

27.02.2024
Sl. No.6(DL)
srm

C.O. No. 2689 of 2023

Sri Aniruddha Ghosh

Versus

Sri Jayanta Kumar Saha

Mr. Indranath Mukherjee,
Mr. Siddhartha Sankar Deuty

...for the Petitioner.

1. The revisional application arises out of an order dated March 15, 2023 passed by the learned Civil Judge (Junior Division) at Bidhannagar, North 24-Parganas, in Ejectment Suit No.10 of 2022.
2. By the order impugned, the learned court rejected an application under Section 7(2) of the West Bengal Premises Tenancy Act (hereinafter referred to as the said Act) on the ground that a belated application was not maintainable.
3. Mr. Mukherjee, learned Advocate appearing on behalf of the defendant/tenant challenges the order on the following grounds:
 - (a) Previous application under Section 7(1) of the said Act was pending adjudication.

(b) The application under Section 7(2) was filed as an added precaution as the tenant was always willing to deposit the entire arrears once such calculation or adjudication was made by the court.

(c) Without disposing of the application under Section 7(1), the subsequent application ought not to have been rejected. The learned court ought to have taken into account the earlier application which was filed with a prayer to allow the defendant to pay the arrear rent to the plaintiff or allow the defendant to deposit the said amount before the court and to pass necessary orders.

4. The question is whether the learned court erred in dismissing the application under Section 7(2) of the said Act during the pendency of an application under Section 7(1).
5. The records reveal that the application under Section 7(1) of the said Act was filed on June 10, 2022 and the defendant intended to pay to the plaintiff or deposit the arrear rent calculated at the rate at which it was last paid, i.e. Rs.100/- per month. The specific averment was that the defendant had tried to pay the

rent by way of money order, but the same was not accepted. Rather, the money orders were refused and hence the arrears occurred.

6. The defendant has stated that under such circumstances, a suit was filed before the Additional Rent Controller at Barrackpore, which was pending. There is no averment that the deposit of rent was made before the Rent Controller.
7. According to Mr. Mukherjee, as the application under Section 7(1) had been filed, the question of depositing the rent before the Rent Controller would not arise. This, in my view, is an incorrect appreciation of law. The tenant was bound to deposit the rent as per Section 7 of the Act.
8. The application under Section 7(1), which Mr. Mukherjee says was actually an application under Section 7(2), also discloses admission of arrears. The fact remains that when the said application was filed, the admitted arrears along with 10% interest as per the requirement of the statute was not deposited. This is a contravention of the mandate of the statute. Secondly, even if it is taken that the same was an application under Section 7(2) as well, the law

required that adjudication in terms of Section 7(2) with regard to the quantum of rent or the arrears payable would be subject to compliance of Section 7(1), meaning thereby the tenant would have to approach the court within a month from receipt of summons or when the tenant appears without receipt of summons within a month from appearance by filing an application under Section 7(2) with a request to adjudicate the dispute with regard to quantum of rent. The application has to be accompanied with deposit of the admitted arrears along with 10% interest.

9. From the records it appears that the application under Section 7(1) which Mr. Mukherjee claims to be an application both under Sections 7(1) and 7(2), was filed but without any deposit. There was no dispute with regard to the quantum of rent. It is also not the tenant's case, that the arrears had been deposited with the rent controller. Thus, the very premise of the earlier application filed by the tenant was misconceived and contrary to the mandate of the statute. The same is non-est in the eye of law. The second application under Section 7(2) was belated

and arrears of rent from July, 2020 was admitted in the applications.

10. Under such circumstances, the Court does not find any irregularity in the order impugned. Even if the earlier application was pending, the same was not in proper form as the admitted arrear rent was not deposited with 10% interest.

11. Moreover, the law is well-settled that without compliance of Section 7(1), Section 7(2) would not come into operation. The tenant was required to deposit the admitted arrear rent within a month from receipt of summons 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 the interest at the rate of 10% per annum. Thereafter, the tenant was required to continue to pay to the landlord or deposit with the civil judge, month by month within 15th of every succeeding month, a sum equivalent to the rent at that rate.

12. In case of any dispute, the tenant was required to deposit the amount as per sub-section (1) within the statutory period of one month and file an application

asking the court to determine the dispute with regard to the rate of rent and arrears payable. Such procedure was not followed. In any event, no such dispute was also raised.

13. In the decision of the Hon'ble Apex Court in the matter of **Bijay Kumar Singh –vs- Amit Kumar Chamaria** reported in (2019) 10 SCC 660, it was held 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 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."

14. 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 is the decision 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. The provisions of the said section were discussed in the following paragraphs thereof:-

16.

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."

15. The learned court below shall proceed with the suit,
in accordance with law.
16. Accordingly, the revisional application is disposed
of.
17. There shall be no order as to costs.
18. Parties are to act on the basis of the server copy of
this order.

(Shampa Sarkar, J.)