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2023 INSC 925

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.6565 of 2023

DEBASISH PAUL & ANR. **… Appellants**

Versus

AMAL BORAL **…Respondent**

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. Respondent is stated to have been inducted as a tenant in respect of shop No. AC 249, Rabindrapally, Krishnapur, Post Office Prafulla Kanan, Police Station Baguiati, Kolkata – 700101, District 24 Parganas (North) at an agreed rent of Rs.352/- per month of which the appellants are the landlords. It is the say of the appellants that the respondent stopped paying the rent from February 2005, and on that account ultimately a notice was served on 31.10.2013 on the respondent to vacate the premises. Soon thereafter, the appellants filed a suit for eviction, being title Suit No.667/2013 against the respondent-tenant for non-payment of rent.

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2. In the proceedings, the respondent made an application under Sections 7(1) and (2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act'). The application was rejected by the Trial Court vide a judgment dated 11.09.2018 on the ground that the respondent had entered appearance in the suit on 09.02.2016 but filed the application only on 14.12.2016 i.e., after a delay of ten months.

3. The application, not being filed within the statutory period of one month, was, thus, rejected. No application was filed under Section 5 of the Limitation Act, 1963.

4. The respondent, aggrieved, by the same preferred a Civil Revision before the High Court and in terms of the judgment dated 21.08.2019, the High Court set aside the judgment dated 11.09.2018 and granted liberty to the respondent-tenant to file an application under Section 5 of the Limitation Act, 1963 explaining the circumstances causing the delay for the purpose with the prayer for condonation of delay in support of the application under Sections 7(1) and 7(2) of the said Act already filed.

5. We may notice that the ground sought to be made out by the respondent-tenant was that his failure to deposit arrears of rent coupled with monthly rent was on account of ill-advise by his advocate that no steps were required to be taken in view of the stay granted by the High Court in C.O. No.233/2006. The respondent claimed that having become cognizant of this, he made amends by

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filing the written statement on 14.12.2016 along with the application under Sections 7(1) and 7(2) of the said Act, which was rejected. The High Court directed the Trial Court to dispose of the application under Section 5 of the Limitation Act, if any, filed within the stipulated period mentioned without granting any unnecessary adjournments and preferably within two months from the date of filing of the application.

6. Notice was issued in the SLP and thereafter leave was granted.

Relevant Provisions

7. In order to appreciate the contours of the arguments, it is necessary to reproduce the relevant provisions of the said Act and the Limitation Act as under:

> **Section 5 of The Limitation Act, 1963**
>
> "**5. Extension of prescribed period in certain cases.** — Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.
>
> *Explanation* — The fact that the appellant or the applicant was missed by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."
>
> …. …. …. …. …. ….

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Section 40 of the West Bengal Premises Tenancy Act, 1997

"**40. Application of the Limitation Act, 1963 to proceedings and appeals. –** Subject to the provisions of this Act relating to limitation, the provisions of the Limitation Act, 1963, shall apply to proceedings and appeals under this Act."

…. …. …. …. …. ….

Section 7 of the West Bengal Premises Tenancy Act, 1997

"**7. When a tenant can get the benefit of protection against eviction. –** (1) (a) On a proceeding 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 Controller 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.

(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 proceeding 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 Controller month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

(2) If in any proceeding 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 Controller 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,

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> the Controller 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 Controller only once and the period of such extension shall not exceed two months."

Arguments of learned counsel for the parties and our conclusion:

8. The default of the respondent in payment of the rent is not in dispute. The application, which was filed under Sections 7(1) and 7(2) of the said Act, was not within the window of the statutory period. The only reason stated was that there was lack of proper advice from the advocate and the proceedings before the Trial Court and subsequently he sought to make amends by filing the written statement. The arguments had, thus, revolved around the issue whether the High Court could have invoked the provisions of Section 5 of the Limitation Act, 1963 to give benefit to the respondent for such a claim to be considered by the Trial Court.

