

1.04.2024
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Ct. no. 652
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CO 3330 of 2019

Joginder Mahato
Vs.
Radha Sahani & Anr.

Mr. Ujjal Roy
Mr. Sk. Abdur Rahim ...for the Petitioner

Affidavit of service filed by the petitioner is taken on record. In spite of service, opposite parties are not represented.

The present application has been preferred under Article 227 of the Constitution of India against the order no. 116 dated 22.8.2019 passed by the learned Civil Judge(Junior Division), 1st Court, Chandannagore in Title Suit no. 46 of 2014 (renumbered as 2168 of 2014).

The plaintiff/opposite parties herein filed aforesaid suit against the defendant/petitioner seeking eviction from the suit property inter alia on the ground of default. The defendant/petitioner appeared in the said suit and filed application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997. Learned court below by an order dated 15.7.2005, disposed of the said application under Section 7(2) of the Act whereby the court below determined that the petitioner herein is defaulter in payment of rent since the month of April 2011 to June 2015 and the rate of rent is

Rs.300/- per month and accordingly directed defendant/petitioner to deposit Rs. 12,630/- by way of challan within 30 days from the date of passing the order. By the same order, the defendant/petitioner was further directed to go on depositing the current rent month by month @ Rs. 300/- per month.

Petitioner contended pursuant to such direction the petitioner duly deposited the aforesaid amount of Rs. 12,630/- but inadvertently for the mistake by the concerned law clerk in the court below, he went on depositing the monthly rent to the tune of Rs. 75/- instead of Rs. 300/- per month.

Thereafter, the defendant/petitioner detected his inadvertent mistake and he filed an application to give him permission to deposit the arrear rent by filing an application under Section 151 of the Code of Civil Procedure. The opposite party herein filed an objection against said petition.

By the impugned order, learned court below was pleased to reject the said prayer made by the petitioner by quoting the judgment of Hon'ble High Court in ***Mithun Vs. Sk. Aziz Haque*** in **C.O. 1332 of 2016** and further observing that the petitioner has violated the orders under Section 7(1) & 7(2) of the Act of 1997 for a period of three years, court below struck off the defence against delivery of possession invoking jurisdiction under section 7(3) of the Act.

Being aggrieved by that order, the defendant/petitioner herein submits that at the time of adducing evidence, the petitioner himself realised his unintended inadvertent mistake and immediately thereafter, he filed aforesaid application under Section 151 of the Code. The court below has not correctly interpreted the judgment passed in ***Mithun Vs. Sk. Aziz Haque*** in **C.O. 1332 of 2016** and thereby misconstrued that the petitioner has violated the order passed in connection with Section 7(1) and 7(2) of the Act. The judgment relied upon by the court below in ***Mithun Vs. Sk. Aziz Haque*** is not at all applicable in the present context. In fact, the petitioner partially has complied with the order passed under Section 7(2) of the Act but because of the inadvertent mistake of the law clerk of the court below and due to indigenuous and illiterate condition of the petitioner, the full amount could not be deposited.

Learned Counsel for the petitioner further argued that in ***Mithun's Case (supra)***, this court was pleased to deal with a matter, where the defendant in spite of the learned Court's order in Section 7(2) proceeding, did not make any payment and subsequently after a lapse of considerable time filed application for payment of the same and also filed application under section 5 of the Limitation Act. Ultimately this court in that case held Limitation Act may not provide benefit to the tenant

who willfully did not make any payment, but in the instant case petitioner complied with the order of the court below and paid the arrears with interest but only for the inadvertent mistake committed by law clerk payment was made to the tune of Rs. 75 per month instead of Rs. 300/-. He further pointed out that Hon'ble court has already took a different view in respect of above mentioned judgement and co-ordinate Bench in C.O. 175 of 2017 has sent the matter for decision before Chief Justice.

I have considered the submissions made by the petitioner. It appears from the order impugned that the court below has specifically made an observation that the petitioner deposited the arrear amount of Rs. 12,630/- and accordingly, the court below failed to find any logic behind the plea of the defendant/petitioner that he was not aware that the court has directed to pay him monthly rent of Rs. 300/- per month, which was passed by the same order.

In fact court below while passed the order under section 7(2), in the body of order as well as in the operative portion of the order, it has been specifically determined that rate of rent in respect of suit premises is Rs. 300/- per month, as defendant/tenant failed to establish by showing any material that rate of rent is Rs. 75/-. It is not at all believable that defendant tenant while complied said order dated 15.7.2015 by

depositing Rs. 12,630/- had seen only the arrear amount mentioned in the order and has over looked the other operative portion of the order, where court below has specifically asked him to go on depositing current rent month by month @ Rs. 300/- per month.

Section 7(3) of the Act of 1997 clearly attracts where tenant fails to pay any amount referred to in section 7(1) or 7(2) within the time specified or within extended time, if any, granted by court. In ***Bijay Kumar Singh & others Vs. Amit Kumar Chamariya & another***, reported in (2019) 10 SCC 660, Apex Court is of clear view that section 7 of the Act provides for a complete mechanism for avoiding eviction on the grand 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. It was further held section 5 of Limitation Act has no application in such context.

Since petitioner once deposited arrear amount of Rs. 12,630/-, which amount was calculated taking into account that monthly rent is Rs. 300/-, such subsequent deposit of Rs. 75/- per month for long three years must be held to be intentional laches. Petitioner has blamed the lawyers clerk that he has committed the mistake but such mistake even if committed by law clerk will not come to the rescue of the petitioner in view

of judgment, reported in 1994(2) CLJ 527, wherein it was held learned lawyer is the actual professional agent of the client. In celebrated observation of Tekchand, J in the judgment of Punjab High Court reported in AIR 1962 Punjab 450, it has been specifically held that Mohorar's lapse cannot be construed to be an excuse for non-appearance on the part of litigant in a pending proceeding.

In this context I am also constrained to remind that exercise of power under Article 227 and to interfere with the order of court below is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice. While exercising jurisdiction, High Court is not supposed to act as an Appellate Court or to substitute its own observations in place of that of the court below to correct an error which is not apparent on the face of record. High Court is supposed to interfere the findings of fact of the court below if it appears that there is no evidence at all to justify or finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court below has arrived at. Since in the present context, court below has shown cogent reason that petitioner was well aware of the order of paying monthly rent of Rs. 300/-, has disobeyed the order for three years, blaming lawyer's clerk, I find

nothing illegality or impropriety in the findings of the order impugned.

In such view of the matter, I find that the order impugned does not suffer from perversity or that the court below has exceeded his jurisdiction in passing the order impugned. In such circumstances, I find that this is not a fit case where the interference of this court is required by invoking jurisdiction under Article 227 of the Constitution of India.

C.O. 3330 of 2019 is accordingly dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)