

Item-5. 22-11-2022

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Ct. 8

WPLRT 147 of 2022

M/s. Bharat Commercial Enterprises
Versus
State of West Bengal & Ors.

Mr. Saptarshi Kumar Mal, Adv.
Ms. Shukti Nag, Adv.
...for the appellant

Mr. Sourav Sen, Adv.
Mr. Partha Chakraborty, Adv.
...for the respondent no.3

We have heard the learned Counsel for the parties.

The learned Tribunal has dismissed the appeal preferred against the order of the Controller on the ground that the application filed under Section 27 of the West Bengal Premises Tenancy Act, 1997 alleging disconnection of water supply and the same was filed beyond the period of six months from the date of concurrent Act.

Mr. Sourav Sen, learned Advocate representing the private respondent has rightly pointed out that the application ought to have been filed under Section 35 of the West Bengal Premises Tenancy Act being a substantive provision dealing essential repairs which, inter alia, includes measures for maintenance of essential services.

Essential services includes “cutting off” or “withholding off” water supply. The Controller allowed the application by condoning the period on an assumption that the said Controller has the jurisdiction to extend the time beyond the period of six months to do complete justice to the parties.

The learned Tribunal held that the Controller has no power

to extent the said period and, accordingly, dismissed the application on the ground of limitation.

In our view, both the Controller and the learned Tribunal overlooked Section 35 of the West Bengal Premises Tenancy Act, 1997. The reason could be that no argument was advanced drawing the attention of the Controller or the learned Tribunal with regard to Section 35 of the said Act.

In view thereof, the order passed by the Controller shall be treated to be an order passed under Section 35 of the West Bengal Premises Tenancy Act, 1997.

The learned Tribunal shall rehear the appeal and dispose of the appeal on merits treating the order of the Controller to be an order passed under Section 35 of the West Bengal Premises Tenancy Act.

The order of the learned Tribunal is set aside.

The learned Tribunal is requested to dispose of the appeal within two months from the date of the communication of this order by either of the parties.

The appeal stands disposed of.

(Uday Kumar, J.)

(Soumen Sen, J.)