

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Mr. Justice Shib Sadhan Sadhu, J.

C.O. No.3571 of 2013

Sri Loknath Dhal

... Petitioner

Versus

Smt.Gita Rani Roy

...Opposite Party

For the Petitioner : Mr. Kajal Roy

For the O.P. : Mr. Dhananjay Banerjee

Heard on : September 24, 2015.

Judgment on : October 15, 2015.

Shib Sadhan Sadhu, J.

1. The petitioner by filing this application under Article 227 of the Constitution of India seeks to set aside/quash the order being order No.14 dated 19.06.2013 passed by the Learned Civil Judge (Junior Division), 2nd Court, Chandannagar in Title Suit No.17 of 2013 rejecting the application dated 2nd May, 2013 filed by the defendant/petitioner herein praying for condonation of delay in depositing the admitted arrear rent.
2. The plaintiff/Opposite Party herein instituted the aforesaid suit for eviction, recovery of khas possession, mense profit and other consequential

reliefs against the defendant/petitioner on various grounds including the ground of default. The plaintiff's case is that the defendant is a tenant in respect of a shop room at a monthly rental of Rs.200/- payable according to English Calender month. Further case of the plaintiff is that the defendant has defaulted in payment of rent since the month of July, 2010. The defendant/petitioner on receipt of the summons entered into appearance on 14.03.2013 and filed two applications – one under Section 7(1) of the West Bengal Premises Tenancy Act, 1997; (herein after referred to as the said Act) and the other under Section 7(2) of the said Act and started depositing the current rent at his own risk. In both these applications and also in the written statement the defendant admitted that the rent is due from the month of July, 2010. He however did not deposit such admitted arrear rent. Instead he filed the petition under Section 151 of the Civil Procedure Code on 02.05.2013, praying for condonation of the delay in depositing the said admitted arrear rent with interest, which has been rejected. Hence this revision.

3. Mr. Kajal Roy, Learned Counsel appearing on behalf of the petitioner submitted that the petitioner/defendant is a poor businessman having a very meagre income and that's why he could not deposit entire arrear rent at a time within the statutory period and for that reason he prayed for leave to deposit such amount after condonation of delay. Mr. Roy contended that the Court has enough power to enlarge time to make the deposit specially when sufficient cause has been shown. He contended yet

further that although the Clause (a) of Section 7 (1) of the said Act lays down that the tenant shall pay to the landlord or deposit the same with the court all arrears of rent but such provision is directory and not mandatory. But the Learned Trial Judge quite illegally rejected such prayer without showing any reason. Therefore, according to him the impugned order is bad in law and is liable to be set aside. He relied on an unreported judgment of a Learned Single Bench of this Court passed on 14.12.2010 in the case of M/S.Indo Americans Electricals v. Gopa Sinha & Ors. in support of his contention.

4. Mr. Dhananjay Banerjee, Learned Counsel appearing on behalf of the Opposite Party, on the contrary, argued that as per mandate of the provisions of Section 7(1) of the said Act, tenant is duty bound to pay the admitted arrears of rent either to the landlord or to deposit the same with the Court together with interest at the rate of 10% per annum within one month of the service of summons or when he appears without receiving summons within one month of his appearance. He further contended that the time-limit for making such deposit is inflexible and the Court cannot extend time under any circumstances. Thus, according to him the Learned Trial Judge has rightly rejected the application under Section 151 of the C.P.C. praying for condonation of delay in depositing the arrears rent and so the impugned order deserves to be affirmed.
5. Having due regard to the submission and contention advanced by the learned Counsel appearing for the parties in the light of the unreported

judgment placed and on perusal of the entire materials available on record I find that the petitioner/defendant admitted in clear terms that the rate of rent is Rs.200/- per month payable according to the English Calender month and that the rent is in arrears from the month of July, 2010 which was asserted by the plaintiff/opposite party. It is further seen that the petitioner/defendant entered into appearance on 14.03.2013 after receiving summons and he had filed the application under Section 151 C.P.C. on 02.05.2013. Thus it is an admitted fact that the defendant/petitioner did not deposit the admitted arrear rent within one month of his appearance.

6. Since this Revisional Application involves interpretation of the provisions contained in Section 7(1) and Section 7(2) of the said act of 1997 it would be apposite to set out Section 7 of the said Act. **“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.

7. Therefore, it becomes evident that clause (a) of sub-section (1) of Section 7 casts mandatory duty upon the tenant to pay the admitted arrears of rent either to the landlord or to deposit the same with the court who is in seisin of the ejectment proceeding, together with interest at the rate of 10% per annum.

