

Item No. 14
02.01.2024
Court. No. 19
GB

C.O. 3376 of 2022

Sri Swapan Pal @ Swapan Kumar Paul & Ors.
Vs.
Smt. Kanika Das

Mr. Ayan Banerjee,
Mr. Sovro Chaudhury

... for the Petitioners.

Mr. Tanmoy Mukherjee,
Mr. Kajal Baran Roy,
Mr. Rudranil Das,
Mr. Suman Nandi

... for the Opposite Party.

The revisional application has been filed challenging an order dated August 31, 2022, passed by the learned Civil Judge (Junior Division), 1st Court at Chandernagore, Hooghly in title Suit No.45 of 2014.

By the order impugned, the learned court rejected the applications filed under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act') on the ground of delay. The learned Judge, also invoked his power under Section 7(3) of the said Act by striking out the defence of the tenants.

The tenants have approached this Court, aggrieved by the aforementioned order on the following grounds:-

- a) The learned court, without adjudicating whether the tenants were actually in arrears, could not have struck off the defence.

- b) Unless there was a specific finding by the court that there were arrears to be paid by the tenants and there had been default on the part of the tenants in paying such arrears or current rent, defence could not be struck off.
- c) The learned court failed to take into consideration that the question of arrear rent and default, would not arise as the tenants had paid in excess of the contracted rent and in excess of the rent claimed by the landlord in the suit.
- d) The learned court failed to take into consideration the excess rent paid in terms of the order of the Hon'ble High Court passed in C.O. 4466 of 2015 whereby and whereunder, the petitioners were directed to pay Rs.1,000/- per month to the opposite party, commencing from August 2015 till the disposal of the application under Order 9 Rule 13 of the Code of Civil Procedure, as a condition precedent for enjoying a stay of the execution.
- e) The arrears on and from August 2015 were directed to be paid on or before March 31, 2016. Such payment was subject to adjustment against future rents.

Thus, Mr. Banerjee, learned advocate for the petitioners submits that it was not only the question of default which was to be decided by the learned court, but the applications under Section 7(1) and 7(2) of the said Act ought to have been decided upon taking into consideration the issues of adjustment, rent payable, the months of tenancy etc.

For compliance of the provisions of Section 7(1) of the said Act, no separate application was required to be filed by tenants as the arrears were paid to the erstwhile landlord. There was no attornment of tenancy and the tenant was not aware of the change of ownership in favour of the present landlord. These were sufficient grounds for holding that the tenants were not in default. When all the rents were paid by the tenants to the person they recognized to be their landlord, the question of deposit of admitted arrears along with 10% statutory interest, did not arise. An application for determination of the rate of rent or adjudication of arrears, was not required to be filed in the facts of this case. Thus, the learned court could have ignored the application under Section 7(1) of the said Act and directly decided whether excess rent had been paid by the petitioners in compliance of the order of the Hon'ble High Court and how the same could be adjusted against the earlier dues, if at all.

Mr. Banerjee further submits that the ratio in the matter of ***Bijay Kumar Singh & Ors. versus Amit Kumar Chamariya & Anr.*** reported in ***(2019) 10 SCC 660***, would not apply in the present case as this was not a case of default on the part of the tenants to either pay the admitted arrears along with statutory interest or failure of the tenants to approach the court for adjudication of the issues of default, arrear rent, adjustment, rate of rent, etc. When there was no default at all, the tenants were not required to file the applications within the time limit prescribed by the statute. The tenants merely asked for an adjustment of the excess amount paid as per the order of the High Court. Such adjudication was independent of the mandatory pre-conditions prescribed in the decision of ***Bijay Kumar Singh & Ors. versus Amit Kumar Chamariya & Anr.*** reported in ***(2019) 10 SCC 660***.

Mr. Mukherjee, learned advocate appearing on behalf of the landlord submits that the order impugned does not suffer from any illegality. According to Mr. Mukherjee, the suit was filed for eviction of the tenants on the ground of default as also reasonable requirement. The suit being one under Section 6 of the said Act, Section 7 would be squarely applicable. The tenants were required to comply with the provisions of Sections 7 in its letter and spirit. The allegation of default has been averred in the plaint and the tenants

have objected to such allegation in their application under Section 7(1) and 7(2) of the said Act. When the defendants categorically disputed the allegation of default and stated how the vendor of the plaintiff/landlord, namely, Sabitri Bala Devi had collected rent once a year and had granted printed receipts and that such rent was paid by several modes till March 2013 including payment by money order, an adjudication was necessary. Mr. Mukherjee, submits that the application under Section 7(2) of the said Act should have also been filed within time, for a decision on the arrears or the rate of rent or the month of tenancy, in view of the dispute raised. Further, the question of adjustment of the rent paid, would arise only in respect of future rent as already directed by the High Court. Such adjustment could not be made under Section 7(2) of the said Act.

Mr. Mukherjee further relies on the decision of the Hon'ble Apex Court in the matter of Amit Kumar Chamariya (supra) and submits that the Hon'ble Apex Court had categorically stated that Sections 7(1) and 7(2) of the said Act should be complied with in its letter and spirit, within the time specified in the statute and in the manner prescribed.

Unless the tenants deposit before the court, the admitted arrears with 10% security deposit, within one month either from receipt of summons or within one

month from appearance, in case the tenants appear without receipt of summons, and also files the application, requesting the court to decide the arrear rent or the rate of rent, the courts were powerless to decide such applications. Even if, there were no admitted arrears, the dispute which was raised by the tenants with regard to the claim of payment of the arrears to the erstwhile vendor, was a dispute which was to be adjudicated in terms of Section 7(2) and such being the position of law, the applications ought to have been filed within the time period of one month, with details and documents as to how the payments were made to the erstwhile landlord.

