

D/L- 18
19/05/2025
Ct. No.-6
Aritra

C.O. 1742 of 2025

**Honorary Secretary Town School & Anr.
Vs.
Sri Nilanjan Basu & Ors.**

Mr. Sanjoy Mukherjee
Mr. Souvick Mitra
Ms. Shetparna Ray

....for the petitioner

Mr. Tanmoy Mukherjee
Mr. Diptyendu Kr. Pal

....for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the defendants challenging several orders passed by the learned Judge, 2nd Bench, Presidency Small Cause Court at Calcutta in Ejectment Suit No.404 of 2022.

Mr. Sanjoy Mukherjee, learned advocate appearing for the petitioner submits that he has instruction to press the civil revision application insofar as it is directed only against the order No.10 dated October 4, 2023 passed in Ejectment Suit No.404 of 2022. Since the petitioner is not pressing the challenge against other orders, the civil revision application insofar as the challenge to the other orders excepting the order No.10 dated October 4, 2023 stands dismissed as not pressed.

The opposite party herein filed a suit for eviction under Section 6(1) of the West Bengal Premises Tenancy Act, 1997 on the ground of default in payment of rent.

The petitioner entered appearance in the said suit and filed two applications one under Section 7(1) of the 1997 Act and the other under Section 7(2) of the said Act. The application under Section 7(2) of the said Act stood rejected by the order dated October 4, 2023.

Mr. Sanjoy Mukherjee, learned advocate appearing for the petitioner submits that the petitioner has challenged the landlord tenant relationship between the parties and have also raised a dispute as to the rate at which the rent was last paid as well as the period of default. He submits that the learned trial judge without adjudicating the aforesaid disputes mechanically rejected the application under Section 7(2) of the 1997 Act.

Mr. Tanmoy Mukherjee, learned advocate appearing for the opposite parties submits that the civil revision application insofar as the challenge against the order dated October 4, 2023 is concerned is at a highly belated stage and no explanation for such delay has been given in the body of the application under Article 227 of the Constitution of India. He further submits that the tenant/petitioner was given liberty to deposit current rent month by month commencing from the month of February, 2023 within the time limits stipulated in the order dated March 23, 2023 and in spite of such liberty being granted, the petitioner did not comply with such order. He further submits that

subsequently the petitioner filed an application under Section 151 of the Code of Civil Procedure praying for extension of time to deposit the entire arrears of rent. Mr. Mukherjee, further submits that no dispute as to the landlord-tenant relationship was raised by the tenant/petitioner in the application under Section 7(2) of the 1997 Act.

Heard the learned advocates for the parties and perused the materials placed.

There is substance in the argument of Mr. Tanmoy Mukherjee that the delay in filing the application under Article 227 of the Constitution of India has not been explained. Though there is no specified period of limitation for filing an application under Article 227 of the Constitution of India but it is well-settled that the same has to be filed within a reasonable time and it is also well-settled that the same has to be filed within the time prescribed for filing an application under Section 115 of the Code of Civil Procedure. However, an application under Article 227 of the Constitution of India can also be entertained if the same is filed after such time limit has been sufficiently explained the delay. Though no explanation has been given in the said application but, considering the fact that the petitioner has raised a legal issue in this civil revision application and the learned advocates for the respective parties have advanced arguments on the merits of the civil revision

application, this Court is inclined to exercise discretion in favour of the petitioner and to entertain the civil revision application and to decide the same on merits.

It appears from the plaint which is annexed to the civil revision application that the plaintiff/opposite party has claimed that the rate at which the rent was last paid is Rs.365.25/- per month and the petitioner defaulted in payment of rent since October, 2015. In the application under Section 7(2) of the 1997 Act, it is the specific case of the defendant/petitioner herein that the actual rent is Rs.356.25/- per month and not Rs.365.25/- as alleged by the plaintiff/opposite party in the plaint of the said suit. It further appears from the application under Section 7(2) of the 1997 Act that the opposite party has admitted that the rent receipt was issued by the landlord/opposite party herein lastly for the month of October, 2017.

After going through the application under Section 7(2) of the 1997 Act, this Court is of the considered view that no dispute as to the landlord-tenant relationship between the parties was raised in the application under Section 7(2) of the 1997 Act as rightly argued by Mr. Tanmoy Mukherjee. The only dispute raised is with regard to the rate at which the rent was last paid and the period of default. Thus the dispute as to the rate at which the rent was last paid and the period of default was only required to be adjudicated on an application

under Section 7(2) of the 1997 Act provided the tenant/petitioner complied with the requirements laid down under Section 7(2) of the 1997 Act.

Section 7(2) of the 1997 Act states that if in any suit referred to in sub-section (1), 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. It further states that no deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. The question of adjudication of the dispute as to the rent payable shall arise only if the tenant deposits with the civil judge the amount admitted by him to be due from him together with an application for determination of the rent payable.

It is not the case of the tenant/petitioner in the application under Section 7(2) that he has deposited the rent on and from the month of November, 2017 till January, 2023 either before the Rent Controller or before the learned Civil Judge along with the application under Section 7(2) of the 1997 Act. From the averments made in the said application it is evident that rent was last paid till the month of October, 2017. Thus there is non-compliance of the provisions laid down under Section 7(2) of the 1997 Act.

To the mind of this Court, the learned Civil Judge was not required to decide on the dispute raised in the application under Section 7(2) of the 1997 Act. This Court finds that the ultimate conclusion arrived at by the learned Civil Judge in the order dated October 4, 2023 does not call for any interference by this Court.

For such reason, this Court is not inclined to interfere with the order dated October 4, 2023.

Accordingly, CO 1742 of 2025 stands dismissed.

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.)