

14.02.2025
7
Ct. no. 237

**CO 3758 of 2024
CAN 1 of 2025**

**Sri Ashis Chandra Das.
Vs.
Sri Krishna Kumar Bhagat & Anr**

Mr. Partha Chakraborty
...for the Petitioners

Mr. Dyutiman Banerjee
Mr. Sourat Nandy
Mr. Akash Lal
...for the Opposite Parties

The defendant petitioner in the present application has contended that the opposite parties herein as plaintiffs filed T.S. No. 56 of 2013 for eviction of the defendant/tenant/petitioner herein. Petitioner further contended that just after receiving the summon four days before he appeared in the suit on 05.06.2023, he filed an application under section 7(1) of West Bengal Premises Tenancy Act, 1997 (in short Act of 1997) on 27.06.2023, praying for permission to deposit the admitted arrear of rent from September, 2022 up to the month of May 2023 and also for permission to deposit regular rent within 15th of every succeeding month and there was no requirement to file

application under section 7(2) of the Act of 1997 as there was no dispute regarding relationship or rate of rent or arrear amount of rent.

Learned Court below by its order dated 27th June, 2023 permitted the petitioner/defendant to deposit the said arrear amount of rent along with monthly rent and consequently petitioner's said application under section 7(1) of the Act of 1997 was allowed.

Petitioners further case is after passing the aforesaid order, defendant duly deposited the rent with the ld. Court below from July 2023 up to date and the said order dated 27.06.2023 is still in force and the opposite party herein/plaintiff filed no written objection at the time of allowing the said application under section 7(1) of the Act of 1997.

Thereafter suddenly on 20.07.2023 the opposite party/plaintiff raised objection against the legality of the payment of rent, though he did not file any application for recalling the said order dated 27.06.2023, nor has ever challenged the said order before higher forum and therefore, petitioners submit that said order is still in force. On 10th September, 2024 the opposite party /plaintiff filed an application under section 7(3) of the Act of 1997 for striking out the defence of petitioner/defendant

and the learned Trial Court without giving an opportunity to the defendants/petitioner to file an objection, has been pleased to allow the said petition.

Being aggrieved by the impugned order the petitioner contended that the ld. Trial court mentioned in the impugned order that defendant had received the summons on 16.05.2023 and appeared in the suit on 05.06.2023 and in the order dated 27.06.2023, it has been specifically mentioned by the court below that the petitioner defendant appeared in the suit on 05.06.2023 and filed the application under section 7(1) within the statutory period. He further submitted that the impugned order dated 10.09.2024 has been passed completely overlooking the said previous order of the same court and the ld. Court below has erred in computing the time limit of appearance of the tenant/petitioner before the court below and as well as the filing the application under section 7(1) of the Act of 1997. Accordingly the petitioner submits that the order impugned is not sustainable in the eye of law.

Mr. Banerjee learned Counsel appearing on behalf of the opposite parties/plaintiffs submits that the petitioner/tenant failed to comply the

mandatory provision laid down in section 7(1) of the Act of 1997 and as such he is not entitled to get protection and for which the court below was justified in allowing plaintiffs prayer for striking out defence of the defendant against delivery of possession.

Having heard the submissions made by both the parties and on perusal of the order impugned, it appears that the trial court recorded in the impugned order that after careful scrutiny he found that the summon was served upon the defendant Ashish Chandra Das on 16.05.2023 and he appeared to contest the suit on 05.06.2023 but he did not prefer any application under section 7(1) to pay the monthly rent as well as admitted arrear rent within one month from the service of summon. Infact the defendant preferred the application under section 7(1) of the Act of 1997 on 27.06.2023 and in the said application he has categorically admitted that he has defaulted in payment of rent from September, 2022 to May, 2023 i.e. for about 9 months, at admitted rate of rent of Rs. 410/- per month and he prayed for deposit of said arrear rent amounting to Rs. 3690/- along with 10% interest.

Section 7(1) of the Act of 1997 mandated that in order to get protection against eviction the

tenant has to deposit the admitted arrear amount of rent within one month from the date of service of summon or whether there is no service of summons, within one month from the date of his appearance. In the present case as I have mentioned above that the trial court recorded that the summons was served on 16.05.2023 and the application under section 7(1) along with prayer for deposit of arrear rent was made on 27.06.2023 and as such the deposit of admitted arrear rent has not been made within the statutory period of one month.

