REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3786 OF 2015
(arising out of S.L.P.(C) NO.20281 of 2014)

Monoj Lal Seal and others .....Appellant(s)

Versus

Octavious Tea and Industries Ltd. ..Respondent(s)

JUDGMENT

M. Y. EQBAL, J.

Leave granted.

2. This appeal by special leave is directed against the order dated 27.3.2014 passed by the High Court of Calcutta in C.O. No. 914 of 2012 dismissing the application filed by the appellants and upholding the orders dated 19.1.2012 and 21.2.2012 passed by 5th Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 49 of 2008-E and rejecting the application for review of the order passed under Section 7(2) of the West Bengal Premises Tenancy Act, 1997.

3. The facts of the case lie in a narrow compass.

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Date: 2015.04.22 16:58:32 IST
Reason:

4. The father of Appellant No.1 was owner of a two storied building in a posh locality in South Kolkata (near Park Street) with a covered area of about 4650 sq. ft. on the rent of only Rs. 429/- per month. The tenancy of the Respondent was attorned by the Official Trustee of West Bengal in favour of Appellant No.1 herein and since then the respondent–tenant, which is a corporate house is occupying the entire first floor of the building.

5. It is case of the appellants that the respondent has embroiled the appellants (owner-landlord) in a series of litigations. It had earlier tried to encroach upon the lawn resulting in litigation which even came up to this Court.

6. The appellants-plaintiffs instituted a suit against the respondent for eviction on the ground of default in payment of rent and personal necessity before the Presidency Small Causes Court at Calcutta in respect of the suit premises. The suit was contested by the respondent, who after appearance filed two applications, one under Section 7(1) and another under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the '1997 Act'). On 11.4.2008,

the application under Section 7(1) of the 1997 Act was allowed permitting the defendant-respondent to deposit the arrears of rent as prayed for in the said application and thereafter month by month in the Court within the scheduled date as per law. The respondent, thereafter, alleged to have continuously defaulted in payment of rent despite order to pay rent was passed by the Court under Section 7(1) of the 1997 Act.

7. Appellant's further case is that instead of depositing the monthly rent before the Civil Judge, tenant had deposited monthly rent with the Rent Controller and on 17.6.2010, the respondent-tenant filed an application under Section 151 of the Civil Procedure Code seeking permission to deposit the rents for the month of April, 2008 to March, 2010 along with current rent before the trial court. That application was rejected by the trial Judge. Aggrieved by the said order, respondent then moved a revision petition before the High Court being C.O. No.2964 of 2010, which was rejected by order dated 5.1.2011 holding that the tenant was bound to comply with the directions of Section 7(1) of the Rent Act. On

26.8.2011, respondent filed another application under Section 151, CPC before the trial Judge seeking permission to deposit the arrears of rent, and that application was also rejected.

8. It is worth to mention here that respondent had challenged High Court's order dated 5.1.2011 by way of review application, which was rejected by the High Court on both merits and delay. Thereafter, respondent moved the Apex Court under Article 136 of the Constitution by way of special leave petition being SLP (Civil) Nos. 20181-82 of 2013, which was dismissed on 29.7.2013 leaving it open to the SLP petitioner (respondent herein) to raise all questions before the court below where the trial is pending including the default alleged against him so as to consider whether the same can be treated as bonafide in order to satisfy the condition laid down under Section 7 of the West Bengal Premises Tenancy Act, 1997.

9. After disposing of application under Section 7(1), the trial Judge disposed of the application under Section 7(2) of the 1997 Act on 19.1.2012 with the direction to the respondent-tenant to deposit a sum of Rs.91,419/- within

thirty days from the date of the order. However, plaintiffs-appellants filed an application for recall of order dated 19.1.2012. The said application was rejected holding that the trial Judge had no power to review his own order and accordingly he fixed the next date for framing of issues in the matter.