Heard the parties. This Court finds that the suit was filed on March 11, 2014. The suit was decree ex parte against the petitioners on March 20, 2015. The landlord filed Title Execution Case No.46 of 2015 for execution of the decree. When the process server reached the premises, the tenants came to know about the ex parte decree and the suit. Soon thereafter, they filed Misc. Case no.144 of 2015 under Order 9 Rule 13 of the Code of Civil Procedure, along with an application for condonation of delay. An application for stay of the execution was also filed in the proceeding. The learned trial court rejected the stay application by order dated October 3, 2015. The defendants/petitioners filed C.O.4466 of 2015. A

learned coordinate Bench disposed of the revisional application allowing the application for stay of the execution, subject to the condition that the petitioners would continue to deposit Rs.1,000/- per month from August 2015 till the disposal of the application under Order 9 Rule 13 of the Code. Arrears were directed to be cleared within March 31, 2016 and it was specifically stated that the petitioners would be entitled to claim adjustment of the amount against 'future rents'. The application was disposed of. The Misc. Case was allowed by an order dated June 5, 2018. The ex parte decree was set aside.

It appears from the said order, that the summons were not served on the petitioners. Thus, the petitioners admittedly were not aware of the suit, but became aware of the suit, on August 20, 2015 when the process servers went to the premises as per direction in the execution proceeding. The question of the tenants filing an application within one month from receipt of summons, does not arise in this case. However, the law provides that the tenants must take advantage of Section 7 of the said Act, if the tenant wishes to seek protection from eviction. Either within a month from receipt of summons or when the tenants appear without receipt of summons, within a month from their appearance, the tenant must take steps under Section 7 of the said Act.

Even assuming Mr. Banerjee's contention that there was no suit in existence until the application under Order 9 Rule 13 of the Code was disposed of, to be correct, the requirement of Mr. Banerjee's clients to file the application under Sections 7(1) and 7(2) of the said Act within a month from June 5, 2018 cannot be in doubt. There is a dispute with regard to the payment of arrears. The plaintiff submits that rent was not paid since 2009 after he became the owner. The tenants submit that the arrears were paid to the erstwhile landlord upto March 2013. There was no attornment of tenancy. Modes of payment, grant of receipts, etc., have been averred. This claim and counter-claim, is also a dispute, which had to be decided under Section 7(2) of the said Act. Section 7(2) provides that any dispute as to the amount of rent payable or arrears of rent etc., shall be decided in accordance with the said Section. The Hon'ble Apex Court has also clarified that Section 7(2) is not independent of Section 7(1). In order to get a dispute adjudicated either with regard to the arrears of rent or the rate of rent, etc., the compliance of Section 7(1) with regard to deposit of admitted arrears within the time limit prescribed by law, that is, one month from the date of appearance (in this case from June 5, 2018, when the ex parte decree was set aside and the suit revived), was a mandatory pre condition.

This Court finds that the records and the petition filed by the tenants are silent about post-suit default or payment of rent. The pre-suit default was a matter to be adjudicated under Section 7(2) of the said Act and the post-suit default, in my opinion, is a situation, where there were admitted arrears, which were not paid. Although, it is correct that the post-suit default could not be liquidated month by month as the tenants were unaware of the suit till the process servers approached the tenants. Yet in compliance of Section 7(1) such admitted arrears of rent along with 10% interest ought to have been deposited within one month from June 5, 2018 and the court ought to have been requested to adjudicate the dispute with regard to arrears, rate of rent landlord tenant relationship etc., within such time.

On June 5, 2018, the Order 9 Rule 13 application was allowed. The suit revived and the tenants were asked to file the written statement within July 9, 2018. The tenants did not file the written statement on the ground that the plaint was not received, but it appears that the amount of Rs.1,000/- as directed by the High Court was deposited on June 13, 2018, and July 7, 2018. This indicates that the tenants had started taking steps in the suit. In this case, the proper course of action would have been to

comply with Sections 7(1) and 7(2) of the said Act within a month from the disposal of the Misc. Case.

It is pertinent to mention that the applications under Sections 7(1) and 7(2) of the said Act were filed on July 25, 2019, on the plea that the plaint was served on July 1, 2019. Whereas, the law prescribes that it is the duty of the tenant to approach the court within one month from appearance in the suit, if the summons are not served. No assertive right of the tenant can be enforced, unless the tenant complies with the mandatory pre-condition of the said section.

The entire record is silent about the arrears from April 2013 to July 2015 and the tenants have not been able to show any document which remotely suggests, that the rent for that period had been paid either to the erstwhile owner or deposited in court. Thus, such arrears would have to be deposited in terms of Section 7(1) of the Act.

Under such circumstances, although the learned court may not have given an elaborate explanation as to why the application under Sections 7(1) and 7(2) could not be entertained in this case and had dismissed the same only on the ground of delay, this Court is of the view that there has been non-compliance of Sections 7(1) and 7(2). Thus the defence of the tenants were also rightly struck off, for the reasons discussed hereinabove. It is also settled law

that Section 5 of the Limitation Act would not be applicable to condone the delay in filing the applications under Section 7 (1) and Section 7 (2) of the said Act or in depositing the admitted arrears with 10% statutory interest.

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:-

‘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 Section 7 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 Section 7 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 (2-A) and (2- B) which was being examined by this Court in *B.P. Khemka [B.P. Khemka (P) Ltd. v. Birendra Kumar Bhowmick, (1987) 2 SCC 407]*. 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.'

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.”

Accordingly, the revisional application is dismissed.

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

(Shampa Sarkar, J.)