

ORDER SHEET

CS NO.405 OF 2013
GA NO.1643 OF 2014
GA NO.2907 OF 2014
GA NO.2908 OF 2014
GA NO.2909 OF 2014
GA NO.2910 OF 2014
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

ASHOK KUMAR BHAGNANI
Versus
MANSUR AHMED & ANR.

.....

BEFORE:
The Hon'ble JUSTICE I. P. MUKERJI
Date : 13th January, 2015.

Ms. S. Mukhopadhyay...appears.
Ms. T. Chatterjee...appears.

The Court : The application [GA No.1643 of 2014] has been taken out by the plaintiff on 3rd June, 2014 to strike out the defence of the defendants. This application is made under section 7[3] of the West Bengal Premises Tenancy Act, 1997. The case put forward by Mrs. Mukhopadhyay, learned advocate for the plaintiff is straight forward and simple.

The suit was filed on 2nd November, 2013. On 10th December, 2013 the writ of summons was received by the defendants. This enjoined them with a duty to deposit within one month of the service of the summons, the arrear rent calculated at the rate which it was last paid which was Rs.2000/- per month. Such arrear rent had to be paid up to the end of the month previous to which the payment was being made. It had to be made direct to the landlord or to the registry of the Civil Judge. In addition to rent interest @ 10% per annum had to be paid for this period. Therefore, the time for the defendants to make this payment under sub-section [1] of the Act was roughly upto 10th January, 2014.

After about 245 days and after the plaintiff's above application, the defendants made two applications. One [GA No.2907 of 2014] was a section 5 application for condonation of delay to make the defendants' application under section 7[1] of the Act. The application [GA No.2908 of 2014] was the substantive application by the defendants under section 7[1] of the said Act. The defendants also filed an application under section 7[2] of the Act for resolution of an alleged

dispute regarding rent [GA No.2910 of 2014] and a section 5 application connected with it for condonation of delay of 245 days [GA No.2909 of 2014].

Ms. Mukhopadhyay cited an unreported decision of this court in CO NO.2451 of 2010 [M/s. Indo American Electricals Ltd. vs. Gopa Sinha & Ors.] decided by Mr. Justice Prasenjit Mandal on 14th December, 2010. In the facts of that case the inordinate delay in filing the section 7[1] application was not condoned, the court having come to the finding that there was negligence on the part of the defendants.

In this case, the defendants have already filed their written statement.

No doubt, there is a substantial delay in taking out the application under section 7[1] of the Act. A large part of it is unexplained but the dictum of the Hon'ble Supreme Court in Ms. Santosh Mehta vs. Om Parkash & Ors.; reported in AIR 1980 SC 1664 and referred to at page 7 of Justice Mandal's judgment must be remembered and followed. The use of the power of the court to strike out the defence of the defendants has drastic consequences. It is to be used by the court as a last resort against a defiant tenant. A discretion is vested in the court, not a mandate which is to be used judiciously. I will set out paragraph 3 of Justice Krishna Iyer's judgment :

“3. We must adopt a socially informed perspective while construing the provisions and then it will be plain that the Controller is armed with a facilitative power. He may or may not strike out the tenant's defence. A judicial discretion has built-in-self-restraint, has the scheme of the statute in mind, cannot ignore the conspectus of circumstances which are present in the case and has the brooding thought playing on the power that, in a court, striking out a party's defence is an exceptional step, not a routine visitation of a punitive extreme following upon a mere failure to pay rent. First of all, there must be a failure to pay rent which, in the context, indicates wilful failure, deliberate default or volitional non-performance. Secondly, the section provides no automatic weapon but prescribes a wise discretion, inscribes no mechanical consequence but invests a power to overcome intransigence. Thus, if a tenant fails or refuses to pay or deposit rent and the court discerns a mood of defiance or gross neglect, the tenant may forfeit his right to be heard in defence. The last resort cannot be converted into the first resort; a punitive direction of court cannot be used as a booby trap to get the tenant out. Once this teleological interpretation dawns, the mist of misconception about matter-of-course invocation of the

power to strike out will vanish. Farewell to the realities of a given case is playing truant with the duty underlying the power.”

Moreover, section 7[3] grants the court the power to extend the time for the tenant to make this deposit. When the deposit is not made within the original time or within the extended time, then the court has to strike out the defence of the defendants.

Here, the question of extension of time to make the deposit is coming up for the first time.

In my opinion, a dispute is better resolved on contest than ex parte. Striking out the defendant's defence is a very serious step. As observed by the Hon'ble Supreme Court in the above case, unless the conduct of the defendant is such that no mercy should be shown to him, the court should always use its discretion to grant time to the defendant to make the deposit under section 7[1] on such terms as it thinks fit. Here, I would allow the defendants a short time to make the deposit, but subject to payment of additional interest.

For the period after the month when rent was last paid i.e. October 2011 till 10th January, 2014 the defendants will pay the arrear rent @ Rs.2000/- per month together with the statutory rate of 10% per annum simple interest. From 11th January, 2014 till the date of payment they will pay the arrear rent together with 18% per annum simple interest. Such arrear rent and interest has to be paid to the plaintiff by the defendants by 27th February, 2015. The payment will be made direct to the plaintiff. Current rent will be paid @ Rs.2000/- per month directly to the plaintiff.

The respective section 5 applications are allowed, sufficient cause having been shown. Other applications are disposed of by this order.

In case of default, the defence of the defendants will be struck off without any further application to be made by the plaintiff, upon mentioning before this court.

Certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(I. P. MUKERJI, J.)