10. Dissatisfied appellants, therefore, preferred civil revision petition being C.O. No.914 of 2012 against the orders dated 19.1.2012 and 21.2.2012, whereby the Presidency Small Causes Court had allowed the application of the Respondent tenant under Section 7(2) of the Act, thereby rendering the remedy of the appellants u/s.7(3) of the 1997 Act, infructuous. However, this revision petition was dismissed by the High Court vide impugned order. Hence, the present appeal by Special Leave by the appellants.

11. We have heard, Mr. P.P. Rao, learned senior counsel appearing for the appellants and Dr. A.M. Singhvi, learned senior counsel appearing for the respondent.

12. After narrating the entire facts and the orders time to time passed by the trial court under Sections 7(1) and 7(2) of

the Act and also the orders passed by the High Court in revision application and also the order passed by this Court in special leave petition, Mr. P.P. Rao, learned senior counsel appearing for the appellants, contended that since the respondent-tenant failed to comply with the statutory provisions as contained in Sections 7(1) and 7(2) of the Act, the High Court has committed grave error of law in passing the impugned order holding that there is a compliance of the aforesaid provisions of the Act and submitted that in absence of strict compliance of the statutory provisions, the tenant shall be held to be a defaulter. On this proposition, learned counsel relied upon the decisions passed in the case of ***E. Palanisamy vs. Palanisamy (Dead) By Lrs. and Others***, (2003) 1 SCC 123, ***Atma Ram vs. Shakuntala Rani,*** (2005) 7 SCC 211, ***Sarla Goel and Others vs. Kishan Chand***, (2009) 7 SCC 658, ***Balwant Singh and Others vs. Anand Kumar Sharma and Others,*** (2003) 3 SCC 433 and ***Supreme Court Bar Association vs. Union of India and Another,*** (1998) 4 SCC 409.

13. Dr. A.M. Singhvi, learned senior counsel appearing for the respondent, on the other hand submitted that as a matter of fact there is no default committed by the respondent-tenant in depositing the rent. On the first day of appearance, the respondent filed an application seeking a direction to permit defendant-tenant to deposit the rent with the Rent Controller. The said prayer was allowed by order dated 11.4.2008. Learned counsel submitted that the respondent-tenant deposited the entire rent and was continuously depositing the rent till 2010 without any demor or objection. Learned counsel conceded that by virtue of amendment, which came into effect from 1.6.2006, the word "Rent Controller" has been substituted by the word "Civil Judge". With the *bonafide* belief that the rent had to be deposited with the Rent Controller, the respondent-tenant continuously deposited the same.

14. Dr. Singhvi, learned senior counsel further contended that in any view of the matter application under Section 7(3) of the Act is pending wherein prayer has been made to struck out the defence for the alleged non-compliance of the

provisions of Section 7(2) of the Act. Learned counsel submitted that Rent Control Act is a beneficial legislation and the Court has interpreted the provisions taking into consideration the intention of the legislature to give protection to the tenant. In this connection learned counsel would rely upon the decisions passed in the case of ***Mangat Rai & Anr. vs. Kidar Nath & Ors.,*** (1981) 1 SCR 476, ***Pushpa Devi and Others vs. Milkhi Ram (Dead) By His Lrs.,*** (1990) 2 SCC 134, and ***Nagindas Ramdas vs. Dalpatram Ichharam alias Brijram and Others,*** (1974) 1 SCC 242. Lastly, Dr. Singhvi submitted that earlier when the matter came to this Court by way of a special leave petition, this Court dismissed it on 29.7.2013 with the observation that the trial court shall consider the bonafide of the tenancy in depositing the rent.

15. Before appreciating the submissions made by learned counsel, we would like to quote here Section 7 of the West Bengal Tenancy Act, 1997:

> "**7. When a tenant can get the benefit of protection against eviction.** –
> (1)(a) On a suit being instituted by the landlord for eviction on any of the grounds referred to in Section 6, the tenant shall, subject to the provisions of sub-section (2) of this section, pay to the landlord or deposit with the Civil Judge all

arrears of rent, calculated at the rate at which it was last paid and upto the end of the month previous to that in which the payment is made together with interest at the rate of ten per cent per annum.

(b) Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the [1][suit] without the summons being served upon him, within one month of his appearance.

