

Ej. Suit No. 336 of 14

6/30.1.15

Today is fixed for passing order in respect of the application under section 7(2) of the W.B.P.T.Act by the contesting defendant no. 4. Both parties file hazira through their respective Id. advocates.

Record is taken up for passing order.

In the subject petition dt. 7.8.14 filed under section 7(2) of the W.B.P.T.Act, the contesting defendant no. 4 stated to have received the summons in this suit on 14.7.14. It has further been mentioned that the instant suit has been instituted against the defendants for their eviction from the suit premises on the ground of, inter alia, default in payment of rent since the month of December, 2011.

It is the contention of the defendants that they are the monthly tenants under the plaintiffs in respect of the suit premises at a monthly rent of Rs. 500/- payable as per the English Calender month. Till the month of November, 2011, the defendants paid rent to the plaintiffs against due issuance of proper rent receipts. The defendant no. 4 personally tendered the rent to the plaintiff no. 1 for the month of December, 2011 on 6.12.11 and on his refusal to accept the same, the defendant no. 4 then tendered the said rent for December, 2011 to the plaintiffs by money order on 7.12.11. Even this money order was also refused to be accepted by the plaintiff no. 1 and as such being left with no other option, the defendant started depositing the month by month current rent with the office of the Rent Controller to the credit of the plaintiffs from December, 2011 onwards and continued to do so till the month of May, 2012.

It has also been contended by this defendant that previously another eviction suit bearing Ej.No. 197/12 was instituted by the plaintiffs against the present defendant no. 2. In that suit, the defendant, on his appearance, deposited the current rent for the months of June, 2012 to February, 2014 under section 7(1) of the W.B.P.T.Act. In an order passed by the Court under section 7(2) of the W.B.P.T.Act, the defendant in that suit was held not to be a defaulter in payment of rent till the month of July, 2013. The defendant also claimed to have deposited the monthly rent in Court in connection with that suit up to the month of February, 2014. Subsequently, the plaintiffs withdrew the said previous suit bearing Ej.Suit No. 197/12 on the ground of having some formal defects in the plaint.

After withdrawal of the suit, the defendant again personally tendered the rent for the month of March, 2014 to the plaintiff No. 1 on 2.4.14 and again on his refusal to accept the same, tendered the said rent for March, 2014 by money order on 3.4.14, only to meet with the same fate of being refused. Accordingly,

the defendant again started depositing rent with the office of the Rent Controller for the month of March, 2014 onwards and continued to deposit the same to the credit of the plaintiffs till June, 2014.

The defendant further asserted that after making his appearance in this suit, he preferred an application under section 7(1) of the W.B.P.T.Act praying for permission to deposit the current month by month rent from July, 2014 onwards in Court in connection with this suit.

On the basis of aforesaid contention, the defendant claimed himself not to be a defaulter in payment of rent and by way of this application, prayed for adjudication of outstanding rent, if any, found to be due and payable by him.

At the time of hearing Id. Advocate for the contesting defendant no. 4 reiterated the contents of the application under section 7(2) of the W.B.P.T.Act and drew attention of this Court to the various rent control challans, court deposit challans and money order documents furnished by the defendant in course of hearing.

Copy of the petition served on the other side. No written objection submitted on behalf of the plaintiffs. However, during hearing, Id. Advocate for the plaintiffs raised vehement objection against the prayer made on behalf of the defendant no. 4 and steadfastly stuck to the plaint allegation that the defendants are defaulters in payment of rent since the month of December, 2011.

Considered the submissions made by both sides and perused the materials on record including the various documents produced by the defendant no. 4.

Undisputed position remains that the defendants are tenants under the plaintiffs in respect of the suit premises at a monthly rent of Rs. 500/- payable as per the English Calendar month.

The only area of dispute to be adjudicated at this stage is whether the defendants have defaulted in payment of rent since the month of December, 2011.

On perusal of the documents submitted by the defendant no. 4, it transpires that he has duly tendered the monthly rent at the rate of Rs. 500/- to the plaintiffs by money order for the months of December, 2011 as well as March, 2014 and both the said tenders for December, 2011 and March, 2014 were refused to be accepted, as reported by the concerned postal authorities. The defendant had also furnished the rent control challans for the month of December, 2011 to May, 2012 and again from March, 2014 to June, 2014.

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Considering the dates, amounts and other particulars of the said rent control challans and keeping in mind with a tender of rent by money order for December, 2011 and March, 2014 were refused to be accepted by the plaintiffs, I am inclined to hold that the said deposits made by the defendant with the office of the Rent Controller are all valid.

It also remains admitted that previously the plaintiff had instituted another eviction suit against these defendants bearing Ej.No. 197/12 which was subsequently, withdrawn by the plaintiffs themselves. The defendant no. 4 in this case had also produced the court deposit challans disclosing the deposit of rent in Court at the rate of Rs. 500/- p.m. for the months of June, 2012 to February, 2014. Here again, considering the dates and amounts of the said documents I find that the deposits made by the defendants in Court in connection with the previous suit (Ejectment 197/12) were valid.

On perusal of the case record it further reveals that vide order No.2 dt.7.8.14, the petition of the defendant No. 4 under section 7(1) of the W.B.P.T.Act was allowed and he was permitted to deposit the month by month current rent in Court at the rate of Rs. 500/- from July, 2014 onwards. The court deposit challans submitted for the months of July, 2014 to January,2015 supports the contention of the defendant that he has duly complied with the said order under section 7(1) of the W.B.P.T.Act dt. 7.8.14 and has been depositing the current monthly rent in Court at his own risk and without prejudice to the rights and contentions of the plaintiffs.

Scrutinising the dates, amounts and other particulars of the said court deposit challans I am inclined to accept that all the said deposits made in Court are also valid.

Summing up the aforesaid discussion, it is observed that the defendant no. 4, after refusal of rent to be accepted by the plaintiffs, validly deposited the same with the office of the Rent Controller for the months of December, 2011 to May, 2012 and again from March, 2014 to June, 2014. He had also deposited the current rent for the months of June, 2012 to February, 2014 in court in connection with the previous suit and thereafter making his appearance in this suit, started depositing the monthly rent in Court from July, 2014 onwards till date.

In view of above, I am constrained to hold that the defendant is found not to be a defaulter in payment of rent till date.

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Hence, it is

Ordered:

That the petition under section 7(2) of the W.B.P.T.Act stands disposed of on contest without any order as to cost.

The defendant is found not to be a defaulter in payment of rent till the month of January, 2015.

No amount is found due and payable by the defendant towards outstanding rent.

Question of statutory interest does not arise.

The defendant however is directed to go on depositing the current month by month rent in court at the rate of 500/- p.m. from February, 2015 onwards within the time frame as stipulated under section 7(1)(c) of the W.B.P.T.Act i.e. by the 15th day of each succeeding calendar month.

Fix 09/3/15 for hearing of petition under section 39 rule 7 C.P.C. written objection, if any, in the meantime.

Dictated & corrected by me :

Judge

Judge, 3rd Bench.