

S/L 3
20.6.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 1778 of 2024

Laxmi Housing Udyog Private Limited
Vs.

Sri Sharad Subramanyan & Anr.

Mr. Aniruddha Chatterjee
Mr. Kushal Chakraborty
Mr. Nilay Sengupta
Mr. Sujit Banerjee

...for the Petitioner.

Mr. Subhabrata Datta
Mr. Debnath Ganguly
Mr. Aranya Saha
Mr. B.N. Joshi
Mr. A. Agarwala
Mr. P. Garain

...for the Opposite Parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for eviction and is directed against the order dated April 29, 2024 passed by the 4th Court of learned Civil Judge (Senior Division) at Alipore, District: 24 Parganas (South) in the said suit being Title Suit No.67 of 2016.

The learned Trial Judge by the order impugned has dismissed the plaintiff's application under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 holding *inter alia* that the defendants never denied ownership of the plaintiff, but has denied the existence of *landlord and tenant relationship* which cannot be decided at the early stage of the suit without taking evidence.

Mr. Aniruddha Chatterjee, learned advocate for the petitioner submits that the opposite parties did not resort to the provision of section 7(2) of the said Act of 1997 to raise a dispute regarding relationship between the plaintiff and the defendants and admittedly did not deposit arrear rent in terms of section 7(1) of the said Act of 1997, for such default, section 7(3) thereof was automatically attracted.

Mr. Subhabrata Datta, learned advocate for the opposite parties submits that the tenants, in their written objection under Section 7(3) of the said Act of 1997 has

categorically stated that the plaintiff is the owner of the property but not their landlord, as such, the learned Trial Judge has rightly held that the dispute so raised cannot be decided without trial on evidence. He further submits that, till the said dispute is resolved, the opposite parties are not obliged to comply with the provision of section 7(1) of the said Act of 1997, as such, non-compliance of the said provision cannot attract section 7(3) thereof.

Heard learned advocates for the parties, perused the materials on record.

On a suit being instituted by the landlord under section 6 of the said Act of 1997, the tenant in terms of section 7(1)(a) thereof is obliged either to pay to the landlord or to deposit 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 @ 10% per annum, and such payment or deposit, in terms of sub-section (b) of section 7(1) of the said Act of 1997 shall be made within one month of the service of summons on the tenant and where the tenant appears in the suit without the summons being served upon him, within one month of his appearance.

Section 7 of the said Act of 1997 affords the tenant the benefit of protection against eviction in a suit instituted under section 6 thereof, the opposite parties chose not to avail the said benefit, inasmuch as, they neither have complied with section 7(1) of the said Act of 1997, nor have resorted to section 7(2) thereof to raise a dispute with regard to relationship between the parties, such non-compliance automatically attracts the consequence contemplated under section 7(3) thereof.

It is preposterous to suggest that an owner is not coming within the *inclusive* definition of “*landlord*” under section 2(c) of the said Act of 1997, the said provision is quoted below for ready reference:-

“...2.... (c) “landlord” includes any person who, for the time being, is receiving, or is entitled to receive, the rent for any premises, whether on his own account or on account of, or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant;”

The learned Trial Judge has committed a grave error of law in dismissing the plaintiff's application under section 7(3) of the said Act of 1997 to decide whether the plaintiff is the landlord of the defendant or not, by trial on evidence, inasmuch as it is not in dispute that the plaintiff is the owner of the suit property.

The order impugned therefore is not sustainable, and is accordingly set aside, the plaintiff's application under section 7(3) of the said Act of 1997 is allowed.

The learned Trial Judge is requested to dispose of the suit as expeditiously as possible, without granting any unnecessary adjournment to either of the parties.

CO 1778 of 2024 is allowed with the above terms, without any order as to costs.

After this order is passed, Mr. Datta prays for a stay of operation of it, the prayer is considered and is rejected.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Biswajit Basu, J.)