

EJECTMENT SUIT NO. 35 OF 2021
C. N. R. NO. WBPS01-000058 -2021
Before Sri Sridhar Chandra Su, Ld. Judge, 5th Bench.

ORDER NO. 22 DATED 22.12.2022

Today is fixed for passing order in respect of petition under Sec.7(2) of the W.B.P.T. Act.

Both parties have filed their respective haziras.

The record is taken up for order.

This is an application under Sec.7(2) of the W. B. P. T. Act stating, inter alia, that plaintiff received rent up to 2019 and issued some rent receipts with ill motive. Plaintiff refused to accept rent from January 2020 though there is no intentional latches and/or negligence on the part of the petitioner. The father of the plaintiff, Tarak Nah Dey inducted the defendant as a tenant. That the defendant/petitioner paid Rs.2,50,000/- against the tenanted portion to Tarak Nath Dey as a selami. That said Tarak Nath Dey was allowed to make repairing work in the tenanted portion out of good relationship and more than Rs.1,50,000/- towards cost was borne by the defendant. Thereafter, defendant issued a notice dated 02.04.2019 asking the plaintiffs to intimate him as to whom he would pay monthly rent but to no effect. The defendant came to know that the plaintiff has been trying to oust him and trying to construct a multi storied building thereon. Defendant has also denied that he is a monthly tenant at a rental of Rs.175/- as alleged in the plaint. And, as such, prayed for allowing the petition under Sec.7(2) of the W.B.P.T. Act.

By filing written objection, plaintiff has raised objection contending, inter alia, that the application under Sec.7(2) of the W. B. P. T. Act is misconceived and unsustainable in the eye of law. Defendant has defaulted in payment of rent @ Rs.175/- payable according to English calendar month since January 2012. That the defendant has failed and neglected to disclose what the actual rate of rent is. That the present plaintiff used to collect rent from the defendant since December 2011 and issued rent receipts up to that period. That if the Sec.7(1)(a) of the W. B. P. T. Act 1997 has not been complied with, there is no scope to file or get benefit under Sec.7(2) of the Act. Defendant has not prayed for depositing any arrear rent or for adjudication of the period of default and hence prayed for disposal of the same on merit.

In support of his application, defendant, Bijay Bhushan Jaiswal has adduced himself of AP.W.1 and the documents filed by him have been marked as Exhibits as follows:-

1.18 nos. of court deposit challans from March 2021 to August 2022 – Ext.-1 collectively.

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2. Two Rent receipts dated 17.01.2013 – Ext.-2 and Ext.-2(a) respectively.

3. Copy of Advocate's letter dated 02.04.2019 – Ext.-3 collectively.

Considering the submissions of Id. Advocates for both sides, the petition and the materials on record, it appears that as per plaint, rate of rent is Rs.175/- p.m. payable according to English calendar month. As per plaint, defendant paid rent up to December 2011 and the defendant is a defaulter since January 2012. As per petition under Sec.7(2) of the Act, father of the plaintiff namely Tarak Nath Dey inducted the defendant as a tenant. As per para-13 of the petition, defendant was granted injunction in T.S. No.1023/2019. No document has been filed by the defendant to show that he has given a sum of Rs.4,00,000/- towards advance to the plaintiff. Id. Advocate on behalf of the plaintiff, in this connection, referred the cross examination of AP.W.1 dated 11.11.2022 that "The rate of rent is Rs.630/- payable according to English calendar month. I am a tenant in respect of two rooms with bathroom and one space for bathing which is now acquired by the plaintiff. I used to pay rent to Tarak Nath Dey. I paid rent to Goutambabu till 2014. But at this stage, I cannot remember up to which month I paid rent for the last time. I paid rent from January 2010 to December 2010 and the plaintiff issued rent receipt to me lastly on 17.01.2013. I did neither inform the Id. Rent Controller in writing nor filed any case regarding non issuance of rent receipt by the plaintiff. I have not filed any document before this Court regarding payment of Rs.4,00,000/- to the plaintiff. I have not deposited any arrear rent along with petition under Sec.7(1). I have not filed any application praying for permission to deposit the arrear rent". On the other hand, plaintiff did not adduce any evidence, oral and documentary. In this connection, Id. Advocate for the plaintiff cited the decisions reported in 2017(2) C.L.J. Cal 345, 2022(4) ICC 111 SC, 2020(1) ICC 664 SC and 2021(2) ICC 286 Cal. Relying upon those decisions, Id. Advocate for the plaintiff submitted that the deposits made by the defendant are all bad deposits.

In view of above discussion, I hold that the defendant is a tenant in respect of the suit premises under the plaintiff at a rental of Rs.175/- p.m. payable according to English calendar month. I further hold that the defendant is a defaulter in payment of rent since January 2012. It also appears from the record that the defendant has deposited the rent from March 2021 up to date.

Accordingly, the petition under Sec.7(2) of the W. B. P. T. Act is disposed of with following observation:-

That the defendant is a tenant in respect of the suit premises under the plaintiff at a rental of Rs.175/- p.m. payable according to English calendar month and the defendant is a defaulter in payment of rent since January 2012.

Defendant is directed to deposit the arrear rent of Rs.19250/- for 110 months i.e. from January 2012 to February 2021 along with statutory interest @ 10 % p.a. within 30 days from the date of this order.

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Defendant is also directed to go on depositing the current rent month by month within 15th day of each succeeding month.

Fix 17.01.2023 for filing challan showing compliance of this order by the defendant.

DICTATED AND CORRECTED BY ME,

JUDGE

JUDGE
[5TH BENCH]
J.O. Code No. WB-00-620.