

(2015) 12 CAL CK 0053
In the Calcutta High Court
Case No : C.O. 801 of 2014

Venus Drug Centre

APPELLANT

Vs

Dinabandhu Hajra and Others

RESPONDENT

Date of Decision : 21-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Limitation Act, 1963 — Section 5
West Bengal Premises Tenancy Act, 1997 — Section 17(1), 7, 7(2), 7(3)

Citation : (2015) 12 CAL CK 0053

Hon'ble Judges : Ishan Chandra Das, J.

Bench : Single Bench

Advocate : Anit Kumar Rakshit, for the Appellant; Anshuman Chakraborty and Shivaji Mitra, for the Respondent

Final Decision : Dismissed

Judgement

Ishan Chandra Das, J.—Heard the learned Counsel for both the parties.

2. This revisional application has been directed against the Order No. 112 dated 15th February, 2014 passed by learned Civil Judge (Junior Division), 1st Court, Hooghly in Title Suit No. 249 of 2007 where learned court below while disposing of the application under Section 151 of the Code of Civil Procedure coupled with an application under Section 5 of the Limitation Act rejected the prayer of the petitioner (who is a tenant of the original suit and hereinafter referred to as the petitioner) for extension of time for making deposit of the arrears of rent in five equal instalments and consequently allowed the application under Section 7(3) of the West Bengal Premises Tenancy Act, 1997, filed on behalf of the opposite parties (the plaintiff landlord of the original suit and hereinafter referred to as the opposite parties), resulting the defence of the petitioner herein to be struck off.

3. Being aggrieved by such order of rejection as noted above, the petitioner preferred the revisional application questioning legality and propriety of the order dated 15th February, 2014.

4. Whether the court has power to extend time to deposit arrears rent, as prayed for by the petitioner herein, is the solitary question involved in this revisional proceeding.

5. The learned Counsel for the petitioner, in course of hearing, submitted that the court has jurisdiction to extend time for deposit or payment of rent. Relying on a decision of a Special Bench of this Court in Krishna Gopal Ghosal Vs. Mihir Baran Nandy and Others, , he confidently urged that "for exercising the courts" power to condone delay or to extend the time for delayed deposit or payment of rent under Section 17(1) of the West Bengal Premises Tenancy Act (12 of 1956), the Court is bound to take into consideration the circumstances of each particular case". Further relying on a decision of a single bench of this Court in Sri Ranjit Kr. Ghosh v. Manindra Chandra Saha, reported in 1995(II) CHN 43 and pointed out that the court has jurisdiction to condone the delay or extend the time for deposit or payment sums specified under Section 17(1) of the West Bengal Premises Tenancy Act, 1956. With reference to the decision of this court in Pulin Behari Choudhury v. Sachindra Mohan Bose & Anr., reported in 1978(1) CLJ 645, he further submitted that as there was a wrong calculation of arrears of rent and statutory interest the court shall grant time to make payment after proper calculation is made.

6. Clarifying the relevant provisions of the old Act of 1956, learned Counsel for the petitioner also urged relying on a decision of the Hon''ble Apex Court in B.P. Khemka Pvt. Ltd. Vs. Birendra Kumar Bhowmick and Another, , that the court has discretion to condone default and extend the time for payment or deposit and such a discretion is a necessary implication of the discretion not to strike out the defence. He also submitted with reference to the said decision of the Hon''ble Supreme Court in M/s. B.P. Khemka Pvt. Ltd. (supra) that striking out of defence was directory and not mandatory and the intention of the legislature shall be looked into and not upon the language in which the intent was clothed.

7. To conclude his argument he further relied on a decision of this Hon''ble Court in Jatindra Nath Nandi and Others Vs. Krishnadhan Nandi and Another, and submitted with a confident tune that the High Court is competent to see that proper orders are made when a matter comes up in revision and opined that the order impugned is liable to be set aside.

8. The learned Counsel for the opposite parties herein on the other hand submitted that after the enactment of West Bengal Premises Tenancy Act, 1997, there was a change of the total scenario with regard to condonation of delay after arrear amount has been adjudged by the court in terms of Section 7(2) of the Act. Relying on a decision of a Specially Constituted Bench to deal with the matter in question in Subrata Mukherjee Vs. Bisakha Das, , he emphatically submitted that the court is debarred from granting extension of time prescribed in the proviso to Section 7(2) of the Act. In support of his argument, he relied on another decision of this court in Sri Arup Kumar Atta Vs. Sri Susanta Kumar Ghosh, wherein it was categorically held relying on several decisions of the

Hon'ble courts including the Hon'ble Apex Court that the time limit, as fixed after adjudication is inflexible.

9. In this context, I may refer to a decision of a Specially Constituted Bench in *Subrata Mukherjee & Bishakha Das (supra)* wherein it was categorically held leaving no ambiguity, which is quoted below -

"41. However, the time limit fixed for payment to the landlord, after adjudication of the dispute with regard to the rate of rent with the extended time limit, as mentioned in the proviso of sub-section (2), is inflexible and this cannot be extended by the Court under any circumstances, naturally, provisions of Section 5 of the Limitation Act will not be applicable".

10. In the case at hand, the petitioner filed the application under Section 7(2) of the Act which was allowed by learned court below by Order No. 84 dated 30th July, 2012, the petitioner was found defaulter in payment of rent since December, 1994 to September, 2007. The rate of rent was held @ Rs. 75/- per month and the arrear amount was adjudicated and the direction for payment of total arrears of rent to Rs. 15,768/- by five monthly instalments but that order was not complied with though in the application under Section 151 of the Code of Civil Procedure (Annexure-"A" to the revisional application), the petitioner prayed for time to make the deposit in favour of the plaintiffs/opposite parties, instead of raising objection with regard to mis-calculation.

11. Since the proviso to Section 7(2) of Act of 1997 does not provide any scope to extend time by way of condoning the delay for making payment of arrears of rent in terms of Section 5 of the Limitation Act, it cannot be said that learned trial court was not justified in rejecting the prayer of the petitioner herein for extension of time.

12. In a decision in *Bina Devi Benani v. Rajesh Kumar Gupta*, reported in 2015 (3) ICC 462, this court held that the Civil Judge exercising jurisdiction under Section 7 of the 1997 Act does not have the jurisdiction to entertain any application for extension of time to deposit the amount adjudicated by the original order passed under sub-section 7(2) after expiry of the period stipulated by the original order. Position would have been otherwise had there been the Old Act of 1956 (12 of 1956) was in operation in the field. Hence regard being had to the facts of the case, it is hereby held that the Court has no scope to entertain any application under Section 5 of the Limitation Act for extension of time and accordingly it cannot be said that learned trial court committed any mistake in rejecting the prayer. Consequently, the right in favour of the landlord under Section 7(3) of the Act of 1997 for striking out the defence of the petitioner against delivery of possession is accrued by operation of law.

13. In the background, I firmly conclude that learned trial court was correct in his approach and I find no reason to interfere with the decision taken by him.

14. The revisional application is dismissed.

15. Hence, the order impugned stands affirmed.

16. I make no order as to costs.

17. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis after compliance with all necessary formalities.