

14.06.2016.
d.p.

C.O. 4169 of 2015

Parivar Enclave Pvt. Ltd.
-versus
Samir Dutta

Mr. Diptendu Majumdar,
Mr. Dipak Kumar Mookherjee.
...For the Petitioner.

Mr. Debashis Sur,
Mr. Santanu Kumar Roy.
...For the Opposite Party.

let affidavit-of-service filed in Court today, be kept with the record.

Heard learned counsel for the parties at length.

Questioning the propriety of the order No. 28 dated 21st September, 2015 passed by learned Civil Judge, Junior Division, 1st Court, Serampore, Hooghly in T.S. 4501/2014 (T.S. 134/2014), the petitioner herein stated that in the order impugned while dealing with the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997, the learned Trial Court allowed the same and directed the defendant/opposite party to make deposit the arrears of payment to the tune of Rs.5,577/- in two equal monthly installments.

Being aggrieved by and dissatisfied with such direction, by way of allowing the application under Section 7(2) of the Act, the present revisional application has been preferred.

Section 7(2) of the Act prescribed that if in any suit for eviction of tenant under this Act, if there is any dispute 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. This section also provides that no such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable and 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.

At the very outset, the learned counsel appearing for the petitioner drew my attention to the order impugned wherein the learned Trial Court while disposing of the application under Section 7(2) of the Act observed that the petitioner under Section 7(2) of the Act was filed before him after the expiry of six months from the date of his appearance, though he ought to have filed the same within one month and drawing my attention to the provision of Section 40 of the said Act, he pointed out that the defendant/opposite party did not prefer to file any application under Section 5 of the Limitation Act for condonation of delay in filing such application within stipulated period (i.e. one month from the date of his appearance). Clarifying the provision of Section 7(2) of the said Act, he pointed out that the learned Trial Court while disposing of the said application under Section 7(2) of the Act did

not consider the maintainability of the application, since it was not preceded by any application under Section 5 of the Limitation Act.

In this context, he relied upon a decision of the Hon'ble Apex Court, reported in AIR 2014 SC, 746 (Basawaraj & Anr. -vs- The Spl. Land Acquisition Officer) and pointed out that where a case has been presented in the Court beyond limitation, the applicant has to explain the Court as to what was the sufficient cause (which means an adequate and enough reason) which prevented him to approach the Court within limitation. He also pointed out that the Court could be justified in condoning such an inordinate delay and the application is to be decided only within the parameters laid down by Court in regard to the condonation of delay by showing sufficient ground which is opposed equitable grounds.

The learned counsel for the opposite party herein while opposing the revisional application admitted with all fairness that the petition under Section 7(2) of the Act was filed as expeditiously as possible but after lapse of about six months and on the strength of the order impugned, his client made deposit of the arrears of rent by two installments, as directed. Supporting findings of learned Trial Court while dealing with the application under Section 7(2) of the Act, he submitted that the delay in filing the application was condoned by learned Trial Court in the order impugned taking into consideration, the provision of the beneficial legislation to protect the interest of the tenant so that the cause of justice is subserved.

In this context, while dealing with the application under Section 7(2) of the Act, learned Trial Court observed that – “Before parting of, this court would further like to observe that although

the delay in filing of the present petition is being condoned by this court however, in consideration of the admitted laches on the part of the defendant, this court is inclined to allow the same, subject to payment of cost.”

Admittedly, as per statute, in a suit for eviction of a tenant under the provision of the West Bengal Premies Tenancy Act, 1997 the application under Section 7(2) of the Act has to be filed before the learned Trial Court within one month from the date of appearance of the tenant to decide the issue regarding relationship of landlord/tenant, rate of rent, defaulter/arrear of rent to be paid by the tenant supported by deposit of admitted amount equivalent to rent within one month but it was not filing within the stipulated time. There is a provision under Section 40 of the Act, which was enacted with a view to protect the interest of the parties who were prevented by sufficient cause for taking recourse of law within the stipulated time but the defendant/opposite party dared to take recourse of such section so that his interest is protected.

In this context, he referred to a decision of the Hon'ble Apex Court, in Basawaraj & Anr. -vs- The Spl. Land Acquisition Officer (supra) categorically held that “The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for what of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by

imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature”.

When the legal proposition is settled that law of limitation may harshly affect a particular party but it has to be applied with all its rigour, when the statute so prescribes that the court has no power to extend the period of limitation on equitable grounds. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same.

Hence, in view of the decision of the Hon'ble Apex Court noted above, I firmly conclude the learned Trial Court was not justified in allowing the application under Section 7(2) of the Act particularly when the defendant/petitioner failed to explain the sufficient cause before him by filing an application under Section 5 of the Limitation Act read with Section 40 of the Premises Tenancy Act, 1997.

Accordingly, I find merit in this application which stands allowed.

The order impugned being order No. 28 dated 21st September, 2015 stands set aside with observation that the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 was not tenable in law.

The revisional application thus stands disposed of.

There will be no order as to costs.

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

(Ishan Chandra Das, J.)