

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.O.1788 of 2021

Sri Debi Prosad Chakraborti
Versus
Smt. Ranu Ghosh & Anr.

For the Petitioner : Mr. Anirudha Chatterjee
Ms. Iftekar Munshi

For the opposite parties : Mr. Tarak Nath Halder
Mr. Sayan Mukherjee

Heard on : 19.11.2024

Judgment on : 10.12.2024

Dr. Ajoy Kumar Mukherjee , J.:

1. This instant revisional application has been directed against an order dated September, 07, 2021 passed by learned Civil Judge (Junior Divisions) 1st Court, Sealdah, in Ejectment Suit no. 10 of 2009, thereby disposing an application under section 7(2) of the West Bengal Premises Tenancy Act, 1997(in short Act of 1997) directing the opposite parties herein to pay a sum of Rs. 2474/- as arrear rent along with interest by the next date. By the self same order the opposite parties were further directed

to continue depositing the sum equivalent to the rate of rent month by month.

2. The factual matrix of the present case is that the petitioners herein as plaintiff filed a suit for eviction and mesne profits in respect of the suit property. The opposite parties herein as defendants appeared in the said suit and also filed application under section 7(2) of the Act of 1997 for adjudication of the relationship between the parties and also for adjudication of the arrears of rent. The plaintiff /petitioner filed written objection to the said application denying and disputing all the allegations stated in the said application.

3. Petitioner contended that previously petitioner along with his wife issued a notice to quit to the predecessor in interest of the defendants/opposite parties herein and subsequently filed a suit being T.S. No. 92 of 2001 (not the present one) on the ground of default in payment of rent and reasonable requirement. Said earlier suit was decreed vide judgment dated 30.03.2006. Present defendants preferred an appeal being T.A. no. 57 of 2006 against the said eviction decree passed by the Trial Court. Thereafter learned First Appellate Court was pleased to remand the case for adjudicating the suit afresh. Upon remand the Trial Court was pleased to observe that the notice to quit was not in proper form and thus suffered from technical defect, which ultimately compelled the petitioner to withdraw the suit.

4. Petitioner's further contention is that defendant/opposite parties herein also filed petition under section 17(1) & (2) of the West Bengal Premises Tenancy Act, 1956(in short Act of 1956) in the said previous Title

suit No. 92 of 2001 and in the aforesaid judgment passed in said T.S. No. 92 of 2001, the Trial Court decided issue no. 3 as follows:-

“The application under section 17(2) of West Bengal Premises Tenancy Act, was disposed of on 10.10.2001. the defendant complied the order of the court regarding payment of arrears rent. Scrutiny of the record reveals that the defendant has complied the provision of section 17(1) of West Bengal premises Tenancy Act all along. There is no pre-suit or post suit default on the part of the defendant. Consequently the defendant is entitled to get the relief under section 17(4) of West Bengal Premises Tenancy Act. Hence, this issue is decided in favour of the defendant, against the plaintiff.”

5. Now it is submitted by the petitioner that in the instant suit being Ejectment Suit no. 10 of 2009, the tenant/defendant/opposite parties herein also filed application under section 7(2) of the Act of 1997 and learned Trial Court after hearing both the parties by an order dated 14.12.2017 held that the defendants/opposite parties are not liable to pay any arrear of rent. Being aggrieved by that order plaintiff/petitioners preferred revisional application before this court being C.O. 3554 of 2019 and this High Court by its order dated 23.02.2021 had disposed of the said Application directing the learned Trial Judge to decide the application under section 7(2) of the Act of 1997, afresh in accordance with law, on the basis of evidence already on record. Learned Trial Judge according to the direction of the High Court had taken up defendant/opposite parties application under section 7(2) of the Act of 1997 afresh and by the impugned order held that there exists landlord tenant relationship between the parties and the total arrears of rent along with interest payable is Rs. 2474/-.

