

25.04.2024
Ct. No. 19
Sl. No. 20
Cp/Gb

C.O. No. 2281 of 2023

Sanjiv Kumar Jaiswal & anr.
Vs.
Sri Harigopal Das & ors.

Mr. Aditya Sen

... for the Petitioners.

Mr. Sayan Sinha
Mr. Deepak Kr. Basu
Mr. Puran Pal

....for the opposite parties.

1. The revisional application arises out of an order dated November 14, 2022, passed by the learned Judge, 5th Bench, Small Causes Court, Calcutta. By the order impugned, an application under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as “the said Act”), was allowed.
2. The petitioners were found to be defaulters and the defence was struck off. The learned court, upon considering the orders passed in the applications under Sections 7(1) and 7(2) of the said Act as also the exhibits and pleadings in paragraphs 7 and 8 of the application under Section 7(2) and paragraph 12 of the written statement, arrived at the conclusion that there were admitted dues which were not deposited. However, when the application under Section 7(1) of the said Act had been disposed of, an opportunity was

given to the petitioner to deposit the admitted dues.

The dues were not paid.

3. Thus, the court had no other alternative but to strike off the defence. The court found that the factum of deposit of rent from August 2014 to January 2018 also, could not be established by the petitioners.
4. By the order dated February 22, 2018, the learned Chief Judge, Small Causes Court had disposed of the application under Section 7(1) of the said Act, inter alia, holding that the application was formal in nature and within time. Unless the tenants were allowed to deposit the admitted arrears along with the current rent, they would suffer irreparable loss and injury. The tenants were permitted to deposit the admitted arrear of rent at the rate at which it was last paid, upto the end of the month prior to the filing of the suit, together with 10% interest per annum, in terms of their prayer. Liberty was further granted to deposit the current rent month by month within 15th of each succeeding month. The application under Section 7(2) of the said Act was kept pending for further adjudication.
5. The application under Section 7(2) came up for hearing before the learned court on July 18, 2022. The court recorded that the induction of the petitioner as tenants in respect of the shop room on the ground floor of the suit premises at a monthly rental of Rs.300/- payable according to the English calendar

month was an admitted fact. The case of the tenants was that they had paid the rent regularly to the landlords. The landlords had received the rent for 19 months @ Rs.300/- from January, 2013 to July, 2014 at a time. Rent receipts were granted. The tenants further contended that the landlords did not issue any rent receipts for the months from August, 2014 to December, 2016, although the rent was received. The tenants had also paid rent from January, 2017 to September, 2017 but no rent receipts had been issued as per their statements. The rent for December, 2017 was sent by postal money order, but was refused by the landlords. Thereafter, the application under Section 7(1) of the said Act was filed for permission to allow the tenants to go on depositing the current rent from February, 2018.

6. By filing the application under Section 7(2), the tenant raised a dispute with regard to the arrears and the relationship. The learned court came to the finding that the relationship was admitted in the written statement and also in the other pleadings under Section 7(1) and 7(2) of the said Act. Moreover, the tenants' case was that they had approached the plaintiffs for acceptance of rent and grant of receipts, which they had refused. The landlords filed an application under Section 7(3) of the said Act for

striking off the defence for non-compliance of Section 7(1).

7. The learned court considered the postal receipts etc. and the other challans and came to the finding that the tenants were defaulters between August, 2014 to January, 2018 and although permission was granted to the petitioners/tenants to deposit the admitted arrears by the order dated February 22, 2018, but such opportunity was not availed of. The court could not condone the delay by allowing the tenants to deposit the admitted arrears.
8. The learned court took up the matter for hearing and upon considering the orders passed under Sections 7(1) and 7(2) of the said Act, arrived at the conclusion that the deposit from August 2014 to January 2018 had not been made. The court considered the admissions of the tenants that there were some arrears, but despite having been given an opportunity to deposit the same the deposit was not made.
9. The learned advocate for the petitioners submits the challans to show that current rent @ Rs.300/- had been paid as per the order dated February 22, 2015. Thus, the contention of the learned advocate for the petitioners that the petitioners were unaware of the order by which they were permitted to deposit the admitted arrears with 10% interest which led to the non-compliance, is not correct.

10. Section 7 is a mechanism which allows a tenant to seek protection from eviction in a suit filed under any of the grounds under Section 6 of the West Bengal Premises Tenancy Act, 1997.
11. This is a suit for eviction on the ground of default and reasonable requirement. The tenants were required to comply with Section 7(1) of the said Act by depositing the admitted arrears of rent with 10% statutory interest within a month from receipt of summons or within a month from appearance before the court, if the tenant appeared without receipt of summons.
12. The order records that the application under Section 7(1) was filed within time. The learned court found that there were admitted arrears and directed the tenants/petitioners to deposit the same. The petitioners admittedly did not deposit the same. The ground taken before this Court is non-communication of the order by the learned advocate. This plea cannot be accepted because the other part of the same order was complied with and current rent was deposited. Moreover, while disposing of the application under Section 7(2), the learned court allowed the parties to adduce both oral and documentary evidence. The learned court also went through each and every pleading and found that there was admissions with regard to the arrears of rent in paragraphs 7 and 8 of

the application under Section 7(2) and paragraph 12 of the written statement. Thus, the opportunity which was available to the petitioners under Section 7(1) and as permitted by the learned court while disposing of the application under Section 7(1), was not availed of at the appropriate time. The court observed that the rents from August 2014 to January 2018 had not been paid. There was no evidence to justify such claim.

