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IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION

CO 192 of 2024

With
CAN 1 of 2024

M/s. Sitaram Kishanlal & CO & Ors.
Vs.
Hemanta Kumar Marda

Mr. Satarudriya Mukherjee
Ms. Oshmita Mukherjee
... For the petitioners.

In re: CAN 1 of 2024

1. This is an application filed under Section 5 of the Limitation 1963, praying for condonation of delay in filing the revisional application.
2. Mr. Mukherjee, learned advocate appearing in support of the application would submit that by way of abundant caution, the petitioners have filed the same, though there is no such requirement in law.
3. Having heard Mr. Mukherjee, let the application being CAN 1 of 2024 be disposed of without any order.

In re: CO 192 of 2024

4. The instant revisional application has been filed challenging the order No.81 dated 12th August, 2024, passed by the learned Civil Judge (Senior Division) at Siliguri in T. S. 29 of 2010, whereby the defence of the petitioners who are the

defendants in the Eviction Suit have been struck out.

5. Mr. Mukherjee, learned advocate appearing in support of the revisional application by drawing attention of this Court to the copy of the amended plaint would submit that from the statements made in the plaint and in particular the schedule thereof, it would be apparent and clear that the suit premises had been let out for non-residential purpose. He would submit that from the statements made in the plaint it would also be clear that the suit property was let out for and at a monthly rental of Rs.8600/- in the year 2004. He would submit that ordinarily although, it was the practice of the plaintiffs to collect the monthly rental by sending their representative, however, after the month of March, 2009, the plaintiffs suddenly stopped sending their representative for collecting the rentals. In such circumstances, the petitioners were compelled to tender the rent by cheque which, however, had been returned. Bringing such fact to the notice of the learned Court an application was filed seeking permission to deposit Rs.8600/-per month towards monthly rent in respect of the suit premises. He would submit that the said application though

captioned as an application under Section 7(1)(c) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act) was in fact, an application for making payment of the rent. By referring to this Court to the provisions contained in Section 3(f) of the said Act he would submit that since, the suit premises had been let out for non-residential purpose and since the rental is more than 5000/- and the suit property being situated outside Kolkata Municipal Corporation and Howrah Municipal Corporation, the provisions of the said Act cannot stand attracted and hence no order under Section 7(3) of the said Act declaring the defence of the defendants against delivery of possession to be struck out, could have been passed. He says that the order passed by the learned Trial Judge is without jurisdiction and on such ground the same should be set aside. He prays stay of all further proceedings in the suit pending hearing of this application.

6. Mr. Mukherjee, further submit that the petitioners are ready and willing to pay the entire arrears that had fallen due along with the current rent subject to payment on installments, as may be directed.

7. Having heard the learned advocate for the petitioners, I am of the view that a copy of the revisional application should be served on the opposite parties.
8. The revisional application is, thus, made returnable before the next available Circuit Bench.
9. There shall be a stay of all further proceedings in T.S. 29 of 2010 till the end of next available Circuit Bench or until further order whichever is earlier.

(Raja Basu Chowdhury, J.)