accordingly, the revisional application is disposed of.
16. However, there will be no order as to cost.
17. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)