

C.O. 32 of 2022

Mahendra Shaw & Anr.
Vs.
Manoj Shaw

Mr. Ayan Banerjee,
Mr. Dev Kimar Sharma,
Ms. Debjani Sengupta
.....for the petitioners

Mr. Kushal Chatterjee
.....for the opposite party

The subject matter of challenge in this revisional application is against an order dated 3rd March, 2020 passed by learned Civil Judge (Junior Division), 1st Court, Howrah in Title Suit No. 1090 of 2018, allowing an application under Section 5 of the Limitation Act, and thereby condoning the delay of 67 days in filing application under Section 7(1) & 7(2) of the WBPT Act.

Mr. Ayan Banerjee, learned advocate appearing for the petitioners submits that there is hardly any scope of application of Section 5 of the Limitation Act in the given circumstances of the case, where there is an inbuilt mechanism provided for filing of such application referred above, within the mischief period provided in the Act itself.

Mr. Banerjee, learned advocate places his reliance on a decision of Apex Court reported in **2019 (10) SCC 660**, delivered in the case of **Bijay Kumar Singh and others Vs. Amit Kumar Chamariya and Anr.** to support his stand that Section 5 has no application to condone the delay in filing application under Section 7(1) & 7(2) of WBPT Act in a suit for eviction.

Disputing with the applicability of decision referred above, Mr. Kushal Chatterjee, learned advocate for the opposite party, submits that the core issue involved in this case relates to Section 7(2), but not relatable to Section 7(1) of W.B.P.T. Act, and therefore, such decision has no application. Supporting the order of the Court below, Mr. Chatterjee submits that order impugned would go unaltered.

The proposition of law settled by the Apex Court, as to the applicability of Section 5 of the Limitation Act over application under Section 7(1) and 7(2) of W.B.P.T. Act was addressed by the Apex Court in the case of **Bijay Kumar Singh and Ors. (supra)**. The ratio of such decision would be squarely applied over the facts and circumstances of the case.

Section 7 (1) of the WBPT Act deals with the payment of arrears of rent, when there is dispute

regarding the rate of rent, or the period of arrears of rent. Section 7(2) of the Act comes into play if there is dispute as to the amount of rent including the period of arrears payable by the tenant. A tenant is, therefore, obliged to apply within the time, as specified in Section 7(1) of the Act, i.e. within one month of the receipt of the summons, or within one month of appearance before the Court. The filing of application under Section 7(1) or Section 7(2) of the W.B.P.T. Act could not be done taking required exercise by the tenant within the mischief period provided in Section 7(1) of the Act itself. When there is inbuilt mechanism, prescribing limitation for filing a particular application relatable to Section 7(1) & 7(2) of the WBPT Act, in that case Section 5 of Limitation Act will not be applied for condoning the delay, if there be any.

The settled proposition of law, as discussed hereinabove, thus should not be endeavoured to be unsettled, as the opposite party proposes to do in the manner referred hereinabove.

The impugned order is set aside.

With this observation and direction, the revisional application stands disposed of.

Parties are directed to make communication of this order to the learned Court below.

Urgent photostat certified copy of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Subhasis Dasgupta, J.)