(c) The tenant shall thereafter continue to pay to the landlord or deposit with the Civil Judge month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

(2) if in any suit referred to in sub-section (1), there is any dispute as to the amount of the rent payable by the tenant, the tenant shall, within the time specified in that sub-section, deposit with the Civil Judge the amount admitted by him to be due from him together with an application for determination of the rent payable. On receipt of the application, the Civil Judge shall, having regard to the rate at which rent was last paid and the period for which default may have been made by the tenant, make, as soon as possible within a period not exceeding one year, an order specifying the amount, if any, due from the tenant and, thereupon, the tenant shall, within one month of the date of such order, pay to the landlord the amount so specified in the order:

Provided that having regard to the circumstances of the case, an extension of time may be granted by the Civil Judge only once and the period of such extension shall not exceed two months.

(3) If the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, the Civil Judge shall order the defence against delivery of

> possession to be struck out and shall proceed with the hearing of the suit.
>
> (4) If the tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant, shall be made by the Civil Judge, but he may allow such cost as he may deem fit to the landlord:
>
> Provided that the tenant shall not be entitled to any relief under this sub-section if, having obtained such relief once in respect of the premises, he again makes default in payment of rent for four months within a period of twelve months or for three successive rental periods where rent is not payable monthly."

16. Section 6 of the Act lays down the provision of protection of tenant against eviction. Section 6 provides that a tenant shall not be evicted unless an order or decree for recovery of possession of any premises is made in favour of the landlord and against the tenant on the ground inter alia that the tenant has defaulted in payment of rent in three months within a period of twelve months, or for three rental periods within a period of three years where the rent is not payable monthly. Section 7, as quoted above, gives further protection to a tenant from eviction on the ground of default in the event the tenant complied with the order and direction passed by the

Court in a proceeding instituted by the landlord for eviction. In order to get the benefit of protection against eviction, a tenant on an application or otherwise shall have to deposit with the Civil Judge all arrears of rent together with interest within one month from the service of summons on the tenant as contemplated under Section 7(1) of the Act.

17. The word "Controller" in sub-section (1) of Section 7 was substituted by the word "Civil Judge" by West Bengal Premises Tenancy (Amendment) Act, 2005 which came into effect from 1.6.2006.

18. As noticed above, the respondent filed two applications, one under Section 7(1) and another under Section 7(2) of the West Bengal Premises Tenancy Act, 1997. By the said application under Section 7(1), the appellant made the following prayer:

> "12. This application is bona fide and made for the ends of justice.
>
> Your petitioner, therefore, most humbly prays that the defendant may be permitted to deposit the amount of current monthly rent for the month of March 2008 and subsequent months thereafter payable by the defendant in the Office of the Learned Rent Controller, Calcutta and further permit the defendant to deposit in this Learned Court the sum of Rs.27,500/- being the arrears rent for 23 (twenty three) months with interest @ 10% p.a. and/ or pass such further order or orders as your Honour may deem fit and proper."

19. The said application under Section 7(1) was allowed by the Court on 11.4.2008 permitting the respondent-tenant to deposit the rent as prayed in the petition. The order dated 11.4.2008 is reproduced hereunder:-

> "Defendant filed today a put up petition along with two other Petition u/s 7(1) and 7(2) of the W.B.P.T. Act on the grounds are stated therein and a Vakalatnama. Let the same kept with the record.
>
> This case record is put up today. Learned advocate for the defendant is present moved. The petition u/s 7(1) is taken up for hearing. Perused the petition. Heard Court allowed.
>
> Defendant is permitted to deposit rent as prayed in the petition u/s. 7(1) at party's risks and responsibility without prejudice to the rights, and contention of the party and thereof month by month within date as per law.
>
> The petition u/s. 7(2) be put up todate. A copy served us the meantime."

20. The perusal of the order dated 11.4.2008 would show that the Court instead of directing the tenant to deposit the rent with the Civil Judge, as per the amendment which came into effect from 1.6.2006, permitted the tenant to deposit the rent as prayed for in the petition. Consequently, the respondent-tenant deposited the rent within 30 days as required under Section 7(1) of the Act, but the said deposit was made with the Rent Controller.

