

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Gaurang Kanth

SAT 253 of 2023
IA No: CAN 1 of 2024

Smt. Nilima Das
Vs.
Bijay Kumar Manish Kumar HUF

For the appellant : Mr. Probal Mukherjee, Ld. Sr. Adv.,
Mr. Abhijit Roy,
Mr. Santu Nandy

For the respondent : Mr. Manabendra Saha Roy,
Mr. Sounak Bhattacharya,
Mr. Ganesh Prasad Shaw,
Mr. Anirban Saha Roy

Heard on : 05.12.2024

Judgment on : 05.12.2024

Sabyasachi Bhattacharyya, J.:

1. Upon hearing learned senior counsel appearing for the appellant under Order XLI Rule 11 of the Code of Civil Procedure, we are of the opinion that no substantial question of law has been made out.
2. The primary grounds of challenge are that there was a miscalculation on the part of the courts in computing the defaults and that the

parent provision of Section 6(1)(b) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as “the 1997 Act”) are not applicable.

3. The brief facts are that the plaintiff/respondent/landlord obtained a decree of eviction against the present appellant on the ground of default in payment of rent under the 1997 Act. Both the trial court and the first appellate court affirmed such decree of eviction.
4. We find that in the present case, the benefit of Section 7(2) of the 1997 Act was initially granted to the tenant. However, thereafter, the tenant/appellant committed a default for three months within a period of twelve months. As such, within the contemplation of Section 7(3) of the 1997 Act, the defence of the tenant was struck off, which was affirmed up to this court. Thereafter, as a logical corollary, the proviso to Section 7(4) of the said Act was attracted, since the tenant, even after having obtained the benefit of Section 7(2), again made a default in payment of rent.
5. In the present case, since the defence of the tenant was struck off, it has to be construed that the additional cloak of protection afforded by Section 7 could not be availed of by the tenant. As such, the parent provision under Section 6(1)(b) has to be reverted to. Proceeding on such premise, we find that the ingredients of Section 6(1)(b) are squarely attracted in the present case.

6. Hence, both the courts were justified in passing the decree of eviction on the ground of default in payment of rent.
7. Moreover, it is well-settled that concurrent findings of fact are not interfered with generally by the second appellate court unless an exceptional case has been made out, which we find absent here.
8. Accordingly, SAT 253 of 2023 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. Consequentially, IA No: CAN 1 of 2024 is also dismissed.
9. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Gaurang Kanth, J.)