

2. 26.11.
2024
Ct.No. 237

C.O. 1828 of 2019
Dilip Kumar Karmakar
Vs.
Chanchal Kumar Biswas & Ors

Mr. Atis Kumar Biswas
Ms. Jyoti Agrwal ...For the Petitioner.

The opposite parties are not represented inspite of service.

This application pertains to an order dated 29th March, 2019 passed by Civil Judge (Junior Division) First Court Krishnanagore, Nadia in connection with Title Suit No. 215 of 2008. By the impugned order the learned court below rejected defendants/petitioners/tenants application under section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (in short Act of 1997).

Petitioner contended that opposite party herein has filed a suit for eviction and recovery of khas possession against the petitioner herein being aforesaid T.S. No. 215 of 2008, in which, the plaintiff/opposite party claimed that the petitioner/tenant paid monthly rent till Jaistha 1409 BS and since then the petitioner became defaulter.

After receiving summon in the said suit on 29.11.2011 the defendant/petitioner entered appearance on 13.12.2011 and filed two separate

applications under section 7(1) and 7(2) of the Act of 1997.

It is submitted that in the said application under section 7(2) the defendant/petitioner herein specifically contended that since the plaintiff/opposite parties refused to accept rent, the defendant/petitioner deposited the rent to the Rent Controller till receiving the summon of the suit and as such there is no arrear of rent. However, in the said petition the defendants undertook to deposit any sum which may be found due by the court. In the said proceeding the defendant petitioner adduced his evidence and exhibited 107 nos. of rent challans in support of his deposit before the Rent Controller. Upon considering the materials on record, the court below by the order impugned had rejected the aforesaid applications filed by the defendants/petitioners.

Being aggrieved by that order, Mr. Biswas learned Counsel appearing on behalf of the petitioner submits that the court below failed to appreciate that the rent for the entire period were paid by the defendants/petitioners before the Rent Controller and those documents were marked as exhibit. Court below failed to appreciate that the defendant undertook to pay any defaulted amount, if it is found

that the deposit before rent controller was not valid. Accordingly he prayed for setting aside the order impugned.

Upon perusal of the plaint it appears that the admitted monthly rent is Rs. 30 payable according to Bengali calendar month and it is not in dispute that the defendants paid rent upto the month of Jaistha 1409 BS. In his application under section 7(1) the petitioner herein had prayed for permitting him to deposit rent before the court month by month from the month of Agrahan 1418 BS. It further appears from petitioner's application under section 7(2) of the Act of 1997, that plaintiff/land lord accepted rent from the defendant from Ashwin 1408 BS to Jaistha 1409 BS, at a time, and granted receipt but thereafter they refused to receive rent. The defendant sent rent at a time for the month from Ashar 1409 BS to Shrabon 1411 BS on 18.08.2004 but opposite parties herein refused to accept the rent sent through money order and for which defendant/petitioner initiated Rent case being No. 9 of 2004 before Rent Controller, where he has deposited rent till Kartick 1418 BS.

Learned court below while dealt with the issue held that the petitioner/tenant had not deposited the rent within 15 days from the date of alleged refusal by the land lord in compliance with section 21 of the Act

of 1997. Since the petitioner tenant sent rent for 26 months i.e. from the month of Ashar 1409 to Shrabon 1411 BS at a time through money order, which was refused on 26.08.2008, the court below held that tendering rent for 26 months at a time is invalid deposit and therefore all subsequent deposits are invalid deposits and as such defendant's application under section 7(1) and 7(2) of the Act of 1997 are not maintainable.

Having considered the rival contentions, it appears that defendant/petitioners specific case is plaintiff/opposite party refused to accept rent from Ashar 1409 B.S. However he did not immediately sent rent through money order. He sent rent for 26 months at a time from Ashar 1409 B.S to Sharaban 1411 B.S through money order on 18.08.2004. Thereafter on refusal he started Rent case no. 9 of 2004, where he has allegedly made the deposit of said arrear rent as well as current rent.

If section 21 of Act of 1997 is read with Rule 9 of the West Bengal Premises Tenancy Rules 1999, it appears that where the landlord does not accept the rent tendered by the tenant, within the period prescribed by the Rules, then the tenant shall remit the rent to the landlord by postal money order within 15 days of such refusal and thereafter if postal money

order returns as undelivered due to refusal or for any other reason, the tenant may remit such rent to the Rent Controller.

Here admittedly petitioner/tenant has not complied the said provision and long after plaintiffs alleged refusal, he sent rent through money order for 26 months at a time.

Under the old provision as well as under the new Act the tender of rent has to be made within the period prescribed for tendering rent under Rule 4 of the West Bengal premises Tenancy Rule, 1999. Section 21 provides for tender of rent by money order, when the landlord refuses to accept the rent tendered by him within prescribed time limit. Deposit of rent under section 21 as well as deposit of rent before Rent Controller beyond time is invalid. In order that a deposit of rent on refusal be valid, it must be made within the month following that for which the rent of that month is due and the deposit has to be made upon the refusal of the landlord within the prescribed time limit under Rule 4. Thus a valid timely tender of rent is a condition precedent to the validity of the deposit of rent. If there was no valid tender, the deposit of rent will be invalid and such deposit and all subsequent deposits made thereafter will be rendered invalid. In such view of the matter, I do not find any

illegality or impropriety in observing that all the deposits made by petitioner/tenant form Aswin 1409 B.S are invalid deposit.

However in the present case defendant admittedly appeared and filed application under section 7(1) & 7 (2) of the Act of 1997 within statutory period, with the submission that to his understanding he is not defaulter in payment of rent and no arrear rent is payable, since he has deposited rent for the entire period before Rent controller. He further prayed that if court finds him defaulter in payment of rent observing that the deposit is invalid, he is ready and willing to deposit the rent for entire period with interest by instalment. In such circumstances, the court below ought to have considered defendants aforesaid prayer from that perspective since he made both the Applications under Section 7(1) & 7(2) within the statutory period.

In such view of the matter CO 1828 of 2019 is hereby disposed of with a direction upon the court below to decide petitioner/defendants applications under section 17(1) and 17(2) afresh without being influenced by any observation made herein, preferably within a period of twelve weeks from the date of communication of this order.

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Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)