

Ct. 10.01.
No. 2024
652
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R.V.W. 174 of 2023
In
C.O. 793 of 2019
Binay Chowdhury @ Vinay Chowdhury & Ors.
-Versus-
Pradip Kumar Mukherjee

Mr. Tanmay Mukherjee
Mr. Aman Kumar Saha
Mr. Irish Paul
Mr. Soumava Santra
Mr. Soumyadip Panda

...For the Petitioners

Mr. Tarak Nath Halder
Mr. Abhijit Sarkar
Mr. Raja Biswas

...For the Respondent

This review application under order XLVII of the Code of Civil Procedure has been preferred in connection with order dated 18.05.2023 passed by this court while disposing C.O. 793 of 2019. By the impugned order the aforesaid application being C.O. 793 of 2019 was allowed and the defence of the defendant against delivery of possession was struck off under section 7(3) of the West Bengal Premises Tenancy Act, 1997 and thereby the order of the trial court dated 14.01.2019 was set aside.

The grounds behind the present prayer for review is that on the face on the record it is apparent that by an application dated 06.03.2018 the opposite parties/ petitioner herein prayed for acceptance of deposit of Rs.15,534/- after condoning delay Main prayer was for acceptance of the deposit made on 22.12.2017 by recalling the order dated 04.05.2016 but the main prayer for acceptance was allowed which could have been done

even after passing the order dated 24.07.2019 passed in C.O. No. 2194 of 2016 and the learned court below never recalled the order dated 04.05.2016. Learned senior advocate of the opposite parties/petitioners herein could not appear at the time of hearing but reached at the time of delivering order as a result of which the said fact could not be brought and thereby this court committed mistake in passing the order dated 18.05.2023 which is apparent on the face of the record.

Mr. Halder learned counsel appearing on behalf of the opposite party raised strong objection contending that the order impugned passed by Trial Court is barred by res judicata and this court was absolutely justified in striking off the defence against delivery of possession for non-compliance of section 7 (1) and 7(2) of the Act of 1997.

I have considered submissions made by both the parties.

At the cost of repetition it can be said that the trial court while disposing application under section 7(1) and 7 (2) of the Act of 1997 made a specific observation on 04.05.2016 that the defendants are defaulter in payment of rent for 11 months and directed to pay arrear rent with interest amounting to Rs. 15,534/- by 06.05.2016. petitioners main cause of grievance is that though under section 7(2) of the West Bengal Premises Tenancy Act 1997 the Trial court was obliged to give one month time to pay to the land lord the arear amount but in the instance

case only two days time was given which is against the provisions of 7(2) of the Act.

However being aggrieved by the order dated 04.05.2016 the tenant/petitioner preferred Revisional application before this Court and this Court while disposing said C.O. 2194 of 2016 have made following observation:-

“upon hearing the learned advocates for both sides and going through the materials on record, there seems to be no ground for interference with the findings of the trial Judge arrived at while passing the impugned order, whereby the application under Section 7(2) of the said Act was disposed of and the defendants/petitioners were directed to pay the arrear rent in accordance with law. The trial Court dealt with the points urged now by the petitioners in details and arrived at the conclusion that all deposits made with the Controller for the period subsequent to October, 2013, were bad deposits. This Court, as such, is not inclined to interfere with such factual findings of the trial Court, arrived at upon just consideration of the materials on record.

As a result C.O. 2194 of 2016 is dismissed on contest thereby affirming the order impugned.”

Whatever good or bad is there in the said order, it was never under challenge and the order of affirmation had attained its finality. This court while passed the impugned order specifically held this High Court once affirmed the said order passed on 04.05.2016, the trial court had exceeded its jurisdiction by reviewing its own order dated 04.05.2016 which has been affirmed by this High Court by the aforesaid order. In such view of the matter the impugned order passed by the trial court dated 14.01.2019 suffers from illegality, irrationality and procedural impropriety and the court below had no scope to review its earlier order. It is settled position of law that

the principle of *res judicata* applies also as between two stages in the same litigation to the extent that a court whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of a same proceeding. Reliance has been placed in this context on ***Satyadhyan Ghosal and others Vs. Smt. Deoroin Debi and another*** reported in **AIR 1969 SC 941**.

The tenant defendant ought to have deposited said amount on protest, when he chooses to prefer Revisional Application and as there was no stay he cannot restrain himself from making the payment with the expectation that he will ultimately succeed in the Revisional Application, since the time schedule made in section 7(1) & 7(2) is mandatory. As in the present context the order dated 04.05.2016 had attained its finality and for non-compliance of the said order provision under section 7(3) of the Act attracts automatically, which specifically states that tenant is under obligation to make the payment as required by section 7(1) and section 7(2) within the time specified therein or within such extended time as may be granted. Petitioner has not made out any case that they had sought for extension of time for compliance of 7(1) or 7(2) or court below allowed any such extension.

The settled principle of law is that in order to attract order XLVII rule 1 read with section 114 of the

Code there should be mistake or error apparent on the face of the record and it should not be an attempt for hearing the matter again on merit simply because senior advocate could not attend court when the matter was taken up for hearing. Learned counsel for the opposite party referring a judgment reported in ***Tamilnadu Electricity Board and another Vs. Raju Reddiar & another*** reported in **AIR 1997 SC 1005** contended that the Supreme Court has deprecated the practice of changing the Advocates and filing repeated petitions which is against the purity of administration of law and healthy practice.

Having regard to the facts and circumstances of the case, I do not find any cogent ground for review of the order impugned either on the ground of discovery of any new or important matter or an account of any mistake or error apparent on the face of the record or for any other sufficient reason and as such RVW 174 of 2023 is rejected without cost.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Ajoy Kumar Mukherjee, j.)