

C.O. 3681 of 2022

Deep Chand Hirawat

Versus

Smt. Kamala Devi Chowdhary & Ors.

Mr. K. C. Garg,
Ms. Sunita Agarwal

...for the Petitioner.

1. This revisional application arises out of an order dated September 28, 2022, passed by learned Judge, 6th Bench, Presidency Small Causes Court at Calcutta, in Ejectment Suit no.110 of 2019.

2. By the order impugned, the learned court below allowed an application filed by the plaintiffs under Section 7 (3) of the West Bengal Premises Tenancy Act, 1997. The defendant is the petitioner.

3. The defense of the defendants against delivery of possession, was struck off.

4. Learned Advocate for the petitioner submits that the learned court below had wrongly rejected the application under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act) as also the application under Section 5 of the Limitation Act.

5. Unless the court determined the arrear rent payable by the defendant in terms of Section 7(2) of the said Act, the question of fulfilling the obligation

under Section 7 of the said Act did not arise. Thus, rejection of the application under Section 7 (1) along with the application for condonation of delay and allowing the application under Section 7 (3) of the said Act were premature.

6. The plaintiffs filed a suit for ejection and recovery of khas possession against the defendant. The defendant was a tenant in respect of one room on the third floor of premises no.76 Pandit Purushottam Roy Street, at a monthly rental of Rs.190/- along with maintenance charges of Rs.76/- per month, payable according to English calendar month. The schedule of the tenanted property is quoted below:-

“All that in respect of one room on the third floor of premises no.76, Pandit Purushottam Roy Street, Police Station –Burrabazar, Kolkata -700 007 being butted and bounded as follows:-

On the North : By wall of the building

On the South : By floor passage

On the East : Other room of the defendant

On the West : Other room of the defendant”

7. According to the plaintiffs, the defendant neglected to pay the monthly rent on and from the month of August, 1997. The defendant became a defaulter in payment of rent for more than three months within a period of 12 months. Thus, the plaintiffs was entitled to recover the suit premises on the ground of default. The plaintiffs also claimed that they required the suit premises for their own use

and occupation and for the use and occupation of the family members. The plaintiffs did not have any other suitable accommodation elsewhere, other than the suit property. The plaintiff's family members were 14(fourteen) in number and the requirements had been elaborately mentioned in paragraphs, 6, 7 and 8 of the plaint.

8. The plaintiffs claimed to have sent an ejectment notice dated November 19, 2018, by registered post with acknowledgment due through their learned Advocate. The notice of ejectment was duly served upon the defendant on November 22, 2018. The defendant failed to quit and vacate the suit premises upon termination of tenancy.

9. Hence, the suit was filed for a decree for recovery of vacant and khas possession of the suit premises, Commission and costs.

10. The defendant contested the suit by filing his written statement. The defendant denied the relationship of landlord and tenant between the plaintiffs and the defendant. The defendant claimed to be a tenant under one "Kamala Devi Chowdhury and Sons" in respect of one room on the third floor of the premises. The defendant denied allegation of default and also denied the receipt of the notice of ejectment.

11. According to the defendant, rent had been paid upto June, 1997 to Kamala Devi Chowdhury, who issued receipt. The rent of September, 1998 was paid in cash, but no receipts were granted. The rent for October 1998 was issued by money order, which was returned to the defendant with postal remark "Unclaimed". Since October, 1998, the rent was being deposited before the learned rent controller, Kolkata. It was further contented that the question of reasonable requirement of the premises did not arise as the plaintiffs were never the landlords of the defendant.

12. The defendant filed an application under Section 7 (1) of the West Bengal Premises Tenancy Act, 1997 along with an application for condonation of delay under Section 5 of the Limitation Act, 1963. The said applications were filed around September 7, 2022. It was contended in the application for condonation of delay filed with the application under Section 7 (1), that the summons were not served upon the defendant. The defendant appeared on August 9, 2019 and prayed for service of a copy of the plaint. A copy of the plaint was served upon the learned Advocate for the defendant on 26th September, 2019. The defendant filed an application under Section 7 (2) of the West Bengal Premises

Tenancy Act, 1997, disputing the relationship of landlord and tenant.

13. The application was heard on May, 13, 2022 and the learned court below decided the issue of relationship of landlord and tenant, but no order was passed for depositing the arrear rent.

14. Aggrieved by the order dated May 13, 2022, the defendant filed a revisional application before the High Court. It is contended that until the said revisional application was disposed of, the question of filing the application under Section 7 (1) of the West Bengal Premises Tenancy Act, 1997, did not arise. Hence, the delay in filing the said application, should be condoned.

