

18.11. 2024
item No.11
n.b.
ct. no. 24

C.O. 2488 of 2024

Smt. Dayeeta Khan (Paul)
Vs.
The Chairman Revival and Recovery Committee,
Ramkrishnapur Co- operative Bank. Ltd.

Mr. Saunak Bhattacharya,
Mr. Anirban Saha Roy,
..... For the Petitioner

Affidavit of service filed on behalf of the petitioner is taken on record.

Despite service none appears on behalf of opposite parties.

The instant civil revision has been preferred against the order dated 27.6.2024 passed by the learned 1st Civil Judge (Senior Division) at Howrah in Title Suit No.127 of 2023.

The brief fact of the matter is that the plaintiff being the landlord filed a suit for eviction of the defendant from the disputed premises on the ground of defaulter. It is the case of the plaintiff that the defendant has contested the suit for filing written statement, but, till date, they have not preferred any application under Section 7(1) or 7(2) of the West Bengal Premises Tenancy Act, 1997. Hence, the plaintiff/petitioner has filed an application under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 seeking necessary order for struck out the defence of the defendant for non-compliance of mandatory provision under Section 7(1) and 7(2) of West Bengal Premises Tenancy Act, 1997.

Learned Civil Judge concerned has heard the petitioner and defendant/opposite party. The learned Civil Judge concerned by passing impugned order has

turned down the prayer of the petitioner under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 on the sole ground that the same question has already been decided by the Court in Title Suit No.397 of 2016 by passing the judgment in the earlier suit.

Heard the learned advocate for the petitioner; perused the judgment passed by the learned 1st Court, Civil Judge (Senior Division), Howrah in Title Suit No.397 of 2016 on 26.7.2022. On a plain perusal of the judgment, it appears that the suit was dismissed on the ground that the plaintiff had failed to prove the fact of induction of the defendant no.2 as tenant over the suit premises, as such, the landlord and tenant relationship was not proved. The said suit was dismissed on 26.7.2022. It appears from the paragraph 9 of the plaint of the present Suit (T.S. 127 of 2023) that the cause of action arose in this suit on December 18, 2022 when a notice to quit was served upon the defendant through registered post. Thus, it appears that the cause of action of the instant suit arose after the disposal of the said suit (T. S. 397 of 2016). Thus, it appears that the observation of the learned Civil Judge concerned regarding the adjudication of the same issue in the earlier suit is not correct.

It further appears that the provision of Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 has provided a protection to the tenant against the proceeding of eviction. The defendant/tenant has to opt the provisions enumerated under Sections 7(1) and & 7(2) of the West Bengal Premises of Tenancy Act, 1997 for getting benefit against the prayer for eviction by the landlord. In this case, it appears that the defendant no.2 was impleaded in the said suit on May 31, 2023. Defendant No.2 did not file any petition within the stipulated time frame under Section 7(1) of West Bengal Premises Tendency Act, 1997. The defendant never

deposited for filing admitted rent to the court or did not file any application for settlement of the rent by the Court.

Thus, I am of the view that the application under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 filed by the present petitioner/plaintiff is quite meritorious.

However, the law has been declared to that effect by the Hon'ble Supreme Court in ***Bijay Kumar Singh Vs. Amit Kumar Chamariya*** reported in **(2019) 10 SCC 660** as follows:-

"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.

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 Section 7 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 Section 7 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 (2-A) and (2-B) which was being examined by this Court in *B.P. Khemka [B.P. Khemka (P) Ltd. v. Birendra Kumar Bhowmick, (1987) 2 SCC 407]*. Sub-sections (2-A) and (2-B) of Section 17 of the 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso to Section 7(2) and sub-section (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 precondition 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.”

According to the observation made in herein above and also according to the dictum of the Hon’ble Supreme Court in the case of ***Bijay Kumar Singh (Supra)***, I am of the view that the application under Section 7(3) of the West Bengal Premises Tenancy Act filed by the plaintiff/petitioner is justifiable and the same is allowed. The impugned order passed by the Learned Civil Judge concerned is hereby set aside.

The defence of the defendant no.2 against the delivery of possession be struck out.

Under the above observation, the instant C.O. is disposed of.

The learned Civil Judge concerned is to proceed with the suit according to the law and dispose of the same as early as possible more preferably within a period of six months from the date of passing of this order.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)