

Ej. Suit No. 98 of 2020
CNR No. WBPS01-000192-2020

Order No. 23
Dated 02.04.2024

Today is fixed for hearing of the petition u/s 7(2) of WBPT Act filed by the defendant dtd. 06.05.2022.

Both sides are present by filing respective haziras.

Now in presence of both sides the petition u/s 7(2) of W.B.P.T. Act is taken up for hearing.

Heard both sides.

Perused the materials on record.

Considered.

Now the record is taken up for passing order.

Plaintiff's version regarding default

As canvassed by the plaintiff in his plaint, the defendant is a tenant under the plaintiff in respect of the suit premises at a monthly rent of Rs. 65/- payable according to English Calendar month and he is a defaulter in payment of rent since August, 2019.

Defendants version as per the petition u/s 7(2) of W.B.P.T. Act

Admitting the existence of landlord/tenant relationship between the plaintiff and the defendant as well as the extent of tenancy and the rate of rent but denying and disputing the allegation of the plaintiff on the ground of default in payment of rent, it has been specifically stated by the defendant that he has not made any willful default in payment of rent since August, 2019 as alleged by the plaintiff. It is specifically stated by the defendant that he paid the rent upto July, 2019 to the plaintiff but thereafter the defendant could not paid rent to the plaintiff. However, the defendant deposited the admitted arrear of rent from July, 2019 to April, 2022 in terms of the application filed under Section 7(1) of the WBPT Act, 1997 along with statutory interest and thereafter he started paying monthly rent from the month of from May, 2022 in terms of of the leave granted by the Court vide order dated 06.05.2022. The defendant by filing application u/s 7(2) of WBPT Act, 1997 has prayed for determination of arrear of rent, if any, found due from him and prays for passing necessary order permitting him to pay the same along with statutory interest.

The defendant has categorically stated in his application u/s 7(2) that he never received summon of the instant suit and on 02.05.2022 he came to know from the whispering of the local people that the plaintiff has obtained a decree of eviction against the defendant with regard to the suit premises and hearing the same he contacted an Advocate and obtained information from the Court on 04.05.2022 and came to know about the instant suit for the first time. Thereafter, he appeared before this Court on 06.05.2022 and filed applications u/s 7(1) & 7(2) of the WBPT Act, 1997 and his application u/s 7(1) of the Act has been allowed by the Ld. Chief Judge and he has been paying rent on regular basis in terms of Law.

Documents on record :

The defendant has filed (1) Court deposit challans from January, 2024 along with the deposit for payment of admitted arrear of rent and (2) Information Slip.

Plaintiff version regarding the application u/s 7(2) of WBPT Act, 1997 :

The plaintiff has specifically stated that the application u/s 7(2) of the Act is not maintainable as it has been filed beyond the statutory period of one month from the date of service of summon i.e. on 21.12.2020 as per order dated 09.12.2021 and the application u/s 7(2) of the Act has been filed on 06.05.2022.

The plaintiff has specifically stated that there is no scope to condone the delay in bringing the instant application beyond the statutory period in terms of the decision of the Hon'ble Apex Court reported in **Bijay Kumar Singh vs Amit Kumar Chamariya** on 22 October, 2019 [**reported in 2019 (10) SCC 660, 2019 SCC OnLine 1376**]. Accordingly, the plaintiff has prayed for rejection of the application u/s 7(2) of the Act.

Finding of the Court :

At the very outset, it is necessary to mention here that the plaintiff has specifically claimed himself as the landlord of the defendant and the defendant has admitted the same. The defendant has also admitted the extent of tenancy and the amount of rent but he has only disputed the allegation of making default.

Now, before plunging into the merit of the instant application, this Court finds it appropriate to deal with the technical aspect that has been harped from the side of the plaintiff regarding the maintainability of the instant application on the point of its maintainability being filed beyond the statutory period of one month from the date of service of summon.

In this context, this Court finds it appropriate to refer to the provision of section 7 of WBPT Act, 1997 for better understanding of the situation which is as under:-

“Section 7 - When a tenant can get the benefit of protection against eviction. -

- (1) (a) On a suit 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 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.
 - (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 suit 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 Civil Judge month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.
- (2) If in any suit 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 Civil Judge 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, the Civil Judge 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 Civil Judge only once and the period of such extension shall not exceed two months.

