

Civil Revision
PRESENT: THE HON'BLE MR JUSTICE KALIDAS MUKHERJEE
JUDGMENT ON: 18.02.2010.

C.O. NO. 3594 OF 2008
Pradyut Roy Chowdhury
Vs.
Smt. Bonolata Ghosh Roy & Ors.

Point:

SUSPENSION OF RENT: Landlord admitted that the tenant was inducted with all amenities attached to the tenancy- Tenant claimed payment to the water carrier- Whether it is necessary to give an opportunity to the tenant to adduce evidence to prove the necessary documents and examine necessary witness in support of the claim - West Bengal Premises Tenancy Act, 1997, S. 7(2)- Constitution of India, Art. 227

Fact: By filing the instant application, the petitioner/defendant, being a tenant of a suit premises, has challenged the order passed by Ld. Additional Civil Judge (Junior Division), Sealdah whereby the petitioner's application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 filed in connection with a suit for ejection on the ground of default and reasonable requirement, was disposed of determining the amount of arrears of rent and the interest. The petitioner has also challenged an order of rejection passed by the Ld. Additional Civil Judge rejecting his application for recalling him as witness

Held:

The learned Court below observed that O.P.W. 1 has admitted on behalf of the landlord that the tenant was inducted with all amenities attached to the tenancy. It has also been recorded by the learned Court below that O.P.W. 1 has admitted in cross-examination that the tenant got water from a separate line from the main line of the corporation. Having regard to the circumstances of the

instant case the High court observed that in the interest of justice to give an opportunity to the defendant/petitioner herein to adduce evidence to prove the necessary documents and examine necessary witness in support of the claim for payment to the water carrier. The learned Court below will dispose of the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 after giving opportunity to the petitioner herein to adduce evidence on the point stated above and also giving opportunity to the O.Ps. herein to adduce rebuttal evidence.

Paragraph – 9 & 11

Cases: AIR 1966 SC 1361 [Surendra Nath Bibra V. Stephen Court Ltd.] Para 8 and AIR 1978 Allahabad 144 [Mani Kant Tiwari V. Babu Ram Dixit] para 34, 35 & 36.

For the petitioner: Mr. Jiban Ratan Chatterjee,
 Mr. Subrata Bhattacharyya.

For the O.Ps. : Mr. Harish Tandon
 Mr. Goutam Das.

The Court:

1. This is an application under Article 227 of the Constitution of India assailing the order No. 52 dated 31.10.2008 passed by learned Additional Civil Judge(Junior Division), Sealdah in Ejectment Suit No. 268 of 2004.
2. The defendant/petitioner herein is a tenant in the suit premises. The O.Ps. instituted a suit for ejectment on the ground of default and reasonable requirement. The defendant entered appearance and filed an application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 praying for determination of arrears of rent after determining the amount already paid as to electricity charges and for bringing water through water carrier. The petitioner was inducted in the suit premises at a rental of Rs.180/- with all amenities

attached to the tenancy in the year 1977 including the supply of water to the tenanted portion, but, the opposite parties whimsically stopped the flow of water by putting a stopcock on the pipeline under their control on 11.1.2002 as a result of which the petitioner was compelled to bring the essential water from outside on payment of Rs.300/- per month to the water carrier. Such amount should be adjusted with the monthly rent. The O.P. No. 2 herein categorically stated in evidence-in-chief that corporation water is stored in the underground reservoir of the premises and each floor having hand pump for the user and there is sufficient water. But in the criminal case bearing No. C/592/2002 in the Court of learned J.M., 5th Court, Sealdah against the wife of the petitioner, the O.P. No. 1 deposed in her evidence that there is no water in the house and water was brought from outside through water carrier. The said deposition of the O.P. No. 1 in the criminal proceeding has been marked as Exhibit 5, 5/1 & 5/2. The petitioner filed an application on 09.8.2007 for recalling him as witness to produce the documents showing payment of charges paid to the water carrier in connection with the application under Section 7(2) of the Act. But the learned Court below was pleased to reject the said prayer.

3. The petitioner has further stated in this application that he has an electric meter in his own name. The other electric meter which was standing in the name of the predecessor of the landlord was disconnected due to non-payment of bills. At that time the total electricity of the premises was consumed from the petitioner's meter and the O.Ps assured that the said amount of Rs.6,730/- approximately would be adjusted with the monthly rent of the petitioner. But the O.Ps. refused to adjust the same. The petitioner paid monthly rent from September to December, 1990 and January 1991 but no rental bill was granted to that effect. The petitioner sent a letter through his learned advocate to the O.Ps. on 08.6.1992 which

was exhibited as (Exhibit – 4). But the O.Ps. did not send any reply against that letter. Finding no other alternative, the petitioner started depositing the monthly rent with the Rent Controller from May, 1995 onwards.

