

08.02.2024
Court No. 19
Item No.16
Cp

C.O. No. 1950 of 2022

Dr. Archan Kumar De
Vs.
Dr. Sandeep Kumar Lakhotia

Mr. Probal Kr. Mukherjee, Sr. Advocate
Ms. Shebatee Datta
.....for the petitioner.

Mr. Saptansu Basu, Sr. Advocate
Mr. Anil Choudhury
Ms. Mrinalini Majumdar
....for the opposite party.

1. By the order dated June 7, 2022, the learned Civil Judge (Senior Division), 9th Court, Alipore rejected an application under Section 151 of the Code of Civil Procedure filed by the petitioner on June 1, 2022. By the said application, the petitioner who was the defendant in the suit prayed for setting aside the order dated April 20, 2022. By order dated April 20, 2022, the learned court had rejected the application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997, (hereinafter referred to as 'the said Act'), filed by the defendant, as the defendant was not present before the court on repeated calls. The defendant prayed for recalling of the said

order, by filing an application dated June 2, 2022.

2. The learned court, while rejecting the application for recalling of the order dated April 20, 2022, was of the opinion that the order sheets would reflect the lackadaisical conduct of the defendant who had been continuously negligent. The defendant had wasted the time of the court and delayed the proceedings. There was no other option left to the court, but to reject the applications under Section 7(1) and 7(2) of the said Act. The High Court had directed expeditious disposal of the proceedings, without granting any unnecessary adjournments to any of the parties. The learned trial court was constrained to reject the said applications and refused to recall the order of rejection, upon exercise of inherent power.
3. The order sheets and the facts which have been disclosed in the records, disclose a laid back conduct of the defendant. The conduct was lacking in diligence.
4. The question is whether an opportunity should have been given to the defendant to have his applications under Sections 7(1) and 7(2) of the said Act, heard on merits. The consequence of

rejection of the said applications is serious. The rejection will amount to the defence of the tenant being struck off. The defendant/tenant, loses every right to contest the suit by setting up his own defence against the delivery of possession. In such a situation, in my opinion, the learned court ought to have recalled the order rejecting the applications, on the ground of non-appearance of the defendant.

5. The orders dated April 20, 2022 and June 7, 2022 are thus, set aside for the ends of justice, upon imposition of further cost of Rs.10,000/- to be paid to the plaintiff for the delay caused, on account of the conduct of the defendant. The plaintiff had filed the suit for eviction on the ground of reasonable requirement. The cost will be paid within a week from date, either to the learned advocate-on-record of the plaintiff or directly to the plaintiff. In case of default in payment, the applications shall not be heard.
6. The parties are at liberty to file a put up petition before the learned court below seeking a pre-ponement of the date for hearing of the applications under Sections 7(1) and 7(2) of the said Act. The said applications should be disposed of within four weeks from the date to

be fixed and, thereafter the suit shall proceed in accordance with law.

7. As there is already a direction for expeditious disposal of the suit, it goes without saying that the suit should be disposed of within a year from the disposal of the applications under Section 7(1) and 7(2) of the said Act.
8. The revisional application is, thus, disposed of. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)