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2024**

Ct. No. 04

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**SAT 252 of 2023
IA No. CAN 1 of 2023**

Sri Anupam Dutta

Vs.

Smt. Bela Mukherjee and another

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

... for the appellant.

**Mr. Sukumar Ghosh,
Mrs. Moumita Ghosh.**

... for the respondents.

A suit for eviction of a tenant under the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'said Act') stood decreed by the Trial Court and such decree is affirmed by the First Appellate Court. The eviction was sought, inter alia, on the ground of default, reasonable requirement and guilty of waste and damages, but the Trial Court proceeded to decree the suit on the ground of default as the defendant/appellant did not comply the mandatory provisions contained under Section 7(1) and (2) of the said Act and the defence was struck off under Section 7(3) of the said Act.

Naturally, the moment the defence is struck off, the written statement filed by the tenant/defendant shall not be taken on record nor shall be permitted to adduce evidence in respect of such defence. The only right, which is conferred upon such tenant, is to cross-examine the plaintiffs' witness. The Trial Court was of the view that in view of the non-compliance of the mandatory provisions contained under Section 7(1) and (2) of the said Act and the defence having struck off, the defendant/appellant is regarded as defaulter in payment of rent, which is one of the grounds on which the Court can pass a decree for eviction against the tenant.

According to the Counsel for the defendant/appellant, there is no discussion or finding returned by the Trial Court on the other grounds viz.

reasonable requirement and guilty of waste and damages, but the Appellate Court while affirming the judgment and decree of the Trial Court considered the aforesaid grounds and also found that the plaintiffs/respondents have been able to prove that they reasonably require the suit premises for their own use and occupation and for occupation of their family members.

We do not find any impediment on the part of the Appellate Court to consider the ground of reasonable requirement, when the parties knowing fully well adduced evidence, invoking the provisions under Section 107 sub-section (2) of the Code of Civil Procedure, which does not put any fetter in exercise of powers by the Appellate Court in deciding an issue, which was conspicuously not decided by the Trial Court, as it exercises the same powers and performance as nearly as the same duties conferred and imposed on the Court of original jurisdiction in respect of the suits instituted therein.

The Counsel for the defendant/appellant took a plea that the operation of the West Bengal Premises Tenancy Act, 1997 has not been extended to Chandannagar in view of the provisions contained under Section 1(3) of the said Act. Before we deal with the aforesaid contention, it would be apposite and profitable to quote the provisions contained under Section 1(3) of the said Act, which runs thus:

“1. Short title, commencement and extent.- (1).....

(3) It extends to the areas included within the limits of the Calcutta Municipal Corporation and the Howrah Municipal Corporation and to the municipal areas within the meaning of the West Bengal Municipal Act, 1993 (West Bengal Act XXII of 1993):

Provided that the State Government may, by notification, extend this Act or any provision thereof to any other area specified in the notification or may, by notification, exclude any area from the operation of this Act or any provision

thereof.”

It is axiomatic to record that by virtue of the enabling provisions contained under sub-section (3) of Section 1, the operation of the said Act is extended to the Calcutta Municipal Corporation, Howrah Municipal Corporation and any area within the Municipality from which the Counsel for the defendant/appellant derived inspiration to contend that the Chandannagar area is included within the West Bengal Municipal Corporation Act and, therefore, kept outside the purview of the operation of the said Act.

On a bare reading of the enabling provision contained in the said sub-section, at the first blush, we find substance in the submission of the Counsel of the defendant/appellant, but our attention is drawn to a Notification being No. 1118-LR/1M-3/03 dated 22nd April 2003 issued by the State Government whereby and whereunder the Chandannagar Municipal Corporation has been included within the purview of the said Act. The said Notification runs thus:

“In exercise of the power conferred by the proviso to sub-section (3) of section 1 of the West Bengal Premises Tenancy Act, 1997 (West Bengal Act XXXVII of 1997) (hereinafter referred to as the said Act), the Governor is pleased hereby to extend the said Act to the areas included within the limits of the Chandannagar Municipal Corporation, the Assansol Municipal Corporation and the Siliguri Municipal Corporation with effect from the 10th day of July, 2001.”

Since the operation of the West Bengal Premises Tenancy Act, 1997 has been extended to the territory of the Chandannagar Municipal Corporation, the point urged by the Counsel for the defendant/appellant does not appear to be good and/or correct. The scheme of the 1997 Act envisaged that in the event the summon is served upon the tenant in respect of a suit instituted under Section 6 of the said Act, it is imperative on the

part of the tenant to comply the provisions contained under Section 7(1) of the said Act or in the event there is any dispute, such dispute must be raised under sub-section (2) of Section 7 of the said Act. There is a stringent provision contained under sub-section (3) of Section 7 of the said Act, which postulates that in the event the tenant does not comply the aforesaid mandatory provisions, his defence shall be struck off, which, in fact, has been done in the instant case.

It is sought to be contended before us that the said order by which the defence was struck off was challenged before this Court under Article 227 of the Constitution of India, which is still pending. Be that as it may, it is undeniable that there is no order of stay of the proceedings passed by this Court in the aforesaid revisional application and, therefore, there was no fetter on the part of the Trial Court as well as the Appellate Court to proceed with the matter and bring to its logical end in accordance with law. Even apart, there is no ground, which is taken in the Memorandum of Appeal filed before the First Appellate Court assailing and/or challenging the order by which the defence was struck off and, therefore, we do not find any ambiguity and/or illegality in the impugned judgment and order.

From whatever angle we look it, do not find involvement of substantial question of law, the appeal is dismissed.

In view of the dismissal of the appeal itself, the connected application for stay being CAN 1 of 2023 has become infructuous and the same is also dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