The deposit or payment to be made under Section 7(1) is, of course, subject to sub-section (2). Sub-section (2) is attracted where the tenant raises a dispute about the amount of rent payable by the tenant. The expression "all arrears of rent" means the arrears of rent admitted by the tenant, and such arrears is the arrears on the date of deposit or payment under clause (a).

Clause (b) specifies the time-limit within which deposit or payment is to be made under sub-section (1). In case the tenant has been served with summons of the ejectment proceeding, the time-limit is "within one month of the service of summons" But in case the tenant appears in the proceedings without the summons being served upon him, the time-limit is "within one month of his appearance".

Clause (c) of sub-section (1) specifies that the deposit of all arrears of rent under clause (a) is not enough and it cannot be construed as sufficient compliance of Section 7(1). Further obligation of the tenant is to go on depositing the current rent “month by month by the 15th of each succeeding month” till the disposal of the proceeding.

8. In the instant case although the defendant/petitioner filed an application under Section 7(2) of the said Act but such application is a meaningless and redundant exercise as he did not at all raise any dispute as to the amount of the rent payable by him. On the contrary he himself admitted that the rent was in arrear from the month of July, 2010 as asserted by the plaintiff/O.P.
9. Now the question arises is whether the delay in making deposit under clause (a) or clause (c) can be condoned. The Hon’ble Supreme Court in the case of Nasiruddin & ors. v. Sita Ram Agarwal reported in (2003) 2 SCC 577 rendered a decision explaining the scope of condonation of delay under Section 5 of the Limitation Act, where the tenant could not make deposit within the statutory period in terms of Section 13(4) of the Rajasthan Rent Control Act. Sub-section (4) reads as under :

“The tenant shall deposit in court or pay to the landlord the amount determined by the court under sub-section (3) within fifteen days from the date of such determination, or within such further time, not exceeding three months, as may be extended by the court. The tenant shall also continue to deposit in court or pay to the landlord, month by month, the

monthly rent subsequent to the period upto which determination has been made, by the fifteenth of each succeeding month or within such further time not exceeding fifteen days, as may be extended by the Court, at the monthly rate at which the rent was determined by the court under sub-section (3).”

Sub-section (4) of the Rajasthan Act is in pari materia with clause (c) of sub-sec.(1) and sub-sec.(2) of sec.7 of the West Bengal Act of 1997.

The Hon’ble Supreme Court further held that the word “shall” used in sub-section (4) of Section 13 of the Rajasthan Act is imperative and mandatory and the provisions contained in Section 5 of the Limitation Act cannot be made applicable for obtaining extension of time to deposit the rent by the tenant under sub-section (4) of Section 13 of the Act.

10. It was further held by the Hon’ble Supreme Court in the aforesaid decision that wherever the special Act provides for extension of time or condonation of default, the Court possesses the power therefor, but where the statute does not provide either for extension of time or to condone the default in depositing the rent within the stipulated period, the court does not have the power to do so. It was held that in the absence of such provisions in the said Rajasthan Act, the Court did not have the power to either extend the period to deposit the rent or condone the default in depositing the rent.
11. A close scrutiny of Section 7 of the West Bengal Premises Tenancy Act, 1997 would reveal that there is nothing in the section providing extension of time or condonation of default. Of course under the proviso to sub-

section (2) of Section 7, the Court is vested with power to allow an extension of time only once and “the period of such extension shall not exceed two months”. Thus the time-limits specified in clauses (b) and (c) of sub-section (1) as well as in sub-section (2) and the proviso to the said sub-section are conclusive and mandatory. Such time-limits cannot be extended or delay in default cannot be condoned.

12. Therefore, from the aforesaid exposition of law I find that the Learned Trial Judge exercising jurisdiction under Section 7 of the 1997 Act does not have the jurisdiction to entertain any application of a tenant/defendant filed under Section 151 of the Code of Civil Procedure praying for condoning the delay in depositing the amount of arrear rent admitted by him, after the expiry of the period stipulated in that section. Therefore, I have no hesitation to hold that the Learned Trial Judge has rightly rejected the application dated 02.05.2013.
13. Accordingly I am of the opinion that this application is bereft of merit and that there is no scope of interference at all with the impugned order.
14. The application is, therefore, dismissed, but without any order as to costs.
15. The urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

(Shib Sadhan Sadhu, J.)