15. According to the defendant, there was a delay of 27 days in filing the application under Section 7 (1) of the said Act. In the application under Section 7 (1) of the said Act, it was categorically stated that the defendant was a monthly tenant under Kamala Devi Chowdhury and Sons in respect of a room in the third floor of premises no.76 Pandit Purusatam Roy Street, Kolkata 700007. That the defendant paid rent upto June, 1997 and the landlord granted receipt. Thereafter, although the rent was paid upto September, 1998, but no receipts were granted. The rent for October, 1998 was tendered by way of money order which was unclaimed. Then, the defendant

started depositing the rent with the rent controller and the same was deposited upto the month of August, 2022.

16. The petitioner/defendant prayed that the learned court below be pleased to allow the petitioner/defendant to deposit the rent for the month of August, 1997, September, 1998 and September, 2022, along with statutory interest, if any.

17. The plaintiffs filed an application under Section 7 (3) of the West Bengal Premises Tenancy Act, 1997, praying for striking off the defense of the defendant on the ground of non-compliance of the provisions of Sections 7(1) and 7 (2) of the West Bengal Premises Tenancy Act, 1997.

18. The categorical case of the plaintiffs was that from the order dated July 10, 2019, passed by the learned trial court, it was clear and evident that the defendant had refused to accept the summons and the suit had been posted for ex parte hearing against the defendant. On September 8, 2019, the defendant entered appearance and filed Vakalatnama. On December 16, 2019, the defendant filed an application under Section 7(2) of the said Act, denying the relationship of the landlord and tenant.

19. The learned trial court determined the relationship between the plaintiffs and the defendant

as that of landlord and tenant. Such order was challenged before the High Court and the High Court dismissed the revisional application. The defendant has defaulted in payment of rent since August, 1997 and had not taken advantage of the provisions of Section 7 of the said Act.

20. Thus, the application under Section 7 (3) of the said Act was filed with a prayer for striking out the defense of the defendant, with a prayer for the court to proceed with the ejectment suit.

21. Under Section 7(2) of the said Act, the defendant called upon the court to decide the relationship between the plaintiffs and the tenant and the quantum of rent, if any, to be paid.

22. The said application was rejected by the learned trial judge and the order of rejection was upheld by the High Court in C.O. No.1686 of 2022. It was held that the dispute sought to be raised by the defendant was a sham one Kamala Devi Chowdhury and Sons were the plaintiffs and the defendant had claimed to be a tenant under the Kamala Devi Chowdhury and Sons. The learned trial court took up the application under section 7 (1) of the said Act, the application under Section 5 of the Limitation Act and the application under Section 7 (3) of the said Act, for hearing on September 28, 2022.

23. According to the learned trial court, the summons was served upon the defendant in both ways i.e. through court bailiff and through the postal department. The bailiff had submitted a report that the defendant had refused to receive the summons and as per the postal endorsement by the postal peon, the summons could not be served as the addressee was absent.

24. The learned chief judge, Presidency Small Causes Court, Calcutta, considered the service of the summons as good service.

25. Records reveal that on August 9, 2019 the defendant filed an application praying for permission to contest the suit and for direction upon the plaintiffs to furnish a copy of the plaint. The copy of plaint was served on September 26, 2019.

26. By the application under Section 7 (1) of the said Act, the defendant/petitioner sought for permission to deposit rent from August, 1997 to September, 1998 and for September, 2022. The delay in filing the said application was calculated as 27 days from the date of the final order passed by the High Court on July 12, 2022, dismissing the civil revisional application.

27. The learned court below observed that the provisions of Section 5 of the Limitation Act, would not apply and the delay in filing the application

under Section 7 (1) of the said Act, could not be condoned. In this case, the delay was of more than 3 years from the date of appearance of the defendant/petitioner in the suit, even if, it is accepted that the summons had not been served.

28. In my opinion, the learned court below did not commit any irregularity as the law has been discussed in great detail and rightly applied in this case.

29. It is evident that the petitioner/defendant did not deposit the arrear rent along with the statutory interest, while raising the dispute of landlord and tenant and while asking the court to determine the rent payable. According to the law, the petitioner/defendant ought to have deposited the admitted arrear rents along with 10% statutory interest, within a month from entering appearance in the suit. Such compliance is the mandatory precondition to filing an application under Section 7 (2) of the said Act. Asking the court to determine the relationship between landlord and tenant and the rent payable, requires the tenant to comply with the provisions of Section 7(1) of the said Act.

30. Section 7 provides a complete mechanism to be availed of by a tenant in order to protect himself from eviction. Such mechanism was provided under Section 7 of the said Act. 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.

31. In case of any dispute as to the amount of rent payable by the tenant, within the time specified in the sub-section, the tenant was liable to deposit with the civil judge, 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.

