

May 2, 2024
Sl. No.16
Court No.19
s.biswas

CO 4287 of 2023

Naba Kumar Samanta
vs.
Narayan Chandra Saha and another

Mr. Tuhin Subhra Raut

... for the petitioner

Mr. Krishna Das Poddar

... for the opposite parties

1. The revisional application arises out of order dated September 4, 2023 passed by the learned Chief Judge, Presidency Small Causes Court at Calcutta in Ejectment Suit No.56 of 2022. The learned court rejected an application for recalling of the order dated December 15, 2022.
2. By the order dated December 15, 2022, the learned court had dismissed the application under Section 7(1) of the West Bengal Premises Tenancy Act, as “not pressed” at the request of the petitioner’s advocate.
3. Thereafter, an application dated December 20, 2022 was filed under Section 151 of Code of Civil Procedure, seeking recall of the earlier order. The said application came up for hearing on September 4, 2023. The learned court rejected the said application and held that question of recalling the order would not arise as there was nothing on record to show that the learned advocate acted beyond the instructions of the

petitioner. Moreover, ignorance of law was no ground for recalling of the order.

4. The petitioner himself filed an application under Section 7(1) of the Act and did not press the same. Allowing the restoration of the said application upon recalling of the order dated December 15, 2022 would amount to bringing life back to an application at the belated stage, which could not be entertained by the court. The court could not grant permission to deposit current rent as they had not been paid at the appropriate time. The court further noted that apart from the application for recall, not a single averment had been made that the tenant would undertake to deposit the entire arrear from the date of filing of the suit till the date of restoration of the application. The revival of the application under Section 7(1) of the Act, would not enure to the benefit of the tenant.
5. The court further held that in view of the ratio in **Bijay Kumar Singh –vs- Amit Kumar Chamaria** reported in (2019) 10 SCC 660, belated deposit of rent could not be allowed. Thus, the application for recall was rejected.
6. Such order has been challenged before this court. The learned advocate for the petitioner submits that the petitioner could not be

penalised for the mistake of his learned advocate. The petitioner being a layman was not acquainted with the law and as such, did not understand the consequence of the action of the learned advocate. The moment he came to know of such order, an application was filed for recall. The petitioner was not in arrear as all the pre-suit rents had been deposited with the learned rent controller.

7. Learned advocate further submits that all that was being prayed for was for restoration of the application under Section 7(1) of the said Act, so that the issue with regard to the deposit of current rent could be decided during adjudication of the said application.
8. Learned advocate for the opposite parties/landlords submits that the application for recall was not maintainable. The petitioner himself prayed for dismissal of the application as he did not want to press the same. The learned court accordingly, on such prayer, dismissed the said application as “not pressed”. Thus, the question of recall would not arise. It was on the petitioner’s own volition that the application under Section 7(1) of the Act was dismissed.
9. It is next submitted that the application may have been filed on time, but was not moved

before December 15, 2022. On December 15, 2022, it was dismissed as 'not pressed' at the instance of the petitioner.

10. Heard the parties. First and foremost, whether the petitioner instructed the learned advocate to take steps or whether the learned advocate acted beyond the scope of the petitioner's instructions, are matters of trial. Secondly, the learned court has categorically observed that there was no prayer to allow deposit of rent with an expression of a willingness to do so. The petitioner did not indicate that he wanted to deposit the current rent, from the date of filing of the suit.

11. Revival of the application under Section 7(1) of the Act would not change the situation. Admittedly there has been default in payment of the current rent (i.e. rent from the month of receipt of summons till date). The petitioner's submission is that upto February 2022, the rent had been deposited with the rent controller. After the filing of the suit the petitioner did not deposit the current rent month by month in terms of Section 7(1)(c). The application under Section 7(1) was filed with the following prayer:-

"Your petitioner, therefore, humbly prays that your honour be pleased to pass necessary relating to disposal of this application along with the disputes involved in the application along with the

disputes involved in the application under section 7(2) for ends of justice.”

12. Here too, there is no prayer seeking deposit of current rent. The petitioner raised a dispute with regard to rate of rent. Such dispute is pending hearing in the application under Section 7(2) of the Act. Filing an application under Section 7(2) of the said Act, by raising a dispute with regard to quantum of arrear rent, rate of rent, or relationship between the parties, is subject to compliance of Section 7(1) of the said Act.