13. Paragraphs 7 and 8 of the application under Section 7(2) clearly states that the rent for December 2017 was not accepted by the plaintiff and the same was sent by money order. The defendants did not pay the rents for December 2017 and January 2018 as per their own statement. In the written statement, it has been categorically stated in paragraph 12 that the rent for December 2017 was refused and later tendered by money order. With regard to the payment of rent for January 2018, the petitioners were silent. The court, while disposing of the application under Section 7(1), had permitted the petitioner to deposit the admitted arrears along with 10% statutory interest. Even assuming that the observation of the court with regard to non-payment of rent from August 2014 to January 2018, is not correct, how payment for December 2017 and January 2018 was made, is not available. There is a clear direction by the trial court that there had been

arrears, which should be deposited with 10% interest. Only upon compliance of Section 7(1) can any dispute under Section 7(2) be raised.

14. The Hon'ble Apex Court in the matter of ***Bijay Kumar Singh & Ors. versus Amit Kumar Chamariya & Anr.*** reported in ***(2019) 10 SCC 660*** held that without depositing the admitted arrears with 10% statutory interest, the tenant would not be entitled to seek any adjudication of any dispute under Section 7(2). The law is well-settled. It has also been held that upon non-compliance of Sections 7(1) and 7(2), the defence of the tenants was also liable to be struck off.

The relevant paragraphs 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.”

15. In the decision of ***Smt. Binika Thapa (nee Rai) & Anr. Vs Smt. Dambar Kumari Mukhia & Anr.***, this Court held that the decision in Chamariya (supra) is a binding precedent. The relevant paragraphs are quoted below:-

“15. Section 7 was interpreted in Amit Kumar Chamariya (supra) and the entire mechanism by which a tenant could seek benefit from eviction on the ground of default, was considered to be mandatory and inter-related. The provisions of the said section were discussed in the following paragraphs thereof:-

16.....

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 sub-section, 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.”

16. Under such circumstances, the learned court was correct in holding that no opportunity can be given to the tenants to deposit arrear rents. The order impugned does not call for any interference.

17. The prayer of the petitioners for deposit of the admitted arrears with statutory interest cannot be allowed at this stage in view of the decision of the Hon’ble Apex Court and also of this Court, inasmuch as, a belated deposit of admitted arrears is not permissible in law and Section 5 of the Limitation Act would not have any role to play.

18. In ***Debasish Paul and Anr. vs. Amal Boral*** reported in **2023 INSC 925**, the Hon’ble Apex Court also

reiterated the ratio of ***Chamariya (supra)*** and held that the ratio of ***Chamariya (supra)*** could not be doubted. The briefs facts before the Hon'ble Apex Court were as follows:-

“2. In the proceedings, the respondent made an application under Sections 7(1) and (2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the ‘said Act’). The application was rejected by the Trial Court vide a judgment dated 11.09.2018 on the ground that the respondent had entered appearance in the suit on 09.02.2016 but filed the application only on 14.12.2016 i.e., after a delay of ten months.

3. The application, not being filed within the statutory period of one month, was, thus, rejected. No application was filed under Section 5 of the Limitation Act, 1963.

4. The respondent, aggrieved, by the same preferred a Civil Revision before the High Court and in terms of the judgment dated 21.08.2019, the High Court set aside the judgment dated 11.09.2018 and granted liberty to the respondent tenant to file an application under Section 5 of the Limitation Act, 1963 explaining the circumstances causing the delay for the purpose with the prayer for condonation of delay in support of the application under Sections 7(1) and 7(2) of the said Act already filed.”

19. In the said case as narrated above, being aggrieved by the order of the High Court, the landlord moved the Supreme Court. The Hon'ble Court held that Section 40 of the said Act would not be applicable in this case, as the period of limitation had been prescribed in the provisions of Section 7 itself. The Hon'ble Apex Court held as follows:-

“15. It is relevant to note that the case of Bijay Kumar Singh, 4 in turn, referred to the observations made in Nasiruddin case⁵ in the

following terms: “37. ...It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

38. ...if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified.

