

25.09.2024
sayandeep
Sl. No. 12
Ct. No. 08

CO 1616 of 2024

Smt. Ramala Sen & ors.
-Versus-
Ranajit Mitra & ors.

Mr. Sourav Sen
Ms. A. Chakraborty

..... for the petitioners

Mr. Arnab Dutta
Ms. Laboni Dey

....for the O.P.

An application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 filed by the defendant/petitioner is rejected by the Trial Court vide order No. 24 dated 27.03.2024. A suit for eviction was filed against the defendants/petitioners on one or more grounds, including the ground of default since June, 2015, under Section 6 of the said Act. Section 7(1) of the Act provides a remedy to the defendant-tenant to deposit the admitted arrears of rent, within one month from the date of the service of summons or in the event, the tenant appears voluntarily within one months from the date of such appearance, along with the statutory interest with the Court or to pay to the landlord. The language used under Section 7 (2) clearly manifest the intention of the legislature that after the compliance having made under Section 7(1) if the tenant raised the dispute with regard to quantum of the rent or the period of default, it can file an application under the said provision for determination by the Court.

We have seen the application filed under Section 7(1) of the Act wherein defendant-appellant admitted the payment of rent up to the month of May, 2015 and made out a story that the rent for the further month was though tendered to the landlord

but refused to accept the same on the ground that a probate proceeding is pending before the competent Court.

If such story is believed, the legislature have taken care of a situation whether the landlord refuses to accept the rent so tendered by the tenant, the petitioners ought to have taken recourse under the provisions of section 21 of the said Act by depositing the rent with the rent controller.

Since the conditions enshrined under Section 7(1) and 7(2) is imperative for the consequences having provided under Section 7(3) of the Act, failure to deposit the admitted rent may stand in the way of the tenant to get relief under Section 7(2) of the Act. The aforesaid proposition is fortified by a Judgment of the Apex Court in case of **Bijay Kumar Singh & ors. vs. Amit Kumar Chamariya & anr.** reported in **(2019)10 SCC 660** in the following:

“Therefore, sub section (1) deals with the payment of arrears of rent when there is no dispute about the rate of rent or the period of arrears of rent. Sub section (2) of the Act comes into play if there is dispute as to the amount of rent including the period of 16 arrears payable by the tenant. In that situation, the tenant is obliged to apply within time as specified in sub section (1) that is within one month of the receipt of summons or within one month of appearance before the court to deposit with the Civil Judge the amount admitted by him to be due. The tenant is also required to file an application for determination of the rent payable. Such deposit is not to be accepted, unless it is accompanied by an application for determination of rent payable. Therefore, sub section (2) of the Act requires two things, deposit of arrears of rent at the rate admitted to be due by the tenant along with an application for determination of the rent payable. If the two conditions are satisfied then only the Court having regard to the rate at which rent was last paid and for which tenant is in default, may make an order specifying the amount due. After such a determination the tenant is granted one month’s time to pay to the landlord the amount which was specified. The proviso of the Act, limits the discretion of the court to extend the time for deposit of arrears of rent. The extension can be provided once and not exceeding two months.

21. Sub section (3) provides for consequences of non-payment of rent i.e. striking off the defence against the delivery of the possession and to proceed with the hearing of the suit. Such provision is materially different from sub sections (2-A) and (2-B) which was being examined by this

Court in B.P. Khemka. Sub sections (2-A) and (2-B) of Section 17 of 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso of sub sections (2) and (3) of Section 7 of the Act. Therefore, the provisions of sub section (2) are mandatory and required to be scrupulously followed by the tenant, if the tenant has to avoid the eviction on account of non-payment of arrears of rent under Section 6 of the Act. There is an outer limit for extension of time to deposit of arrears of rent in terms of the proviso to sub section (2) of Section 7 of the Act. The consequences flowing from non-deposit of rent are contemplated under sub section (3) of Section 7 of the Act. Therefore, if the tenant fails to deposit admitted arrears of rent within one month of receipt of summons or within one month of appearance without summons and also fails to make an application for determination of the disputed amount of rate of rent and the period of arrears and the subsequent non-payment on determining of the arrears of rent, will entail the eviction of the tenant. Section 7 of the Act provides for a complete mechanism for avoiding eviction on the ground of arrears of rent, provided that the tenant takes steps as contemplated under sub section (2) of Section 7 of the Act and deposits the arrears of rent on determination of the disputed amount. The deposit of rent along with an application for determination of dispute is a pre-condition to avoid eviction on the ground of non-payment of arrears of rent. In view thereof, tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not an application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.”

In view of the law enunciated in the above report, this Court does not find any illegality and/or infirmity in the impugned order.

The revisional application is, thus, dismissed without any order as to costs.

(Harish Tandon, J.)