

04.04.2024
Item No.13
gd/ssd

CO/3409/2023
SK. JAMIL AHMED
VS
NAJMA KHATOON & ORS.

Mr. Nilanjan Bhattacharjee,
Mr. Abhilash Chatterjee,
Mr. Saikat Dey
..for the petitioner.

As prayed for by Mr. Bhattacharjee, learned advocate for the petitioner, leave is granted to the learned advocate-on-record of the petitioner to amend the preamble portion of the revisional application by incorporating the order dated 22nd November, 2022 as the impugned order in addition to the order dated 30th August, 2023.

Let such amendment be carried out, here and now.

The application under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 along with an application under Section 5 of the Limitation Act was rejected by an order dated 22nd November, 2022. By the said order the defendant nos.1, 3 to 6 were given liberty to deposit current rent. By the said order a date was also fixed for evidence on the petition under Section 7(2) of the said Act.

The petitioner filed an application under Section 151 of the Code of Civil Procedure praying for

modification of the said order on two fold grounds firstly that after rejecting the application under Section 7(1) of the said Act the learned Judge could not have granted liberty to the defendants to deposit the current rent. The other ground raised in the said application was with regard to fixation of a date of evidence in connection with the application under Section 7(2) of the said Act when there was no such application in the records before the learned Judge as on the date of passing the order dated 22nd November, 2022.

The said application under Section 151 of the Code of Civil Procedure stood rejected by the order dated 30th August, 2023.

The petitioner has challenged both the orders in this revisional application.

Mr. Bhattacharjee, learned Advocate appearing for the petitioner submits that the learned Judge after rejecting the application under Section 7(1) of the West Bengal Premises Tenancy Act along with an application under Section 5 of the Limitation Act could not have granted liberty to deposit current rent.

Affidavit of service filed in court is taken on record.

In spite of service none appears to oppose this application.

It appears from the order dated 22nd November, 2022 that the learned Trial Judge rejected the application under Section 5 of the Limitation Act. However, liberty was granted to the defendant nos.1, 3 to 6 to deposit current rent.

It appears to this court that such liberty was granted keeping in mind the provisions laid down under Section 7(1)(c) of the West Bengal Premises Tenancy Act.

It is, however, made clear that it will be open to the petitioner herein to raise the issue of legality of such deposit at the appropriate stage in accordance with law.

Record reveals that the application under Section 7(2) was filed only on 21st February, 2023 and a copy of such application has been annexed at page 112 of this civil revisional application. Therefore, it prima facie appears to this court that Mr. Bhattacharjee may be justified in arguing that there was no application under Section 7(2) of the said Act on 22nd November, 2022. However, though a specific ground was raised with regard to non-existence of such application by filing an application under Section 151 of the Code of Civil Procedure, the learned Trial Judge while passing the order dated 30th August, 2023 did not return any finding on such aspect.

However, taking note of the fact that the application under Section 7(2) of the said Act is on record, this court is of the considered view that no useful purpose will be served by interfering with the order dated 30th August, 2023.

At this stage, Mr. Bhattacharjee, learned Advocate appearing for the petitioner submits that the said application under Section 7(2) of the West Bengal Premises Tenancy Act is not maintainable after the dismissal of the application under Section 7(1) of the said Act. He submits that he has decisions to support such contentions. He further submits that the application under Section 7(2) is hopelessly time barred.

Mr. Bhattacharjee, learned Advocate appearing for the petitioner submits that 10th May, 2024 has been fixed for hearing of the application under Section 7(2) of the West Bengal Premises Tenancy Act.

Mr. Bhattacharjee, in his usual fairness, submits that no objection against such application has yet been filed by the petitioner before the learned court below.

He prays for liberty to file such written objection within the time limit as may be fixed by this court.

The petitioner will be at liberty to file a written objection to the application under Section 7(2) of the West Bengal Premises Tenancy Act on or before 25th April, 2024 upon serving a copy of the same to the learned advocate for the opposite parties in the court below.

It will be open to the petitioner to raise all points in such objection.

The learned Civil Judge (Junior Division), 3rd Court at Howrah is requested to take up the hearing of the application under Section 7(2) of the West Bengal Premises Tenancy Act on the next date fixed i.e. on 10th May, 2024.

Considering the fact that the suit is of the year 2014, the learned Trial Judge is requested to dispose of the same as expeditiously as possible, but preferably on or before the end of July, 2024.

With the above observations and directions, CO 3409 of 2023 stands disposed of.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)