13. The provision of Section 7(1) is quoted below:

“7. When a tenant can get the benefit of protection against eviction. — (1)(a) On a suit being instituted by the landlord for eviction on any of the grounds referred to in section 6, the tenant shall, subject to the provisions of sub-section (2) of this section, 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 is made together with interest at the rate of ten *per cent per annum*.

(b) 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.

(c) The tenant shall thereafter continue to pay to the landlord or deposit with the Civil Judge month by month by the 15th of each succeeding month, a sum equivalent to the rent at the rate.”

14. On perusal of the provisions of Section 7 of the said Act, it is apparent that the tenant can get protection under the said Act only in compliance

of what has been set out therein. Clause (a) of Sub-Section 1 of Section 7 provides for payment of admitted arrears by the tenant along with 10% interest either to the landlord or depositing the same in court, where there is no dispute at all. In the factual matrix of the present case, there is a dispute with regard to quantum. In terms of Clause (b), the payment has to be made within one month of the service of summons on the tenant or where he appears in the proceedings without the summons being served on him within one month of his appearance and in terms of Clause (c), the tenant thereafter is required to pay to the landlord or deposit in court month-by-month a sum equivalent to the rent by the 15th of each succeeding month.

15. Sub-Section (2) of Section 7 refers to a scenario where there is dispute with regard to the rent payable, arrears or relationship. Even then, there is a bounden duty upon the tenant to deposit with the court or pay to the landlord the amount of admitted arrear due from him as also the current rent. The application for determination of the dispute cannot be filed without complying with Section 7(1)(c) also. The proviso under Section 7(2) permits extension only once and the period of such extension cannot exceed two

months. Two years have passed since the dismissal of the application under Section 7(1), on the prayer of the petitioner.

16. Thus, as soon as the petitioner filed the application under Section 7(1) of the Act, the petitioner, even if not in arrears, was bound by law to deposit the current rent month by month every month, within 15th of each succeeding month. Such intention to pay is not available from the application. No such payment was not made. The application was filed within time, but was not moved up to December 15, 2022. On the other hand, the petitioner sought dismissal of the said application. Thus, this court does not find the action of the petitioner be bona fide. There is no reflection of any intention or attempt of the petitioner to deposit the current rent, which the petitioner was enjoined by law to deposit, even assuming that he was not in arrears. The deposit of current rent was not subject to adjudication under either Section 7(1) or 7(2) of the Act. Section 7(1) would have been formally allowed by the learned court immediately on filing, so that the current rent could be deposited. No such prayer was made. Instead, the tenant prayed for dismissal of the application as not pressed. Allowing such

application to be adjudicated once again would be a futile exercise as in the decision of the **Amit Kumar Chamaria** (supra), the Apex Court held that compliance of Section (1) was mandatory and the court could not condone the delay in payment of arrear rent. The Hon'ble Apex Court held as follows:-

“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."

17. In the matter of ***Debasish Paul & Anr. vs Amal***

Boral reported in **2023 INSC 925**, the Hon'ble

Apex Court held as follows:-

“16. We have no doubt over the proposition that though generally the Limitation Act is applicable to the provisions of the said Act in view of Section 40 of the said Act, if there is a lesser time period specified as limitation in the said Act, then the provisions of the Limitation Act cannot be used to expand the same. It is in this context that in Nasiruddin⁶ case, it has been mentioned that the real intention of the legislation must be gathered from the language used. Thus, the reasoning in Bijay Kumar Singh⁷ case cannot be doubted more so as the requirement is for a tenant to file an application, but he has to deposit the admitted arrears of rent as well, which has certainly not been done.

17. We are of the view that a combined reading of the two statutes would suggest that while the Limitation Act may be generally applicable to the proceedings under the Tenancy Act, the restricted proviso under Section 7 of the said Act, providing a time period beyond which no extension can be granted, has to be applicable. The proviso is after Sub-Section (2) of Section 7 but Sub-Section (2) of Section 7 in turn refers to Sub-Section (1) implying the application of the proviso to Sub-Section (1) too.

18. There is also a larger context in this behalf as the Tenancy Acts provide for certain protections to the tenants beyond the contractual rights. Thus, the provisions must be strictly adhered to. The proceedings initiated on account of non-payment of rent have to be dealt with in that manner as a tenant cannot occupy the premises and then not pay for it. This is so even if there is a dispute about the rent. The tenant is, thus, required to deposit all arrears of rent where there is no dispute on the admitted amount of rent and even in case of a dispute. The needful has to be done within the time stipulated and actually should accompany the application filed under Sub-Sections (1) &

(2) of Section 7 of the said Act. The proviso only gives liberty to extend the time once by period not exceeding two months.