16. We have no doubt over the proposition that though generally the Limitation Act is applicable to the provisions of the said Act in view of Section 40 of the said Act, if there is a lesser time period specified as limitation in the said Act, then the provisions of the Limitation Act cannot be used to expand the same. It is in this context that in Nasiruddin case, it has been mentioned that the real intention of the legislation must be gathered from the language used. Thus, the reasoning in Bijay Kumar Singh case cannot be doubted more so as the requirement is for a tenant to file an application, but he has to deposit the admitted arrears of rent as well, which has certainly not been done.

17.....

18. There is also a larger context in this behalf as the Tenancy Acts provide for certain protections to the tenants beyond the contractual rights. Thus, the provisions must be strictly adhered to. The proceedings initiated on account of non-payment of rent have to be dealt with in that manner as a tenant cannot occupy the premises and then not pay for it. This is so even if there is a dispute about the rent. The tenant is, thus, required to deposit all arrears of rent where there is no dispute on the admitted amount of rent and even in case of a dispute. The needful has to be done within the time stipulated and actually should accompany the application filed under Sub-Sections (1) & (2) of Section 7 of the said Act. The proviso only

gives liberty to extend the time once by period not exceeding two months.”

20. A Division Bench in the **Calcutta Gujarati Education Society versus Sri Ajit Naraya Kapoor** passed in **C.O.175 of 2017**, answered a reference in view of conflicting decisions on the issue of application of Section 5 of the Limitation Act. The question formulated by the then Acting Chief Justice is quoted below:-

“Does the view of the Division Bench of this court that section 5 of the Limitation Act can be applied to condone delay in making applications under sub-sections (1) and (2) of section 7 of the West Bengal Premises Tenancy Act, 1997, as held in the Subrata Mukherjee case (supra), survive in view of the decisions of the Hon’ble Supreme Court in the Nasiruddin case (supra), the Ashoke Kumar Mishra case (supra), Manjushree Chakraborty case (supra).”

21. The reference was specific as to whether Section 5 of the Limitation Act could be applied to condone the delay in filing the applications under Section 7(1) and 7(2) of the said Act. The Hon’ble Division Bench held that the Limitation Act, 1963 had no manner of application in respect of an application by a tenant under Section 7 for determination of arrear rents and disputed rents. Paragraphs 46 and 47 of **Nasiruddin & Ors. v. Sita Ram Agarwal** reported in **(2003) 2 SCC 577** were considered by the Hon’ble Division Bench and it was held that in Nasiruddin (supra), it was

decided that the court could condone delay only when the statute conferred such a power on the court or not otherwise. The Hon'ble Division Bench held as follows:-

“West Bengal Premises Tenancy Act, 1997 is an Act of the State legislature providing for period of limitation in respect of deposit and determination of rent. Section 6 in the Act has the non-obstante clause on application of other laws, regarding eviction. Section 40 makes applicable Limitation Act, 1963 subject to provisions in the Act relating to limitation.

The application for determination of rent not having prescribed period of limitation anywhere else in the third division, article 137, if applied, will provide for it to be made within three years from when the right to apply accrues. In case of such an application it is not the right of the tenant that would accrue, to make such an application. The Act of 1997 mandates that deposit of rent or where there is dispute regarding quantum of rent, deposit of admitted rent along with application for determination of rent, must be made by the tenant within time specified and as extendable under said Act. This is in relation to the suit filed for eviction, where compliance with the deposit mandate will enable the tenant to seek the protection provided. This enabling provision cannot be seen as an assertive right of a tenant, to be enforced. Here, provision in article 137 cannot be made applicable. Furthermore, where it is a requirement of compliance by the tenant to seek protection, mandated by the statute as competently legislated by the State legislature and specifically limiting application of the 1963 Act, there cannot be occasion for application of the period of three years, overriding the period and extension specified by the local law and thereafter condonation of delay as under section 5.

We answer the question referred to say that Limitation Act, 1963 has no application in respect of an application by a tenant, made under section 7 for determination of arrears of disputed rent. We are aware our answer to the question referred gives rise to conflicting views of two Division Benches of this Court. However,

we have answered the question pursuant to direction made in said administrative order. The files be sent back on the reference answered and disposed of.”

22. The Division Bench held that the Act of 1997 mandated deposit of rent or in case of dispute with regard to quantum, deposit of admitted rent along with an application for determination was to be filed by the tenant, within the time specified under the Act. Article 137 of the Limitation Act would not be applicable. Furthermore, when it was a statutory requirement, compliance by the tenant would entitle the tenant to seek protection. The provision was competently legislated by the State legislature by specifically limiting the application of the Limitation Act of 1963. Grant of extension of time specified by the local law, by seeking condonation of delay under Section 5 of the Limitation Act was not permissible. The question on reference was thus answered. The Limitation Act had no applicability in respect of the tenant’s application under Section 7(1) and Section 7(2) of the said Act.

23. Accordingly, the revisional application is dismissed.

24. However, there will be no order as to costs.

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

(Shampa Sarkar, J.)