21. The Suit remained pending and in the meantime, the appellant filed an application under Section 7(3) of the said Act for striking out the defence of the defendant on the ground, inter alia, that the respondent-tenant is not depositing the rent. The said application is still pending for hearing. In the meantime, the trial Judge put up the application filed by the respondent under Section 7(2) of the Act for hearing. The said application was disposed of on 19.1.2012.

22. The trial court held that the respondent did not comply with the mandatory provisions as envisaged in Section 7(1) of the Act by not depositing the rent before the Court where the Suit is pending and instead went on depositing the rent before the Rent Controller. The trial court, therefore, by order dated 19.1.2012 directed the respondent-tenant to deposit Rs.1,18,919/- after deducting Rs.27,500/- which was already deposited within one month from the said order.

23. It appears that the appellants-landlords filed an application for review or recall of order dated 19.1.2012. The

trial court considered the said application and finally rejected it on 21.2.2012 by passing the following order:

> "Both sides are present through their lawyers.
> Petition dt. 01.2.12 filed by Plaintiff is taken up for hearing.
> Heard both sides. Perused the petition filed by plaintiff.
> Having considered the submissions of both sides and after going through the case record as well as order dt. 19.01.12, I find that plaintiff through the instant petition prays for cancellation/rescind the purported order dt. 19.01.12 passed by this Court. Plaintiffs have also prayed for the rejection of application u/s 7(2) of W.B.P.T. Act, filed by defendants.
> In view of above facts and circumstances, it appears before this Court that the application U/s 7(2) of W.B.P.T. Act filed by defendant was disposed of in presence of both sides and upon contested hearing. Accordingly, the prayer of plaintiffs is devoid any merit. Moreover, this Court has no jurisdiction to review its own order.
> Hence, the petition filed by plaintiffs on 01.02.12 is rejected on contest.
> Defendant have complied the order dt. 19.01.12 and deposited the amount. Let, the Xerox copy of challan be kept with this record.
> Fix 20.04.12 for framing issue."

24. These two orders dated 19.01.2012 and 21.2.2012 were challenged by the appellants-landlords by filing a civil revision before the Calcutta High Court. The High Court after taking into consideration all the facts including those mentioned hereinabove dismissed the revision petition by holding as under:

> "This being the position, in my view, the defendant has complied with the orders passed on the application under Section 7(2) of the 1997 Act. It may be mentioned herein that the said application under Section 7(2) of the 1997 Act was disposed of on contests and then the defendant/tenant/opposite party herein has complied with the orders passed therein. Under the circumstances, the order dated 19.01.2012 passed by the learned trial Judge, in my view, cannot be said to be contrary to the order passed by the Hon'ble Apex Court rather the learned trial Judge, in my view, has disposed of the said application in accordance with the law.
> So far as the impugned orders are concerned, though after disposing of the application under Section 7(1) of the 1997 Act, the defendant/tenant was not able to comply with the orders, yet, if there is any default for the intervening period prior to the date of disposal of the application under Section 7(2) of the 1997 Act, in my view, the Court is free to pass appropriate orders calculating the arrears of rent to be paid. Such a recourse has been adopted by the learned trial Judge by passing the order dated 19.01.2012. The said order dated 19.01.2012 has already been complied with by the defendant/tenant/opposite party herein by depositing the amount as per direction of the Court on 07.02.2012, i.e. within the 30 days from the date of disposal of the application under Section 7(2) of the 1997 Act. In my view, while passing the order dated 21.2.2012 for review, the learned trial Judge had no other alternative but to dismiss the said application, though he has recorded a different ground that he has no power to review his own order."

