

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 3162 of 2022
Smt. Sova Shaw & Ors.
VS.
Partha Santra

For the petitioners :Mr. Kushal Chatterjee, Adv.
Mr. Debrup Choudhury, Adv.

For the Opposite Party :Mr. Tanmoy Mukherjee, Adv.
Mr. Diptyendu Kumar Pal, Adv.

Last Heard On :12.12.2024,

Judgement On :22.01.2025

Bibhas Ranjan De, J. :

1. Challenge is the order dated 24.08.2022 passed in connection with Ejectment Suit No. 13 of 2020 whereby Ld. Civil Judge, Junior Division, Bidhannagar allowed an application under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 (for

short Act of 1997) after determining the relationship of landlord and tenant, decided quantum of admitted rent and arrears rent to the tune of Rs. 36,960/- for the period since January, 2011 to December, 2019 and January, 2020 to December, 2020.

2. Plaintiff/petitioner herein filed a suit under Section 6 of the Act of 1997 for eviction and recovery of Khas possession. Defendant/opposite party herein entered appearance in the suit by filing written statement. Thereafter, defendant/opposite party herein filed application under Section 7 (1) & 7(2) of the Act of 1997 with a prayer to determine the dispute of arrears of rent.
3. Ld. Trial Judge recorded the impugned order.
4. Only issue before this Court is whether Ld. Trial Judge committed any error in finding the arrears rent admitted by the defendant in terms of Section 7 (1) of the Act of 1997.

At the Bar:-

5. Ld. Counsel, Mr. Kushal Chatterjee, appearing on behalf of the petitioners has mainly canvassed his argument on the ground that the defendant/opposite party herein did not deposit the admitted arrears rent in terms of Section 7 (1) of the Act of 1997. In support of his argument he has drawn the attention of this

Court to the relevant paragraphs of written statement, petition under Section 7 (1) & 7(2) of the Act of 1997.

6. In support of his contention, Mr. Chatterjee has relied on a case of ***Bijay Kumar Singh and others vs. Amit Kumar Chamariya and another*** reported in ***(2019) 10 Supreme Court Cases 660***

7. In opposition to that, Ld. Counsel, Mr. Tanmoy Mukherjee appearing on behalf of the defendant/opposite party has countered by submitting inter alia that nowhere in the pleadings or petitions under Section 7 (1) & 7(2) of the Act of 1997 Defendant/opposite party admitted the arrears rent. Mr. Mukherjee has tried to make this Court understand more particularly that there is no unequivocal or unconditional admission by the defendant/opposite party herein.

8. In support of his contention, Mr. Mukherjee has relied on a case of ***Gurmeet Singh Sidana vs. Ameek Singh Sawhney*** reported in ***2023 SCC OnLine Del 6230***

Analysis:-

9. Before going into further discussion with respect to the intricacies of the case at hand, I think it would be profitable to

first reproduce the provision of Section 7 of the Act of 1997 which runs as follows:-

“ 7. When a tenant can get the benefit of protection against eviction.- (1)(a) *On a [suit] 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 Civil Judge] 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 [suit] 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 Civil Judge] month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

(2) If in any [suit] 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 Civil Judge] 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 Civil Judge] 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 Civil Judge] only once and the period of such extension shall not exceed two months.

(3) If the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, [the Civil Judge] shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the [suit].

(4) If the tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant, shall be made by [the Civil Judge], but he may allow such cost as he may deem fit to the landlord:

Provided that the tenant shall not be entitled to any relief under this sub-section if, having obtained such relief once in respect of the premises, he again makes 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.”

10. Only issue involved in this revision application is whether pleadings on behalf of the opposite party/defendant discloses the admitted arrears of rent.

11. In this regard, Ld. Counsel, Mr. Chatterjee firstly has drawn my attention to paragraph 6 of the plaint which states that:-

“ That the Defendant is a habitual defaulter in the matter of payment of rent since the month of January, 2011 uptill this date and as the Defendant failed to deliver the peaceful vacant possession of the undermentioned “B” Scheduled Property to the Plaintiffs so, the Defendant has committed the default in the matter of payment of rent for more than three months within a period of twelve months as such the Defendant has lost his protection against eviction as per provision laid down in Section 6(1)(b) of the W.B.P.T Act, 1997 (as amended upto date).”

