

S/L 5
23.9.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 2173 of 2024

Md. Suleman

Vs.

Dr. Mohammed Haroon

Mr. Tarique Quasimuddin

Mrs. Zainab Tahir

... for the Petitioner.

Mr. Abhijit Ray

Md. Aquil

Mr. Santu Nandy

... for the Opposite Party.

The plaintiff in a suit for ejectment is the petitioner of the instant application under Article 227 of the Constitution of India which is directed against the Order No.14 dated February 23, 2024 passed by the learned Chief Judge, Presidency Small Causes Court at Calcutta in the said suit being *Ejectment Suit No.294 of 2021*.

The tenant, the opposite party herein, by an application under section 5 of the Limitation Act, 1963 had prayed for condonation of delay in filing the applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 ("*said applications under the said Act of 1997*" in short).

The learned Trial Judge by the order no.7 dated September 13, 2022 had allowed the said application for condonation of delay and had permitted the tenant to deposit the admitted arrear rent and the current rent in terms of Section 7(1) of the said Act of 1997.

The petitioner, by an application under Section 151 of the Code of Civil Procedure dated April 13, 2023 had prayed for recalling of the said order dated September 13, 2022 on the ground that delay in filing of the said applications under the said Act of 1997 cannot be condoned.

The learned Trial Judge by the order impugned has dismissed the said application of the petitioner.

Mr. Abhijit Ray, learned advocate for the opposite party submits that the tenant appears in the suit without the

service of summons and he had filed the said applications under the said Act of 1997 within 30 days from the date of his such appearance; but on a wrong advice, had filed the application for condonation of delay.

The said submission of Mr. Ray is heavily disputed by Mr. Quasimuddin, learned advocate for the plaintiff and he submits that the summons was duly served upon the tenant/defendant.

Having heard the learned counsel(s) for the parties, it appears that the stand of the tenant that the said applications under the said Act of 1997 were filed within the period of limitation changes the whole premise on which the order dated September 13, 2022 was passed.

The veracity of the allegation of the tenant that he had appeared in the suit without the summons being served upon him and had filed the said applications under the said Act of 1997 within the period of limitation needs to be ascertained with reference to the records of the suit.

The learned Trial Judge is therefore requested to decide the said application under Section 7(1) of the said act of 1997 afresh, in accordance with law, and to facilitate the said exercise, the order no.7 dated September 13, 2022 and the order impugned dated February 23, 2024 are set aside.

CO 2173 of 2024 is disposed of without any order as to costs.

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

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

(Biswajit Basu, J.)