

D/L- 12
29/04/2025
Ct. No.-6
Aritra

C.O. 701 of 2025
With
CAN 1 of 2025 (Not in file)
Papiya Pradhan
Vs.
M/s. Business Points

Mr. Tanmoy Mukherjee
Mr. Subham Gupta
Mr. Tapan Kumar Mahapatra
Mr. Anup Kumar Singh
Mr. Rajsekhar Bal Bakshi
....for the petitioner

Mr. Siddheswar Chanda
Mr. Sandip Dutta
....for the opposite party

Though this matter is appearing under the heading 'Extension of Interim Order', with the consent of the learned advocates for the respective parties the main civil revision application is taken up for final hearing.

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being No.11 dated January 31, 2025 passed by the learned Judge, 4th Bench, Presidency Small Cause Court, Calcutta in Ejectment Suit No.32 of 2024.

By the order impugned the learned trial judge disposed of the application filed by the petitioner herein under Section 7(2) of the West Bengal Premises Tenancy Act, 1997, thereby holding the petitioner to be defaulters in payment of rent for the month of January, 2012 to

December, 2024 and directed the petitioner to deposit the arrears of rent for 156 months at the rate of rent fixed by the learned trial judge.

Mr. Mukherjee, learned advocate appearing for the petitioner submits that in the plaint, the opposite party herein has claimed that the monthly rent of the suit premises is Rs.250/- payable according to English calendar month. He submits that the petitioner herein in the application under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 as well as Section 7(2) of the West Bengal Premises Tenancy Act, 1997 have specifically stated that the rate of rent last paid is Rs.217/- per month. Mr. Mukherjee further submits that the petitioner filed the application under Section 7(1) of the 1997 Act praying for permission to deposit the arrear rent for the period from January, 2012 to February, 2024 at the rate of Rs.217/- per month. Mr. Mukherjee draws the attention of the Court to a rent receipt which is annexed at page 36 of the civil revision application in support of his contention that the rent last paid was at the rate of Rs.217/- per month. He further submits that the learned trial judge without taking into consideration the aforesaid materials arrived at a finding that the rate of rent is Rs.389/- per month.

Mr. Chanda, learned advocate appearing for the opposite party submits that the learned trial judge after considering the materials on record rightly held that the

petitioners were defaulters in payment of rent. He further submits that the rate of rent was correctly assessed by the learned trial judge.

After going through the order impugned, this Court finds that the learned trial judge did not take into consideration the rent receipt which was produced by the petitioner before the learned trial judge.

Section 7(2) of the of the West Bengal Premises Tenancy Act, 1997 states that if in any suit referred to in sub-section (1) of Section 7 there is any dispute as to the amount of 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. Section 7(2) further states that on receipt of the application the civil judge shall having regard to the rate at which the 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, pass an order specifying the amount if any, due from the tenant and thereupon the tenant shall, within one month from the date of such order, pay to the landlord the amount so specified in the said order.

Upon a reading of the provisions laid down in Section 7(2) of the West Bengal Premises Tenancy Act, 1997 this Court finds that while passing an order under

Section 7(2) of the 1997 Act the learned trial judge ought to have taken into consideration the rate at which the rent was last paid. Thus the rent receipt produced by the petitioner in support of their contention that the rate of rent last paid was Rs.217/- ought to have been considered by the learned trial judge which has not been done.

The impugned order was passed by not considering the relevant material. This Court accordingly holds that the impugned order suffers from perversity and the same is liable to be set aside in exercise of powers under Article 227 of the Constitution of India. This Court further finds that the learned civil judge directed the petitioner to deposit the arrear amount by taking into consideration the rate of rent which has been fixed by the Court without considering the rent receipt produced by the petitioner. For such reason, this Court is inclined to interfere with the order impugned.

Mr. Chanda would submit that in the written objection to the application under Section 7(2) of the 1997 Act, the opposite party has specifically raised the point that the petitioners are liable to pay proportionate share of corporation taxes as well as commercial surcharge. This Court refrains from making any observation in that regard at this stage.

For the reasons as aforesaid the impugned order is set aside. The learned trial judge is directed to consider

the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 afresh after taking into consideration the written objection filed by the opposite parties herein. The learned trial judge is requested to dispose of such application as expeditiously as possible without granting any unnecessary adjournments to either of the parties and by passing a reasoned order.

Accordingly, CO 701 of 2025 stands allowed and connected application being CAN 1 of 2025 stands disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)