12. Mr. Chatterjee next has referred to paragraph 12 of the written statement which runs below:-

“12. That the content of paragraph no.6 of the plaint is strictly denied by this defendant and the plaintiff is put to strict legal proof thereof. This defendant submits that he paid rent up to the month of November 2008 on issuance of rent bills to the Plaintiff no.1 and there after this defendant has paid rent up to the month of March 2020 but the plaintiff no.1 did not issued any rent bill on

pretext of non availability of printed rent bills. The plaintiff no.1 assured the defendant to issue the said rent bills very shortly and not to be worried of. The defendant considering the acquaintance and good relation did not press hard for the bills and has relied upon the said assurance. That there after due to Pandemic and lockdown declare by the Government from March 2020, this defendant cannot tender rent up to the month of July 2020 and after that as and when this defendant approached to the plaintiff no.1 for payment of entire outstanding rent on the August 2020, the plaintiff no. 1 refused to accept the rent and also refused to issue outstanding rent bills from December 2008 to March 2020.

Be it mention here that this defendant instituted a Title Suit being T.S.no. 236 of 2020 for declaration and permanent and mandatory injunction against the plaintiff no. 1 wherein this defendant prayed for a decree of mandatory injunction directing this plaintiff no. 1 to issue rent receipt/bill for the month of December 2008 to March 2020 along with other prayer which is pending before this Ld. Court for disposal.”

- 13.** Mr. Chatterjee has further referred to paragraph 3 of the application under Section 7(1) of the Act of 1997 and paragraph 3 of Section 7(2) of the Act of 1997. Thereby, Mr. Chattejee has tried to make this Court understand that the defendant/opposite party herein admitted the arrears rent but did not comply with the provision of Section 7(1)(b) by

depositing the same within one month from the date of receipt of the service of summons. From that point of view, according to Mr. Chatterjee, the defendant/opposite party herein lost the protection against eviction and in consequence his defence against delivery of possession should be struck out.

14. To avail protection against eviction in terms of Section 7 of the Act of 1997 tenant has to deposit the arrears rent admitted to be due along with an application for determination of rent payable under Section 7(2) of the Act of 1997. If the aforesaid conditions are satisfied then the Court may pass an order specifying the amount due under Section 7(2) of the Act of 1997. Mr. Chatterjee has relied on ratio of ***Bijay Kumar Singh*** (supra) where the issue of ‘admitted arrears rent’ was not dealt with.

15. On the other hand, Mr. Mukherjee has submitted that no clear and unambiguous admission is found either from the pleadings of the suit or from the applications under Section 7(1) & 7(2) of the Act of 1997. He supported his contention

by relying on paragraph 133 of **Gurmeet Singh Sidana** (supra) which runs as follows:-

“133. This Court is inclined with the view taken by the learned Trial Court whereby, it held that there is an absence of clear and categorical admissions on the part of the respondent and the same cannot be taken to be the basis of passing a judgment in favour of the present petitioner. Admission has to be unambiguous, clear and unconditional and the law would not permit admission by inference as it is a matter of fact. Admission of a fact has to be clear from the pleadings or the documents on the record itself and cannot be left to the determination by the Court by way of an interpretation of any pleading or document on record.”

16. Coming back to the case at hand, I find that plaintiff disclosed the outstanding due since January 2011. Whereas, written statement shows the outstanding period since April 2020 to July 2020. From the application under Section 7(1) of the Act of 1997 it appears that outstanding period starts from April 2020 to December 2020. In the application under Section 7(2) of the Act of 1997 it is averred that defendant paid rent upto March 2020 and at the same time denied the period of default from January 2011 till date.

17. It is now settled that an admission must be clear and unambiguous in order that such an admission should

relieve the opponent of the burden of proof of the fact said to have been admitted.

18. Admission of fact, in my opinion, is to eliminate possibility of any other view. Not only that, in a suit for eviction of a tenant on the ground of default in payment of rent, non-compliance of provision of Section 7(1) (b) of the Act of 1997 by not depositing arrear rent on such admission ultimately balks at the right of defence. Therefore, in order to qualify such admission as valid, it should be absolute, categorical and explicit in nature leaving no scope for interpretation or determination by the Court.

19. What I have discussed in paragraph 16 clearly spells out a dispute regarding period of arrears rent. Nowhere in the written statement or applications under the Act of 1997, I find any clear and unambiguous admission by the defendant/opposite party herein regarding period of arrears rent to be deposited in compliance with the provision of Section 7(1) (b) of the Act of 1997.

20. Conglomeration of the discussions made hereinabove leads to this Court not to interfere with the order impugned

whereby the dispute regarding period of arrears rent was resolved.

- 21.** In the aforesaid view of the matter, Civil revision application being no. C.O. 3162 of 2022, stands dismissed.
- 22.** Interim Order, if there be any, stands vacated.
- 23.** Connected applications, if there be, also stand disposed of accordingly.
- 24.** Parties to act on the server copy of this order duly downloaded from the official website of this Court.
- 25.** 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.]