

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Civil Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.O. No. – 41 of 2024

IN THE MATTER OF

Binode Kumar Agarwal@ Panighata wala
Vs.

M/s. S. Serum Analysis Centre Pvt. Ltd.

For the Petitioner : Mr. Amales Ray Adv.,
Mr. Deborsi Dhar Adv.,
Ms. Oshmita Mukherjee Adv.,
Mr. Nigam Mittal Adv

Reserved On : 10.04.2024

Judgment on : 15.05.2024

Subhendu Samanta, J.

1. The instant Revisional Application is preferred against order dated 20.09.2023 passed by the Learned Civil Judge, Junior Division, Siliguri, rejecting the application u/s 5 of Limitation Act filed by the present petitioner/ defendant in O.C (eviction suit) No. 199 of 2022 filed by the present OP/ plaintiff.

2. The brief fact of the case is that the present OP/ Plaintiff instituted a suit for recovery of possession misne profit and other consequential relief before the Learned Civil Judge, concern against the present petitioner/defendant (tenant). The present petitioner receive the summon of the Court on

01.02.2023 wherein the date of appearance was mentioned as 04.02.2023. However, as per resolution of legal bar no steps were taken on that date and the present petitioner appeared before the Learned Civil Judge, concerned on 22.03.2023. Thereafter, on 09.05.2023 the present petitioner filed an application u/s 5 of Limitation Act praying for condonation of delay for filing an application u/s 7(1) (a) of West Bengal Premises Tenancy Act 1997 and an application u/s 7(2) of West Bengal Premises Tenancy Act 1997. The Learned Civil Judge, concern after hearing both sides passed the impugned order rejecting the application u/s- 5 of Limitation Act and consequently rejected the application u/s 7 (1) and Section 7(2) of West Bengal Premises Tenancy Act 1997.

3. Hence this revision.

4. Learned Advocate for the petitioner submits that impugned Order passed by the Learned Civil Judge, concern is illegal in the eye of law. He further submits that the Learned Civil Judge, concern should have allowed the application u/s 5 of Limitation Act and shall also the consequent applications u/s 7(1) and Section 7(2) of the West Bengal Premises Tenancy Act 1997. He further submits that though the Learned Civil Judge, concern as held that the Single Bench of this Court in CO 2575 of 2022 and CO No. 344 of 2022 has adopted the view that Section 5 of Limitation Act is applicable and maintainable

in an application u/s 7(1) and 7 (2) of the Act, but he rejected the application on some flimsy grounds.

5. Learned Advocate for the petitioner has categorically argued the provisions of law in Section- 7(1) and 7(2) of WBPT Act- 1997 has emerged from the earlier West Bengal Premises Tenancy Act 1956 in Section 17(1) and 17(2) of West Bengal Premises Tenancy Act (hereinafter referred as “ Act 1956”). He argued that the said provision of Law was adopted in West Bengal Premises Tenancy Act 1997 under the Provisions of 7(1) (2) of the said Act 1997. He submits that the Division Bench of this court in **Subrata Mukherjee Vs. Bishakha Das** reported in **2011 SCC Online 5003** has adopted the view that the time limit fixed as mentioned in Sub Section 1 and 2 of Section 7 of 1997 Act to pay or deposit with the controller or the Civil Judge, of admitted arrears of rent together with interest, as mentioned in Clause- (b) thereto and consequently, the “time limit mentioned for this purpose as mentioned in Sub Section 2 is not inflexible and which can be extended by the court by virtue of Section 5 of Limitation Act 1963”.

6. He further submits that the Learned Civil Judge, has placed his reliance upon the decision of Hon’ble Apex Court in **Bijay Kumar Singh and Ors. Vs. Amit Kumar Chamaria and Ors** Reported in **(2019) 10 SCC 660**.

He pointed out that, the Hon’ble Apex Court in **Amit Kumar Chamaria (supra)** has followed the decision of the three Judges

Bench of Hon'ble Apex Court passed in **Nasiruddin Vs. Sitaram Agarwal (2003) 2 SCC 557**. He specifically argued that the Hon'ble Division Bench of Hon'ble Apex Court in **Amit kumar Chamaria** does not properly followed the observation in **Nasiruddin** at paragraph 37.