32. The court does not have any power to extend the time to deposit the rent and the admitted arrears. The Apex Court in ***Bijay Kumar Singh & Ors. versus Amit Kumar Chamariya & Anr.*** reported in ***(2019) 10 SCC 660***, held that Section 5 of the Limitation Act, will not be application to condone the delay in depositing the arrear rent. The relevant portions are quoted below:-

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

33. In ***Calcutta Gujarati Education Society versus Sri Ajit Naraya Kapoor*** passed in C.O.175 of 2017, a similar question was decided by the Division Bench of this court. The relevant paragraph is quoted below:-

“We answer the question referred to say that Limitation Act, 1963 has no application in respect of an application by a tenant, made under section 7 for determination of arrears of disputed rent. We are aware our answer to the question referred gives rise to conflicting views of two Division Benches of this Court. However, we have answered the question pursuant to direction made in said administrative order.”

34. In the matter of ***Smt. Binika Thapa (nee Rai) & Anr. Vs. Smt. Damber Kumari Mukhia & Anr.*** decided in ***C.O. No. 64 of 2023***, this Court held as follows:-

“22. The decision in **Amit Kumar Chamariya (supra)**, is the law governing the scope of Section 7 of the said Act. The question was framed in Paragraph 5 thereof. The same is binding on all courts. The facts of the case do not make an iota of difference with the points of reference. In **Amit Kumar Chamariya (supra)** the Hon’ble Apex Court finally interpreted **Nasiruddin (supra)**, in paragraph 16 thereof. **B.P. Khemka (supra)** was also considered and distinguished in paragraph 18 and the Hon’ble Apex Court arrived at the conclusion that Section 5 of the Limitation Act would not apply in case the benefit of protection from eviction was sought by the tenant under Section 7 of the said Act. A conjoint reading of the paragraphs 19, 20 and 21 of **Amit Kumar Chamariya (supra)** would categorically reflect such finding.

23. Section 40 of the said Act makes the Limitation Act applicable to the provisions of the said Act, subject to other inbuilt periods of limitation prescribed. The Hon’ble Apex Court discussed the provision of law and held that Section 5 of the Limitation Act would not apply if the tenant failed to comply with the mandatory provisions of Section 7.

24. According to the ratio in **Amit Kumar Chamariya (supra)**, the period of one month as mentioned in paragraph 7(1)(b) was treated to be the inbuilt period of limitation making Section 40 of the said Act inapplicable.

25. Thus, the decision in **Bahadur Kathotia (Supra)** cannot be accepted as good law. The decision was rendered without considering paragraphs 19 to 21 of the **Amit Kumar Chamariya (supra)**. The decision in **Subrata Mukherjee (supra)**, had been distinguished in the **Calcutta Gujarati Education Society (supra)** in which Section 40 of the said Act was considered, but negated upon discussing the decision of **Amit Kumar Chamariya (supra)**. The law was declared by the Apex Court, and it was the duty of the High Court to act in accordance with Article 141 of the Constitution of India and to apply the same. The High Court could not overrule the decision of the Hon’ble Apex Court on the ground that the Hon’ble Apex Court had laid down the legal position, without considering Section 40 of the said Act. It is not only a matter of discipline for the High Court, but also a mandate of the Constitution as provided in Article 141 that the law declared

by the Apex Court should be binding on all courts within the territory of India. All subordinate Courts to the Hon'ble Apex Court are bound by all declarations of law made by the Hon'ble Apex Court, even when the facts of the case, decided by the Hon'ble Apex Court, is distinguishable."

35. In decision of the Hon'ble Apex Court in ***Debasish Paul and Anr. vs. Amal Borai*** reported in **2023 INSC 925**, the Hon'ble Apex Court held that the Limitation Act, could not be used to expand the time prescribed by the legislation and the reasoning in ***Amit Kumar Chamariya (supra)*** could not be doubted.

36. Thus, the learned court below rightly held that the question of condoning the delay in filing an application under Section 7 (1) of the said Act did not arise at all.

37. In my opinion, the contention of the defendant that the defendant was waiting for the outcome of the civil revision and the delay should be counted from the date of dismissal of the civil revisional application, is misconceived.

38. Section 7 (2) of the said Act cannot be independent of the 7 (1). Without depositing the admitted arrears along with 10 per cent statutory interest, within the time limit prescribed under Section 7, i.e., one month from either receipt of summons or one month from the date of entering appearance, if the defendant/petitioner enters

appearance without receipt of summons, had not been complied with. This compliance is a mandatory provision to be fulfilled by any tenant, who seeks protection from eviction under any of the grounds mentioned in Section 6 of the said Act.

39. The application under Section 7 (2) of the said Act, without any deposit of arrear rent along with statutory interest within the time prescribed by the statute itself, was itself not maintainable.

40. Thus, the pendency of the said application before the learned trial judge and the revisional application arising therefrom before the High Court, could not be regarded as a ground for condonation of delay in filing and the application under Section 7 (1) of the said Act.

41. Accordingly, the revisional application is hereby dismissed.

42. The impugned order is hereby upheld.

43. There will be no order as to costs.

44. Parties are directed to act on the server copy of this order.

(Shampa Sarkar, J.)