

EJECTMENT SUIT NO :- 452 OF 2015
(CNR No. WBPS01-001159-2015)
(JO CODE No. WB01229)

Order no. - 110
Dt. 20.01.2024

Today is fixed for passing necessary order.

Both side file hazira.

The case record is taken up for passing necessary order in respect of the application under Section 114 of CPC and Order 47 Rule 1 read with Section 151 of the CPC filed by the plaintiff on 13.12.2019.

Heard Ld. Advocate for the plaintiff who submitted before this Court that the instant eviction suit was filed against the defendant on various grounds and after making appearance of this suit the defendant files an applications under Section 7(1) and 7(2) of W.B.P.T. Act and the application under Section 7(2) of W.B.P.T. Act was heard by adducing evidence from the both sides and this Court Vide Order no. 51 dated 05.08.2019 was pleased to disposed of the said application holding that the defendant is a defaulter in payment of rent since April, 2012 to March, 2015 at the rate of Rs. 933/- per month and interest of Rs. 3,359/-.

He further submitted that at the time of disposal of the said application, this Court did not fully considered the objection raised by the plaintiff and also the evidence-in-chief filed by the plaintiff and also the judgement which has been referred at the time of argument by the plaintiff was not considered and he further submitted that it was argued that the petition under Section 7(2) of W.B.P.T. Act was not maintainable without deposit the amount admitted in the said application and it was also argued that the tenant does not admit to any amount payable and he is not entitled to file the same and being aggrieved and dissatisfied with the said order no. 41 dated 05.08.2019 passed by this Court, the petitioner files the review application on the grounds :-

1. Ld. Court did not discuss referred to the points agitated by the plaintiff in his objection against the application under Section 7(2) of the W.B.P.T. Act and also to the examination-in-chief to the plaintiff.

2. Ld. Court did not consider the reported judgement of 2017(2) CHN (Calcutta) 331 in C.O No. 4458 of 2016 with C.O. No. 2628 of 2016 of the Calcutta High Court filed by the plaintiff at the time of hearing of the application under Section 7(2) of W.B.P.T. Act.

3. Ld. Court ought to have hold that as the defendant failed to deposit the admitted arrear of challans, the application under Section 7(2) of W.B.P.T. Act and as such the said application was not maintainable.

4. Ld. Court did not come to the conclusion that application under Section 7(1) and 7(2) could not be possible simultaneously.

5. Ld. Court wrongly directed payment of interest and Ld. Advocate for the plaintiff further submitted that in view of the above reasons the order passed by this Court Vide. dt. 05.08.2019 should be reviewed and hence prayed for passing necessary order.

Heard Ld. Advocate for the defendant who after filling written objection submitted that the statement made in the instant application filed by the plaintiffs are totally illegal and bad in law and also submitted that while disposing under Section 7(1) of W.B.P.T. Act and this court was pleased to direct the defendant to deposit admitted arrear of rent and thereafter depositing rent month by month and thereafter the defendant deposited the admitted arrear of rent also has been deposited current rent month by month till date.

He further submitted that being aggrieved dissatisfied that the said order passed at the time of application under Section 7(2) of W.B.P.T. Act has filed a review application under Section 47 Rule 1 of CPC and the same was registered as Misc. Case No. 185 of 2019 which is still pending.

He further referred a decision reported in AIR 1976 Patna page 298 as cited by the defendant has not been considered and as such there is an error apparent on the face on record and the defendant has been deposited the admitted arrear of rent under Section 7(1) of W.B.P.T. Act and all statutory requirement has fulfilled and as such the instant application is misconceived one and bad in law and accordingly the said application has been dismissed.

Considered. Perused the instant application, written objection and other materials on record and the order passed by this court in respect of application under Section 7(2) of W.B.P.T Act Vide order no. 41 dated 05.08.2019.

On perusal of the materials on record, it appears that at the time of hearing of application under Section 7(2) of W.B.P.T Act, both sides have adduced evidence.

On perusal of the order passed by this court, Vide Order no. 41 dated 05.08.2019, it is nowhere reflected in the said order that both sides have adduced evidence in respect of application under Section 7(2) of W.B.P.T Act.

It further appears that the defendant has filed application under Section 7(1) of W.B.P.T Act, where-from it appears that defendant has prayed for permission to deposit admitted arrear of rent for the month of April, 2015 to November, 2015 and current rent for the month of December, 2015 and thereafter month by month and as per prayer of the defendant, Ld. Chief Judge, Presidency Small Causes Court, Calcutta has been pleased to allow the said prayer of the defendant and the defendant was directed to deposit admitted arrear of rent for the month of April, 2015 to November, 2015 and current rent for the month of December, 2015 and thereafter month by month.