4. The learned Court below was pleased to pass an order determining the arrears rent at Rs.16,380/- and the interest thereon at Rs.22,113/- totalling to Rs.38,493/-. It has been contended that the learned Court below determined the interest whimsically and not disclosing the rate of interest as required under the law.
5. The learned Court below upon consideration of the materials on record and upon hearing both sides was pleased to dispose of the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 determining the amount of arrears of rent and the interest as stated above. Being aggrieved by the said order passed by the learned Court below, the tenant/defendant has filed the instant application under Article 227 of the Constitution of India.
6. The learned Counsel appearing on behalf of the petitioner submits that the landlord stopped the supply of water and the tenant had to engage water carrier for fetching water on payment of necessary charges. It is also submitted that the electric meter standing in the name of the predecessor of the present landlady was disconnected for non-payment of the bill and the landlord consumed electricity from the meter of the tenant on the assurance that the electricity charges will be adjusted with the monthly rent of the petitioner. But ultimately the landlord refused to do that. The learned Counsel appearing for the petitioner further submits that in the evidence-in-chief the O.P. has stated that the water is kept in the reservoir in the ground floor and there is hand pump in each floor, but, in the criminal proceeding it was stated in evidence that there was no water in the building and water was

brought from outside through the water carrier. The learned Counsel further submits that the learned Court below assessed the interest whimsically and the simple interest should have been calculated @ 10% as per the statute.

7. The learned Counsel appearing on behalf of the O.Ps. submits that the tenant failed to prove the basis of the claim regarding the adjustment. It is further submitted that there is no such stipulation that there would be any adjustment and the alleged claim is beyond the terms of the tenancy and the alleged adjustment or suspension of rent would not be automatic. The learned Counsel in this connection has referred to the decisions reported in *AIR 1966 SC 1361 [Surendra Nath Bibra V. Stephen Court Ltd.] Para 8 and AIR 1978 Allahabad 144 [Mani Kant Tiwari V. Babu Ram Dixit] para 34, 35 & 36.*
8. The learned Court below rejected the prayer for adjustment on the point of electricity charges amounting to Rs.6,730/- holding that in absence of any express statement either oral or documentary made by the landlord admitting such claim, mere forbearance on the part of the landlord to reply as against Exhibit – 4 could not be treated as an admission. The learned Court below further held that the onus was upon the tenant to prove such fact and as he has failed satisfactorily to discharge it, no liability could be fastened on the landlord. On perusal of the papers on record and after going through the finding arrived at by the learned Court I find that there is no scope to interfere with the same so far as the claim regarding adjustment of electricity charge is concerned. Finding of the learned Court below on this point is affirmed.
9. As regards the adjustment of the amount paid to the water carrier, the learned Court below observed that O.P.W. 1 has admitted on behalf of the landlord that the tenant was inducted with all amenities attached to the tenancy. It has also been recorded by the learned Court

below that O.P.W. 1 has admitted in cross-examination that the tenant got water from a separate line from the main line of the corporation. It further appears that a petition recalling the witness Pradyut Roy Chowdhury was filed which was rejected by the learned Court below, as per averment made in para 6 of the instant application.

10. In the decision reported in AIR 1966 SC 1361 para 10, 13 the matter regarding apportionment of rent rejected by High Court was remanded to the Trial Court for calculation of proportionate rent. In that case the landlord failed to give possession of one out of three bedrooms of the demised premises and the tenant was entitled to pay a proportionate part of the rent. The learned Counsel appearing for the O.Ps. herein submits that in case of failure on the part of the landlord to give possession of the part of the premises to the tenant, the doctrine of suspension of rent can be invoked, but, in case of payment of water charges and/ or electricity the said doctrine cannot be invoked. In the instant case it has been contended by the tenant that the supply of water was stopped and he had to bring water from outside through water carrier and for that he had to pay the necessary charges. In the aforesaid case it has been held by the Hon'ble Apex Court as follows:-

Para 7.

“.....It seems to us that it will depend on the circumstances of each case whether a tenant would be entitled to suspend payment of the rent or whether he should be held liable to pay proportionate part of the rent.....”

11. Having regard to the circumstances of the instant case I find it expedient in the interest of justice to give an opportunity to the defendant/petitioner herein to adduce evidence to prove the necessary documents and examine necessary witness in support of the claim for

payment to the water carrier. The finding of the learned Court below on this point along with the determination of the arrears of rent with interest thereon is set aside. The learned Court below will dispose of the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 after giving opportunity to the petitioner herein to adduce evidence on the point stated above and also giving opportunity to the O.Ps. herein to adduce rebuttal evidence. The learned Court below will dispose of the petition under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 as early as possible according to law. Interim order, if any, stands vacated. The instant application under Article 227 of the Constitution of India is thus disposed of accordingly.

12. There will be no order as to costs.
13. Let a copy of this order be sent to the learned Court below immediately.
14. Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.

(Kalidas Mukherjee, J.)