

Item No.1
24.04.2024
Court. No. 19
GB

C.O. 1627 of 2023

Sri Ashit Ranjan Das
Vs.
Smt. Uma Devi Gupta & Ors.

Mr. Asish Chandra Bagchi,
Ms. Malyasri Maity

...for the Petitioner.

Mr. Joydeep Guha

...for the Opposite Parties.

1. The revisional application arises out of an order dated March 3, 2023, passed by the learned Chief Judge, Small Causes Court at Calcutta in Ejectment Suit No.228 of 2022.
2. By the order impugned, the learned court rejected the applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act') on the ground of delay. Admittedly, the said applications were filed along with an application under Section 5 of the Limitation Act seeking condonation of delay of 19 days in filing the said applications. The learned court relied on the decision of ***Bijay Kumar Singh & Ors. versus Amit Kumar Chamariya & Anr.*** reported in ***(2019) 10 SCC 660*** and held that if the tenant failed to deposit admitted arrear rent within one month from receipt of summons or within one month from appearance without summons and also failed to file the applications for determination of the disputed arrear

or rate of rent and the period of default, the protection of Section 7 of the said Act would not be available. For the deposit of arrears and for determination of the dispute, the tenant was required to approach the court within one month from date of receipt of summons or within a month from date of appearance, if the tenant appeared without summons. Thus, not only the pre-condition of pre-deposit of the admitted arrear rent along with interest, but also the pre-condition of filing the applications within one month, were mandatory.

3. Ms. Maity, learned advocate appearing on behalf of the petitioner submits that there were no admitted dues. The defendant was not a defaulter. The defendant was not required under the law to deposit any arrear with 10% interest. The rent had been deposited before the rent controller. The learned court failed to appreciate such fact. When there were no admitted arrears, the question of depositing the amount would not arise and the issue of delay could not be raised. The Hon'ble Apex Court held that only if there were dues and a delay had been caused in depositing the same, such delay could not be condoned by the court. In the absence of arrear dues, a belated applications under Sections 7(1) and 7(2) could be accepted upon condonation of delay.
4. Ms. Maity further submits that Section 40 of the said Act provides that the provisions of the Limitation Act

shall apply to all proceedings and appeals under the said Act. She further contends that the Statute was promulgated for the benefit of the tenant and the tenant should not be penalised for a mere delay of 19 days in filing the applications when the tenant's specific case was that there were no dues.

5. Mr. Guha, learned advocate appearing on behalf of the plaintiff/landlord submits that not only is the deposit of rent within a month from receipt of summons a mandate, but the tenant was also required to appear before the court and file the applications under Sections 7(1) and 7(2) of the said Act within a month from receipt of summons or within a month from appearance, if the tenant appeared without summons.
6. The suit for eviction was filed on the ground of reasonable requirement. The tenant received the summons on August 10, 2022. Thereafter, the applications under Sections 7(1) and 7(2) of the said Act was filed on September 29, 2022, that is, 19 days beyond the period of limitation. In the application under Section 5 of the Limitation Act, for condonation of delay in filing the abovementioned applications, the grounds assigned by the tenants were illness, deterioration of health, inability to contact the learned advocate, etc. In the application under Section 7(1) it was contended that the tenant had been duly depositing the monthly rent before the rent controller,

Kolkata. Only the current deposit was required to be paid. Similarly, in the said application under Section 7(2), the tenant again contended that in view of the change of the ownership of the property, the tender of rent to the subsequent owner was refused by the owner. Accordingly, monthly rent at the rate of Rs.240/- per month from May 2018 to December 2018 had been tendered by money order which was also refused. Thereafter, the money was deposited with the rent controller upto August 2022, that is, the month prior to the filing of the suit.

7. The petitioner prayed before the court to adjudicate whether the petitioner was a defaulter in the payment of rent, upon taking into consideration the deposits which had been made before the learned rent controller.
8. The learned court rejected the said applications on the ground that the application did not deserve any consideration as the tenant had approached the court beyond the period of limitation prescribed under the said provision.
9. In my opinion, the learned court did not have any jurisdiction to condone the delay, thereby accepting the belated applications for adjudication on merits. Even for adjudication as to whether there were any arrear dues or whether the entire amount had been deposited before the learned rent controller, the tenant

was required by law to approach the court within the inbuilt period of limitation in the section itself. Section 40 of the said Act does not have any application as has been already decided by the Hon'ble Apex Court in the matter of ***Debasish Paul and Anr. vs. Amal Boral*** reported in ***2023 INSC 925***.

10. In ***Debasish Paul and Anr. vs. Amal Boral*** reported in ***2023 INSC 925***, the Hon'ble Apex Court also reiterated the ratio of ***Chamariya (supra)*** and held that the ratio of ***Chamariya (supra)*** could not be doubted. The briefs facts before the Hon'ble Apex Court were as follows:-

“2. In the proceedings, the respondent made an application under Sections 7(1) and (2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the ‘said Act’). The application was rejected by the Trial Court vide a judgment dated 11.09.2018 on the ground that the respondent had entered appearance in the suit on 09.02.2016 but filed the application only on 14.12.2016 i.e., after a delay of ten months.

