

18.04.2024
Ct. No. 19
Sl. No.30
Cp/Gb

C.O. No. 3017 of 2023

Sri Ganauri Mahato

Versus

Vindhyawashini Trading & Development
Company Private Limited

Mr. Anshunath Chakraborty
Mr. Gourab Mukhopadhyay

.....for the petitioner.

Mr. Shaunak Bhattacharya
Mr. Surojit Dasgupta
Ms. N. Singh
Ms. Rupal Singh
Mr. Ashok Kumar Singh

....for the opposite party.

1. By the order dated June 5, 2023, the learned Civil Judge (Junior Division), 5th Court, Howrah in Title Suit No. 73 of 2020, rejected an application under Section 5 of the Limitation Act dated January 11, 2023. The said application was filed in connection with applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as "the said Act"), which were also dismissed as the court found that the same were not filed within the statutory period.
2. By the same order, the defence was struck off and the defendant was only allowed to cross-examine the plaintiff's witnesses and also advance arguments on the plaint case.

3. The learned advocate for the petitioner/defendant submits that the order suffers from various irregularities:-

- a) The application under Section 7(1) of the said Act was allowed by an earlier order.
- b) There was no delay in filing the applications under Sections 7(1) and 7(2) of the said Act as the said applications were filed on February 28, 2020 and summons had been received on January 29, 2020. The learned court ought to have appreciated that the application for condonation of delay was misconceived and wrongly filed by the learned conducting advocate.
- c) There was no default and the current rent, at the last paid rate, was paid upto January, 2020. The question of depositing arrear rent also did not arise.
- d) The learned court wrongly relied upon a document being the postal track report without waiting for the S.R. and without ascertaining whether the summons had been received on January 25, 2020 as submitted on behalf of the landlord on January 29, 2020, as per the defendant.

4. Mr. Bhattacharya, learned advocate for the opposite party/landlord, submits that the postal track report downloaded from the website of India Post.com indicate that the summons were delivered to G. Mahato (Addressee), on January 25, 2020 on or about 15.20 hours. The Consignment Number had been mentioned as RW393232056IN. As such, the applications were filed beyond the period of 30 days from the date of receipt of the summons.
5. From the order impugned, it appears to this court that the learned Trial Judge had specifically recorded that no S.R. had returned before the court and it could not be ascertained as to the date on which the summons through court was received by the defendant. Based on the track report and the postal receipt filed by the landlord, the court recorded that the summons were delivered on January 25, 2020 at Ghusuri S.O. Thus, the learned court in my, prima facie, view was also confused with the exact date on which the summons were delivered. In view of two contradictory dates having been put forward by the respective parties, in my opinion, the matter should have been decided on evidence.
6. Under such circumstances, the order impugned is set aside.

7. The learned court is directed to hear the applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 only on the ground as to whether the defendants approached the court after a month from receipt of summons or not.
8. Parties are at liberty to take appropriate steps and adduce evidence in order to prove their case and counter-case.
9. The application under Section 5 of the Limitation Act is not maintainable and thus, the same loses its significance. The court need not go into the question of condonation of delay at all. If the court finds that the summons were received on January 25, 2020, but the applications were filed beyond the period of one month from receipt of summons, the defence is liable to be struck off upon rejecting the applications. However, if the defendant can prove delivery of summons on January 29, 2020 the applications should be heard on merits. The entire exercise shall be completed within a period of two months from the date of communication of this order.
10. Accordingly, the revisional application is disposed of.
11. However, there will be no order as to costs.

12. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)