19. The respondent neither paid the rent, nor deposited the rent by moving the application nor deposited it within the extended time as stipulated in the proviso. The mere allegation of absence of correct legal advice cannot come to the aid of the respondent as if such a plea was to be accepted it would give a complete license to a tenant to occupy premises without payment of rent and then claim that he was not correctly advised. If the tenant engages an advocate and abides by his advice, then the legal consequences of not doing what is required to be done, must flow.

18. This court 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:-

“**14.** The ratio decided in **Amit Kumar Chamariya (supra)** applies to all situations, when the tenant fails to comply with the provisions of Section 7 (1) and 7 (2) of the said Act, within the time frame as prescribed under Section 7 (1), itself. The law declared in **Amit Kumar Chamariya (supra)** extends to such point and the subsequent decision in **Debasish Paul (supra)** agrees with the ratio of the decision in **Amit Kumar Chamariya (supra)**. The decision is a binding precedent upon all courts, be it the trial court as well as High Court.

16. 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.

17.Moreover, the decision in ***Bahadur Singh Kathotia (supra)*** was rendered without consideration of the decision of the Division Bench in ***Calcutta Gujarati Education Society versus Sri Ajit Naraya Kapoor*** passed in C.O.175 of 2017, the Hon'ble Division Bench answered the reference in view of conflicting decisions of the Hon'ble Division Benches of this Court. The question formulated by the then Acting Chief Justice was as follows:-

“Does the view of the Division Bench of this court that section 5 of the Limitation Act can be applied to condone delay in making applications under sub-sections (1) and (2) of section 7 of the West Bengal Premises Tenancy Act, 1997, as held in the Subrata Mukherjee case

(supra), survive in view of the decisions of the Hon'ble Supreme Court in the Nasiruddin case (supra), the Ashoke Kumar Mishra case (supra), Manjushree Chakraborty case (supra)."

18. The reference was whether Section 5 of the Limitation Act could be applied to condone delay in filing an application under sub-section (1) and sub-section (2) of Section 7 of the said Act and whether the decision in **Subrata Mukherjee's case** survived in view of the decision in Nasiruddin's case, Ashok Kumar Mishra's case and Manjushree Chakraborty's case. Upon taking note of the judgment of the **Amit Kumar Chamariya (supra)** the Division Bench held that the Limitation Act, 1963 had no application in respect of an application by a tenant made under Section 7 of the said Act, for determining the arrear rent, as the Act of 1997 mandated that deposit of rent or where there is dispute regarding quantum of rent, deposit of admitted rent along with application for determination of rent must be made by the tenant within the time specified under the said section. In relation to a suit for eviction, where compliance with the deposit mandate would enable the tenant to seek protection against delivery of possession, compliance with the deposit mandate was essential. No assertive right of the tenant could be enforced. Section 6 of the said Act had a non-obstante clause on application of other laws regarding eviction and Section 40 of the said Act would be applicable, subject to the limitations provided in the said Act. The deposit of admitted rent, raising a dispute regarding quantum of rent, and filing an application for determination of rent, were to be made by the tenant within the specified time and could only be extendable as per the proviso to Section 7(2) of the said Act and the deposit mandate had to be followed by the tenant for protection from eviction.

19. If for any reason the tenant failed to pay/deposit rent month by month as laid down under Clause (c) of Sub-Section 1 of Section 7 of the Act or as directed by the

court under Sub-Section 2 of Section 7, the tenant could get further extension of time for two months, to make such deposit.

20.In *Debasish Paul (supra)*, 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. More so, the requirement for the tenant to file an application and to deposit the admitted arrear rents as well, were binding, which had not done in the said case.

21.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.

22.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.

23.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."

19. Under such circumstances, the order impugned does not call for any interference. Even the proviso to Section 7(2) of the Act would not apply in this case as the petitioner did not pay current rent for a single month since the institution of the suit on and from March 2020, (going by his own version that rent was deposited with the rent controller upto February 2020) till date. The period of extension covered by the proviso to Section 7(2) of two months also, cannot be applied in this case. There has been multiple defaults in depositing current rent, month after month, since March 2020. Such default cannot be condoned by allowing belated deposit of accumulated rent for the past two years.

20. Under such circumstances, the order impugned does not call for any interference. The revisional application stands dismissed.

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

(Shampa Sarkar, J.)