

IN THE HIGH COURT AT CALCUTTA

Circuit Bench at Jalpaiguri

Civil Revisional Jurisdiction

Appellate Side

C.O.No. 1 of 2024

Mohammed Alim @ Mohammed Alim and Ors.

VS

Jai Prasad Gurung and Anr.

Before : The Hon'ble Justice M.V. Muralidaran

Mr. Partha Pratim Sarkar,

Mr. Sumanta Ghosh,

----- for the petitioner.

Mr. Hassan Bhutia,

Mr. Debejit Kundu,

----- for the respondent.

Hearing concluded on :

9.01.2024

Judgment On :

25.01.2024

M.V. Muralidaran, J.:

Heard learned counsel for the petitioners and the learned
counsel for the respondents.

2. This revision is directed against the order dated 27.9.2023 passed by the learned Civil Judge, Senior Division, Darjeeling in O.C. Eviction Suit No.7 of 2022 thereby dismissing the applications under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 for permission to deposit the rent for the month of January, 2018 as well as the current rents and under Section 5 of the Limitation Act, 1963 praying for condonation of delay and to strike off the defense against the recovery of possession filed by the petitioners.

3. The petitioners are defendants and the respondents are plaintiffs in OC Eviction Case No.7 of 2022.

4. The learned counsel for the petitioners submitted that the Court below dismissed the applications filed by the petitioners on a very pedantic manner being oblivion of the settled position of law that when substantial justice and technicalities are pitted against each other, it is the substantial justice that should prevail over technicalities. The learned counsel would submit that the Court below failed to appreciate the bonafide of the petitioners, inasmuch as they are ready and willing to deposit the rent for the month of

January, 2018 had they been so advised. The petitioners have clearly made out a case of erroneous advice from their engaged counsel in depositing the arrears of rent from the month of February, 2018 instead of January, 2018. In such situation, the Court below ought not to have considered and appreciated the petitioners' bonafide ignoring the mistake committed by their engaged counsel and ought to have granted the relief as prayed for by them.

5. The learned counsel for the petitioners further submitted that the petitioners have been regularly paying the current rents as per law and no laches on the part of the petitioners. Therefore, the petitioners should not have been made to suffer the rigour of the order as in the nature of the impugned order. Further, the Court below failed to appreciate that law does not debar the defendant in an eviction suit to deposit the arrears of rent voluntarily. However, the Court below rejected the petitioners' prayer. In fact, the order under challenge has seriously prejudiced the petitioners. Therefore, the impugned order is liable to be set aside.

6. Per contra, the learned counsel for the respondents submitted that the petitioners are not entitled to get the benefit of Section 5 of the Limitation Act. The respondents in their plaint clearly averred that the defendants have defaulted in payment of rent to the plaintiff on and from January, 2018 but the defendants have made payment since February, 2018. The learned counsel submitted that the defendants have clubbed the rent of November and December, 2022 which they have filed through challan on 1.12.2022 which is not permitted in the eye of law. The learned counsel submitted that considering the factual aspects of the matter coupled with the settled law, the Court below has rightly declined the relief prayed for by the petitioners. No valid grounds are made out to interfere with the said order. Thus, a prayer has been made to dismiss the instant petition. In support, the learned counsel for the respondents relied upon the following decisions/orders:

- (i) Debasish Paul and another v. Amal Boral,
2023 (6) CTC 308.
- (ii) Sukumar Sarkar and others v. Salil
Kumar Chakravarty, 1986(sup) R.C.R.
(Rent) 83.

7. This Court considered the rival submissions and also perused the materials available on record.

8. It is the case of the respondents/plaintiffs that the defendants have defaulted in payment of rent to the plaintiffs on and from January, 2018 and thus, the defendants have deprived the plaintiffs of their rightful money and the defendants have illegally enriched themselves staying free of cost in the suit schedule B property.

9. Pending suit, the petitioners/defendants took out application under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 stating that after receiving the summons the defendants have deposited the arrears of rent from the month of February, 2018 and have also been depositing the current rents within the time stipulated by law. However, owing to wrong and ill-advice given by their counsel, the defendants have failed to deposit the rent of January, 2018. It is further stated that the lapse to deposit the January, 2018 rent is not due to any wilful and deliberate failure on the part of the defendants. Therefore, the defendants intend to deposit all the rents and should not be made to suffer for the default of their counsel. In such circumstances, the

defendants prayed for permission to deposit January, 2018 rent along with the current rent under the beneficial provisions of the West Bengal Premises Tenancy Act, 1997. According to the petitioners/defendants, inadvertently and due of oversight and lapse on the part of the counsel on behalf of the defendants, they were advised to deposit the arrear rents from the month of February, 2018 and not from January, 2018 and such omission is not due to any deliberate default and, therefore, the delay ought to be condoned.

