

February 26, 2024
Sl. No.5
Court No.19
s.biswas

CO 3190 of 2022

Sri Debasish Roy
vs.
Sri Bipul Kumar Roy

Mr. Siva Prasad Ghose

... for the petitioner

Mr. Sabyasachi Mukherjee

Ms. Poulami Dey

Ms. Arundhuti Barai

Mr. Syed Neaz Ahmed

... for the opposite party

1. The revisional application arises out of an order dated September 5, 2022 passed by the learned Civil Judge (Junior Division), 2nd Court at Barrackpore in Ejectment Suit No.42 of 2010.
2. By the order impugned, the learned court allowed the defendant/tenant and the opposite party before this court, to deposit arrear rent of Rs.14,496/- by allowing the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'the Act').
3. The petitioner contends that the opposite party entered appearance in the suit and filed two applications, one under Sections 7(1) and the other under Section 7(2) of the said Act on August 11, 2010. The written statement was filed on November 30, 2010. Although the tenant contended before the learned court in both the applications as also in the written statement that there were arrears from April 2004 to July 2010 and he was willing to deposit the entire arrears

upon determination of the same, no deposit of the admitted arrear had been made along with the applications under Section 7(1) and 7(2) of the said Act.

4. The learned advocate for the opposite party/tenant submits that a total amount of Rs.75,000/- had been paid to the plaintiff towards rent and the said amount was being adjusted. Thus, until the court determined the arrear, the question of deposit of arrear rent would not arise.
5. The court found that the tenant had paid Rs.74,624/- and arrear rent of Rs.14,496/- was still payable. While the learned court found that the tenant was in arrears with regard to rent from April 2004 to 2005, the defendant/tenant had himself claimed that there were arrears from April 2004 to July 2010. In the application under Section 7(1), it was specifically contended that the tenant was willing to deposit the arrears along with 10% interest. In the application under Section 7(2) of the said act, the tenant had specifically averred that the arrear rent along with 10% interest had been deposited in the court through challan. However, the specific contention of the plaintiff is that the admitted arrears were deposited sometime in December 2013 and not

along with the applications under Section 7(1) and 7(2) of the said Act which was the mandate of the statute. The learned court also failed to take into consideration the above fact and passed the order without considering the non-compliance of Sections 7(1) and 7(2) of the said Act. Even though arrears were admitted, the same was not deposited as per requirement of law.

6. Section 7 of the said Act provides a complete mechanism for protection of the tenant from eviction on any of the grounds under Section 6 of the said Act. Section 7(1) of the said Act mandates that the admitted arrears of rent along with 10% statutory interest should be deposited within a month from the receipt of summons and when the defendant appears without summons within a month from appearance.
7. It is an admitted position in this case that the application under Section 7(1) of the said Act was filed, but the admitted arrears along with 10% statutory interest was not deposited along with application. Even though the tenant was willing to deposit the arrears, the fact remains that the very mandate of law, i.e. the pre-condition of depositing the admitted arrears along with 10% statutory interest at the time of filing the application under Section 7(1) of the said Act was

not complied with. The law requires a mandatory compliance of such statutory pre-condition.

8. 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 upto 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.
9. 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.
10. 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."

11. 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 decision has been rendered 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.”

12. Accordingly, the revisional application is allowed and the order impugned is set aside.
13. The learned court below shall proceed with the suit, in accordance with law. The tenant shall be at liberty to pray for withdrawal of the money which may have been deposited on the basis of the order impugned.
14. The revisional application is accordingly disposed of.
15. All the parties are directed to act on the basis of the server copy of the order.
16. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)