

EJECTMENT SUIT NO. 86 OF 2018
C.N.R No. WBPS01-000238-2018

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- 37
DATED 27-11-2024:

Today is fixed for hearing of the petition under section-7(2) of the West Bengal Premises Tenancy Act, 1997 filed by the defendant. The plaintiff files attendance through his Ld. Advocate. One petition with a prayer for time has been filed on behalf of the defendant on the ground of the illness of the conducting Ld. Advocate.

Heard. Perused the case record.

Considered.

The record reveals that the petition under section-7(2) of the Act is pending for hearing since 27.07.2018. Till date eight adjournment petitions, including the today's one, have been filed by the defendant for the hearing of the said petition. In the mean time the defendant filed an application under section-151 of the C.P.C with a prayer for permission to deposit the commercial tax and service tax which was rejected by this Court. In such premises, this Court is not inclined to put any indulgence to the habit of the defendant in seeking adjournments on various pretext.

Accordingly the prayer for adjournment is rejected.

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

Heard the Ld. Advocate for the plaintiff.

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 to be the defaulter since April, 2017. The defendant did not dispute the amount of rent and the date from when the default started. It is stated by the defendants that they have paid Rs.500/- as monthly rent along with Rs.50/- as tax till the month of March, 2017 and the Landlord issued rent receipts against such payment. But since April, 2017 the plaintiff refused to accept the rent. He sent the rent to the plaintiff through Money Order since April, 2017 to August, 2017 but the same returned to the defendant as refused. So thereafter he is depositing the rent before the Rent Controller since September, 2017 at the same rate. After appearing before the Court he is depositing the rent before the Court since June, 2018 at the rate of Rs.550/- monthly. The defendant by filing an application under section 7 (1) of the West Bengal Premises Tenancy Act, 1997 prayed for permission of the Court to deposit the rent from June, 2018 and accordingly on the strength of the Order passed by the Court he is depositing the rent before the Court on regular basis till date. So the defendant is not the defaulter in respect of the payment of rent.

The Money Order refusal slip and all the challans of the Rent Controller and the Court deposit challans upto March, 2021 are filed in the record.

On the other hand the plaintiff by filing written objection against the instant petition denied all the contentions of the defendants and stated that the defendants are bound to pay the Corporation tax as a part of monthly rent and they have paid the rent including maintenance charge and Corporation tax without any objection in any manner. But they have deposited rent before the Rent Controller as well as before the Court without adding the Corporation tax and maintenance charges with the amount of rent. So all the deposits made by the defendants are bad. So the plaintiff prayed for an Order holding the defendants as defaulters.

After going through the rival submission of the parties and the record including the challans of the Rent Controller and the Court deposit challans this Court can decipher that there is no dispute regarding the amount of rent and the relationship of landlord and tenant between the parties. But the amount of Rs.50/-, which the plaintiff claimed to be the monthly maintenance charges, has been paid by the defendants as tax. The defendants have not stated anything regarding the reason for depositing Rs.50/- as tax amount. If this Court takes it as deposition of the amount of tax by the defendants then there is no documents filed by the defendants to show that they have paid maintenance charges. The amount of rent definitely includes the amount of monthly maintenance charge. Not only that, the defendants, if claimed that they have paid Rs.50/- towards the payment of tax, then it can be held that they are admitting that the proportionate share of Corporation tax and service tax are payable by the defendants. The admission of the defendants will also gets clear from the petition dated 08/11/2019 filed by them, wherein they have prayed for permission of the Court to deposit the arrears of service tax and commercial tax.

Payment and acceptance of "Rent" is the most essential incidence of the tenancy but the term rent has not been defined in the Act. So the meaning of this word is to be understood in its ordinary popular sense in the context of existing agreement between the parties. It was held in Usharanjan VS Mahalaxmi, 79 CWN 221 that rent is the whole amount agreed to be paid by a tenant to his landlord in respect of his enjoyment of what is demised to him by the landlord and additional payment towards fixtures and fitments and towards Corporation taxes agreed to be paid by the tenant. The Hon'ble Apex Court also held in Abdul Kader VS G.D.Govindraraj, (2002) 5 SCC 51 that in the event of taxes having been agreed to be paid by the tenant, the same forms part of the rent. In the instant suit the defendants admitted that they are liable to pay the tax along with the amount of rent, which will reflect from the petition dated 08/11/2019. That petition was rejected by this Court and the Order of Rejection was affirmed by the Ld. Chief Judge, City Civil Court, Calcutta in Misc. Appeal No. 118 of 2022. So this Court can safely hold that the defendants have agreed to pay the Corporation tax to the plaintiff, for which the Corporation tax must be considered to be a part of the monthly rent in this suit.

The record is devoid of any documents from which this Court can satisfy itself to the effect that the defendants have paid the Corporation tax for each quarter since after April, 2017. If this Court considers that amount of Rs.50/- as tax then those challans will be bad for non payment of the maintenance charge or if this Court considers that amount of Rs.50/- to be the maintenance charge then also those challans are liable to be held as invalid due to non payment of Corporation tax because without the Corporation tax the payment of rent cannot be completed. So the deposits made by the defendants at the Rent Control Office, are destined to be held as invalid as without payment of Corporation tax those deposits cannot be treated as deposit of whole amount of rent. It further appears that the defendants stated that the rent was refused by the plaintiff since April, 2017 till August, 2017. Thereafter they started depositing rent before the Rent Controller. But the defendants have not prayed for depositing the rent for the month of April, 2017 to August, 2017 as admitted arrears in their petition under section 7 (1) of the Act. So the provision of section 7 (1) (a) of the Act. The defendants cannot deposit the admitted arrears at this stage. There is no document within the four corners of the record showing that the defendants deposited the rent since the month of April, 2021. So far as the challans in respect of the deposit of rent before the Court are concerned, this Court found that all the deposits were made in due time since June, 2018 till March, 2021 but before the Court also the defendants did not deposit the amount of service tax and Corporation tax. So the deposits before the Court cannot also be treated as valid one as it does 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 defendants are defaulters in the payment of rent since April, 2017 till date including the maintenance charges, service tax and Corporation tax. In gist the defendants are defaulters for 92 months in the payment of rent including monthly rent of Rs.500 + maintenance charge Rs.50/- and proportionate share of Corporation tax Rs.600/- for each quarter. So the amount in respect of which the defendants are held to be defaulters is Rs.52,463.4P {(92 X 550 = 50,600) + (31 X 600 = 18,600) = 69,200/- + 10% statutory interest ie Rs.6920}.

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 defendants is disposed of on contest without cost.

Defendants are held to be defaulters for the month of April, 2017 to November, 2024.

Defendants are directed to pay the arrears of rent for aforesaid 92 months including the maintenance charges and quarterly Corporation tax together with the statutory interest (in total Rs.76,120/-) within one month from the date of passing of this Order.

The defendants are directed to go on paying the current rent and the Corporation tax for the upcoming quarters of the financial year within the time specified in section-7(1)(c) of the W.B.P.T Act.

To 09/01/2025 for framing of issue.

Typed, Corrected and Printed by me.

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

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