

Item No.2
08.02.2024
Court. No. 19
GB

C.O.2258 of 2023

Smt. Mousumi Chanda & Anr.
VS
Sri Nandadulal Ghosh

*Mr. Supriyo Chattopadhyay,
Mr. Sudip Kr. Maiti*

...for the Petitioners.

*Mr. Debnath Ganguly,
Mr. Supriyo Dutta*

...for the Opposite Party.

The revisional application arises out of an order dated March 17, 2023, passed by the learned Chief Judge, Small Causes Court at Calcutta in connection with Ejectment Suit No.263 of 2022.

By the order impugned, the learned court rejected an application under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act') filed by the defendants dated January 13, 2023. The written statement was not accepted.

It has been recorded that the defendants had admitted that the applications under Section 7(1) and 7(2) of the said Act was not filed within time. On such admission, the learned court was of the view that the applications were liable to be rejected. The summons were served on August 28, 2022, by the Bailiff. The defendants entered appearance in the suit on September 5, 2022. Thereafter, on January 13, 2023, the defendants filed their applications under Sections 7(1) and 7(2) of the said Act, after a lapse of more than five months

from date of service of summons. Clearly, the applications were time barred.

Relying on the decision of the Hon'ble Apex Court in the matter of ***Bijay Kumar Singh & Ors. versus Amit Kumar Chamariya & Anr.*** reported in **(2019) 10 SCC 660**, the learned court was of the view that the mandate of the Statute was not followed. Not only were the arrear rents along with 10% statutory deposit not deposited, but even the applications under Sections 7(1) and 7(2) of the said Act, was filed beyond the period prescribed under the said provisions of law. Non-compliance of Sections 7(1) and 7(2) of the said Act results in striking off the defence of the tenant. Such non-compliance by not acting as per the mandatory provisions of the said sections, within the time frame prescribed by Section 7(1) of the said Act, could not be condoned by applying Section 5 of the Limitation Act. For convenience, the relevant paragraphs of the decision of the Hon'ble Apex Court in the matter of ***Bijay Kumar Singh (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.”

The Hon’ble Apex Court took note of the decisions rendered in ***B.P. Khemka (P) Ltd. vs. Birendra Kumar Bhowmick*** reported in ***(1987) 2 SCC 407***, ***Shibu Chandra Dhar vs. Pasupati Nath Auddya*** reported in ***(2002) 3 SCC 617*** and ***Nasiruddin v. Sita Ram Agarwal*** reported in ***(2003) 2 SCC 577***, and arrived at the conclusion that the tenant would not be able to take recourse to the provisions of Section 5 of the Limitation Act. The Hon’ble Apex Court noticed the decisions in the above cases and still arrived at the conclusion that filing of the applications and deposit/payment of the admitted arrears with statutory interest, within the aforementioned period, were both mandatory pre-conditions to be complied with by a tenant, in order to avoid eviction.

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 subsection, 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.

In a subsequent decision of ***Debasish Paul and Anr. vs. Amal Boral*** reported in **2023 INSC 925**, the Hon'ble Apex Court held that the Limitation Act, could not

be used to expand the time prescribed by the legislation and the reasoning in ***Amit Kumar Chamariya (supra)*** could not be doubted.

The learned court held that once the right of the tenant to defend a suit for eviction is struck off for non-compliance of Sections 7(1) and 7(2) of the said Act, Section 7(3) of the said Act would become operative.

Under such circumstances, the learned court was of the view that the question of acceptance of a belated written statement could not arise.

The written statement is the statement of defence of the tenant, who has lost his right to defend the suit. In the decision of the Hon'ble Apex Court in the matter of ***Modula India versus Kamakshya Singh Deo*** reported in ***(1988) 4 Supreme Court Cases 619***, The Hon'ble Apex Court had held that in a suit which was appearing undefended, the defendant may enter appearance by exercising a limited right to cross-examine the plaintiffs witnesses and to advance arguments to demolish the plaintiff case. Relevant paragraph is quoted below:-

“For the above reasons, we agree with the view of Ramendra Mohan Dutta, ACJ that, even in a case where the defence against delivery of possession of a tenant is struck off under section 17(4) of the Act, the defendant, subject to the exercise of an appropriate discretion by the court on the facts of a particular case, would generally be entitled:

- (a) to cross-examine the plaintiff's witnesses; and
- (b) to address argument on the basis of the plaintiff's case.

We would like to make it clear that the defendant would not be entitled to lead any evidence of his own

nor can his cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses."

Under such circumstances, the tenant shall be entitled to contest the suit and demolish the case of the plaintiff, but not set up his own defence case. The order impugned is not interfered with.

Accordingly, the revisional application is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)