

319. 14.07.2025
Court No.29
(Tanmoy)

CO/3854/2024

**MONOJIT DAS
VS
SUKUMAR TA**

Mr. Angshuman Chakraborty
Mr. Shivaji Mitra

... for the petitioner.

Mr. Amitabha Ghosh
Ms. Nabanita Chatterjee

...for the opposite party.

1. This application under Article 227 of the Constitution of India is at the instance of the tenant/defendant/petitioner herein and is directed against order no.90 dated August 20, 2024, passed by the learned Civil Judge (Junior Division), 1st Court at Serampore, Hooghly, in Title Suit No.211 of 2019.

2. The petitioner is a tenant under the opposite party in respect of the suit premises and the opposite party herein as plaintiff filed the aforesaid suit praying for eviction of the petitioner/defendant from the suit premises on the ground of default in payment of rent, reasonable requirement of the landlord and the damage caused by the tenant. The plaintiff/opposite party, in his plaint, alleged that the petitioner/defendant made default in payment of rent since October, 2000 and an arrear amount of rent of Rs.78,768/- has fallen due as on May, 2019.

3. The defendant/petitioner herein is contesting the said suit by filing his written statement. The defendant's contention is that he has paid all the rent since inception of tenancy and the plaintiff did not issue rent receipts for five months from October, 2000 to February, 2021. Thereafter, finding no other alternative, the petitioner tendered monthly rent for the month of March, 2001 to the opposite party/plaintiff by money order but the opposite party/plaintiff refused to accept the rent sent through money order and, therefore, the petitioner started depositing rent in respect of the suit premises in H.R.C. Case No.92 of 2001 before the Rent Controller, Serampore, Hooghly, from March, 2001 till July, 2019, at the rate of Rs.300/- per month.

4. After receiving the summons of that suit, the petitioner herein as defendant, filed an application under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the '1997 Act'), praying for permission to deposit the admitted arrear rent for August, 2019 and also to deposit monthly rent from September, 2019 onwards before the Court. The defendant/petitioner also filed an application under Section 7(2) of the 1997 Act, praying for determination of quantum of rent and also determination regarding the relationship and also for the determination as to whether any rent is due from

the defendant to the plaintiff. The petitioner's said application under Section 7(1) of the 1997 Act was allowed by the learned Trial Court and he was directed to deposit Rs.300/- per month. Thereafter, on July 7, 2022, the petitioner's aforesaid application under Section 7(2) of the 1997 Act, was taken up for hearing. The petitioner's contention before the learned Trial Court was that he deposited monthly rent from March, 2001 to July, 2019 in the aforesaid H.R.C. Case No. 92 of 2001 but inadvertently, challans of such deposit could not be placed before the Court below at the time of hearing of the application under Section 7(2) of the 1997 Act and the learned Court below, by an order dated July 7, 2022, held that the defendant is a defaulter and directed the defendant to pay total amount of Rs.70,620/- within two months.

5. Thereafter, the suit was fixed for peremptory hearing and the petitioner was under the impression that his contention in the said application was accepted by the Court below. In the meantime, on December 7, 2023, the plaintiff/opposite party herein filed an application under Section 7(3) of the 1997 Act for striking out the defence of the defendant/petitioner for non-payment of arrear rent as directed by the Court below. At that time, only the petitioner came to learn about the arrear amount of rent as determined by the Court on July 7, 2022.

6. The petitioner herein as defendant thereafter filed an application under Section 151 of the Civil Procedure Code, 1908, praying for modification of the order dated July 7, 2022, after accepting the original rent challans deposited in the aforesaid H.R.C. Case No.92 of 2001 i.e., from March, 2001 to July, 2019 and the petitioner also filed the original challans by a *firisti* on August 8, 2024. However, the learned Trial Court, by the order impugned, rejected the petitioner's aforesaid application under Section 151 of the Code.

