

04.12.2023
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Ct. no. 652
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C.O. 963 of 2019

Indo Financiers Pvt. Ltd.
Vs.
Sri Praveen Kumar Sharma

Mr. Saptarshi Mal
Mr. Hiranyak Gangopadhyay ...for the petitioner

Mr. Sumit Roy ...for the opposite party

This is an application under Article 227 of the Constitution of India against an order dated 19th December, 2018 passed by the learned Additional Civil Judge, Junior Division, Sealdah in Ejectment Case no. 15 of 2013. By the impugned order, the learned court below allowed the defendant's application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter called as Act of 1997).

The petitioner contended that the opposite party herein was inducted in the suit premises as a tenant under a letter of tenancy dated 14th August, 1991 containing several terms and conditions stated therein. After determining the tenancy by notice dated 2nd March, 2007, the petitioner herein as plaintiff instituted aforesaid suit for ejectment *inter alia* on the ground of default in payment of rent. The opposite party herein as defendant appeared in the said suit and thereafter filed applications under Section 7(1) and 7(2) of the West Bengal Premises

Tenancy Act wherein he has alleged that the monthly rent of the said premises is Rs. 2410/- and not Rs. 3110/- as claimed by the plaintiff. Learned court below while taken up said application has allowed the same by the order impugned.

Learned counsel for the petitioner submits that the court below has exceeded his jurisdiction in passing the order impugned and thereby the court below has done a material irregularity and illegality by not appreciating the fact that there was no cogent ground to allow the said application. He further submits that the defendant received the summon much earlier but he appeared in the suit on 17th August, 2007. He also submits that the order dated 4.9.2008 shows that the defendant filed an application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act only on 4.9.2008. Furthermore, the order impugned goes to show that the defendant did not even deposit the rent before the court prior to December, 2013 and as such relying upon the judgment reported in **Bijay Kumar Singh & Others Vs. Amit Kumar Chamaria & Anr.**, he submits that the said application filed by defendant/tenant is not maintainable and the court below ought to have rejected the said prayer.

Learned counsel for the opposite party relied upon a judgment passed by a Division Bench of this court in **Subrata Mukherjee Vs. Bishakha Das reported in**

(2012) 3 CHN 423 (Cal) and submits, while passing the judgment in **Amit Kumar Chamariya (supra)** case, Section 40 of the West Bengal Premises Tenancy Act, was not taken into consideration and as such the judgment suffers from doctrine of sub silentio and relying upon the judgment in **Subrata Mukherjee case (supra)** contended that the court below was very much justified in allowing the application filed by the defendant/opposite party herein and as such the order impugned does not suffer from any irregularity or infirmity for which the court by exercising its supervisory jurisdiction, can interfere in the order impugned. In such view of the matter, the order impugned does not call for any interference and accordingly, he has prayed for dismissal of the said application.

I have considered the submissions made by both the parties. On perusal of the orders, it appears that the defendant/tenant appeared before the court below in the aforesaid ejectment suit being no. 15 of 2013 on 17.8.2007 when the court recorded that the defendant appeared by power and the court below fixed 13.11.2007 for filing written statement. More than one year thereafter, on 04.09.2008, Defendant filed an application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act. Not only that it further appears from the order impugned that the defendant/opposite party herein sent rent through money order to the plaintiff company

for the month of May, June and July 2003 but it was refused. Thereafter, since July, 2003, the defendant started to deposit rent before the rent controller and thereafter only from December, 2013, he continued to deposit rent before the court.

Needless to say that in the present context, the defendant/opposite party though admittedly appeared on 17.8.2007 but in compliance with, mandatory provision laid down under Section 7(1) of the West Bengal Premises Tenancy Act, has not filed any application under Section 7(1) at least within one month from appearance in the court below. Not only that he did not deposit the rent before the court prior to December, 2013.

In **Bijay Kumar Singh & Others Vs. Amit Kumar Chamaria & Anr**, the Apex court has clearly as follows

20. Therefore, sub-section (1) deals with the payment of arrears of rent when there is no dispute about the rate of rent or the period of arrears of rent. Sub-section (2) of Section 7 of the Act comes into play if there is dispute as to the amount of rent including the period of arrears payable by the tenant. In that situation, the tenant is obliged to apply within time as specified in sub-section (1) that is within one month of the receipt of summons or within one month of appearance before the court to deposit with the Civil Judge the amount admitted by him to be due. The tenant is also required to file an application for determination of the rent payable. Such deposit is not to be accepted, unless it is accompanied by an application for determination of rent payable. Therefore, sub-section (2) of Section 7 of the Act requires two things, deposit of arrears of rent at the rate admitted to be due by the tenant along with an application for determination of the rent payable. If the two conditions are satisfied then only the court having regard to the rate at which rent was last paid and for which tenant is in default, may make an order specifying the amount due. After such a determination the tenant is granted one month's time to pay to the landlord the amount which was specified. The proviso of the Act, limits the discretion of the court to extend the time for deposit of arrears of rent. The extension can be provided once and not exceeding two months.

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 argument canvassed by learned advocate for the petitioner that the judgment passed in **Bijay Kumar Singh (supra)** suffers from the doctrine of *sub silentio* does not have any merit in view of the fact that applicability of section 5 of the Limitation Act in connection with section 7(1) of the said Act has been considered by this court in several other judgments. A Division Bench of this Court in the **Calcutta Gujarati Education Society vs Sri Ajit Narayan Kapoor** reported in **2022 (1) ICC 414 (Cal)** have clearly held that Limitation Act, 1963 has no application in respect of an application by a tenant made under section 7 for

determination of arrears of disputed rent. In this case, Judgment passed in **Subrata Mukherjee Case (Supra)** also considered.

Another Division Bench of this court in **Arsala Khan vs. Land & Bricks & entertainment Ltd** reported in **2022 (3) ICC 37 (Cal)** held that one month time for deposit of arrear rent along with interest, at the rate at which it was last paid, as envisaged in section 7 (1) (b) of West Bengal Premises Tenancy Act is mandatory and the tenant will not be able to take recourse of Limitation Act or any other Act to deposit said arrear rent beyond that period. A Single Bench of this court in **Saurav Das vs. Kartick Dutta & others** reported in **2019 SCC online Cal 9155** expressed the same view that in such cases tenant cannot invoke section 5 of the Limitation Act and giving such opportunity would frustrate the scheme of the statute and tantamount to give the tenant a relief indirectly, which she/he cannot get directly in law. Even considering **Subrata Mukherjee Case (Supra)**, another Co-ordinate Bench of the court held that it is settled law that when a statute provides for a specific remedy in a particular case, the court does not have any inherent Power under section 151 of the code for granting the same remedy. In **Bijay Kumar Singh Case (Supra)** Apex Court specifically held that 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.

In such view of the matter when admittedly the tenant has not filed application within the statutory period as mandated in Section 7 of the West Bengal Premises Tenancy Act and in view of the observations that deposit of rent along with an application for determination of dispute, is a pre-condition to avoid eviction on the ground of non-payment of arrear rent, the court below had exceeded his jurisdiction in passing the order impugned.

In such view of the matter, C.O. 963 of 2019 is allowed. The order impugned dated 19.12.2018 is hereby set aside.

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

(Ajoy Kumar Mukherjee, J.)