

21st May,
2025
(AK)
09

S.A. 67 of 2024
IA No: CAN 1 of 2024

Ludhiana Calcutta Roadways
Vs.
Sri Bimal Kumar Bazaz

Mr. Krishna Das Poddar
Ms. Mandira Barman
Mr. Surajit Maity

...for the appellant.

Mr. Rupak Ghosh
Mr. Ayan Dutta
Mr. Pradip Kr. Sarawagi

...for the respondent.

1. The present second appeal has been preferred against a judgment of affirmance in a suit for eviction of a premises tenant under the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'the 1997 Act').
2. Learned counsel for the appellant submits that the suit was decreed by the trial court and was affirmed by the appellate court, on the ground of second default within the contemplation of the proviso to Section 7(4) of the 1997 Act.
3. Learned counsel for the appellant submits that the previous suit, where allegedly a similar relief had been obtained by the tenant/appellant, was filed by way of a suit for eviction of a trespasser.

4. As such, it cannot be said that the relief which was granted to the present defendant/appellant in the previous suit was under Section 7(1) or 7(2) of the 1997 Act.
5. It is argued that the mere fact that the learned trial Judge, in the earlier suit, upon hearing the parties, held that the present appellant was a tenant and granted relief to the appellant does not mean that the suit, as framed, which was one for eviction of trespasser, was automatically converted to a suit under Section 6 of the 1997 Act.
6. It is further argued that the appellant, subsequently, on repeated occasions, attempted to tender rent to the respondent/landlord but the respondent having refused the same, the appellant was constrained to deposit the same in accordance with law before the appropriate authorities.
7. Upon a careful perusal of a photocopy of the certified copy of the judgment passed in the previous suit being Ejectment Suit No.7 of 2015, we find that, contrary to the contention of learned counsel for the appellant, the very first sentence of the narrative part of the said judgment records the case of the plaintiff, where it is clearly stated that the plaintiff claimed to be the owner of the suit property and further that the plaintiff claimed that

the defendant, that is, the present appellant, was a monthly tenant in respect of the suit property.

8. Thus, the very conspectus of the previous suit was one under Section 6 of the 1997 Act.
9. Subsequently, the plaintiff alleged in the previous suit that the defendant was a defaulter in payment of rent and had been illegally occupying the suit property thereafter.
10. Proceeding on such premise, an issue was framed in the suit as to whether the suit was maintainable in its present form.
11. However, we do not find from the issues formulated in the earlier suit that any issue was framed as to whether the defendant/present appellant was a tenant or a trespasser.
12. Rather, the issues framed in the earlier suit were on the grounds stipulated in Section 6 of the 1997 Act, pertaining to whether the plaintiff required the suit premises for his own use and occupation, whether the plaintiff in the previous suit had any other suitable alternative accommodation, whether the defendant was a defaulter in payment of rent or guilty of causing nuisance, annoyance and damage to the suit property, as well as whether the notice served on the defendant was legal and valid.
13. Hence, the entire narrative in the earlier suit as well as the issues framed therein go on to show

that the suit was not one for eviction of trespasser but squarely a suit for eviction of a premises tenant under Section 6 of the 1997 Act.

14. In its decision portion, the learned trial court on the earlier occasion had mentioned in a stray sentence that the bone of contention of the suit was whether the defendant was a premises tenant under the plaintiff or trespasser over the suit property or not.
15. However, the said “bone of contention” was a non-issue in the suit as reflected from the issues framed in the said suit themselves.
16. Furthermore, we find from the concluding portion of the judgment of the previous suit that the provisions of Section 7(4) of the 1997 Act was quoted and it was observed that the defendant had deposited rent, complying an order under Section 7(1) and 7(2) of the 1997 Act, and therefore the defendant would not be evicted from the suit premises as per Section 7(4) of the 1997 Act.
17. Thus, the defendant/appellant, in the second and current suit, is squarely covered by the proviso to Section 7(4) of the 1997 Act which stipulates that the tenant shall not be entitled to any relief under sub-Section (4) of Section 7 if, “having obtained such relief once in respect of the premises”, again makes a default in payment of rent for four months within a period of twelve months or for three

successive rental periods where rent is not payable monthly.

18. Thus, the appellant comes within the ambit of the said proviso and the learned courts below rightly decreed the instant suit on the ground of second default against the defendant/appellant.
19. As such, there was no error of law or fact committed by the courts below, let alone any error touching any substantial question of law.
20. Hence, S.A. 67 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. Consequentially, CAN 1 of 2024 is also dismissed.
21. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)