

08.02.2024
Sl. No.8(DL)
srm

C.O. No. 2636 of 2023

Biswajit Panda

Versus

Pratima Poiria & Ors.

Mr. Nilanjan Bhattacharjee,
Mr. Abhilash Chatterjee,
Mr. Saikat Dey

...for the Petitioner.

1. In this revisional application, the order dated June 26, 2023 passed by the learned Civil Judge (Junior Division), 6th Court at Howrah, in Title Suit Nno.1298 of 2019, is under challenge.
2. By the order impugned, the learned court below rejected an application under Section 5 of the Limitation Act, which was filed by the petitioner, seeking condonation of the delay in filing the applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act). While passing the said order, the learned court was also of the view that the provisions of Section 7(3) will become operative.
3. The learned Advocate for the petitioner submits that the delay was caused due to the laches of the learned Advocate who had been entrusted by the petitioner to proceed in the suit.

4. It is next contended that the application was filed belatedly, in view of the covid pandemic situation. The Hon'ble Apex Court had extended the period of limitation in filing all suits, applications, proceedings and appeals, but the learned court failed to take into consideration the decisions of the Hon'ble Apex Court, thereby not allowing the petitioner the exemption granted by the Hon'ble Apex Court from March 15, 2020 to February 28, 2022.

5. Next, it is contended that the learned court *suo motu* struck off the defence of the petitioner by applying Section 7(3) of the said Act, without any application filed by the plaintiff.

6. The provisions of Section 7(1) of the said Act deals with circumstances under which a tenant can get the benefit of protection against eviction. The same provides that 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 the said 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 was made, together with interest @ 10% per annum. Section 7(1)(b) provides that such deposit/payment "**shall**" be made within one month from the service of summons on the tenant or,

when the tenant appeared without summons being served upon him, within one month of his appearance.

7. In the present case, application under Section 7(1) of the said Act was filed on April 1, 2022. The petitioner has admitted in paragraph 2 of the application that summons were served and he had entered appearance in the suit on December 17, 2019 and prayed for time to file the written statement. Thus, the application under Section 7(1) ought to have been filed within one month from the date of service of summons. It was admitted that summons were served. On December 17, 2019, the petitioner appeared but there was no compliance of Section 7(1) of the Act. The application under Section 7(1) was not filed. Rather, the application was filed after two and a half years i.e., on April 1, 2022. The period between March 15, 2020 to February 25, 2020 would not be available to the petitioner as he ought to have complied with Section 7(1) within one month from service of summons which was definitely within January 2020.

8. It has been contended in the application that the rents were deposited before the learned Rent Controller up to March, 2022. That there was no default in payment of the rent.

9. An application under Section 7(2) of the said Act was also filed, *inter alia*, with similar facts and prayer. Along with the

said applications, an application for condonation of delay was also filed.

10. Section 7(2) of the said Act provides that if in any suit referred to in sub-section (1), there is any dispute as to the amount of rent, the tenant “**shall**” within the time specified in the 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.

11. In this case, the petitioner contends to have paid the rents in the office of the Rent Controller, but did not approach the court for determination of the rent payable, or for holding that there was no default, within the time specified by law, i.e., one month from service of summons. Moreover, deposit with the rent controller after having entered appearance in the suit, is also contrary to Section 7(1) of the said Act.

12. It has been categorically held by the Hon’ble Apex Court in *Bijay Kumar Singh & Ors. vs. Amit Kumar Chamaria & Anr.* reported in 2020(1) *Indian Civil Cases* 664 (SC), that Section 5 of the Limitation Act would not be applicable where applications 7(1) and 7(2) are not filed within time. Even for the learned court to adjudicate whether there were arrears or that

there was no default, the petitioner ought to have complied with the provisions of Sections 7(1) and 7(2). The application ought to have been filed within time. Only because the petitioner contends that there had been no default, the court could not extend the period prescribed by the statute under Section 7(1)(b).

13. The relevant portions of the judgment in *Chamaria (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 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."

14. In the matter of *Debasish Paul & Anr. vs Amal Boral* reported in 2023 INSC 925 (Civil Appeal No.- 6565 of 2023), the Hon'ble Court once again reiterated the ratio laid in *Chamaraia* (supra).

The relevant portions of the judgment are quoted below:-

"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's 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.

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.”

15.The decision in *Amit Kumar Chamariya (supra)* is a binding precedent which has been decided by this Court, and it is a law laid down. Such decision has been rendered in the matter of *Smt. Binika Thapa (nee Rai) & Anr. Vs Smt. Damber Kumari Mukhia & Anr.* decided in *C.O. 64 of 2023*. The relevant paragraph 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.

17.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.

25. Thus, the decision in *Bahadur Kathotia (Supra)* cannot be accepted as good law. The decision was rendered without considering paragraphs 19 to 21 of the *Amit Kumar Chamariya (supra)*. The decision in *Subrata Mukherjee (supra)*, had been distinguished in the *Calcutta Gujarati Education Society (supra)* in which Section 40 of the said Act was considered, but negated upon discussing the decision of *Amit Kumar Chamariya (supra)*. The law was declared by the Apex Court, and it was the duty of the High Court to act in accordance with Article 141 of the Constitution of India and to apply the same. The High Court could not overrule the decision of the Hon'ble Apex Court on the ground that the Hon'ble Apex Court had laid down the legal position, without considering Section 40 of the said Act. It is not only a matter of discipline for the High Court, but also a mandate of the Constitution as provided in Article 141 that the law declared by the Apex Court should be binding on all courts within the territory of India. All subordinate Courts to the Hon'ble Apex Court are bound by all declarations of law made by the Hon'ble Apex Court, even when the facts of the case, decided by the Hon'ble Apex Court, is distinguishable.

16. The consequences of non-compliance of Sections 7(1) and 7(2) are embedded in Section 7(3) of the said Act, which states as follows:

“(3) If the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, the Civil Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.”

17. Thus, the court was within its power to strike off the defence of the petitioner.

18. Section 7(3) provides that on account of non-compliance of Sections 7(1) and 7(2), the court ‘shall’ strike off the defence against delivery of possession and proceed with the hearing of the suit. The admission in the application under Section 7(1) and 7(2) with regard to receipt of summons and entering appearance on December 17, 2019 and thereafter the delay of 835 days in filing the application under Section 7(1) and 7(2), leads to the only consequence, i.e., the defence being struck off in terms of Section 7(3). The tenant had filed the written statement on January 8, 2021 without taking steps as per the mandate of Section 7(1) and & 7(2). The order of striking off defence is justified as the only consequence of non-compliance of Section 7(1) and & 7(2). If it is directed that the landlord should file an application seeking defence be struck off, it would be an empty formality in the facts of the case, as in any event, the court would have no option, but to hold that the defence of the tenant should be struck off, in view of the non-compliance discussed herein above. Irrespective of whether a

separate application was filed or not the court rightly recorded the consequences of such failure on the part of the petitioner.

19. Under such circumstances, the revisional application is dismissed.

20. The Hon'ble Apex Court, in the matter of ***Modula India versus Kamakshya Singh Deo*** reported in **(1988) 4 Supreme Court Cases 619**, 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.”

21. The above opportunity will be available to the petitioner.

22. There shall be no order as to costs.

23. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)