03.05.2024
04
Ct. no. 652

C.O. 1526 of 2020

Shree Shree Radha Krishna Jew Thakur and Thakurani, represented by their Shebaits and Joint receivers Sri Arun Kumar Kundu & Sri Ashim Kumar Kundu
Vs.
Sri Nirmalendu Sanyal

Mr. Saurabh Guhathakurata
Ms. Nilanjana Sarkar
Mr. Abhratanu Sarkar

…for the Petitioner

Mr. Abhijit Ray
Mr. Rajib Ray …….For the opposite party

Petitioners herein as plaintiffs filed Ejectment Suit No. 147 of 2018 before the Civil Judge (Junior Division) 1st Court Sealdah against the opposite party herein seeking decree for eviction of the defendant/opposite parties herein from the suit premises, along with other reliefs. The defendant/opposite party appeared in the said suit on 28th September, 2018 and had filed two applications under section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (in short Act of 1997). In his application under section 7(2) of the Act of 1997 the opposite party herein/tenant admitted that the rate of rent is Rs. 135/- per month and that he is a defaulter in payment of rent from January, 1994 to September, 2018. Accordingly defendants/tenant sought to deposit principal arrear amount of rent which is Rs. 40,095/-along with 10% of that amount which is Rs.4,009.50 paisa aggregating to Rs.44,104.50 paisa .

Plaintiff/landlord filed written objection against said application and contended that interest calculated at 10% amounting to Rs.4009.50 paisa is not at all tenable in view of the fact that it should be calculated at 10% per annum and as such for the default of about 25 years, the said interest amount comes to Rs. 1,18,822/- to the principal amount. Plaintiff along with the Application also filed a chart showing calculation of interest from January 1994 to December 2018 amounting Rs. 1,59,322/-.

Learned court below while disposing the Application under section 7(2) of the Act held that the defendant is defaulter from January, 1994 to February, 2019 i.e. for 314 months, at the rate of Rs. 135/- per month which amounts to Rs. 42,390/- and the court below further directed to deposit 10% of that arrear amount of 42, 390/- towards interest i.e. Rs. 4239/- and in aggregate defendant was directed to deposit Rs. 46,629/-(Rs. 42390+4239).

Being aggrieved by that order Mr. Sourav Guhathakurata learned counsel appearing on behalf of the petitioner submits that learned court below failed to appreciate that under the provisions of section 7(1) of the Act of 1997, a tenant has to deposit all arrears of rent together with interest at the rate of 10% per annum and the word *"per annum"* clearly postulates that the interest is payable for each year of default and not for the whole period of default. In the instant suit the default is for 25 years and as such the interest is payable for each year of default but court below erred in holding that the statutory interest for the whole period is to be calculated once on the rent payable Accordingly Mr. Guhathakurata contended that the estimation of the court below for fixing Rs. 4,239/- calculated at the rate of 10% upon defaulted amount for the whole period is absolutely perverse and without any basis whatsoever. He therefore prayed for setting aside the order impugned.

Mr. Abhijit Ray learned counsel appearing on behalf of the opposite party contended that it is settled law that simple interest is payable upon the principal arrear amount @ 10% per annum and the question of imposing compound interest upon the arrear amount of rent is beyond the scope of section 7(1) of the Act. In this context he relied upon judgment passed by a Co-ordinate Bench of this Court in **Mata Prasad Vs. Smt. Sudama Devi** (C.O. 1140 of 2023). Accordingly he argued that court below committed no mistake in calculating the interest amount which is 10% of the total arrear amount and as such the order impugned does not call for any interference by this court invoking jurisdiction under Article 227 of the Constitution of India.

I have considered submissions made by both the parties.

It is not in dispute in the present context that the court below found the tenant/defendant defaulter in payment of rent for a period of 314 months i.e. for the period from January, 1994 till February, 2019 amounting to Rs. 42,390/-. The only point for consideration in the present context is whether court below was justified in calculating interest in terms of the language given in the statute or in other words it would be just to say that according to section 7(1) of the Act of 1997, the interest amount to be deposited by the tenant would be Rs.4239/- which is 10% of the total arrear amount.