6. Being aggrieved by that order Mr. Iftekar Munshi learned counsel appearing on behalf of the petitioner argued that under the proviso to section 7 (4) of the Act of 1997, the tenant shall not be entitled to any relief

under subsection (4) of section 7, if having obtained benefit of protection against eviction once in respect of the same premises, tenant again makes default in payment of rent for four months within a period of 12 months.

7. Accordingly Mr. Munshi argued that whatever might be the fate of earlier suit being T.S. no. 92 of 2001, it is not the determining factor or the litmus test, while invoking the operation of the proviso to sub-section (4) of section 7 of the Act of 1997. Since the opposite party herein once availed benefit of protection under section 17(4) of the Act of 1956, they are not entitled to again pray for benefit of protection against eviction in the instant suit being T.S. no. 10 of 2009. Learned Trial Court acted illegally and with material irregularity in passing the said order granting protection to the tenants for the second time with respect to the same premises, which has been deprecated by the proviso to section 7(4) of the said Act. In this context petitioner relied upon a Division Bench judgment of this court reported in **2018(1) CHN (Cal) 56 (P. Marika Vs. Bholanath Kundu)**.

8. Per contra Mr. Taraknath Halder learned counsel appearing on behalf of the opposite party submits that the eviction decree procured in the earlier suit had come to an end with the withdrawal of the suit which was filed on the basis of a defective notice and whatever observation made by the Trial Court in the said T.S. No. 92 of 2001 has got no binding effect upon the opposite parties herein, since the earlier suit was in between the opposite parties herein along with one third party namely Shefali Chakraborty, who is not their land lord.

9. Mr. Halder further submits that the petitioner herein as plaintiffs challenged the earlier order of the Trial Court in connection with disposal of

section 7(2) application before this High Court being C.O. 3554 of 2019, which was disposed of by this Court on 23rd February, 2021 wherein this Court remanded the matter to the learned Trial Judge to decide the application in accordance with law on the basis of evidence already on record and in the course of hearing of the said Revisional Application, the present petitioner herein never urged that the opposite parties herein are not entitled to get protection, since they have already availed protection in an earlier suit. In fact the coordinate bench of this court while disposing aforesaid C.O. No. 3554 of 2019 only made directives in the order of remand to investigate the veracity of the claim of payment of rent to the petitioner herein as no rent receipt was issued and also to scrutinise the validity of deposit of rent before Rent Controller. Accordingly Mr. Halder argued that the present petitioner is now estopped from taking the plea, since such plea is barred by principle of *res judicata* or constructive *res judicata* and in this context he relied upon judgment of **Satyadhan Ghoshal and others Vs. Smt. Deorajin Debi and another** reported in **AIR 1960 SC 941**.

10. He further argued that after remand the scope of adjudication was limited and the learned court has to act within the limit of the said order since the order of remand is bereft of any direction as to whether the opposite party is entitled to get protection under section 7(4) of the Act of 1997 in the present suit also.

11. Mr. Halder distinguished the judgement relied by the petitioner in **P. Marikas Cases (Supra)** stating that the said decision relates to a second appeal where tenant got relief in earlier suit between the self same parties.

After full-fledged trial in the said case learned court held that tenant is not entitled to get any protection since such tenant got relief in earlier suit and such eviction decree was affirmed in the said second appeal. But in the present case the eviction decree was procured by the petitioner and one Shefali Chakraborty, a third party with whom there is no relationship of land lord with the opposite parties herein and which was subsequently set aside by the learned Appellate Court and the suit after the order of remand culminated into dismissal, on the ground of non-prosecution and upon such dismissal, the observations made in connection with benefit of protection has seized to exist and as such it cannot be said that present opposite parties herein got any protection in earlier suit. Accordingly Mr. Halder prayed for dismissal of the instant application since the court below is absolutely justified in passing order impugned.

