29.02.2024
Ct. No. 19
Sl. No.09
Cp/Gb

C.O. No. 944 of 2022

Kalyan Kumar Bhattacharjee
Vs.
Smt. Sushama Guchhait

Mr. Biswaranjan Bhakat
Mr. Probal Das
Mr. Subrata mukherjee
.....for the petitioner.

Mr. Rabindranath Mahato
Mr. Aritra Shankar Ray
.....for the opposite party.

1. The revisional application arises out of an order dated February 14, 2022, passed by the learned Civil Judge (Junior Division) at Kharagpur in Other Suit No. 02 of 2020.
2. By the order impugned, the learned court rejected an application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1977 (hereafter referred to as the 'said Act'), on the ground that the said applications were filed belatedly and were not in proper form, i.e., the applications were filed beyond the statutory period of one month from receipt of summons and without deposit of the admitted arrears and 10% statutory interest. The decision of the Hon'ble Supreme Court in Bijay Kumar Singh & Ors. versus Amit Kumar Chamariya & Anr. reported in (2019) 10 SCC 660, was relied upon by the learned court. The court held that if

the tenant failed to deposit admitted arrears of rent within one month from receipt of summons or within one month from appearance without summons and also failed to make an application for determination of the disputed amount of rent and the period of arrears, such non-compliance would entail eviction of the tenant. The learned court held that the defendant did not appear before the court and did not file the application within one month from receipt of summons. This would be evident from the A.D. card bearing the signature of the defendant which was filed sometime in 2019, in the court before which the suit was originally filed. From the signature and the date in the vakalatnama of the learned advocate representing the defendant also, it appeared that the learned advocate who was conducting the case had signed the same on January 9, 2020. The applications under Sections 7 (1) and 7 (2) of the said Act were filed on March 3, 2020.

3. Upon perusal of the records of the case, it is revealed that the suit was filed in the court of learned Civil Judge (Junior Division), 2nd Court Paschim Medinipur as O.S. No. 147 of 2019 on September 12, 2019. The case records were transferred to the court of the learned Civil Judge (Junior Division), Kharagpur, Paschim Medinipur by the learned District Judge, vide order dated December 17, 2019. The Kharagpur Sub-Divisional Court of the learned Civil Judge (Junior Division),

became functional for the first time on January 7, 2020. The next date in the matter was fixed on March 3, 2020 for S.R. and further orders. On March 3, 2020, the defendant/petitioner appeared in the suit and filed an application under Sections 7(1) and 7(2) of the said Act along with the prayer to deposit the rent by challan from the period of March, 2017 to February, 2020, including interest @ Rs.10%.

4. The plaintiff drew the attention of the court to the A.D. card and the vakalatnama signed by the learned advocate on January 9, 2020. The plaintiff contended that the defendant ought to have appeared before the court on the same day and ought to have filed the applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, accompanied by deposit of admitted arrears of rent and 10% interest.

5. The learned advocate for the petitioner submits that the petitioner was not informed about the transfer of the suit. On January 7, 2020, the court became functional at Kharagpur. The summons were served with regard to the proceeding in the Kharagpur court after January 2020. The date for appearance of the defendant was fixed on March 3, 2020 and on the said date, without wasting any time, the applications were filed. According to the learned advocate, when the court had fixed a date in the summons for appearance of the defendant, it was unlikely that the defendant would enter appearance prior

to the date fixed and take steps. Such could not be the provisions of law, or else, fixing a date in the summons would be of no consequence at all. Moreover, it was incumbent upon the court to fix the date for appearance of the defendant/tenant within a month, so that the statutory mandate of one month was taken care of. It is likely for a litigant to be misled by the date fixed by the learned court for appearance of the defendant and if the said date was fixed after the period of one month expired, the litigant could not be blamed. Next, it is submitted that the order sheet of January 7, 2020 would indicate that prior the March 3, 2020, no proceeding had taken place and it was impossible for a litigant to appear before the court and take steps when date was fixed on March 3, 2020 for SR and AD. The petitioner relies on the decision of this Court passed in C.O.3859 of 2018 dated August 21, 2019 in the matter of Amal Boral versus Debasish Paul and another, in support of his contention that the High Court in a similar situation had permitted the tenant to file an application for condonation of delay, explaining the reasons for the delay in not taking steps under Section 7(1) of the said Act.

6. Mr. Mahato, learned advocate appearing on behalf of the opposite party submits that the order impugned records that the return of the summons/AD Card was filed in the earlier court sometime in 2019, which implies that if the suit was filed on June 12, 2019, the summons were

received in 2019. Moreover, the court also records that the vakalatnama was also singed by the learned advocate on January 9, 2020 which means that even if the exact date of receipt of summons was not available, the petitioner, upon coming to know about the suit, must have approached his learned advocate at least on or before January 9, 2020. Yet, the petitioner did not take steps within a month thereafter.

7. Having heard the learned advocates for the respective parties, this Court holds that Section 7(1) of the Act provides the compliances to be made by a tenant if he seeks protection against delivery of possession in a suit for eviction under any of the grounds mentioned in Section 6 of the said Act. The issue which fell for decision of the Hon'ble Apex Court in ***Chamariya (supra)*** was the scope of Section 7 of the said Act.