Before going to further details let me reproduce section 7(1) of the Act of 1997

> *“**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 that rate.”*

In this context it is also required to quote the provision laid down in the earlier Act in section 17(1) of the West Bengal Premises Tenancy Act 1956, which runs as follows:-

> *“On a suit or proceeding being instituted by the landlord on any of the grounds referred to in section 13, the tenant shall, subject to the provisions of sub-section (2), within one month of the service of the writ of summons on him, or where he appears in the suit or proceeding without the writ of summons being served on him, within one month of his appearance deposit in Court or with the Controller or pay to the landlord an amount calculated at the rate of rent at which it was last paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made together with interest on such amount calculated at the rate of eight and one-third per cent, per annum from the date when any such amount was payable up to the date of deposit, and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate.”(emphasis added)*

In view of above it is quite clear that under the present statute the tenant is required to deposit all arrear rent together with interest at the rate of 10% per annum. Under the old act i.e. under the Act of 1956, the interest was payable at $8\frac{1}{3}$% "per annum from the date when such amount was payable upto the date of deposit", which clearly suggest that interest under the earlier Act was to be calculated on every month rent taking into account the period when it was actually deposited or paid. But the legislature has omitted the words *"from the date when any such amount was payable upto the date of deposit"* in the new Act i.e. in the Act of 1997.

However, it is to be noted that legislature has retained the words *"per annum"* which was also there in the earlier Act, which says "at the rate of $8\frac{1}{3}$% per annum".

Though section 7(1) appears to be not happily drafted but it is obvious when the legislature has retained the words ***"per annum"*** it does not mean *"10% of the total arrear amount of rent". The word "per annum"* literally means *"by the year", "every year", "annually", "yearly."*

When it comes to contract to pay rent within a particular date of the succeeding month, "per annum" ordinarily refers to recurring obligations on those that occur each year throughout an agreement. For example on the basis of any agreement, if interest is charged upon 10% per annum on an outstanding amount, it means, that the person concerned needs to pay an additional 10% amount of every year until the end of the contract.

The rent becomes payable on the basis of contract between the parties either orally or in writing and in the absence of any agreement to the contrary, the rent for particular month becomes payable by the 15th of the following month, when the rent for that month becomes arrear. Since legislature has not used the term *"10% of the total arrear amount of rent"* towards interest, then the logical mode of computation of interest upon the arear amount would be that interest is to be calculated on every month's rent taking into account the period when it was actually deposited or paid. Though the language of the statute in this context is not very clear but when they have retained the term "per annum", the intention of the legislature must not be interpreted that the tenant is obliged to pay only 10% of the total arrear amount of rent and if it is interpreted in such a way that by omitting the words *"from the date when such amount was payable*" Legislature wants to mean tenant is liable to pay only 10% of the total arrear amount, then such interpretation would be clearly prejudicial to the landlord's, interest specially in the case like the present one, where the tenant is admittedly defaulted in payment of rent for more than 26 years.

In such view of the matter the order impugned dated 24th February, 2020 is hereby set aside. Learned court below is directed to compute interest afresh on every month's interest upon the arrear amount equivalent to rent taking into account the period when it was or when it would be actually deposited before the court. Since the error in calculation of interest might have taken place due to unhappy drafting of section 7(1) of the Act of 1997 as discussed above, the non-deposit of aforesaid excess arrear interest, at the time of filing the application under sections 7(1) or 7(2) in the present context may not be treated as fatal, if subsequent deposit is made in substantial compliance with courts order. The court below will make fresh order on the basis of above observation in connection with defendant's application filed under section 7(2) of the Act, preferably within a period of six weeks from the date of the order.

C.O. 1526 of 2020 accordingly disposed of

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)