12. I have considered submissions made by both the parties.

13. It would be mere repetition to say that learned Trial Judge has disposed of defendants application under section 7(2) of the Act of 1997 directing the opposite parties herein to pay a sum of Rs. 2474/- as arrear rent along with interest by the next date. The Trial court disposed of the said application in view of direction made by this court while disposing CO 3554 of 2019. It appears from the said order passed by this High Court that the petitioners/landlord had not raised any issue before this court regarding earlier disposal of 17(2) application in another suit. After considering submissions made by both the parties this court directed the Trial Court to dispose of defendants application, filed under section 7(2) of the said Act within a period of three weeks from the date of communication

of the order. The Trial Court accordingly disposed of the said application filed under section 7(2). The land lord/petitioners advocate strenuously argued that the court below while disposing 7(2) application did not consider that in the petitioners previous suit the defendant tenant has already availed the benefit of protection against eviction under section 17(4) of the Act of 1956 and since he has already obtained such relief once in respect of the same premises and as he again made default in payment of rent for four months within a period of 12 months, as established from the order impugned so, the court below was not justified in giving opportunity to the petitioner to pay the arrear rent which is much more than 4 months within a period of 12, months for the second time.

14. It appears that while making such argument learned counsel for the petitioner did not take into account the purport and object of the two sections namely 7(2) and 7(4) of the Act of 1997. Needless to say that while adjudicating an application under section 7(2), the court is saddled with an imperative duty mainly to determine the arrear amount of rent and in case of any dispute regarding relationship and rate of rent, he is also supposed to resolve such dispute under the said provision but the object of incorporating section 7(4) of the Act in the statute is for the court to consider whether the tenant is entitled to get benefit of protection against eviction on the ground of default in payment of rent by the tenant, in compliance with the direction made under sub-section (1) or sub-section (2) and if it appears to the court that there is compliance of sub-section (1) and (2) of section 7, the court will not order for delivery of possession of the premises to the land lord on the ground of default and at the same time the

proviso to sub section (4) of section 7 states that tenants shall not be entitled to any relief under sub-section (4) of section 7, if having obtained such relief once in respect of the premises he again makes default in payment of rent for four months within a period of 12 months.

15. Accordingly it is clear that the trial court is supposed to adjudicate the issue as to whether the tenant/defendant is entitled to get benefit of protection against eviction on the ground of availing such protection earlier under proviso to section 7(4) of the Act of 1997, at the time of final adjudication of the suit when the court will have to adjudicate the issue whether the land lord/ petitioner is entitled to get an order for delivery of possession of the premises from the tenant on the ground of default in payment of rent by the tenant.

16. Whether the allegation that the defendant/tenant had earlier availed the benefit of protection against eviction and thereby he is debarred from claiming such protection again in the instant suit, is a matter of trial in the suit and the court below will frame an additional issue as to whether the tenant has committed a default again in the matter of payment of rent for four months within a period of 12 months after obtaining relief under section 17(4) in Ejectment Suit No. 92 of 2001 in respect of the same suit premises. Infact the court below while disposing the defendant/tenant's application under section 7(2) of the Act of 1997, had no scope to pre-judge the aforesaid issue as to whether the opposite party tenant has already obtained the relief under section 17(4) of the Act of 1956 in the earlier suit or not. In this context I have also placed Reliance upon the observation

made by a co ordinate Bench of this court in ***Sk. Johuri @ Md. Johuri Vs. Md. Khalil (CO 3166 of 1995)*** reported in **(2001) 2 CHN 134**.

17. In such view of the matter I do not find any perversity or impropriety in the order impugned, which can call for interference by this court invoking jurisdiction under Article 227 of the Constitution of India.

18. C.O. 1788 of 2021 thus stands dismissed. However, inspite of this dismissal order, the issue as to whether the tenant has made default again in the matter of payment of rent for four months within a period of 12 months, after obtaining relief under section 17(4) of the Act of 1956 in Title Suit No. 92 of 2001 in respect of the same suit premises, shall be kept open for final adjudication and the court below will frame appropriate issue to adjudicate the said question.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)