

Ct.
No.
652

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2024

C.O. 4057 of 2018
Sri Indranil Mukherjee
-Versus-
Sri Satyanarayan Jaiswal

Mr. Kumar Jyoti Tewari
Mr. Amrit Sinha
Mr. Anirudedha Tewari **...For the Petitioner**

Mr. Mainak Ganguly **...For the Opposite Party**

This application has been directed against Order Nos. 51 and 52 dated 29th June, 2018 and 18th July, 2018 passed by the learned Civil Judge (Junior Division), 4th Court at Alipore in Ejectment Suit No. 10614 of 2011.

Petitioner's contention is that the opposite party herein filed a suit against the petitioner, being Ejectment Suit No. 10614 of 2011 praying for a decree of ejectment and delivery of khas possession of the suit flat. Petitioner states that till the month of November, 2013, petitioner paid monthly rent to the tune of Rs. 425/- to the opposite party by cash and after the month of November, 2013, the opposite party denied to receive rent from the petitioner. Finding no other alternative the petitioner tendered rent through money order to the opposite party from the month of December, 2009 till April, 2010 but all money orders returned with the postal endorsement "*not claimed*".

When the petitioner's application under Section 7(2) of the West Bengal Premises Tenancy Act came up for hearing before the Court below, the learned Court held that

the defendant is a defaulter in making payment of monthly rent for the months of April, May and June, 2014 as at the time of hearing of the said application under Section 7(2), petitioner herein could not produce the challans showing deposit for the aforesaid months. Accordingly, the Court below by the order impugned dated 29th June, 2018 directed the defendant to pay rent of aforesaid three months along with interest within one month from the date of order.

However, petitioner herein thereafter could trace the missing challans for the said three months and accordingly by filing said challans made a prayer before the Court below for recalling of the order dated 29th June, 2018, whereby the Court below held that the defendant is a defaulter for the months of April, May and June, 2014.

The Court below by the order impugned dated 18th July 2018 rejected the defendant's aforesaid prayer for recalling the order on the ground that defendants were given liberty to file challans but they were reluctant to do so and they failed to avail the opportunity given by the Court.

In my considered opinion this order in the perspective of the present facts and circumstances of the case appears to be harsh, because the defendant has duly paid rent through challans , but it may be that the challans were misplaced, for which they could not produce before the

Court below at the time of hearing. It is not the case of opposite party / landlord that the challans showing deposit of rent for the aforesaid three months are not genuine or have been procured fraudulently.

In such view of the matter, that part of order which relates to the observation that the defendant is a defaulter for the months of April, May and June, 2014 and liable to pay Rs. 1,657/- (Principal Rs. 1,275/- + interest Rs. 382/-) in the impugned order dated 29th June, 2018 and the order impugned dated 18th June, 2018 are hereby set aside.

The Court below is directed to hear the defendant's application under Section 7(2) afresh taking into consideration the civil deposits by way of challans made by the petitioner herein for the months of April, May and June, 2014, within a period of six weeks from the date of communication of this order.

Since the suit is pending for a considerable period of time, the Court below is directed to make best endeavour to finally dispose of the suit at the earliest preferably within a period of ten months from the date of communication of this order.

The application, being C.O. 4057 of 2018 is thus disposed of.

Urgent photostat certified copy of this order, if

applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)