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**(2011) 08 CAL CK 0102**  
**In the Calcutta High Court**  
**Case No : C.O. No. 2632 of 2010**

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|---------------------------------------|------------|
| Sri Shyam Sundar Beriwalla and Others | APPELLANT  |
| Vs                                    |            |
| Bhajanlal Sajjan Kumar                | RESPONDENT |

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**Date of Decision :** 29-08-2011

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 151  
West Bengal Premises Tenancy Act, 1997 — Section 7(1), 7(2), 7(4)

**Citation :** (2011) 08 CAL CK 0102

**Hon'ble Judges :** Prasenjit Mandal, J

**Bench :** Single Bench

**Advocate :** A.B. Routh and T.S. Routh, for the Appellant; Sunit Kr. Roy and Nayumuddin Munshi, for the Respondent

**Final Decision :** Allowed

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## Judgement

Prasenjit Mandal, J.—Challenge is to the order dated June 14, 2010 and July 19, 2010 passed by the learned Judge, Small Causes Court, 4th Bench, Calcutta in Ejectment Suit No. 122 of 2009.

2. The Plaintiffs have filed this application contending, inter alia, that they instituted an ejectment suit being Ejectment Suit No. 122 of 2009 against the Defendant/opposite party herein for a decree for recovery of possession on the ground of default since February 2003. The Defendant/opposite party herein is contesting the said suit by filing a written statement denying the material allegations raised in the plaint. He filed an application u/s 7(2) of the West Bengal Premises Tenancy Act, 1997 and that application was disposed of by the order dated June 14, 2010 holding that the Defendant was liable to pay a sum of Rs. 6,875/- as arrears of rent along with 10 per cent interest. Subsequently, the Plaintiffs filed an objection u/s 151 of the CPC against the order of disposal of the application u/s 7(2) of the 1997 Act. That application u/s 151 of the CPC was disposed of modifying the earlier order on the application u/s 7(2) of the 1997 Act, in part. Being aggrieved by both the orders, this revisional application has

been preferred by the Plaintiffs.

3. Now, the question is whether the impugned order should be sustained.

4. Upon hearing the learned Counsel for the parties and on going through the materials on record, I am of the view that the impugned orders cannot be sustained.

5. While disposing of the application u/s 7(2) of the West Bengal Premises Tenancy Act, 1997, the learned Trial Judge has held that the Defendant was not a defaulter in payment of rent for February 2003 to January 2006 and from March 2006 to January 2010. By the subsequent order dated July 19, 2010, the learned Trial Judge has held that the Defendant is a defaulter for the month of February 2006 and not a defaulter for the period from February 2010 to May 2010 because he had deposited rent for the period of February 2010 to May 2010 and thus, the modification was made.

6. As stated earlier, the Plaintiffs filed the suit for ejectment on the ground of default in payment of rent since February 2003. Under the circumstances, the Defendant is bound to prove that he has paid rents to the landlord or deposited the same with the Rent Controller and subsequently in the Court w.e.f. February 2003. But the evidence in this regard, I find, is scanty.

7. The Defendant has contended that he deposited rent with the Rent Controller at first from February 2006 and then onwards with the concerned Rent Controller and then after appearance in the suit, he is depositing the Rent in the Court, and as such, he is not a defaulter at all, though, he filed an application u/s 7(2) of the 1997 Act for determination of arrears of rent, if any. By the first order, the learned Trial Judge did not find the challan for the period from February 2010 to May 2010 and as such, the learned Trial Judge observed that the Defendant was a defaulter for five months only and so, he calculated the arrears of rent. Subsequently, at the instance of the Defendant, the learned Trial Judge had modified the order holding that default was for one month only, that is, for February, 2006 and determined the arrears of rent and the interest thereon by the subsequent order.

8. Mr. Routh appearing on behalf of the Plaintiffs has contended that since, the Defendant did not adduce any evidence, he could not get any opportunity to cross-examine the Defendant and as such, it could not be determined whether the deposits were valid. He has also contended that the wrong premises No. have been recorded. Though, the initial premises in suit number was 36, Shakespeare Sarani, subsequently, it was re-numbered as 36B, Shakespeare Sarani but the deposits had been made for the premises No. 36A, Shakespeare Sarani. So, the deposits are invalid. Mr. Routh has also contended that some of the owners/trustees are dead and the deposits had been made in their names also and so, those challans are invalid. It will be difficult for the Plaintiffs to withdraw the money. Since, the challans are not valid, the deposits cannot be treated as valid deposits with the Rent Controller or in the Court.

9. I find substance in the submission of Mr. Routh, if the deposits are made in the name of a dead landlord/trustee, the deposits cannot be treated as valid. Moreover, it is the specific contention that the premises in suit have now been re-numbered as 36B, Shakespeare Sarani. So, the deposit of rent mentioning the premises No. 36A cannot be treated as valid deposit. Although, such contentions have been raised in the written objection, there is No. discussion in this regard in the impugned orders.

10. Mr. Rough has referred to the decision of Kartick Chandra Paul and Anr. v. Monorama Dassi and Anr. reported in 1986 CWN 495 and thus, he submits that false statement or incorrect description of tenancy made willfully or negligently would entail forfeiture of the tenants right of protection against ejectment on the ground of default. Therefore, the Defendant is bound to prove that those deposits are valid.

11. On the other hand, Mr. Sumit Kumar Roy, learned Advocate for the opposite party has referred to the decision of Manikyaram Chatuspati v. Shrimati Sikha Dev and Ors. reported in 2011 (2) CLJ (Cal) 362 delivered by this Bench and thus, he submits that the deposits made with the Rent Controller and also in Court should be taken as good deposit and the tenants were not required to deposit again in the subsequent suit.

12. In the instant case, the question of validity of the deposits is involved and so, burden of prove lies upon the tenants to prove that deposits made are in compliance with the provisions of Section 7(1) of the 1997 Act.

13. It is also pertinent to mention that the previously the tenant got the benefit of protection against eviction u/s 7(4) of the 1997 Act. Therefore, the tenant is required to prove that he had deposited the rent with the Rent Controller and before the Court properly, otherwise, his protection against eviction may be lost.

14. Since, the findings of the learned Trial Judge are not enough to conclude over the matter and it is difficult to hold that the deposit is valid, I am of the view that I have No. other alternative but to set aside the impugned orders and to send back the case on remand for fresh decision on the application u/s 7(2) of the 1997 Act. The impugned order cannot be sustained.

15. The revisional application is, therefore, allowed. The impugned order is hereby set aside. The learned Trial Judge is directed to dispose of the application u/s 7(2) of the West Bengal Premises Tenancy Act, 1997 afresh upon giving opportunities to the parties to place their respective contentions and to dispose of the same within a period of two months from the date of communication of this order to him.

16. Considering the circumstances, there will be no order as to costs.

17. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.