

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

CO 2415 of 2022

Mrinal Kanti Das Podder

Vs.

Sk. Abdul Mohit

For the petitioner	:	Mr. Sukanta Das Mrs. Tutun Das
For the opposite party	:	Mr. Sarvesh Chandra Shrivastava
Heard on	:	04.04.2024
Judgement on	:	04.04.2024

PARTHA SARATHI SEN, J.:

1. Heard learned Counsel for the petitioner and the learned Counsel for the opposite party in support and against the instant revisional application.
2. The present case is now taken up for passing appropriate order.
3. In this revisional application as filed under Article 227 of the Constitution of India, the revisionist being the plaintiff/landlord in a suit for eviction of the tenant has assailed the order No. 64 dated

07.05.2022 as passed in O.S. No. 250 of 2012 by the learned Civil Judge (Junior Division), 1st Court, Sadar Paschim Medinipur, whereby and whereunder the said court in the said suit for eviction under the provisions of West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act of 1997) has been pleased to allow the defendant/tenant's application under Sections 7(1) and 7(2) of the said Act of 1997 holding the amount of arrears of rent together with statutory interest to the tune of Rs. 20,460/- which according to the learned trial court had already been deposited by the defendant with a further direction upon the defendant/tenant to go on depositing Rs. 100/- towards rent from the month of June, 2022 till disposal of the said suit.

4. The plaintiff of the said suit for eviction felt aggrieved and thus, preferred the instant revisional application.
5. In course of his submission, Mr. Das, learned Counsel appearing on behalf of the revisionist/plaintiff/landlord draws attention of this Court to the photocopy of the petition under Section 7(1)(c), photocopy of the petition under Section 7(2) of the said Act of 1997 along with the photocopy of the petition under Section 5 of the Limitation Act as have been filed by the defendant/opposite party before the learned trial court. Attention of this Court is also

drawn to the order dated 23.06.2016 as passed by a co-ordinate Bench in CO 2569 of 2015 with CO 2254 of 2015.

6. In course of his submission, Mr. Das submits before this Court that on conjoint perusal of the copy of the petition under Section 7(1)(c) and Section 7(2) of the said Act of 1997 and copy of the petition under Section 5 of the Limitation Act, it would reveal that the defendant/tenant who is the opposite party before this Court has failed to pay to the plaintiff or deposited with the trial court, the admitted arrears of rent till the end of the month previous to that in which the payment is made with interest at the rate of 10 per cent per annum within one month from the date of receipt of summons of the said suit.
7. It is further argued that for the said reason, the defendant/tenant before the trial court had come forward with an application under Section 5 of the Limitation Act for condonation of delay in depositing such admitted arrears of rent. Drawing attention to the order dated 23.06.2016, as passed in CO 2569 of 2015 with CO 2254 of 2015 by the co-ordinate Bench, it is contended that though the said co-ordinate Bench by the said order dated 23.06.2016 set aside the previous order of the trial court with regard to its finding while disposing the petitions under Sections 7(1) and 7(2) of the said Act of 1997 together with Section 5 of the

Limitation Act but by no stretch of imagination, it can be said that the co-ordinate Bench allowed the defendant/tenant's application under Section 5 of the Limitation Act though in the said order, a direction was passed directing the defendant/tenant to deposit a sum of Rs. 25,000/- in the suit within two weeks from the date of passing of the said order together with a cost of Rs. 3,000/-. It is further argued that the defendant/tenant before the trial court though deposited the said sum of Rs. 28,000/-(Rs. 25,000/- + Rs. 3,000/-) but it was again a delayed deposit.

8. In support of the instant revisional application, Mr. Das, learned Counsel for the plaintiff/landlord/revisionist submits further that while passing the impugned order, learned trial court misdirected himself in holding that by the previous order dated 23.06.2016 as passed by the co-ordinate Bench, the order passed by the trial court in respect of the petition under Section 5 of the Limitation Act was not set aside and thus, the trial court completely misdirected himself in understanding the true spirit of the provision of Section 7(1) and Section 7(2) of the said Act of 1997 while passing the impugned order.
9. It is further argued by Mr. Das that since the opposite party herein i.e., the defendant/tenant before the trial court has not filed the applications under Sections 7(1) and 7(2) of the said Act of 1997

within the statutory period, learned trial court is not justified in entertaining the said two petitions violating the mandate of the Hon'ble Apex Court in the reported decision of ***Bijay Kumar Singh & Ors. Vs. Amit Kumar Chamariya & Anr.*** reported in ***(2019) 10 SCC 660***. Mr. Das thus submits that it is a fit case for allowing the instant revisional application by setting aside the impugned order.

