

06.09.2022
Item No.5 & 6
Ct. No.7
CHC
(disposed of)

**C.O.745 of 2022
With
C.O.748 of 2022**

**Mahendra Shaw & anr.
Vs.
Sitaram Chowdhury**

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

Mr. Ashok Pandey
...for the opposite party

On the prayer of both the parties, both the revisional applications, referred above, are taken up together for a common law point being involved.

Impugned order in C.O.745 of 2022 is relatable to Title Suit No.1089 of 2018, of learned Civil Judge (Junior Division), 1st Court, at Howrah, making condonation of delay of 14 days, filed in connection with petitions under Section 7(1) and 7(2) of the W.B.P.T. Act, while order under challenge in C.O.748 of 2022 pertains to an order dated 5th March, 2022 in the same suit, by same court, disposing of application under Section 7(2) of the W.B.P.T. Act holding the opposite party/tenant to be in arrears of rent with a direction to deposit arrear of rents, as assessed

therein, within the stipulated date mentioned in the impugned order.

Mr. Ayan Banerjee, learned advocate appearing for the petitioners/landlords submits that application under Section 7(2) of the W.B.P.T. Act was allowed after making condonation of delay in aid of application under Section 5 of the Limitation Act, by the court below, which is absolutely contrary to law, as there is no scope for any application of the Limitation Act, for the inbuilt limitation prescribed in the Act itself.

It is also submitted by Mr. Banerjee that since condonation of delay was allowed making infraction of the provisions of law, there cannot be any further decision returned in connection with a prayer under Section 7(2) of the W.B.P.T. Act.

Reliance is placed by Mr. Banerjee on a decision reported in **(2019) 10 Supreme Court Cases 660** delivered in the case of ***Bijay Kumar Singh & ors. vs. Amit Kumar Chamariya & anr.*** to submit that for a complete mechanism having been provided in the Act itself, there cannot be any application of Section 5 of Limitation Act for condonation of delay.

Upon referring such decision, Mr. Banerjee submits that the mischief already engrafted in the Act itself would be attracted against the opposite party for causing delay in filing the required applications under

Section 7(1) and 7(2) of the W.B.P.T. Act within the time prescribed in the Act itself.

Per contra, Mr. Ashok Pandey, learned advocate for the opposite party submits that there has been a delay of 14 days only in filing Section 5 application, and there has been explanation already offered, as to what prevented the opposite party from preferring the required applications under Section 7(1) and 7(2) of the W.B.P.T. Act within the prescribed period of time. The court below was satisfied with the explanation giving hearing to both the parties, ultimately it was allowed, learned advocate for the opposite party argues.

It is also submitted by learned advocate for the opposite party that application under Section 7(2) of the W.B.P.T. Act was decided subsequent to the decision being returned under Section 5 of the Limitation Act by the court below. As per decision of the application under Section 7(2) of the W.B.P.T. Act, the opposite party has been depositing rent doing compliance of the order passed by the court below.

Having considered the submission of both sides, it appears that the delay being condoned in connection with an applications under Section 7(1) and 7(2) of the W.B.P.T. Act is under dispute in this case. The proposition of law has already been decided by the Apex Court in the case of ***Bijay Kumar Singh & ors.*** (*Supra*) and as per ratio decided by the Apex Court

there is hardly any scope of application of Section 5 of the Limitation Act to condone the delay, if there be any caused in filing the application under Section 7(1) and 7(2) of the W.B.P.T. Act.

Since application under Section 7(2) of the W.B.P.T. Act was decided subsequent to the decision of the court below being returned in aid of Section 5 of the Limitation Act, the same is in departure of the decision referred above.

For the reasons discussed hereinabove, both the orders dated 25.09.2019 and 5th March, 2022, passed by learned Civil Judge (Junior Division). 1st Court, Howrah, in Title Suit No.1089 of 2018 are set aside with a direction upon the court below to rehear the same afresh in accordance with the provisions of law giving equal opportunity of hearing to both the parties, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

While endeavouring such exercise, a fresh hearing of application under Section 5 of the Limitation Act read with Section 7(1) and 7(2) of the W.B.P.T. Act may be made preferably within four weeks after the Puja Vacation of Court below.

With this observation/direction, both revisional applications are disposed of.

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

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)