

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 2056 of 2022

Payare Lal Das
Vs.
Shahnaz Akhter & Ors.

Mr. Abhijit Ray
Mr. Santu Nandy
Mr. Md. Ayaan
... For the petitioner

1. None appears on behalf of the opposite parties on call.
2. The revisional application is taken up for hearing in presence of the learned counsel appearing on behalf of the petitioner.
3. I have heard the learned counsel appearing on behalf of the petitioner.
4. The instant revisional application has been filed by assailing the order dated 19th May, 2022 passed in connection with Ejectment Suit No.23497 of 2012 wherein the learned Civil Judge (Junior Division), 5th Court, Alipore, South 24-Parganas, allowed an application under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 (in short, '1997 Act') dated 15th March, 2017 and defence against delivery of possession of the defendants was struck off particularly

on the ground of non-compliance of direction passed in the order under Section 7(2) of the 1997 Act.

5. Learned counsel appearing on behalf of the petitioner has contended before this Court that at the time of disposal of the application under Section 7(2) of the 1997 Act, the defendant no.1/petitioner herein was held defaulter in payment of rent for the period of 43 months i.e., **from April 2009 to October, 2012** and the defendant no.1/petitioner herein was directed to pay all arrears amount adjudicated under Section 7(2) of the 1997 Act by 16th August, 2018.

6. Due to non-compliance of the order passed under Section 7(2) of the 1997 Act, the learned Court passed the impugned order by striking out the defence. From the order dated 16th July, 2018 passed by the learned Court in disposing of the application under Section 7(2) of the 1997 Act, it is found that at the time of hearing of the application, defendant no.1/petitioner herein filed rent control challans from April 2012 to October, 2012, that is the period for which defendant no.1/petitioner herein was directed to pay within 16th August, 2018.

7. From the impugned order, it is found that though the learned Judge took cognizance of the rent control challans for the period from April 2012 to October, 2012 but for the reasons best known to him, he ultimately held the defendant no.1/petitioner herein as a defaulter for

the same period i.e., from April 2012 to October, 2012. For that reason only, I find no other option but to come to a conclusion that the learned Judge did not exercise the power under Section 7(3) of the 1997 Act properly though he found that the defendant no.1 already filed rent control challans for the period for which he was held defaulter under Section 7(2) of the 1997 Act.

8. From that point of view, though the order passed under Section 7(2) of the 1997 Act was not challenged by the defendant no.1/petitioner herein, the order passed under Section 7(3) of the 1997 Act cannot be held to be passed in terms of the provision prescribed therefor. The learned Judge should be more circumspect at the time of considering an application under Section 7(3) of the 1997 Act which actually balks at the right to defence of a tenant.

9. Here, in this case, it is apparently clear that the learned Judge, in spite of having challans on record, passed an order directing the defendant no.1/petitioner herein to deposit the amounts for the same period under Section 7(2) of the 1997 Act.

10. In the aforesaid view of the matter, I find it justified to exercise the jurisdiction under Article 227 of the Constitution of India as I find sheer infirmity in the order passed on 19th May, 2022 whereby defence was struck out.

11. As a sequel, the order dated 19th May, 2022 passed in connection with Ejectment Suit No.23497 of 2012 stands set aside.

12. Accordingly, the revisional application stands disposed of with a direction upon the learned Judge to proceed with the suit and dispose of the same as expeditiously as possible.

13. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

14. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)