In ***Bijay Kumar Singh and Others Vs. Amit Kumar Chamariya and Another*** reported in **(2019) 10 SCC 660** the Supreme Court has clearly laid down the law in this context.

21. *Sub-section (3) provides for consequences of non-payment of rent i.e. striking off the defence against the delivery of the possession and to proceed with the hearing of the suit. Such provision is materially different from sub-sections (2-A) and (2-B) which was being examined by this Court in B.P. Khemka [B.P. Khemka (P) Ltd. v. Birendra Kumar Bhowmick, (1987) 2 SCC 407]. Sub-sections (2-A) and (2-B) of Section 17 of the 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso to Section 7(2) and sub-section (3) of Section 7 of the Act. Therefore, the provisions of sub-section (2) are mandatory and required to be scrupulously followed by the tenant, if the tenant has to avoid the eviction on account of non-payment of arrears of rent under Section 6 of the Act. There is an outer limit for extension of time to deposit of arrears of rent in terms of the proviso to sub-section (2) of Section 7 of the Act. The consequences flowing from non-deposit of rent are contemplated under sub-section (3) of Section 7 of the Act. Therefore, if the tenant fails to deposit admitted arrears of rent within one month of receipt of summons or within one month of appearance without summons*

and also fails to make an application for determination of the disputed amount of rate of rent and the period of arrears and the subsequent non-payment on determining of the arrears of rent, will entail the eviction of the tenant. Section 7 of the Act provides for a complete mechanism for avoiding eviction on the ground of arrears of rent, provided that the tenant takes steps as contemplated under sub-section (2) of Section 7 of the Act and deposits the arrears of rent on determination of the disputed amount. The deposit of rent along with an application for determination of dispute is a precondition to avoid eviction on the ground of non-payment of arrears of rent. In view thereof, tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not an application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.”

The aforesaid law laid down by the Apex Court was again taken up for consideration by the Supreme Court in ***Debasish paul and another Vs. Amal Boral, 2023 live law (SC) 919*** wherein after examining the real intention of the legislation, it was observed that the reasoning given in ***Bijay Kumar Singh Case (supra)*** cannot be doubted. Para 16 of the said judgment may be reproduced below.

16. We have no doubt over the proposition that though generally the Limitation Act is applicable to the provisions of the said Act in view of Section 40 of the said Act, if there is a lesser time period specified as limitation in the said Act, then the provisions of the Limitation Act cannot be used to expand the same. It is in this context that in Nasiruddin case, it has been mentioned that the real intention of the legislation must be gathered from the language used. Thus, the reasoning in Bijay Kumar Singh case cannot be doubted more so as the requirement is for a tenant to file an application, but he has to deposit the admitted arrears of rent as well, which has certainly not been done.

Coming back to the present context it appears that by the order dated 27th June, 2023 when the court below permitted the petitioner defendant to deposit the arrear of rent along with

monthly rent in connection with petitioners application under section 7(1) of the Act of 1997, the aforesaid law laid down by the Apex Court was clearly overlooked by the trial court and passed the said order going against the statutory provision of law, as interpreted by apex court in ***Bijay kumar Singh (supra) case***. However, by the order impugned learned Trial Court rectified the mistake and passed the order impugned relying upon ***Bijay Kumar Singhs*** (Supra) case and since he passed the order strictly in accordance with the law of the land, there is no scope to interfere with the order impugned, nor petitioner can take the advantage of the order passed on 27th June, 2023, which though may not have been challenged but it is apparent that the court below was erred in passing the said order overlooking the settled position of law. The legal principle *actus curiae neminem gravabit* states that an act of the court shall prejudice no one.

Needless to reiterate that exercise of power under Article 227 of the Constitution of India in interfering order of the court below is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. Since the

order impugned does not suffer from gross or manifest failure of justice, nor has there been any illegality or perversity committed by the court below, I find no reason, why the High Court would travel beyond the well-defined contours of its jurisdiction under Article 227 of the Constitution of India.

CO 3758 of 2024 along with connected application thus stands dismissed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)