25. It is worth to mention here that as against the finding of the trial court that since the respondent-tenant deposited the rent with the Rent Controller instead of depositing it in the

Court respondent-tenant became a defaulter as contemplated under Section 7(1) of the Act, tenant filed the review petition under Section 151 CPC. The said application was rejected and the revision petition filed against the said order was also dismissed by the High Court. The review petition filed by the respondent in the High Court was dismissed by order dated 14.2.2013. The respondent then moved before this Court against the order dated 14.2.2013 by fling a special leave petition. The said special leave petition was taken up on 29.7.2013 and was dismissed with the observation that it would be open to the SLP petitioner (respondent-tenant herein) to raise all questions before the Court, as to whether the alleged default is bona fide. The order dated 29.7.2013 passed by this Court is quoted herein below:

> "We see no ground to entertain these special leave petitions. The special leave petitions are dismissed.
>
> However, we leave it open to the petitioner to raise all questions before the Court below where the trial is pending including the default alleged against him so as to consider whether the same can be treated as bona fide in order to satisfy the condition laid down under Section 7 of the West Bengal Premises Tenancy Act, 1997."

26. As discussed above, the instant appeal by special leave is against orders dated 19.1.2012 and 21.2.2012 passed by the trial court rejecting the review petition filed by the appellants-landlords holding that the respondent-tenant has complied with the order passed on the application under Section 7(2) of the Act.

27. In the background of all these facts and the sequence of the orders passed by Small Causes Court up to this Court, we have carefully analysed the decisions of this Court referred by the learned counsel appearing for the parties.

28. Indisputably, the Rent Control Acts have been enacted in different States with the object to protect the tenants from illegal eviction without obtaining the decree or order from a competent Court on one or more grounds provided in those Acts. At the same time, it is well settled that the benefits conferred on the tenants through those Rent Control Acts can be enjoyed only after strict compliance with the statutory provisions.

29. Mr. Rao, learned senior counsel appearing for the appellants, mainly contended that Section 7(1) of 1997 Act

shall have to be strictly complied with by the tenant by depositing entire rent as contemplated in the said provision within a fixed time. But in the instant case, there is no dispute that the respondent-tenant deposited the rent as required under Section 7(1) of the Act with the Rent Controller instead of depositing the same with the Civil Judge. The deposit of such rent by the tenant with the Rent Controller instead of Civil Judge as per the amendments which came into effect on 1.6.2006 was either deliberate or a bonafide mistake. This may be the reason, this Court in the earlier special leave petition made an observation that the respondent-tenant may satisfy the Court that such deposit was bonafide.

30. We have given our anxious consideration to the matter and the order impugned passed by the High Court holding that the orders dated 19.1.2012 and 21.2.2012 passed by the Small Causes Court need no interference. We are also of the same opinion that having regard to the order passed by this Court by giving liberty to the tenant to satisfy that such deposit with the Rent Controller instead of Civil Judge was

bonafide, the impugned order passed by the High Court is thus fully justified.

31. For the reasons aforesaid, we do not find any merit in this appeal which is accordingly dismissed.

.....J.
(M.Y. Eqbal)

.....J.
(Amitava Roy)

New Delhi
April 21, 2015

ITEM NO.1B COURT NO.9 SECTION XVI
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.3786 of 2015 arising out of Special Leave Petition(C) No. 20281/2014

MONOJ LAL SEAL AND ORS. Appellant(s)

VERSUS

OCTAVIOUS TEA AND INDUSTRIES LTD. Respondent(s)

Date : 21/04/2015 This appeal was called on for pronouncement of judgment today.

For Appellant(s)
Mr. Pranab Kumar Mullick,Adv.
Ms. Soma Mullick, Adv.
Mr. Sebat Kumar Deuria, Adv.

For Respondent(s)
Mr. Pinaki Addy, Adv.
Mr. Dev Mukherjee, Adv.
For Mr. Chander Shekhar Ashri,Adv.

Hon'ble Mr. Justice M.Y. Eqbal pronounced the judgment of the Bench comprising of His Lordship and Hon'ble Mr. Justice Amitava Roy.

Leave granted.

This appeal is dismissed in terms of the signed reportable judgment.

[INDU POKHRIYAL]
COURT MASTER

[SUKHBIR PAUL KAUR]
A.R.-CUM-P.S.

(Signed reportable judgment is placed on the file)