It appears from the application under Section 7(2) of W.B.P.T. Act, the defendant has stated that they had paid the monthly rent for the period of April, 2012 to March, 2015 at Rs. 34,927.20/- by issuing a cheque no. 221708 drawn on Bank of Baroda, Brabourne Road Bunch dated 09.02.2015 with a covering letter dated 16.01.2015 through registered post and the plaintiff has duly received the same and the defendant categorically denied he was defaulter of payment of rent from April, 2012.

It appears from the written objection filed by the plaintiff in respect of the application under Section 7(2) of W.B.P.T. Act that they have denied that the defendant has paid monthly rent for the period of April, 2012 to March, 2015 at Rs. 34,927.20/- by issuing a cheque no. 221708 drawn on Bank of Baroda, Brabourne Road Bunch dated 09.02.2015 with a covering letter dated 16.01.2015 through registered post and submitted that the Ejectment Notice dated 28.10.2014 was sent to the defendant for determination of the tenancy and the same was received by the defendant on 29.10.2014 and in the said notice it was stated that the defendant was defaulter for making payment of rent since the month of April, 2012.

Here in this case, the instant petition has been filed by the plaintiff under Section 114 of CPC and order 47 Rule 1 read with Section 151 of CPC.

According to the provisions of Section 114 of CPC any person aggrieved by a decree or order from which an appeal is allowed but not filed, or a decree or order from which no appeal is allowed, can file a review petition in the same court which passed such decree or order on the following grounds :

- Where a decree or order is passed which is appealable under the CPC and no appeal is preferred,
- Where a decree or order is passed which is not appealable under the CPC and
- Where a decision is given on a reference from a Small Cause Court.

According to Rule 1 of Order 47 of the CPC, any person considering himself aggrieved by a decree or order etc. may apply for review of judgement. The aggrieved person is one who has suffered a legal grievance that is against whom a decision has been pronounced which has wrongfully affected his title or wrongfully deprived him so something which he was entitled to.

After perusing the relevant provision of law and the order passed by this court Vide. Order no. 41 dated 05.08.2019, it appears to me that the said order should be reviewed.

The instant suit has been filed by the plaintiff on the basis of the Ejectment Notice dated 28.10.2014 and in the said notice, it has been stated that the defendant was defaulter since the month of March, 2012 and after getting such notice, the defendant has issued one cheque being no. 221708 dated 09.02.2015 with covering letter dated 16.01.2015.

Here in this case, the defendant has filed application under Section 7(1) of W.B.P.T Act, where-from it appears that defendant has prayed for permission to deposit admitted arrear of rent for the month of April, 2015 to November, 2015 and current rent for the month of December, 2015.

It is reported in 2017 (2) CHN (CAL) 331 that if the tenant raises any dispute as to the amount of any rent payable to him, then also together with an application under Section 7(2) of the Act, he has to deposit within the time specified in Section 7(1) of the Act, the amount admitted by him to be due from him and if the tenants fails to deposit

for pay any amount referred to in Section 7(1) or Section 7(2) of the W.B.P.T. Act, 1997 within the time specified therein, the court shall order the defence against delivery of possession to be struck out.

In 2018 (1) CHN (CAL) 458 it was held that the requirement of deposit of the admitted arrear rent along with an application under Section 7(2) of the Act is mandatory and the application filed by the defendant without depositing the admitted arrear of rent was not maintainable.

In 2022(2) CHN (CAL) 245, Hon'ble Court held that Section 7(1) of W.B.P.T. Act, 1997 saddled the tenant with the imperative obligation to pay to the landlord or deposit all arrears of rent calculated at the rate of which it was last paid and upto the end of the month previous to that in which the payment is made together with an interest at the rate of 10% per annum.

It appears from the record that at the time of disposal of application under Section 7(2) of W.B.P.T. Act the defendant adduced evidence admitting that the cheque which was issued for the period of April, 2012 to March, 2015 was not encashed and the averments made by the plaintiff that the said cheque was not encashed because before receiving the said cheque, the plaintiff has sent eviction notice to the defendant and the defendant has every knowledge of the said Eviction notice and despite of such notice the cheque was issued which was not duly encashed by the plaintiffs.