3. The application, not being filed within the statutory period of one month, was, thus, rejected. No application was filed under Section 5 of the Limitation Act, 1963.

4. The respondent, aggrieved, by the same preferred a Civil Revision before the High Court and in terms of the judgment dated 21.08.2019, the High Court set aside the judgment dated 11.09.2018 and granted liberty to the respondent tenant to file an application under Section 5 of the Limitation Act, 1963 explaining the circumstances causing the delay for the purpose with the prayer for condonation of delay in support of the application under Sections 7(1) and 7(2) of the said Act already filed.”

11. In the said case, aggrieved by the order of the High Court, landlord moved the Supreme Court. The Hon'ble Court held that Section 40 of the said Act would not be applicable in this case, as the period of limitation had been prescribed in the provisions of Section 7 itself. The Hon'ble Apex Court held as follows:-

“15. It is relevant to note that the case of Bijay Kumar Singh, 4 in turn, referred to the observations made in Nasiruddin case⁵ in the following terms: “37. ...It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

38. ...if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified.

16. We have no doubt over the proposition that though generally the Limitation Act is applicable to the provisions of the said Act in view of Section 40 of the said Act, if there is a lesser time period specified as limitation in the said Act, then the provisions of the Limitation Act cannot be used to expand the same. It is in this context that in Nasiruddin case, it has been mentioned that the real intention of the legislation must be gathered from the language used. Thus, the reasoning in Bijay Kumar Singh case cannot be doubted more so as the requirement is for a tenant to file an application, but he has to deposit the admitted arrears of rent as well, which has certainly not been done.

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18. There is also a larger context in this behalf as the Tenancy Acts provide for certain protections to the tenants beyond the contractual rights. Thus, the provisions must be strictly adhered to. The proceedings initiated on account of non-payment of rent have to be dealt with in that manner as a tenant cannot occupy the premises and then not pay for it. This is so even if there is a dispute about the rent. The tenant is, thus, required to deposit all arrears of rent where there is no dispute on the admitted amount of rent and even in case of a dispute. The needful has to be done within the time stipulated and actually should accompany the application filed under Sub-Sections (1) & (2) of Section 7 of the said Act. The proviso only gives liberty to extend the time once by period not exceeding two months.”

12. A Division Bench in the ***Calcutta Gujarati Education Society versus Sri Ajit Naraya Kapoor*** passed in ***C.O.175 of 2017***, answered a reference in view of conflicting decisions on the issue of application of Section 5 of the Limitation Act. The question formulated by the then Acting Chief Justice is quoted below:-

“Does the view of the Division Bench of this court that section 5 of the Limitation Act can be applied to condone delay in making applications under sub-sections (1) and (2) of section 7 of the West Bengal Premises Tenancy Act, 1997, as held in the Subrata Mukherjee case (supra), survive in view of the decisions of the Hon’ble Supreme Court in the Nasiruddin case (supra), the Ashoke Kumar Mishra case (supra), Manjushree Chakraborty case (supra).”

13. The reference was specific as to whether Section 5 of the Limitation Act could be applied to condone the delay in filing the applications under Section 7(1) and 7(2) of the said Act. The Hon’ble Division Bench held that the Limitation Act, 1963 had no manner of

application in respect of an application by a tenant under Section 7 for determination of arrear rents and disputed rents. Paragraphs 46 and 47 of ***Nasiruddin & Ors. v. Sita Ram Agarwal***, reported in **(2003) 2 SCC 577** were considered by the Hon'ble Division Bench and it was held that in *Nasiruddin* (supra), it was decided that the court could condone delay only when the statute conferred such a power on the court or not otherwise. The Hon'ble Division Bench held as follows:-

“West Bengal Premises Tenancy Act, 1997 is an Act of the State legislature providing for period of limitation in respect of deposit and determination of rent. Section 6 in the Act has the non-obstante clause on application of other laws, regarding eviction. Section 40 makes applicable Limitation Act, 1963 subject to provisions in the Act relating to limitation.

The application for determination of rent not having prescribed period of limitation anywhere else in the third division, article 137, if applied, will provide for it to be made within three years from when the right to apply accrues. In case of such an application it is not the right of the tenant that would accrue, to make such an application. The Act of 1997 mandates that deposit of rent or where there is dispute regarding quantum of rent, deposit of admitted rent alongwith application for determination of rent, must be made by the tenant within time specified and as extendable under said Act. This is in relation to the suit filed for eviction, where compliance with the deposit mandate will enable the tenant to seek the protection provided. This enabling provision cannot be seen as an assertive right of a tenant, to be enforced. Here, provision in article 137 cannot be made applicable. Furthermore, where it is a requirement of compliance by the tenant to seek protection, mandated by the statute as competently legislated by the State legislature and specifically limiting application of the 1963 Act, there cannot be occasion for application of the period of three years, overriding the period and extension specified by the local law and thereafter condonation of delay as under section 5.