10. Per contra, Mr. Shrivastava, learned Counsel for the opposite party also places his reliance upon the previous order dated 23.06.2016 as passed by the co-ordinate Bench. It is argued by Mr. Shrivastava, learned Counsel for the opposite party/tenant/defendant that on meaningful reading of the said order dated 23.06.2016, it would reveal that the earlier finding of the trial court with regard to the allowing of the petition under Section 5 of the Limitation Act i.e., for condonation of delay in filing petition under Sections 7(1) and 7(2) of the said Act of 1997 remained untouched and was not set aside and thus, the learned trial court is very much justified in holding the impugned order that its earlier order under Section 5 of the Limitation Act was not set aside.

11. It is further argued by Mr. Shrivastava that since the earlier order dated 23.06.2016 as passed by the co-ordinate Bench has

not been challenged before the higher forum, the said order has reached its finality and, therefore, the same cannot be reopened once again while disposing the instant revisional application.

12. It is further argued by Mr. Shrivastava, learned Counsel for the opposite party/defendant/tenant that trial court while disposing the petition under Sections 7(1) and 7(2) of the said Act of 1997 rightly came to the finding with regard to the rate of rent as well as the period of default and thus, came to a logical conclusion that the defendant/tenant has already deposited excess of rent for which liberty was given to withdraw a sum of Rs. 2,040/- from the said Court.

13. For effective adjudication of the instant lis, this Court considers that a brief look to the provision of Section 7 of the said Act of 1997 is very much necessary. Section 7 of the said Act of 1997 reads as under:

S. 7. When a tenant can get the benefit of protection against eviction. – (1) (a) On a suit being instituted by the landlord for eviction on any of the grounds referred to in section 6, the tenant shall, subject to the provisions of sub-section (2) of this section, 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 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.

(b) 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.

(c) The tenant shall thereafter continue to pay to the landlord or deposit with the Civil Judge month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

(2) If in any suit referred to in sub-section (1), there is any dispute as to the amount of the rent payable by the tenant, the tenant shall, within the time specified in that sub-section, deposit with the Civil Judge the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of the application, the Civil Judge shall, having regard to the rate at which rent was last paid and the period for which default may have been made by the tenant, make, as soon as possible within a period not exceeding one year, an order specifying the amount, if any, due from the tenant and, thereupon, the tenant shall, within one month of the date of such order,

pay to the landlord the amount so specified in the order.

Provided that having regard to the circumstances of the case, an extension of time may be granted by the Civil Judge only once and the period of such extension shall not exceed two months.

(3)

(4)”

14. On perusal of the aforementioned statutory provision, it thus appears to this Court that it is the mandate of the legislature that in a suit for eviction under Section 6 of the said Act of 1997, it shall be incumbent upon the tenant to pay the landlord or deposit 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 10 per cent per annum and that such deposit is to be paid within one month of the service of summons on the tenant or within one month from the date of his appearance when the tenant appears in the suit without the summons being served upon him. After such deposit the tenant has to pay to the landlord or deposit with the Civil Judge a sum equivalent to the rent at that rate month by month by the 15th of each succeeding month.

15. On careful scrutiny of Section 7(2) of the said Act of 1997, it appears to this Court that in the event the tenant raises any dispute with regard to the amount of rent payable by him, he has to deposit the admitted amount of rent also within one month and with such deposit, he may make an application for adjudication of such dispute.

16. Coming to the factual aspects of this case, there is no doubt that in compliance of Section 7(1) of the said Act of 1997, the tenant/defendant who is the opposite party before this Court has not deposited the admitted arrears of rent together with 10 per cent interest per annum either with the landlord or before the trial court within the specified period. The petition under Section 7(2) of the said Act of 1997 as filed by the tenant/defendant was also not filed within the said time as mentioned in the statute which is why he has come forward with an application under Section 5 of the Limitation Act for condonation of delay in filing the said two petitions namely, petition under Section 7(1) and petition under Section 7(2) of the said Act of 1997.

