

19.03.2024

Srimanta

Sl. No. 21

Ct. No. 655

CO/3479/2015

Baban Sha @ Baban Sah & Ors.

-Vs.-

Mahesh Kumar Sahani & Anr.

Mr. Amales Ray,
Ms. Mousumi Bhowal,
Mr. Aman Gupta

...for the opposite parties.

There is no representation on behalf of the petitioners.

Mr. Amales Ray, learned Counsel appearing on behalf of the opposite parties is present.

This instant revisional application is filed under Article 227 of the Constitution of India challenging the impugned order dated 02.06.2015 passed by the learned Trial Court in connection with O.C. (Eviction) Suit No. 40/2006. In that suit which is pending before the Trial Court an application was filed at the behest of the present petitioner/tenant under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 along with an application for condonation of delay. By passing the impugned order learned Trial Court dismissed all the applications filed by the present petitioners on contest.

Today, at the time of hearing the attention of the Court is drawn about the decision rendered by the Hon'ble Apex Court in the case of ***Bijay Kumar Singh & Ors. -Vs.- Amit Kumar Chamariya & Anr.*** reported in ***(2019) 10 SCC 660***. It is profitable to the quote the observation of the Hon'ble Apex Court

at paragraph 21 of the aforesaid case which entails inter alia that –

"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 (2-A) and (2-B) which was being examined by this Court in B.P. Khemka. Sub-sections (2-A) and (2-B) of Section 17 of the 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso to Section 7(2) and sub-section (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 precondition 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.”

So, as per decision of the Hon’ble Apex Court referred above the tenant will not be able to take recourse to Section 5 of the Limitation Act.

Anyway, I find the petitioners are not represented today and accordingly, there is no justification to keep this revisional application alive in the list.

Accordingly, the present revisional application being CO/3479/2015 is hereby dismissed for default with observation made above.

Interim order, if any, stands vacated.

There will be no order as to costs.

(Prasenjit Biswas, J.)