

EJECTMENT SUIT NO.115 OF 2008

ORDER NO. 69 DATED 29.11.2018

Both parties file hazira. Counsels for both parties are present on call.

Record is taken up for hearing argument of the application dated 14.08.2015 under Sec.7(2) of the West Bengal Premises Tenancy Act wherein the tenant/O.P. prays for determination of arrear rent payable by him to the Plaintiff, if any, with the permission to deposit the same alleging, inter alia, that the Plaintiff initiated the present proceeding against the defendant suppressing that they had filed R. C. Case No.204/2007 which was pending before the Rent Controller, Calcutta for fixation and determination of fair rent but subsequently withdrew the case.

During pendency of the said Fair Rent case, defendant, from time to time, tendered rent to the Plaintiff through his Advocate on record namely Mr. Arindam Mukherjee who kept the same in his custody and such fact was suppressed by the Plaintiff. Defendant duly paid rent to the Plaintiff through his Advocate by Bank Draft till December 2013 and he is intending to deposit the arrear rent from January 2014 to July 2015.

Other side filed written objection denying the material allegations stating that since May 2004, defendant has failed and/or neglected to pay/deposit rent in respect of the suit premises either to the plaintiff or to the ld. Court and is keeping the suit premises illegally without payment of rent.

After perusal of the application under Sec.7(2) as well as the written objection and hearing the submissions of Counsels for both sides, it appears to me that the landlord-tenant relationship between the parties is not under challenge. The rate of rent is Rs.2100/- p.m. is also not disputed. The bone of contention between the parties is the

EJECTMENT SUIT NO.115 OF 2008

ORDER NO. 69 contd.

arrear of rent from May 2004 to December 2013 which the defendant claims to have paid to the ld. Advocate for the Plaintiff.

Accordingly, the following points of consideration are framed for effective disposal of the application:-

- i) Has the defendant paid rent to the plaintiff or his ld. Counsel from May 2004 to December 2013?
- ii) Is there any default in payment of rent by the defendant till date?

Defendant, in support of his contention, examined one witness namely Sanjib Karmakar as AP.W.1 to corroborate his of petition under Sec.7(2) of the West Bengal Premises Tenancy Act and have marked the court deposit challans as Ext.-1 and Ext.-2 collectively and subsequently the copy of the letter dated 18.08.2006 as Ext.-3 and the copy of another letter dated 28.07.2008 as Ext.-4.

AP.W.1 tried to harp upon the aspect that his Company has paid rent to the plaintiff since May 2004 till date and has produced certain xerox copies of Bank Drafts which are marked as 'X' for identification.

On the very onset, I do assent with the plaintiff's submission that AP.W.1, who has deposed on behalf of the defendant company, need to have been authorized by the Directors of the Company to represent them and/or the Company through any Board Resolution or letter of authority but most astonishingly AP.W.1 has appeared before this Court and represent the Company without any document whatsoever.

Be it as may, I am least inclined to reject the application on this technical score but like to get into the merit of the application.

EJECTMENT SUIT NO.115 OF 2008

ORDER NO. 69 contd.

The suit was filed in the year 2008. Defendant appeared in the year 2008 itself. Written Statement was filed in the year 2010 but without any Sec.7(1) and Sec.7(2) application. Thereafter, applications under Sec.7(1) and Sec.7(2) were filed on 14.08.2015 along with Sec.5 petition which was allowed by this Court with cost of Rs.2000/-. Thus, the delaying strategy of the defendant in dragging the suit from the very inception cannot outrightly be overlooked totally.

Be it as may, the arrear of rent from January 2014 till November 2018 @ Rs.2100/- has been deposited by the defendant in Court.

When the defendant asserts that he has paid rent to the Plaintiff from May 2004 to December 2013, the onus is upon him to prove the same. Merely exhibiting certain letters here and there does not serve the purpose at all. Defendant has failed to exhibit or mark the Bank Account/Statement which would otherwise reflect that the demand drafts were being handed over to the Id. Advocate for the Plaintiff.

Now, there is another striking anomaly in the contention of the defendant himself. Defendant asserts that the demand drafts were being issued to the Advocate for the Plaintiff but the copies of the demand drafts reflect otherwise wherein all the copies of the drafts were issued in the name of one Mr. S. N. Bose. Mere xerox copies of few Bank Drafts here and there without any corroboration with that of the Bank Statement does not ipso facto discharge the burden of proof of onus of the defendant to prove the same. In other words, only few stray xerox copies of Bank Drafts and also that of few letters does not help the defendant to convince the Court that he has paid rent to the original Plaintiff from May 2004 to December 2013. These documents, at best, could

EJECTMENT SUIT NO.115 OF 2008

ORDER NO. 69 contd.

have been corroborative evidence with that of the Bank Statement. When there are no Bank Statement or any document prima facie reflecting that the amount have been transferred by the defendant from his Account to that of the Plaintiff, constrains me to hold that the defendant has not paid any rent to the Plaintiff from May 2004 to December 2013. He is a defaulter in payment of rent.

The points for consideration is decided against the defendant and disposed of accordingly.

The Counsel for the defendant also submits that he is willing to pay the above arrear subject to the condition that the Plaintiff will not withdraw the amount deposited by his client till the final disposal of the suit.

I do not find any merit in such submission since if an amount is determined to be deposited in favour of the plaintiff, it is his legal right to withdraw the same and none can debar a lawful legitimate recipient from receiving his legitimate dues.

Admittedly, the rate of rent or rather the rate of rent last paid by the defendant to the plaintiff was Rs.2100/- p.m.

Hence, it is ORDERED that the defendant is a defaulter in payment of rent from May 2004 to December 2013 @ Rs.2100/- p.m. amounting to Rs.2,43,600/- along with statutory interest thereon @ 10% p.a. amounting to Rs.24360/- aggregating to Rs.2,67,960/-.

Defendant is directed to make the above payment/deposit the rent within one month from the date of this order.

EJECTMENT SUIT NO.115 OF 2008

ORDER NO. 69 contd.

Defendant/tenant is also directed to continue paying the landlord current rent month by month in accordance with law.

Fix 02.01.2019 for filing challans showing compliance of this order by the defendant and further order.

DICTATED AND CORRECTED BY ME,

JUDGE

JUDGE
[5TH BENCH]