17. On a meaningful reading of the previous order dated 23.06.2016 as passed in CO 2569 of 2015 with CO 2254 of 2015 by the co-ordinate Bench, it appears to this Court that the co-ordinate Bench though set aside the previous order of the trial

court with regard to its finding under Section 7(1) and Section 7(2) of the said Act of 1997 but there is no specific order with regard to the legality, propriety and correctness of the finding of the trial court in relation to Section 5 of the Limitation Act. However, from the later portion of the said order dated 23.06.2016, it appears to this Court that the co-ordinate Bench directed for deposit of certain amount within a period of two weeks from the date of passing of the said order failing which, the tenant shall be deprived of the benefit of the order under Section 5 of the Limitation Act.

18. In view of such, it appears to this Court that while passing the order dated 23.06.2016, the co-ordinate Bench has practically allowed the petition under Section 5 of the Limitation Act subject to deposit of such certain amount within certain period.

19. Admittedly, from the order No. 25 dated 29.07.2016 as passed in OS 250 of 2012, it would reveal that such deposit was not made in due time.

20. At this juncture, the question arises as to whether the trial court is at all justified in holding that the petition under Section 5 of the Limitation Act as filed by the defendant/tenant stood allowed and in the event, it is found that finding of the trial court is at all justified, trial court is at all right in disposing the petition

under Section 7(1) and Section 7(2) of the said Act of 1997 which has been assailed before this Court.

21. At this juncture, this Court proposes to have a glance at the relevant portion of the reported decision of **Bijay Kumar Singh & Ors. (Supra)** and the same is reproduced hereinbelow in verbatim:

22. 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. 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.

23. On perusal of the aforesaid portion of the reported decision of ***Bijay Kumar Singh & Ors. (Supra)***, it appears to this Court that the Hon'ble Apex Court while dealing with a self-same issue has come to a definite finding that in the event, a tenant fails to deposit the arrears of rent within the prescribed period as envisaged under Section 7(1) of the said Act of 1997 and further in the event, the said tenant fails to raise any dispute with regard to the quantum of rent also within the prescribed period that would entail the eviction of the tenant and recourse to Section 5 of the

Limitation Act would be of no use to avoid eviction on the ground of non-payment of arrears of rent. Admittedly, the judgment of the ***Bijay Kumar Singh & Ors. (Supra)*** was pronounced by the Hon'ble Apex Court on 22.10.2019 and thus, when the co-ordinate Bench passed the order dated 23.06.2016 had no occasion to go through the same and in view of such, the co-ordinate Bench could not get any opportunity to test the legality and/or correctness of the order as passed by the trial court while disposing the petition for condonation of delay in the aforementioned suit for eviction in filing two petitions namely, petition under Section 7(1) and petition under Section 7(2) of the said Act of 1997 in the light of the aforesaid reported decision.

24. On perusal of the certified copy of the impugned order, it appears to this Court that trial court while passing the impugned order and while disposing the petitions under Sections 7(1) and 7(2) of the said Act of 1997 proceeded with an impression that its earlier order allowing the petition under Section 5 of the Limitation Act stands and thus disposed of said two applications in the manner indicated hereinabove.

25. In considered view of this Court for some reason or other, trial court has failed to visualize the proposition of law as enunciated in the reported decision of ***Bijay Kumar Singh & Ors. (Supra)***.

26. This Court thus holds that since the petitions under Section 7(1) and Section 7(2) of the said Act of 1997 was not filed within the prescribed period, a separate application for condonation of delay under Section 5 of the Limitation Act would be of no avail to the defendant/tenant since the provisions of Section 7(1) and Section 7(2) of the said Act of 1997 are mandatory and required to be scrupulously followed by the tenant.

27. In considered view of this Court the reported decision of State of **Kerala Vs. M. K. Kunhikannan** reported in **AIR 1996 SC 906** as cited from the side of the opposite party/tenant/defendant has got no bearing at all since the proposition of law as decided in the said reported decision is quite distinguishable from the facts and circumstances of the present case.

28. In view of the discussion made hereinabove, this Court thus finds sufficient merit in the instant revisional application and accordingly, the instant revisional application being **CO 2415 of 2022** is allowed and disposed of.

29. Consequently, the impugned order no. 64 dated 07.05.2022 as passed in OS 250 of 2012 by the learned Civil Judge (Junior Division), First Court, Sadar, Paschim Medinipur is hereby set aside.

30. Consequently, the petitions under Sections 7(1)(c) and 7(2) of the said Act of 1997 as filed by the defendant/opposite party before the trial court stand hereby rejected.
31. All parties to act on the server copy of this order duly downloaded from the official website of this Court.
32. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(PARTHA SARATHI SEN, J.)

Sourav
A.R. (Court)