This Court is not unmindful of the settled proposition of law as clearly laid down by the Hon'ble Supreme Court of India in the case of **Amit Kumar Chamariya (Supra)**, wherein there shall be no scope for extension of the time specified u/s 7(1) or 7(2) of WBPT Act, 1997 as compliance of the said provisions are mandatory.

Now let us see, whether in the present case the application u/s 7(2) of the Act has been filed within the statutory period or beyond it as alleged from the side of the defendant.

The record reveals that the summon sent to the defendant in both ways i.e. through Court and through registered post came with the endorsement as "**defendant's room was under lock and key**" and "**left**" which was declared to be "**not satisfactory**" vide order dated 05.02.2021 by the Ld. Chief Judge, Presidency Small Cause Court, Calcutta and the plaintiff **was directed to take fresh steps in accordance with law.**

The record further reveals that on 09.12.2021 the plaintiff filed an application for accepting the service upon the defendant on the basis of the report of the Court Bailiff and the Postal Authority and the said petition was allowed by the Ld. Chief Judge vide order dated 09.12.2021 and the matter was fixed appearance of the defendant on the next date.

On 06.05.2022 the defendant appeared for the first time and filed applications u/s 7(1) & 7(2) of the WBPT Act, 1997 thereby stating that the summon was never served upon him and only after obtaining information from the Court he suo-moto appeared in the present case and vide order dated 06.05.2022, the application u/s 7(1) of the WBPT Act, 1997 was allowed by the Ld. Chief Judge permitting the defendant to pay the admitted arrear of rent along with monthly rent.

Therefore, considering the materials on record it is found that the summon sent to the defendant has never been received by him personally and the same was initially declared unsatisfactory but the same was subsequently treated as valid on the basis of the application of the plaintiff. However, subsequently the defendant appeared in the suit by stating on affidavit that no summon was ever served upon him and he came to know about the suit only after obtaining information from the Court on 04.05.2022 and the defendant has filed the information slip before this Court in support of his version.

Accordingly, taking into consideration the fact and circumstances referred above, this Court finds no justification to disbelieve the contention of the defendant that he never received summon of the instant suit, moreso when, the application of the defendant filed u/s 7(1) of the Act has already been allowed by the Ld. Chief Judge, Presidency Small Cause Court, Calcutta vide order dated 06.05.2022 after hearing both sides.

Therefore, the materials on record clearly suggest that the defendant appeared in the suit on 06.05.2022 suo-moto without being served with the summon and he filed applications u/s 7(1) & 7(2) of the Act on the said date and as per Section 7(1)(b) of the WBPT Act, 1997 the applications u/s 7(1) & 7(2) of the WBPT Act, 1997 is required to 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.**

Thus, in my considered view that the application u/s 7(2) has been filed within the statutory period i.e. within one month from the date of appearance of the defendant and it is maintainable under law.

Now coming to the question of default in payment of rent, it is noticed that the plaintiff has claimed that the defendant is defaulter since August, 2019 but the court deposit challans filed by the defendant shows that the defendant has made payment of admitted arrear of rent from July, 2019 to April, 2022 along with statutory interest and has been paying monthly rent from May, 2022 month by month upto the month of January, 2024.

Since the landlord-tenant relationship between the plaintiff and the defendant with regard to the suit premises is admitted, this Court finds no hesitation to hold that there exists landlord-tenant relationship between the plaintiff and the defendant.

Accordingly, the defendant is held not be a defaulter in payment of rent upto January, 2024.

Hence, it is

ORDERED

That the application u/s 7(2) of WBPT Act, 1997 filed by the defendant on 06.05.2022 is hereby disposed of on contest but without any order as to cost.

Defendant is also directed to keep on depositing the current rent, month by month.

Be it noted that the finding made herein are only tentative findings which shall be adjudicated finally in the light of evidence at the time of final disposal of the suit.

Fixing **18.06.2024** for framing of issues.

Dictated and corrected by me:

Judge

**Smt. Sudipa Banerjee
J.O. Code : 01148
Judge, 3rd Bench,
Presidency Small Cause Court,
Calcutta.**