37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

7. He further argued that on careful reading of Section 7(1) and 7(2) as well as 7(3) of the West Bengal Premises Tenancy Act 1997 it would be revealed that Sub-Section 3 of Section 7 mentioned that civil Judge, concern may extend the time as specified in Section 7(1) of the said Act 1997. Finally he argued that the term "Shall" mentioned in Sub- Section 1 (b) of Section 7 need be construed as "may" according to the law laid down by the Hon'ble Apex Court passed in the **MSBP Khemka Private Limited Vs. Birendra Kumar Bhoumik and Anr.**

(1987) 2 SCC 447 and Shibu Chandra Dhar Vs. Pushpita Nath Auddya (2002) 3 SCC 617.

8. Finally, Learned Advocate, for the petitioner submits that the order passed by the Learned Civil Judge concern is liable to be set aside and the application filed u/s 5 of the Limitation Act as well as applications u/s 7(1) and 7(2) of the said Act 1997 need be allowed.

9. Learned Advocate for the plaintiff appearing on behalf of the OP submits that the argument as advanced by the petitioner is perverse. The Law has already been decided by a Special Bench this Hon'ble Court on the relevant point. He argued that in view of divergent decision of the Single Benches of this court the matter was referred to the Larger Bench and the Hon'ble the Chief Justice has constituted a special Division Bench to decide the matter as to whether Section 5 of Limitation Act is applicable in maintains application u/s 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997. The Division Bench of this Court after hearing both the parties has followed the decision of Hon'ble Apex Court passed in **Amit Kumar Chamaria (supra)** as a law enumerated by the Apex Court and it is binding of all Courts within the territory of India. So he submits that the instant CO is liable to be dismissed.

10. Heard the Learned Advocate. Perused the materials on record and also perused the observation of Hon'ble Apex

Court passed in **Amit Kumar Chamaria (supra)** as well as the decision of Apex Court in **Nasiruddin (Supra)**.

11. In considering the argument advanced by the Learned Advocate for the petitioner it appears to me that he challenged the observation of Hon'ble Apex Court passed in **Amit Kumar Chamaria (supra)** in view of the decision of three Judges Bench of Hon'ble Apex Court passed in **Nasiruddin (supra)**. I have gone through the Paragraph 37 as well as 38 of **Nasiruddin (supra)**. Wherein the Hon'ble Apex Court has held that:-

38. Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefore are specified. In Sutherland's Statutory Construction, 3rd Edn., Vol. 3, at p. 107 it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision.

12. By following the view of the Hon'ble Apex Court in **Nasiruddin (supra)** the Division Bench of the Hon'ble Apex Court has laid down the law in **Amit Kumar Chamaria (supra)**. The Special Bench constituted by the Hon'ble the Chief Justice on the self same point has also decided the issue according to the law laid down by the Hon'ble Division Bench

or Supreme Court in **Amit Kumar Chamaria (supra)**. The law, laid down by the Hon'ble Supreme Court is a mandate of the constitution according to the provision of Article 141 of the constitution and it is binding of all the Courts within the territory of India. I have carefully gone through the provision of Section 7(1) (2) and (3) of the West Bengal Premises Tenancy Act 1997. Let them be set out as follows:---

7. 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.

(2) If in any [suit] 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 Civil Judge] 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 Civil Judge] 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 Civil Judge] only once and the period of such extension shall not exceed two months.

(3) If the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, [the Civil Judge] shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the [suit].

13. Sub-section 3 enumerated consequences of failure of a “tenant to deposit or pay any amount referred to in Sub-section 1 of Sub-section 2 within specified time or within such extended time as may be granted” Learned Advocate for the petitioner submits that the Section 3 mentioned the extension of time of Sub-section 1 as well as the Sub-section 2 of the said Act. I find no justification in the submission of the Learned Advocate for the petitioner as provision of extension of time is only provided in Sub-section 2 of Section 7 of the Said Act. Moreover, the Sub-section 1 has no proviso; the (:) mark mentioned just at the end of Sub Section 2 makes it clear that the proviso is only in respect of Sub-section 2. Considering the all aspects I find no justification to entertain the instant C.O.

14. The impugned order passed by the Learned Civil Judge, concern is appears to me justified.

15. The Instant C.O be dismissed as devoid of merit and the same be disposed of.

16. Connected applications, if pending are also disposed of.

17. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)