We answer the question referred to say that Limitation Act, 1963 has no application in respect of an application by a tenant, made under section 7 for determination of arrears of disputed rent. We are aware our answer to the question referred gives rise to conflicting views of two Division Benches of this Court. However, we have answered the question pursuant to direction made in said administrative order.

The files be sent back on the reference answered and disposed of.”

14. The Division Bench held that the Act of 1997 mandated deposit of rent or in case of dispute with regard to quantum, deposit of admitted rent along with an application for determination was to be filed by the tenant, within the time specified under the Act. Article 137 of the Limitation Act would not be applicable. Furthermore, when it was a statutory requirement, compliance by the tenant would entitle the tenant to seek protection. The provision was competently legislated by the State legislature by specifically limiting the application of the Limitation Act of 1963. Grant of extension of time specified by the local law, by seeking condonation of delay under Section 5 of the Limitation Act was not permissible. The question on reference was thus answered. The Limitation Act had no applicability in respect of the tenant’s application under Section 7(1) and Section 7(2) of the said Act.
15. The Hon’ble Apex Court had held that Section 7(1) provided a complete mechanism in order to grant benefit of protection against eviction to a tenant, but

the pre-conditions of approaching the court within one month from the date of receipt of summons or within one month appearance, if the tenant appeared without summons, were mandatory, along with the provision for deposit of arrear rents.

16. The contention of Ms. Maity that if there were no arrear rents the applications could be filed beyond the period of limitation, is also contrary to the decision of the Hon'ble Apex Court in the matter of Chamariya (supra). The relevant provisions of Chamariya (supra) are quoted below:-

19. Sub section (1) of Section 7 of the Act relieves the tenant from the ejectment on the ground of non-payment of arrears of rent if he pays to the landlord or deposits it with the Civil Judge all arrears of rent, calculated at the rate at which it was last paid and up to the end of the month previous to that in which the payment is made together with interest at the rate of ten per cent per annum. Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the suit without the summons being served upon him, within one month of his appearance.

20. 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 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 (2A) and (2B) which was being examined by this Court in B.P. Khemka. Sub sections (2A) and (2B) 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.”

17. In the decision of ***Smt. Binika Thapa (nee Rai) & Anr. Vs Smt. Dambar Kumari Mukhia & Anr.***, this Court has also held that the decision in Chamariya (supra) is a binding precedent. The relevant paragraphs are quoted below:-

“15. Section 7 was interpreted in Amit Kumar Chamariya (supra) and the entire mechanism by which a tenant could seek benefit from eviction on the ground of default, was considered to be mandatory and inter-related. The provisions of the said section were discussed in the following paragraphs thereof:-

16.

17. We proceed to discuss the ratio in Amit Kumar Chamariya (supra). On institution of a suit by the landlord for eviction on any of the grounds referred to in Section 6 of the said Act, the tenant, subject to the provisions of sub-section (2) of the Section 7, was liable to pay to the landlord or deposit with the civil judge all arrears of rent calculated at the rate at which it was last paid and upto the end of the month previous to that in which the payment was made, together with interest at the rate of 10% per annum. Such payment or deposit was to be made within one month from the service of summons on the tenant or when the tenant appeared in the suit without summons being served, within one month from his appearance. Thereafter, the tenant was enjoined by law, to continue to pay to the landlord or deposit with the civil judge a sum equivalent to the rent at that rate, month by month within 15th of each succeeding month. In case of any dispute as to the amount of rent payable by the tenant, the tenant was liable to deposit with the civil judge, within the time specified in the sub-section, the amount admitted by him to be due from him together with an application for determination of the rent payable.

No such deposit could be accepted unless it was accompanied by an application for determination of the rent payable. On receipt of the application, the civil judge, having regard to the rate at which the rent was last paid and the period for which default may have been made by the tenant, determine the dispute and pass an order within a period not exceeding one year, specifying the amount, if any, due from the tenant and thereupon the tenant was liable to pay to the landlord within one month from the date of such order, the amount so specified in the order along with the monthly rent at the rate so determined.”

18. Thus, not only is the pre-condition to deposit arrear rents with 10% interest thereon mandatory, but if the tenant wanted to assert that there is no default and the dispute has to be decided by the learned court under Section 7(2) of the said Act, a tenant was required to come within the mandatory period of one month. Section 40 of the said Act is subject to the provisions relating to limitation under the Act itself. The Hon’ble Apex Court held that the period of one month is an inbuilt period of limitation under Section 7 of the said Act, within which the tenant was required to approach the court. Moreover, the tenant was also required either pay to the landlord the current rent or deposit the current rent within 15th of each succeeding month i.e., a sum equivalent to the rent at the rate at which it was last paid. The records and the pleadings are silent in this respect.
19. Under such circumstances, this Court is unable to grant any relief to the tenant/petitioner by condoning the delay in filing the applications and by adjudicating

whether there was any dispute with regard to the payment of rent or not.

20. Accordingly, the revisional application is dismissed.
21. However, there will be no order as to costs.
22. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)