

EJECTMENT SUIT NO :- 364 OF 2012
(CNR No. WBPS01-000623-2012)
(JO CODE No. WB01229)

Order no. - 84
Dt. 16.08.2022

Today is fixed for passing order.

The record is taken up for passing order in respect of the petition under Section 151 of the CPC filed by the defendant on 28.06.2019.

Heard Ld. Advocate for the defendant who submitted that the defendant has contested the suit by filing writing statement and also filed an application under Section 7(2) of the W.B.P.T. Act and at the time of passing order in respect of the application under Section 7(2) of the W.B.P.T. Act, this court was pleased to hold that the defendant is defaulter since December – 2000 to May, 2019 for 222 months at the rate of Rs. 145/- per month along with interest and directed the defendant to pay sum of Rs. 35.405/- within the month. He further submitted that this court did not taken into consideration all the rent control challans filed by the defendant.

He further submitted that the said rent control deposit was valid and the same was deposited after observing all the formalities.

He further submitted that the defendant has deposited the monthly rent at the rate of Rs. 220/- per month as has been stated by the plaintiffs though the monthly rate of rent is Rs. 75/- per month in the instant suit and Rs. 145/- per month in the Ejectment Suit being no. 364 of 2012 and in total the rate of rent of Rs. 220/- and he further submitted that in order no. 46 dated 15.03.2018, this court held that the defendant was defaulter in payment of rent for the month of August - 2000 to November - 2000 and directed to pay a sum of Rs. 2,464/- and the defendant has already deposited the same on 14.06.2018

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and rate of rent was fixed by this court at the rate of Rs. 220/- and the defendant has paid the entire amount in his single tenancy and hence prayed before this court for recalling or modifying the order dated 28.05.2019, after considering the rent receipts, rent control challans and the court deposit challans and to pass such necessary order.

Heard Ld. Advocate for the plaintiffs who raised objection.

Considered. Perused the instant petition and materials on record.

On perusal of the same, it appears that previously this court has disposed of the application under Section 7(2) of the W.B.P.T. Act, holding that the defendant is defaulter for payment of rent and against the said order the defendant filed a revisional application before the Hon'ble Court and Hon'ble Court has been pleased to give direction to this court to hear the application under Section 7(2) of the W.B.P.T. Act afresh and after hearing both sides this court disposed of the said application vide order no. 60 dated 28.05.2019 holding the defendant as defaulter. It was also observed by this court that the defendant has duly pay rent in favour of the plaintiffs for the month of August – 2000 and the challans filed by the defendant show that the defendant has paid rent for the month of December – 2003 to December – 2013 in the name of the previous landlord while the defendant has admitted that he has received the letter of attornment dated 04.12.2000 where he came to know and he was requested to pay rent to the present plaintiff and in compliance with the defendant has also paid rent to the present plaintiff who intentionally did not issue any rent receipt and after holding the same this court hold that all the deposits made to the Rent Controller are bad and the defendant is defaulter since the month of December – 2000 to May – 2019.

It appears from the record that this court has passed the necessary order at the time of disposal of the application under Section 7(2) of W.B.P.T. Act, after taking evidence and it was admitted by the defendant at the time of cross-examination that he has filed rent receipt and rent control challans mentioned in two tenancies.

As per the provisions of Sub-section 2 of Section 7 of W.B.P.T. Act the word "shall" is introduced in the said section which makes the provisions absolute and there is no provision under W.B.P.T. Act to modify the order passed by this court which was absolute in nature after observing all legal procedure and this court being the Trial Court, has no revisional power to revise the order passed by this court. As such the application filed by the defendant is not tenable in the eye of law and is liable to be rejected.

Hence, it is

ORDERED

that the petition under Section 151 of the CPC filed by the defendant on 28.06.2019 is hereby rejected on contest.

It appears from the record that issues have been framed and accordingly let the case record be fixed for pre-emptory hearing.

To 11.11.2022 for pre-emptory hearing.

Both parties are hereby directed to be ready for evidence.

D/C by me.

Sd/-

Judge, Bench - II,
P.S.C. Court, Calcutta.

Sd/-

Judge, Bench - II,
P.S.C. Court, Calcutta.