

EJECTMENT SUIT NO. 32 OF 2024
C.N.R No. WBPS01-000061-2024

IN THE COURT OF 4TH BENCH, PRESIDENCY SMALL CAUSE COURT,
CALCUTTA

PRESENT: SMT. ARCHITA SEN, JUDGE, 4TH BENCH, PRESIDENCY SMALL
CAUSE COURT, CALCUTTA.

ORDER NO- 11
DATED 31.01.2025:

Today is fixed for hearing of the petition under section-7(2) of the West Bengal Premises Tenancy Act, 1997 filed by the defendant. Both the parties file separate attendance through their respective Ld. Advocates. The defendant has filed all the challans.

The record is taken up for hearing in respect of the petition under section-7(2) of the W.B.P.T Act.

Perused the record including the said petition, written objection and the challans filed by the defendant.

Considered.

It appears from the record that the plaintiff claimed the defendant is a defaulter since January, 2012. It is stated by the plaintiff that the plaintiff is the lawful tenant in respect of the suit premises having right to sublet the same. The defendant is the subtenant in respect of the suit premises under the plaintiff on a monthly rent of Rs.250/-. On the opposite score the defendant stated that she is holding the tenancy of the suit premises on the payment of a consolidated monthly rent of Re.389/- (Rent Rs.332/- + maintenance charge Rs.33/- and proportionate share of Municipal tax Rs.24/-). The defendant has filed the rent receipt of the last paid rent which will reflect the aforesaid amount. Thereafter the defendant tendered the rent for the month of January, 2012 but the plaintiff refused to accept the same. So the defendant on appearance before the Court filed the petition under section-7(1) of the Act and as per the permission of the Court the defendant deposited the admitted arrears of rent from January, 2012 to February, 2024 at the rate of last paid rent along with the statutory interest before the Court and thereafter she is depositing the current rent on regular basis. So the rate of rent is disputed by the defendant and she prayed for an Order determining the rate of rent payable by filing the instant application. It is submitted that no rent is due.

The plaintiff filed the written objection against the petition. On perusal of the written objection filed by the plaintiff it can be seen that the plaintiff, though has not stated in the plaint regarding the amount of Municipal tax and commercial surcharges which is payable in addition to the amount of rent, stated about the claim that the defendant has not paid the Municipal tax at the rate of 20% of the last paid rent and commercial surcharges at the rate of 20% of the last paid rent. On that ground the Ld. Advocate for the plaintiff submitted that the instant petition is not maintainable. It is denied by the plaintiff that the rent for the month of January, 2012 was tendered by the defendant.

The rent receipt of the last paid rent and all the Court deposit challans upto the month of December, 2024 are filed in the record. The plaintiff also filed the photocopy of the agreement dated 05.11.1996, the agreement dated 01.08.1997, copy of eviction notice and other documents.

After going through the rival submission of the parties, the documents filed by both the parties and the Court deposit challans this Court can decipher that the amount of rent is disputed by the defendant. She claimed that the amount of monthly rent is Rs.332/-, excluding the amount of tax and maintenance, whereas according to the plaintiff the amount of rent is Rs.250/- monthly. The plaintiff did not raise any objection on the point of amount of rent claimed by the defendant. Apart from that from the photocopy of the agreement it appears that there was a clause in the agreement that the rent will be enhanced at the rate of 10% in every three years. As the plaintiff did not agitate that the amount of rent as claimed by the defendant is not actual enhanced rent, this Court can safely held that the monthly rent of Rs.332/-, as claimed by the defendant is the last enhanced rate of rent. There is no dispute regarding the relationship between the parties.

The dispute lies regarding inclusion of Commercial tax within the amount of monthly rent and the payment of lesser Municipal tax with the rent. From the rent receipts dated 01.12.2011 as filed by the defendant it can be seen that apart from the monthly rent at the rate of Rs.332/- and maintenance charge at the rate of Rs.33/-, the defendant has also paid the amount of Municipal tax at the rate of Rs.24/-. According