   Paragraph 5 of the judgment is quoted below:-

   > "5. ... We find that since a short question of law arises for consideration, therefore, without going into the question as to whether learned Single Judge should have referred the matter to the larger Bench or not, the question to be decided by this Court is to bring certainty in respect of scope of Section 7 of the Act."

8. The Hon'ble Apex Court was of the view that the mandate of law required the tenant to deposit the arrear rent and 10% interest within a month from entering appearance without summons or within a month from entering appearance upon receipt of summons and in case of

dispute. Such deposit should be accompanied by an application before the learned court to determine the dispute of the arrear rent or the rate of rent. Section 7(2) of the Act was subject to compliance of Section 7(1).

9. In the present case, the date on which the matter was made returnable, should not be of any relevance for consideration of the tenant's case. It has been judicially settled that it is the duty of the tenant to take steps under Section 7 and the returnable date of the matter or the date of appearance of the matter as fixed by the court, will be inconsequential. Admittedly, the applications were belated and so were the deposits.

10. 10. In ***Chamariya (supra),*** the Hon'ble Apex Court held that Section 5 of the Limitation Act would not be applicable in a case where the tenant does not file the application within the aforementioned period as prescribed by law under Section 7(1) of the Act and deposits the arrear with 10% interest. The relevant paragraphs are quoted below:-

> **19.** Sub section (1) of Section 7 of the Act relieves the tenant from the ejectment on the ground of non-payment of arrears of rent if he pays to the landlord or deposits it with the Civil Judge all arrears of rent, calculated at the rate at which it was last paid and up to 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. 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.

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 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 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 (2A) and (2B) which was being examined by this Court in B.P. Khemka. Sub sections (2A) and (2B) of Section 17 of 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso of sub sections (2) and (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 pre-condition 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."

11. The decision relied upon by the petitioner in the matter of ***Debasish Paul*** (supra), has been overruled by the Hon'ble Apex Court. The relevant paragraphs are quoted below:-

> "16. We have no doubt over the proposition that though generally the Limitation Act is applicable to the provisions of the said Act in view of Section 40 of the said Act, if there is a lesser time period specified as limitation in the said Act, then the provisions of the Limitation Act cannot be used to expand the same. It is in this context that in Nasiruddin6 case, it has been mentioned that the real intention of the legislation must be gathered from the language used. Thus, the reasoning in Bijay Kumar Singh7 case cannot be doubted more so as the requirement is for a tenant to file an application, but he has to deposit the admitted arrears of rent as well, which has certainly not been done.
> : : :
> 18. There is also a larger context in this behalf as the Tenancy Acts provide for certain protections to the tenants beyond the contractual rights. Thus, the provisions must be strictly adhered to. The proceedings initiated on account of non-payment of rent have to be dealt with in that manner as a tenant cannot occupy the premises and then not pay for it.

> This is so even if there is a dispute about the rent. The tenant is, thus, required to deposit all arrears of rent where there is no dispute on the admitted amount of rent and even in case of a dispute. The needful has to be done within the time stipulated and actually should accompany the application filed under Sub-Sections (1) & (2) of Section 7 of the said Act. The proviso only gives liberty to extend the time once by period not exceeding two months.
> 19. The respondent neither paid the rent, nor deposited the rent by moving the application nor deposited it within the extended time as stipulated in the proviso. The mere allegation of absence of correct legal advice cannot come to the aid of the respondent as if such a plea was to be accepted it would give a complete license to a tenant to occupy premises without payment of rent and then claim that he was not correctly advised. If the tenant engages an advocate and abides by his advice, then the legal consequences of not doing what is required to be done, must flow."

12. The question has also been decided by a Division Bench of this Court while interpreting the ratio and the binding precedence of ***Chamariya (supra)***. In ***Smt. Binika Thapa (Nee Rai) & anr. vs. Smt. Damber Kumari Mukhia & anr.*** decided in ***CO 64 of 2023***, the relevant paragraphs are quoted below:-

> "24. According to the ratio in ***Amit Kumar Chamariya (supra),*** the period of one month as mentioned in paragraph 7(1)(b) was treated to be the inbuilt period of limitation making Section 40 of the said Act inapplicable.
> 25. Thus, the decision in ***Bahadur Kathotia (Supra)*** cannot be accepted as good law. The decision was rendered without considering paragraphs 19 to 21 of the ***Amit Kumar Chamariya (supra)***. The decision in ***Subrata Mukherjee (supra),*** had been distinguished in the ***Calcutta Gujarati Education Society (supra)*** in which Section 40 of the said Act was considered, but negated upon discussing the decision of ***Amit Kumar Chamariya (supra).*** The law was declared by the Apex Court, and it was the duty of the High Court to act in

> accordance with Article 141 of the Constitution of India and to apply the same. The High Court could not overrule the decision of the Hon'ble Apex Court on the ground that the Hon'ble Apex Court had laid down the legal position, without considering Section 40 of the said Act. It is not only a matter of discipline for the High Court, but also a mandate of the Constitution as provided in Article 141 that the law declared by the Apex Court should be binding on all courts within the territory of India. All subordinate Courts to the Hon'ble Apex Court are bound by all declarations of law made by the Hon'ble Apex Court, even when the facts of the case, decided by the Hon'ble Apex Court, is distinguishable."

13. Under such circumstances, the order impugned is not interfered with. The learned court shall proceed in accordance with law.

14. Accordingly, the revisional application is disposed of.

15. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)