7. Being aggrieved by the said order, Mr. Angshuman Chakraborty, learned Counsel appearing on behalf of the petitioner, submits that by way of filing the application under Section 151 of the Code, the petitioner herein prayed for modification of its own order to correct the *bona fide* mistake when justice of the case so demands and the Court below has every power to modify the said order since the defendant placed the challans in support of his payment before the Rent Controller but he failed to consider the same. He further submits that the judgment relied upon by the Court below reported in 2024 (2) ICC 242 (Cal) is not applicable in the present case and the same is distinguishable as in the said case the learned Trial Court, on scrutiny, did not find any challan in support of payment of arrear rent as decided by the Court while disposing of the application under Section 7(2) of the 1997 Act whereas in the instant case, the

challans were filed with *firisti* on August 8, 2024 and as such, this is a fit case where this Court should interfere with the order impugned invoking the Court's jurisdiction under Article 227 of the Constitution of India.

8. Mr. Amitabha Ghosh, learned Counsel appearing on behalf of the opposite party, raised objection contending that it is clear from the order dated July 7, 2022, that a specific direction was made upon the defendant/petitioner to deposit the arrear amount of rent within two months from the date of the order but the defendant/petitioner did not comply the said order passed under Section 7(2) of the 1997 Act and as such, the provision laid down in Section 7(3) of the 1997 Act clearly attracts in the present case. He further submits that even if the challans that were allegedly filed subsequently on August 8, 2024, i.e. long after passing of the order dated July 7, 2022, it does not contain all the challans for the defaulting period i.e. from March, 2001 to July, 2019 which comprises an amount of Rs.70,620/- which the petitioner was duty-bound to pay within the period prescribed under the law. Accordingly, Mr. Ghosh submits that the order impugned does not call for interference of this Court.

9. I have considered the submissions made on behalf of the parties.

10. It appears from the record that by an order dated July 7, 2022, while disposing of the petitioner's application under Section 7(2) of the 1997 Act, the learned Trial Court was of the clear view that the defendant is a defaulter in payment of rent. He further observed that though the defendant states that he has been paying the rent amount from March 2001 to July, 2019 to the Rent Controller at the rate of Rs.300/- per month but no document has been filed by the defendant in order to show that he has deposited the rent from October, 2000 to July, 2019. Accordingly, the Court below by that order directed the defendant/petitioner herein to deposit the rent for the said period amounting to Rs.70,620/- including the statutory interest and further directed to pay such monthly rent regularly at the aforesaid rate.

11. It is apparent from record that the defendant has not complied such order on the pretext that he was under the impression that he is not required to pay the said amount as he has already paid the same before the Rent Controller.

12. The Court below, in the impugned order, has considered the submissions made on behalf of both the parties and came to a finding, while dealing with the petitioner's application under Section 151 of the Code that the issue raised under Section 7(2) of the 1997 Act had already been disposed of after contested hearing and the defendant got ample opportunity to

submit all the challans. Defendant has not disputed that he could not incorporate all the challans to show that he has made the entire payment as was directed by the Court below to pay *vide* order dated July 7, 2022. The defendant also never challenged the said order dated July 7, 2022.

13. In **Bijay Kumar Singh - Vs. - Amit Kumar Chamariya and another**, reported in **(2019) 10 SCC 660** the Hon'ble Supreme Court after considering its earlier judgments on this point came to a definite finding that the provisions of sub-section (2) of Section 7 of the 1997 Act 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 1997 Act. There is an outer limit for extension of time to deposit of arrears of rent in terms of proviso to sub-section (2) of Section 7 of the 1997 Act. The consequences flowing from non-deposit of rent are contemplated under sub-section (3) of Section 7 of the 1997 Act. The Court further held 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.

14. Thereafter in **Debasish Paul & another – Vs. – Amal Boral**, reported in **2023 Live Law (SC) 919** the Apex Court reiterated the same view and held that the reasoning in **Bijay Kumar Singh** (supra) cannot be doubted more so as the requirement is for a tenant not only to file an application but he has to deposit the admitted arrears of rent as well, which has certainly not been done.

15. In the aforesaid facts and circumstances of the case, since the petitioner herein neither challenged the order dated 7th July, 2022, nor could substantiate even by filing challans afterwards that he made payment of entire amount of Rs.70,620/- as determined by Court below while disposing his application under Section 7(2) of the 1997 Act and since delay in deposit is not liable to be condoned, even under Section 40 of the 1997 Act, I find no perversity or impropriety in the order impugned.

16. With the above observations the civil revisional application being CO/3854/2024 stands dismissed.

17. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)