

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O.764 of 2022

Pradip Shaw

VS.

Srimati Namita Garai & Ors.

For the petitioner :Mr. Sanjib Kr. Mukhopadhyay, Adv.

For the Opposite Party :Mr. Uttiya Ray, Adv.
no.1 to 3 Mr. Anirban Ghosh

Last Heard On :18.03.2025

Judgement On : 21.03.2025

Bibhas Ranjan De, J. :

1. The petitioner herein has assailed the order dated 14.02.2022 passed by the Ld. Judge, Bench No. II, Presidency Small Causes Court, Calcutta in connection with Ejectment Case No. 291 of 2009 wherein Ld. Judge rejected the application preferred by the defendant/ petitioner herein thereby declining to grant any

permission to deposit the due monthly rent from August 2021 to December 2021.

2. The contentious issue involved in this application finds its genesis from a suit for ejectment and recovery of khas possession and mesne profit directed against the predecessor in-interest of the proforma opposite party nos. 4 to 8 herein in the Court of Ld. Chief Judge, Presidency Small Causes Court, Calcutta which was registered as Ejectment Suit No. 291 of 2009. During the pendency of such suit, the petitioner filed an application under Section 151 of the Code of Civil procedure (hereinafter referred to as CPC) on 18.12.2021 with a prayer for allowing him to deposit the rent on and from August 2021 to till December 2021 after condoning the delay. But, the Ld. Trial Judge vide the impugned order dismissed such prayer of the petitioner thereby rejecting the application under Section 151 of the CPC. Hence the instant revision.

At the Bar:-

3. Ld. Counsel, Mr. Sanjib Kr. Mukhopadhyay, appearing on behalf of the petitioners has mainly canvassed his argument on the specific observation of the Hon'ble Apex Court recorded in the case of ***Suo Motu Writ Petition (C) No. 3 of 2020*** wherein

specific relaxation was given for the period from 15.03.2020-28.02.2022 for the purpose of computation of limitation while taking into consideration the impact of surge of COVID pandemic throughout the country. Mr. Mukhopadhyay with the assistance of the aforesaid observation has tried to make this court understand that Ld. Trial Judge acted contrary to the spirit of the order dated 10.01.2022 passed by the Hon'ble Apex Court. Therefore, the impugned order is liable to be set aside.

4. Per Contra, Ld. Counsel, Mr. Uttiya Ray, appearing on behalf of the opposite party no. 1 to 3 has submitted that Ld. Trial Judge rightly exercised his jurisdiction while passing the impugned order as it is settled proposition of law that tenant cannot take recourse to Section 5 of the Limitation Act if he fails to deposit admitted arrears of rent timely.

5. In support of his contention, Mr. Ray has taken assistance of the following cases:-

- ***Bijay Kumar Singh and others vs. Amit Kumar Chamariya and another reported in (2019) 10 Supreme Court Cases 660***
- ***Suo Motu Writ Petition (C) No. 3 of 2020***

- **Sri Om Prakash Agarwal & Anr. vs. Sri Bijay Singh Dugar & Ors. in C.O. 3360 of 2019**

Analysis:-

6. Before embarking on the issue involved in this revision application it would be prudent to reproduce the provision of Section 7(2) of the West Bengal Premises Tenancy Act, 1997:-

“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 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 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."

7. Ld. Counsel for the defendant/petitioner herein has contended that on account of COVID pandemic defendant could not deposit the rent for the period from August 2021 to December 2021. It is submitted that Clerk of the Ld. Counsel was entrusted with the responsibility of depositing the rent for that particular period on behalf of the defendant but he could not attend court due to COVID pandemic for the aforesaid period which was also excluded from the period of limitation by the Hon'ble Apex Court in connection with **Suo Motu Writ**

Petition (C) No. 3 of 2020. That's why one application under Section 151 of CPC was filed on 18.12.2021 with a prayer for permitting the defendants /petitioners herein to deposit the rent for the aforesaid period (August 2021 to December 2021).

8. Even if this contention of the petitioner that due to pandemic as well as physical ailment of the concerned clerk the due rent could not be deposited, is considered to be gospel truth still a perusal of the available records would indicate that on 16.11.2021 and 18.12.2021 the defense witness was cross examined and during such cross examination the defendant/petitioner herein did not file any application with a prayer for deposit of arrear rent. In the present factual matrix, I would also like to add that the defendant/petitioner cannot shift his onus of complying with the order of Ld. Trial Court because as a litigant he should have been more vigilant in keeping a track of timely deposition of arrear rent in order to avail the protection envisaged in Section 7 of the West Bengal Premises Tenancy Act.

9. Now coming to the specific contention of the petitioner regarding the time frame of pandemic, an attempt has been made to take assistance of COVID pandemic in order to justify

the non-payment of arrear rent. But, a specific scrutiny of the judgment of the Hon'ble Apex Court in this regard would suggest that there was a specific indication of a particular set of events in which computation of period of limitation would be relaxed. Those specific set of events as described in the order of the Hon'ble Apex Court are to the effect that:-

“ IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

10. Therefore, it cannot be said that the Hon'ble Apex Court specifically mentioned about relaxation in computation of limitation with regard to deposition of arrear rent in the specified time period of COVID pandemic.

11. Alternatively, the proviso to Section 7 (2) of the West Bengal Premises Tenancy Act would clarify that the Ld. Judge can indeed extend time for payment of arrear rent by using his

discretionary power in given set of circumstances but such power can only be used once and that too for two months only.

12. Now coming to the case at hand, Ld. Trial Judge rightly refused the application preferred under Section 151 of CPC as the time frame of due amount exceeded two months.

13. Moreover, overall evaluation of Section 7 of the West Bengal Premises Tenancy Act outlines a complete mechanism for avoiding eviction on the grounds of arrear of rent and in case of non-payment of arrears rent, the tenant cannot take recourse to Section 5 of the Limitation Act.

14. Therefore, I find hardly any scope to interfere with the observation of the Ld. Trial Judge while exercising jurisdiction under Article 227 of the Constitution of the India as the impugned order suffers from no infirmity, irregularity or perversity.

15. In the aforesaid view of the matter, the instant revision application being no. C.O 764 of 2022 stands dismissed.

16. Interim Order, if there be any, stands vacated.

17. Connected applications, if there be, also stand disposed of accordingly.

- 18.** Parties to act on the server copy of this order duly downloaded from the official website of this Court.
- 19.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]