

19.03.2025

Sl no. 23
Ct no. 237
P.M.

C.O. 3852 OF 2024

Bidhan Neogi & Anr.

- Vs -

Mrinal Kanti Paul & Anr.

Mr. Ejaz Khan,
Mr. Pradip Kumar De,
Ms. Ananya Adhikary
.... for the petitioners.

Mr. Abhilash Chatterjee,
Mr. Saikat Dey
... for the opposite parties.

Being aggrieved and dissatisfied with the order No. 29 dated 9th September, 2024 passed in Title Suit No. 845 of 2021 by the Court below the present application has been preferred.

By the order impugned learned Trial Court rejected the petitioners' application filed under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 and the application under Section 5 of the Limitation Act.

Admitted position in the present case is that eviction suit being aforesaid Title Suit No. 845 of 2021 was filed on 21st August, 2021 by the plaintiffs/opposite parties herein.

It is further admitted position that the defendants/petitioners herein appeared in the said suit on 14th August, 2023. The defendant/opposite parties on 18th December, 2023 filed application

under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 along with application under Section 5 of the Limitation Act praying for condonation of delay and also for adjudication of arrears of rent to be payable to the plaintiff and for a further direction to permit them to deposit rent before the Court month by month.

Learned Trial Court below while disposing the said application has observed that defendants/petitioners have not filed the application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 within one month from their appearance and as such their application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 is not entertainable in view of the judgement passed in **Bijay Kumar Singh & Ors. Vs. Amit Kumar Chamariya & Ors.** reported in **2020 (1) ICC 664 (SC)** it was further observed in the order impugned that the provision laid down under Section 7(2) of the Act are mandatory and required to be scrupulously followed by the tenant for avoiding eviction on account of non-payment of arrears of rent and tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not a prayer simpliciter for determination alone but the tenant

has to deposit admitted arrears of rent as well. In this context he also relied upon a judgement of this Court reported in **2023 (4) CHN Cal 307** where it was held that the Court has no jurisdiction to entertain an application for condonation of delay in depositing the admitted arrears of rent in filing application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 beyond the period of one month of their appearance.

Having considered the submissions made on behalf of both the parties and also in view of observation made by the Trial Court I do not find any illegality or perversity nor the order impugned caused any manifest miscarriage of justice, which can call for interference by the High Court in exercising its supervisory jurisdiction under Article 227 of the Constitution of India. Trial Court has correctly put the law of the land with the facts of the case.

The observation made in the Bijoy Kumar Singh's case (supra) subsequently again reconsidered by the Supreme Court in Debasish Paul & Another - Vs – Amal Boral 2023 Live Law (SC) 919, where Apex Court reiterated that the reasoning in Bijay Kuamr Singh's case (supra) cannot be doubted as the requirement is for a tenant to file an application

alone but he has to deposit the admitted arrears of rent as well.

In such view of the matter CO 3852 of 2024 stands dismissed.

However, this dismissal order will not preclude the petitioners herein to agitate before the Court the points that he is entitled to ventilate before the Court below as permissible under the statute.

(Dr. Ajoy Kumar Mukherjee, J.)