

19.03.2024
Sl.No.9
Ct. no. 652

RVW 262 of 2023
In
C.O. 3503 of 2019

Uttam Brera @ Uttam Kumar Bera
Vs.
Shrimati Hira Dawn & Ors.

Mr. Masud Mallik
Mr. Aritra Shankar Ray

...for the Petitioner

Mr. Rwitendra Banerjee
Mr. Rittwik Pattanayak
Mr. Arigtra Ray Chowdhury

....for the Respondents

This review application has been preferred in connection with the order dated 3rd August, 2023, by which this Court dismissed the application being C.O. 3503 of 2019.

In a suit for eviction the defendant petitioner herein appeared and filed application under section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, (hereinafter called as Act of 1997) wherein the main contention of defendant/tenant was that he is defaulter in payment of rent for 127 months and accordingly after appearance he deposited rent for aforesaid 127 months along with interest.

However, court below held that defendant tenant is defaulter for 135 months and after exercising elaborate mathematical calculation, the court below came to a finding that the defendant though admitted that he is defaulter for 127 months and though there is no dispute regarding relationship and the rate of rent, but he had not deposited even the admitted arrear rent along with 10% interest per annum, as laid down in section 7(1) of the Act of 1997, which amounts to Rs. 16,552.34/- but he has deposited only Rs. 11,960/-, which made his entire deposit as invalid under section 7 of the said Act. The court below further held such invalidity cannot be cured, taking the benefit of the proviso to section 7(2) and as such he invoked section 7(3) of the Act of 1997 and thereby struck off defence of the defendant.

This court while invoking jurisdiction under Article 227 of the Constitution of India did not find any perversity in the order impugned and as such refused to interfere with the ultimate finding arrived at by the Trial Court.

In this review application, the petitioner in the context of the judgement of the Apex Court reported in **2019 (10) SCC 660**, contended that the pre-condition for getting

benefit of protection against eviction under section 7(2), is that the tenant is only required to deposit admitted arrear rent and nowhere in the said judgment it has been held that despite depositing the admitted arrear rent only because of erroneous calculation relating to interest and as a consequence for making short deposit on that account, the tenant will not get benefit under section 7(2) of the Act of 1997. Accordingly since the defendant has deposited the admitted arrear rent along with interest, the decision of this High court is required to be reviewed and thereby the defendants application under section 7(2) is required to be allowed with further direction to pay the deficit amount, if any.

Mr. Banerjee, the learned counsel appearing on behalf of the landlord/opposite party opposed the prayer for review and contended that there is no error apparent on the face of the order and the review application cannot be construed as an appeal against the order impugned. Since defendant has failed to pay even the admitted arrear rent along with interest in terms of section 7(1) of the Act of 1997, he is not entitled to get benefit of protection against eviction. Referring judgment reported in ***Perry Kansagra Vs. Smriti***

Madan Kansagra reported in **(2019) 20 SCC 753** and ***Lily Thomas and others Vs. Union of India and others*** reported on **(2000) 6 SCC 224**, he contended that the present review application is not maintainable as that would lead to substitution of courts earlier observation which can only be done by a court of appeal. He also contended that if such prayer is allowed this will tantamount to rehearing and long drawn process of reasoning on the points where there may conceivably be two opinions. In this context he also referred decision of three judges Bench of the Apex Court passed in ***S. Madhusudhan Reddy Vs. V. Narayana Reddy and others.*** reported in **2022 SCC Online SC 1034**, and contended that the representation made by the petitioner in this petition does not make out any case of “mistake or error apparent”, in terms of guideline laid down in the said judgment and as such the Review application is not maintainable and according to him such application has been filed only to adopt dilatory tactics and to drag the proceeding of the suit.

I have considered submissions made by both the parties.

Section 7(1) of the Act of 1997 in unequivocal terms has prescribed that in order

to get benefit of protection against eviction, the tenant has to deposit the admitted arrear rent calculated at the rate of which it was last paid together with interest at the rate of 10% per annum and it was never the intention of the legislature that the defendant's liability is only to deposit 10% of the entire arrear amount towards interest to get benefit of protection against eviction. This has been discussed by the Trial Court and he found that the defendant even failed to deposit admitted arrear rent along with interest at the rate of 10% per annum.

Since the trial court interpreted the law in its proper perspective, this Court while discussing the connotation of the term "per annum" came to a finding that there appears to be no illegality or perversity in the said finding.

Now the moot contention of the tenant/petitioner herein is that he was under the belief that he was defaulter for 127 months and accordingly he deposited rent for entire 127 months along with 10% of the said amount as admitted arrear rent but the calculation of interest may not be based on the words used in the statute but for that the tenant should not be penalised and his defence against delivery of possession is not liable to be struck off.

I do not find any substance in the said argument as such indulgence can encourage unscrupulous litigant to deposit lesser amount in order to drag the proceeding and then to take the plea that due to weakness in mathematical calculation he could not make the actual deposit in time.

Since the order impugned is based on reasoning and on interpretation of law as laid down in the statute and since there is no error apparent on the face of the record, I do not find any merit in the present application. Accordingly RVW 262 of 2023 along with connected application stand dismissed.

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.)