10. The Court below, upon referring to the decisions relied on by both sides and upon consideration of the facts of the case, held as under:

"Accordingly, this court is of opinion that the defence of the defendant may be struck off.

Hence it is

ORDERED

that the defendant has made default in payment of arrears of rent and he has failed to deposit or pay the amount referred to in sub Sec.1 within the time specified therein and the defence against delivery of

possession of the defendant may be struck off. To 08.11.2023 for framing of issue."

11. Section 7 of the West Bengal Premises Tenancy Act, 1997 is relevant and the same is quoted hereunder for ready reference:

"7. When a tenant can get the benefit of protection against eviction. – (1) (a) On a proceeding 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 Controller 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.

(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 proceeding 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 Controller month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

(2) If in any proceeding referred to in sub-section (1), there is any dispute as to the amount of the

rent payable by the tenant, the tenant shall, within the time specified in that sub-section deposit with the Controller the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of the application, the Controller shall, having regard to the rate at which rent was last paid and the period for which default may have been made by the tenant, make, as soon as possible within a period not exceeding one year, an order specifying the amount, if any, due from the tenant and, thereupon, the tenant shall, within one month of the date of such order, pay to the landlord the amount so specified in the order: Provided that having regard to the circumstances of the case, an extension of time may be granted by the Controller only once and the period of such extension shall not exceed two months."

12. From the above provision, it is clear 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 arrears by the tenant to the landlord where there neither exists a dispute qua quantum of rent nor the time

period involved. As per 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. In terms of Clause (c), the tenant thereafter shall pay the landlord or deposit with the Controller month-by-month a sum equivalent to the rent by the 15th of each succeeding month.

13. The default of the petitioners in payment of rent is not in dispute. As per the provision of Section 7(1) of the Act, the tenant has to deposit the rent month by month. The breach of which will bring the case within Section 7(3) of the new Act and Section 17(3) of the old Act. If the tenant fails to deposit or pay any amount referred to in sub-section 1 within the time specified therein, the provision of Section 17(3) of the old Act would be attracted. Section 17 provides a scheme for payment of the amount in respect of which default has been made also for payment month by month. On a perusal of the materials available on record, it is clear that the application, which was filed under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 is not within the window of the statutory period. The only reason stated for the delay is that there

was lack of proper advice from the advocate who appeared on behalf of the petitioners.

14. The allegation of absence of correct legal advice cannot come to the aid of the petitioners. The Hon'ble Supreme Court in the case of *Debasish Paul*, supra, held thus:

"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."

15. In the light of the aforesaid decision of the Hon'ble Supreme Court, the petitioners cannot contend that for the mistake committed by the counsel, the petitioners should not suffer.

16. As rightly held by the Court below, though the petitioners have paid the arrears of rent from February, 2018 to August, 2022 at the rate of Rs.700/- through challan along with 10% interest on 3.9.2022, they had made default in payment for the month of January, 2018, which cannot be condoned by mere filing of application under Section 5 of the Limitation Act.

17. The Limitation Act, 1963 has no application in respect of an application by a tenant filed under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 for determination of arrears of disputed rent. The provision of Section 7 of the West Bengal Premises Tenancy Act, 1997 is mandatory and is required to be scrupulously followed by the tenant if the tenant has to avoid eviction on account of non-payment of arrears of rent.

18. It is settled law that 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 and in view thereof tenant will not be able to take recourse of Section 5 of the Limitation Act.

19. In the instant case, though the petitioners appeared on 26.9.2022, they had filed application only on 30.03.2023 almost after a gap of six months. The Court below after analyzing all these aspects, rightly declined the reliefs prayed for by the petitioners. This Court finds no perversity and/or infirmity in the order of the Court below. That apart, no valid grounds have been made out to interfere with the order of the Court below. There is no merit in the present revision petition and, therefore, the same is liable to be dismissed.

20. In the result, CO No.1 of 2024 is dismissed. There shall be no order as to costs.

(M.V. Muralidaran, J.)