to the plaintiff the defendant is not paying the Municipal tax at the rate of 20% of the last paid rent. To counter this allegation the defendant stated that she can not go beyond the amount last paid to the landlord as per the rent bill issued by the landlord. In this regard the provision of section-5(7) and 5(8) of the Act should be mentioned. Section-5(7) of the Act provides that every tenant shall pay the charges relating to the maintenance and amenities of the premises at the rate of 10% of the fair rent or agreed rent, as the case may be. In the present suit the plaintiff has not alleged that the defendant is not paying the maintenance charge. So there is no dispute regarding the payment of maintenance along with the amount of rent. Similarly section-5(8) of the Act provides that every tenant shall pay his share of municipal tax as an occupier of the premises in accordance with the provisions of Kolkata Municipal Corporation Act or the West Bengal Municipal Act, 1993. True that the last rent bill reflects the amount of Rs.24/- as Municipal tax and no separate amount has been mentioned as commercial surcharges. But the defendant can not go beyond the terms and conditions laid down in the agreement. In the present suit from the photocopy of the agreement of tenancy it becomes clear that the defendant has agreed to pay the proportionate share of Municipal tax and surcharges in addition to the amount of rent. As per the observation made by the Hon'ble Apex Court in *Eih Limited Vs Nadia A Virji, Civil Appeal Nos. 4797-4799 of 2022* explaining the observation made in paragraph no.46 in the case of *Calcutta Gujrati Education Society Vs. Calcutta Municipal Corporation, (2003) 10 SCC 533* the proportionate share of corporation tax and commercial surcharges can be treated as part of the rent if there is any express agreement between the parties, otherwise also those components can be treated as part of the rent; but only for the purpose of realization of the arrears of tax, not for holding the tenant as defaulter for the purpose of eviction. In the suit at hand as already it was agreed between the parties that in addition to the amount of rent the tenant shall pay the proportionate share of municipal tax and commercial surcharges, those can be treated as part of the rent and on the failure of the defendant to pay the same, will drive the Court to hold her as defaulter.

Ld. Advocate for the plaintiff relied upon the decision of the Hon'ble Apex Court in *M/S Popat Kotecha Property and Others Vs. Ashim Kumar Dey, 2018(4) ICC 173 (S.C)* to submit that the deposits made by the defendant till date may be declared as bad and the defendant may be held as defaulter because she has not paid the municipal tax at the rate 20% of the last paid rent and the commercial charge at the same rate. On the contrary the Ld. Advocate for the defendant placed reliance on the decision of the Hon'ble Supreme Court in the case of *M/S Popat and Kotecha Properties and Others Vs. Swapan Kumar Sel and Another, 2018 1 CHN 270* wherein it was held that in the absence of a demand for surcharge by the plaintiff/landlord, no case of eviction on the ground that the tenant has failed to deposit such surcharge can be made out.

In the instant suit the plaintiff filed the tenancy agreement where from it can be gathered that the parties have agreed that the tenant shall pay the proportionate share of municipal tax and commercial surcharges in addition to the amount of rent. So there is no question of making any demand of commercial surcharge. It is well within the knowledge of the defendant that she has to pay the commercial surcharge in addition to the amount of rent. There remains no doubt that for this suit the amount of rent is including the amount of those taxes and charges. As the defendant has failed to pay the municipal tax at the rate of 20% of the last paid rent and the commercial surcharge, the deposits made till date can not be termed as complete payment of rent. As such this Court is constrained to hold that those deposits are invalid as those do not reflect the payment of whole amount of rent.

Accordingly in view of the above discussion this Court can safely conclude by holding that the defendant is defaulters in the payment of rent since January, 2012 till date including the Corporation tax, maintenance charges, commercial tax. In gist the defendant is defaulter for 156 months in the payment of rent including monthly rent of Rs.332/- + maintenance charge Rs.32.20 + Corporation tax Rs.66.40 + Commercial charge Rs.66.40= Rs.497/-. So the amount in respect of which the defendant is held to be defaulter is Rs.77,532/- (497 X 156) + 10% statutory interest Rs.7,753.20= Rs.85,286.20.

Hence it is

O R D E R E D.

That the petition under section-7(2) of the West Bengal Premises Tenancy Act, 1997 filed by the defendant is disposed of on contest without cost.

Defendant is held to be defaulters for the month of January, 2012 to December, 2024.

Defendant is directed to pay the arrears of rent for aforesaid 156 months

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C.N.R No. WBPS01-000061-2024

including the Corporation tax, commercial charges and maintenance charge together with the statutory interest (in total Rs.85,285.20P) within one month from the date of passing of this Order.

The defendant is directed to go on paying the current rent including the Corporation tax, maintenance charges and commercial charges, i.e. Rs.497/- monthly within the time specified in section-7(1)(c) of the W.B.P.T Act.

To 24/03/2025 for framing of issue.

Typed, Corrected and Printed by me.

Judge, Bench-4
PSCC, Calcutta
J.O Code WB01174

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