

21. 18.07.2024
bd. Ct.237

C.O. 1418 of 2020

Sri Bhaskar Lahiri & Anr.

-vs-

Ajay Krishna Kumar

Mr. P.K.Bhowmick ... for the petitioners.

Affidavit of service filed by the petitioners is taken on record. In spite of service opposite party is not represented.

Being aggrieved by the order dated 5th April, 2019 passed in Title Suit No. 111 of 2016 by the Civil Judge, (Junior Division), 2nd Court, Ranaghat, present application has been preferred by the plaintiffs / petitioners under Article 227 of the Constitution of India.

By the impugned order learned Court below allowed the defendant's application under section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 along with application under section 5 of the Limitation Act.

Petitioners submit that from the certified copy of the process server report it appears that the summons was duly served upon the defendant / tenant on 16.10.2016. The order number 3 dated 3.12.2016 passed in Title Suit no. 111 of 2016 also states that defendant filed the said three applications under section 7(1) and 7(2) of the Act of 1997 and under section 5 of the Limitation Act on 3rd December, 2016.

It is contended on behalf of the petitioners that tenant opposite party admitted in his application that there is an arrear of rent at least for 23 months at the rate of Rs. 500/- per month. However, he did not deposit the said arrear amount of rent within one month of service of summons upon him. Accordingly, he prayed for setting aside the order impugned.

I have gone through the order impugned. Plaintiff/opposite party herein filed the suit for eviction claiming that defendant paid rent upto 9th July, 2014 and thereafter he became defaulter. Unchallenged annexure and certified copy of judgment states that summon of suit was served upon defendant on 16th October, 2016 but defendant/tenant filed application under Section 7(1) and 7(2) of the Act of 1997 along with prayer for condonation of delay, on 3rd December, 2016, which is clearly not within one month of service of summon. The application under Section 7(2) clearly admits that defendant is defaulter in payment of rent for 23 months from 10th July, 2014 to 09.8.2014 and 10.10.2016 to 09.11.2016 at the rate of Rs. 500/- per month.

Trial Court while disposing of defendant's aforesaid application held, admittedly there is violation of statutory mandatory provision but since such delay has not resulted due to willful negligence on the part of defendant/tenant/petitioner herein and since allowing such petition will not cause specific injury to the plaintiff/landlord, while rejecting the same would affect defendant, he

allowed defendant's application, though Court below totally dis-believed defendant's contention, in the absence of any cogent document or evidence that defendant has paid any advance amount without bothering for rent receipt.

Such finding of the Court below that in spite of mandatory provision as laid down in Section 7 of the Act and that defendant having no evidence to show that he paid any amount towards advance rent, defendants prayer for condonation of delay in deposit of rent on the ground of unintentional negligence, is not only perverse but also a case of exceeding Court's jurisdiction, violating mandatory provision of law.

In ***Bijoy Kumar Singh Vs. Amit Kumar Chamariya***, reported in **2019 (10) SCC 660** and all other subsequent judgments, law laid down by the Hon'ble Apex Court on this on this context, is settled. It states, if the tenant fails to deposit admitted arrears of rent within one month of receipt of summons it will entail the eviction of the tenant.

The deposit of rent along with an application for determination of dispute, is a precondition to avoid eviction on the ground of non-payment of arrears of rent and the 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. It was further held in the judgment that the provisions of sub-section (2) of section 7 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.

Since in the present case the tenant/opposite party herein has not deposited the admitted arrear amount of rent within one month of service of summons, the court below acted illegally in allowing opposite party's application under section 5 of the Limitation Act, whereby he condoned the delay in filing the application under section 7(1) and 7(2) of the Act of 1997.

In such view of the matter, the order impugned dated 5th April, 2019 passed in Title Suit No. 111 of 2016 is hereby set aside. The defence against delivery of possession is hereby struck out in view of section 7(3) of the West Bengal Premises Tenancy Act, 1997.

C.O. 1418 of 2020 is, thus, allowed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)