9. On perusal of the provisions of Section 7 of the said Act, it is apparent that the tenant can get protection under the said Act only in compliance of what has been set out therein. Clause (a) of Sub-Section 1 of Section 7 provides for payment of arrears by the tenant to the landlord where there neither exist a dispute qua quantum of rent nor the time period involved. In the factual matrix

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of the present case, there is really no dispute either qua the quantum or the time period. In terms of Clause (b), the payment has to be made within one month of the service of summons on the tenant or where he appears in the proceedings without the summons being served on him within one month of his appearance and in terms of Clause (c), the tenant thereafter to pay the landlord or deposit with the controller month-by-month a sum equivalent to the rent by the 15th of each succeeding month.

10. Sub-Section (2) of Section 7 refers to a scenario where there is dispute about the rent payment and even then, there is a bounden duty of the tenant to deposit with the Controller the amount admitted by him due from him together with the application of determination of rent payable. As per the Proviso under Section 7, an extension of time can be granted by the Controller only once and the period of such extension cannot exceed two months.

11. The submission of the respondent is that in view of Section 40 of the said Act, provisions of the Limitation Act apply to proceedings in appeal and, thus, the respondent is entitled to take recourse to the said provisions.

12. On the other hand, the submission of the learned counsel for the appellant is that the said provision is the general provision, but where a lesser period is provided for any purpose, then that period cannot be expanded by taking recourse to the general provision under the Limitation Act, 1963.

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13. It is the say of the appellant that the matter is fully covered by a Two-Judges Bench of this Court in ***Bijay Kumar Singh v. Amit Kumar Chamariya***[1], opining that the provisions of Section 5 of the Limitation Act, 1963 will not apply in such an instance. The Court observed as under:

> "21. …. 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."

14. On the other hand, it is the submission of the learned counsel for the respondent that the aforesaid judgment is contrary to the view of a Three-Judges' Bench judgment in ***Nasiruddin and Ors v. Sita Ram Agarwal***[2]. It is, however, conceded that the said judgment has been referred to by Two-Judges Bench in ***Bijay Kumar Singh*** case[3].

15. It is relevant to note that the case of ***Bijay Kumar Singh***,[4] in turn, referred to the observations made in ***Nasiruddin*** case[5] in the following terms:

> "37. …It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the

[1] (2019) 10 SCC 660
[2] (2003) 2 SCC 577
[3] (supra)
[4] (supra)
[5] (supra)

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> legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.
>
> 38. …if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified."

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 ***Nasiruddin***[6] 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 Singh***[7] 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.

17. We are of the view that a combined reading of the two statutes would suggest that while the Limitation Act may be generally applicable to the proceedings under the Tenancy Act, the restricted proviso under Section 7 of the said Act, providing a time period beyond which no extension can be granted, has to be applicable. The proviso is after Sub-Section (2) of Section 7

[6] (supra)
[7] (supra)

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but Sub-Section (2) of Section 7 in turn refers to Sub-Section (1) implying the application of the proviso to Sub-Section (1) too.

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.

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20. We have also been given a statement of arrears of rent, which would show that for 142 months i.e., from February 2005 till filing of the petition under Section 7 of the said Act in December, 2016, rent was not paid and even thereafter arrears has not been paid as per the admitted rent of Rs.352 per month. The chart in this behalf, as submitted in Court, reflects the position as under:

No.	**Description**	**Number of months**	**Amount**
1.	From February, 2005 till the filing of Section 7 petition in December, 2016	142 X 352/-	49,984
2.	From January, 2017 till the dismissal of Section 7 petition in September, 2018	21 X 352/-	7,392
3.	From October, 2018 till the impugned order in August, 2019	10 X 352/-	3,520
4.	From September, 2018 till October, 2023	49 X 352/-	17,248
	Total arrears of rent		**78,144**

Admitted Rent: Rs.352 per month

21. We, thus, have no hesitation in coming to the conclusion that the impugned order of the High Court dated 21.08.2019 is not sustainable and the

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same is accordingly set aside while sustaining the order of the Trial Court dated 11.09.2018.

22. The appeal is accordingly allowed with costs throughout in favour of the appellants.

....……J.
[Sanjay Kishan Kaul]

....……J.
[Sudhanshu Dhulia]

New Delhi.
October 18, 2023.