

Item No.26
14.03.2024
Court. No. 19
GB

C.O. 1542 of 2022

M/s. Popat & Kotecha Property & Ors.
Vs.
Sharda V. Hapani & Ors.

Mr. Mainak Bose,
Mr. Suvadeep Sen,
Ms. Sucheta Das

...for the Petitioners.

Mr. Wasim Ahmed,
Ms. Reetika Acharya

...for the Opposite Parties.

1. The revisional application has been filed challenging an order dated April 19, 2022, passed by the learned Judge, 5th Bench, Small Causes Court at Calcutta in Ejectment Suit No.09 of 2007.
2. By the order impugned, an application filed by the tenant under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act') was disposed of, inter alia, holding that the tenant was not a defaulter.
3. Mr. Bose, learned advocate appearing on behalf of the landlord submits that the order impugned suffers from several irregularities. Without there being compliance of Section 7(1) of the said Act and deposit of admitted arrears in terms of the said Section, an adjudication with regard to the dispute as to the quantum of rent payable or rate of rent, could not have been done.
4. It appears from the record that the landlord had filed an application under Section 7(1)(a) of the said Act for a

direction upon the said tenant to pay the current rent. Such application was misconceived. Section 7 is a complete code which provides the mechanism which can be availed of by a tenant to seek protection from delivery of possession in a suit filed on any of the grounds under Section 6 of the said Act. The tenant is enjoined with the duty to pay the admitted arrear rent along with 10% interest either to the landlord or deposit in Court within a month from receipt of the summons or within a month from date of appearance, if the tenant appears without receipt of summons. Such provision is mandatory and without compliance of the said provision, the application under Section 7(2) of the said Act could not be adjudicated. The tenant would have to show that he was not in arrears, if he wanted the court only to adjudicate the dispute and had to come within the time limit prescribed under Section 7(1)(b) of the said Act.

5. In the instant case, the application under Section 7(2) was filed for determination of arrears as also the rate. There was a controversy regarding the rate of rent and arrears, if any due.
6. From a reading of the said application, *prima facie*, it appears that there was default in respect of April 2003, October and November, 2003 as admitted by the defendant in the application under Section 7(2) of the said Act. Whether the said amounts were at all deposited in terms of Section 7(1)(a) or whether the said rents were deposited earlier with the rent controller, is not available.

The learned court also did not venture into the adjudication as to whether there was compliance of Section 7(1), but proceeded to decide the application under Section 7(2).

7. Under such circumstances, the order impugned is set aside. The matter shall be decided afresh, in accordance with law. The current rent which is being deposited, will continue to be deposited. Such deposit will be subject to final decision in the application by the learned court. As parties have been cross-examined and the documentary evidence are also on record, the learned court shall decide the matter afresh on the basis of all the documents and the applicable laws. Whether the upto date rent has been paid, will also be decided.
8. Accordingly, the revisional application is disposed of.
9. However, there will be no order as to costs.
10. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)