

Item No.1
30.04.2024
Court. No. 19
GB

C.O. 3286 of 2022

Sri Basudeb Gope
Vs.
Sri Dulal Chandra Bera

Mr. Tanmoy Mukherjee,
Mr. K. Raihan Ahmed,
Mr. Rudranil Das,
Mr. Soumava Santra

...for the Petitioner.

Affidavit-of-service filed in Court today, be kept with the record.

Despite service, none appears on behalf of the opposite party.

However, the matter is taken up as this Court is inclined to set aside the order passed against the opposite party.

The revisional application arises out of an order dated August 5, 2022, passed by the learned Civil Judge (Junior Division), 4th Court at Howrah in Title Suit No.259 of 2013.

The learned court dismissed the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act').

Mr. Mukherjee, learned advocate appearing on behalf of the landlord/petitioner submits that the order could not have been passed without calculating the arrears, even if the tenant was not contesting the matter.

Under such circumstances, this Court is of the view that the learned judge ought to have disposed of the application under Section 7(2) on its own merits, upon

allowing one last opportunity to the opposite party/tenant to contest the proceeding.

The order impugned is set aside. The learned court shall decide the application on its own merits. The suit is proceeding ex parte. The order fixing the suit for ex parte hearing is also set aside. If on the next date, the opposite party, despite the order of this Court does not appear to move the application under Section 7(2) of the said Act, the learned court shall proceed ex parte again and pass necessary orders, thereby, calculating the arrear rent with further directions to pay the rent as required by law.

This order is necessary so that, in the event the tenant fails to comply with Section 7(2) of the said Act, the landlord can take advantage of the provisions of Section 7(3). The order impugned was erroneous. The application under Section 7(2) of the said Act will be disposed of within a period of three months from the next date fixed and thereafter the suit shall proceed, in accordance with law as the learned court shall deem fit and proper.

The petitioner is directed to communicate this order to the opposite party/tenant as also to the learned advocate who had appeared on behalf of the tenant in the learned court.

Accordingly, the revisional application is disposed of.

However, there will be no order as to cost.

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

(Shampa Sarkar, J.)