Upon considering the materials on record, I am of considered view that defendant has knowledge about the arrear of rent from the month of April, 2012 till March, 2015 but the defendant did not disclose the said arrear of rent at the time of filing of the application under Section 7(1) of W.B.P.T. Act.

It is well settled principal of law according to the provisions of West Bengal Premises Tenancy Act, undisputed areas rate of rent is to be deposited in terms of application under Section 7(1)(a) and in the instant case the same has not been done by the defendant and such undisputed rent cannot be deposited or pay under Section 7(2) of W.B.P.T. Act, 1997 and the application under Section 7(2) of W.B.P.T. Act, 1997 is not maintainable when no dispute as to quantum of rent is raised and no admitted amount was not deposited along with the application which is mandatory as per provisions of law and the deposit made by the defendant in terms of order dated

14.12.2015 instead of paying to the plaintiffs/landlords are invalid deposits as such the defendant is defaulter in payment of rent and not entitled to any protection against the order of eviction.

Upon considering the submissions and argument for the plaintiffs, it appears to me that arguments of the Ld. Advocate for the plaintiffs regarding the order passed by this court in respect of application under section 7(2) of the W.B.P.T. Act and upon perusal of the order of this court it appears that the defendant has filed application under section 7(1) and 7(2) W.B.P.T. Act and application under section 7(1) was allowed and it appears from the application under section 7(1) of the W.B.P.T. Act that the defendant has prayed for deposit the admitted arrear of rent from the month of April, 2015 to November, 2015 current rent on and from the month of December, 2015 and thereafter month by month and there was no mention of any arrear of rent in respect from the month of April, 2012 to March, 2015 which was in the knowledge of the defendant.

Upon perusal of the order passed in the application under section 7(2) of W.B.P.T. Act is tentative order and it was under knowledge of the defendant that he has rent due from the month of April, 2012 to March, 2015 but he did not deposit the said arrear rent from April, 2012 to March, 2015 or did not mentioned about the said arrear rent in his application under section 7(1) or application under section 7(2).

The requirement of deposit of the admitted arrear rent along with an application under section 7(2) of W.B.P.T. Act is mandatory and an application under section 7(2), three elements are required, first there must be a dispute raised as to the amount of rent payable, second the tenant must make deposit of all admitted arrears of rent within the statutory period and third the said deposit must be made along with the application. It is clear from Section 7(1) of the Act, 1997 that when a tenant does not dispute either the relationship of landlord and tenant between the parties or the arrear amount of rent, he has to only deposit the arrear rent in court or pay the said amount to the plaintiff landlord within the stipulated time and he does not need to file any application before the court. It is Section 7(2) of the act which requires an application to be filed by the defendant tenant before the court for adjudication of the arrear rent payable by him which must be accompanied by the deposit of admitted arrear rent.

Here in this case in hand, the tenant filed the application under section 7(2) of the Act without depositing the arrear rent from the month of April, 2012 to March, 2015 together with statutory interest at the rate of 10% per annum.

It is well settled that in a case where the statutory provision is plain and unambiguous, the Court shall not interpret the same in a different manner only because of harsh consequences may arise therefrom and the benefits conferred on the tenant through relevant statutes can be enjoyed only on the basis of strict compliance with statutory provisions and equitable consideration has no place in such matters.

Upon perusal of the materials on record, the evidences and also perusing the applications under section 7(1) and 7(2) of W.B.P.T. Act, it comes out that the defendant has knowledge about the arrear of rent but he did not deposit the same at the time of filing of application under section 7(2) of W.B.P.T. Act which was totally distract from the statutory obligation and also the defendant did not comply the statutory provisions as enumerated under section 7(1) of the said Act.

Considering the above made observations, I am of considered view that the order passed by this court Vide. Order no. 41 dated 05.08.2019 is erroneous and the said order should be reviewed as per Section 114 read with Oder 47 Rule 1 of the CPC.

Hence, it is

ORDERED

that the application filed by the plaintiff under Section 114 read with Oder 47 Rule 1 of the CPC read with Section 151 of CPC is hereby allowed on contest.

The application filed by the defendant under Section 7(2) of the W.B.P.T. Act is not maintainable as per the provisions of West Bengal Premises Tenancy Act and as such the said petition is hereby rejected on contest.

To 15.03.2024 for framing of issues.

[Dictated and corrected by me]

Sd/-

(Manabendra Nath Ghosh)
Judge, Bench – II,
Presidency Small Cause Court,
Calcutta.

Sd/-

(Manabendra Nath Ghosh)
Judge, Bench – II,
Presidency Small Cause Court,
Calcutta.