

01.05.2024
Sl. No.23(DL)
srm

C.O. No. 3216 of 2023
With
CAN 1 of 2023
Sri Kalipada Bhowmik
Versus
Smt. Suparna Basak

Mr. Atanu Chatterjee

...for the Petitioner.

1. The petitioner has challenged an order dated May 15, 2023 passed by the learned Civil Judge (Junior Division), 1st Court at Sealdah, South 24-Parganas, in Ejectment Suit No.51 of 2019.
2. By the order impugned, the learned court rejected an application under Section 5 of the Limitation Act filed in connection with the applications under Sections 7(1) Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act). The learned court applied the ratio of the Hon'ble Apex Court in the matter of **Bijay Kumar Singh -vs- Amit Kumar Chamariya** reported in (2019) 10 SCC 660.
3. The court held that Section 5 of the Limitation Act would not be applicable in connection with an application under Sections 7(1) and 7(2) of the said Act. The court did not have any authority to condone the delay in filing the said

applications under the said Act in view of the inbuilt provision of limitation of 30 days either from the receipt of summons or from entering appearance in the suit.

4. From the application under Section 5 of the Limitation Act filed by the petitioner, it appears that there was 48 days delay in filing the applications under Sections 7(1) and 7(2) of the said Act. The delay was on account of illness of the learned Advocate in the learned court.
5. The learned Advocate for the petitioner submits that the litigant should not be penalized for the delay caused by the learned Advocate. Moreover, the decision *Chamariya* (supra) was passed during the pendency of the suit and the learned court had already kept the applications for hearing on evidence. Once the said applications had been kept for hearing on evidence, the ratio of *Chamariya* (supra) could not be applied retrospectively.
6. Admittedly, there has been a delay of 48 days as per the petitioner's own case, in filing the said applications. The records also show that admitted arrear rent with 10% statutory interest had not been deposited. Thus, there are two deviations from the provision of Section 7 of the said Act.

(i) The tenant did not file the applications under Sections 7(1) and 7(2) of the said Act within the stipulated period of 30 days from the date of appearance.

(ii) The application under Section 7(2) was not accompanied by a deposit of arrear rent with 10% statutory interest.

7. Compliance of Section 7(1) was a pre-condition for filing of the application under Section 7(2) of the said Act and determination of the disputes raised in the application under Section 7(2) including the dispute with regard to the relationship of landlord and tenant could be decided only upon compliance of Section 7(1) of the said Act.
8. Section 7 of the said Act provides a mechanism by which a tenant against whom an eviction suit is filed. Under any of the grounds in Section 6 of the said Act can seek relief from delivery of possession upon compliance of Sections 7(1) and 7(2) of the said Act.
9. The Hon'ble Apex Court in the matter *Chamariya* (supra), has clearly held that the compliance of Section 7(1) of the said Act was a pre-condition to filing an application under Section 7(2) of the said Act. The Court had further held that the provision of Section 7(1) was

mandatory and the tenant, in order to seek protection from delivery of possession in a suit for eviction under any of the grounds under Section 6 of the said Act, would have to deposit the admitted arrear rent along with 10% interest within one month from the receipt of the summons or within a month from the date of appearance, if the tenant appeared without summons. Thereafter, the tenant was required to continue to pay to the landlord or deposit with the civil judge, current rent month by month within 15th of every succeeding month, a sum equivalent to the rent at that rate.

10. In this case, the admitted arrear was not deposited when the application under Section 7(1) of the said Act.
11. Under such circumstances, the provision of law had not been followed by the tenant and the learned court rightly rejected the said application.
12. Even in case of a dispute, the tenant was required to deposit the admitted arrear rent with 10% interest on the said 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. The prayer for belated deposit of the arrears

cannot also be allowed by this court, in view of the decision of the Hon'ble Apex Court that the provisions of Section 5 of the Limitation Act will not apply, either to condone the delay in filing the applications under Sections 7(1) and 7(2) of the said Act or to allow belated deposit of the arrear rent with 10% interest. The filing of the application and the deposit of the amount were simultaneous acts to be completed within one month from receipt of summons or within one month from the date of appearance in case the tenant appears without service of summons.

13. The Hon'ble Apex Court in the *Chamariya* (supra), 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 *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. Thus, on an appreciation of the facts and law, it appears that the defendant had failed to deposit the admitted arrears as per his own pleadings. The ratio of the Hon’ble Apex Court in the matter of *Amit Kumar Chamariya* (supra) and in *Debasish Paul and Anr. vs. Amal Boral* reported in *2023 INSC 925*, was squarely applicable.

16. In *Debasish Paul* (supra), the Hon’ble Apex Court also reiterated the ratio of *Chamariya* (supra) and held that

the ratio of *Chamariya* (supra) could not be doubted. The relevant portion is 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 Nasiruddin⁶ 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 Singh⁷ 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.

17. We are of the view that a combined reading of the two statutes would suggest that while the Limitation Act may be generally applicable to the proceedings under the Tenancy Act, the restricted proviso under Section 7 of the said Act, providing a time period beyond which no extension can be granted, has to be applicable. The proviso is after Sub-Section (2) of Section 7 but Sub-Section (2) of Section 7 in turn refers to Sub-Section (1) implying the application of the proviso to Sub-Section (1) too.”

17. In the matter of *Binika Thapa (nee Rai) and Another vs*

Damber Kumari Mukhia and Another reported in 2023

SCC Online Cal 5478, this court held as follows:-

“17. The Division Bench in *Calcutta Gujarati Education Society versus Sri Ajit Naraya Kapoor* passed in C.O.175 of 2017, the Hon’ble Division Bench answered the reference in view of conflicting decisions of the Hon’ble Division Benches of this Court. The question formulated by the then Acting Chief Justice was as follows:-

“Does the view of the Division Bench of this court that section 5 of the Limitation Act can be applied to condone delay in making applications under sub-sections (1) and (2) of section 7 of the West Bengal Premises Tenancy Act, 1997, as held in the Subrata Mukherjee case (supra), survive in view of the decisions of the Hon’ble Supreme Court in the Nasiruddin case (supra), the Ashoke Kumar Mishra case (supra), Manjushree Chakraborty case (supra).”

18. The reference was whether Section 5 of the Limitation Act could be applied to condone delay in filing an application under sub-section (1) and sub-section (2) of Section 7 of the said Act and whether the decision in *Subrata Mukherjee’s case* survived in view of the decision in Nasiruddin’s case, Ashok Kumar Mishra’s case and Manjushree Chakraborty’s case. Upon taking note of the judgment of the *Amit Kumar Chamariya (supra)* the Division Bench held that the Limitation Act, 1963 had no application in respect of an application by a tenant made under Section 7 of the said Act, for determining the arrear rent, as the Act of 1997 mandated that deposit of rent or where there is dispute regarding quantum of rent, deposit of admitted rent along with application for determination of rent must be made by the tenant within the time specified under the said section. In relation to a suit for eviction, where compliance with the deposit mandate would enable the tenant to seek protection against delivery of possession, compliance with the deposit mandate was essential. No assertive right of the tenant could be enforced. Section 6 of the said Act had a non-obstante clause on application of other laws regarding eviction and Section 40 of the said Act would be applicable, subject to the limitations provided in the said Act. The deposit of admitted rent, raising a dispute regarding quantum of rent, and filing an application for determination of rent, were to be made by the tenant within the specified time and could only be extendable as per the proviso to Section 7(2) of the said Act and the deposit mandate had to be followed by the tenant for protection from eviction.

19. If for any reason the tenant failed to pay/deposit rent month by month as laid down under Clause (c) of Sub-Section 1 of Section 7 of the

Act or as directed by the court under Sub-Section 2 of Section 7, the tenant could get further extension of time for two months, to make such deposit.

20. In *Debasish Paul (supra)*, the Hon'ble Apex Court held that the Limitation Act, could not be used to expand the time prescribed by the legislation and the reasoning in *Amit Kumar Chamariya (supra)* could not be doubted. More so, the requirement for the tenant to file an application and to deposit the admitted arrear rents as well, were binding, which had not done in the said case.

21. The decision in *Amit Kumar Chamariya (supra)*, is the law governing the scope of Section 7 of the said Act. The question was framed in Paragraph 5 thereof. The same is binding on all courts. The facts of the case do not make an iota of difference with the points of reference. In *Amit Kumar Chamariya (supra)* the Hon'ble Apex Court finally interpreted *Nasiruddin (supra)*, in paragraph 16 thereof. *B.P. Khemka (supra)* was also considered and distinguished in paragraph 18 and the Hon'ble Apex Court arrived at the conclusion that Section 5 of the Limitation Act would not apply in case the benefit of protection from eviction was sought by the tenant under Section 7 of the said Act. A conjoint reading of the paragraphs 19, 20 and 21 of *Amit Kumar Chamariya (supra)* would categorically reflect such finding.

22. Section 40 of the said Act makes the Limitation Act applicable to the provisions of the said Act, subject to other inbuilt periods of limitation prescribed. The Hon'ble Apex Court discussed the provision of law and held that Section 5 of the Limitation Act would not apply if the tenant failed to comply with the mandatory provisions of Section

23. According to the ratio in *Amit Kumar Chamariya (supra)*, the period of one month as mentioned in paragraph 7(1)(b) was treated to be the inbuilt period of limitation making Section 40 of the said Act inapplicable."

18. The revisional application is, thus, dismissed.

19. In view of the above, the connected application has become infructuous and the same is disposed of accordingly.

20. There shall be no order as to costs.

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

(Shampa Sarkar, J.)