

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 2575 of 2022

Bahadur Singh Kathotia

VERSUS

Smt. Purabi Basu

For the petitioner:

Mr. Partha Pratim Roy, Adv.

Mr. Debdas Khanna, Adv.

Mr. Dyutiman Banerjee

for the opposite parties:

Mr. Arnab Nandi, Adv.

Mr. Arka Prabha Chaudhury, Adv.

Last Heard on: February 03, 2023

Judgment on: February 17, 2023

Biswaroop Chowdhury.,:

The petitioner before this Court is a defendant in a Suit for Eviction and is aggrieved by the Order dated 26-07-2022 passed by

Learned Civil Judge Junior Division 3rd Additional Court Alipore
South-24 Parganas in Ejectment Suit 276 of 2019.

The case of the petitioner/defendant may be summed up
thus:-

1. The opposite party as plaintiff filed a suit for eviction recovery of Khas Possession and mesne profit against the defendant/petitioner before the Learned Civil Judge (Junior Division) 3rd Additional Court at Alipore South 24 Parganas.
2. The petitioner received the summons in the month of December 2019, and entered appearance in the suit on 30-03-2021 and filed application under Section 7(1) of the West Bengal premises Tenancy Act 1997.
3. The petitioner apart from filing application under Section 7(1) of the premises Tenancy Act 1997 also filed application under Section 7(2) of the West Bengal Premises Tenancy on 22-07-2021.
4. The applications filed by the petitioner under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act was contested by opposite party/plaintiff by filing written objection.

5. By Order dated 26-07-2022 the Learned Trial Court rejected the petitions under Section 7(1) and Section 7(2) of the West Bengal Premises Tenancy Act 1997.

The petitioner being aggrieved by the Order passed by the Learned Trial Judge has come up with this Revisional Application.

It is the contention of the petitioner that the Learned Trial Court acted illegally in not adjudicating the application under Section 7(2) of the West Bengal Premises Tenancy Act for non-compliance with application under Section 7(1) of the West Bengal Premises Tenancy Act by overlooking the reasons assigned by the petitioner in the application under Order 9 Rule 7 of the Code of Civil Procedure. It is also contended that the Learned Trial Court acted illegally in deciding the applications in isolation of the application under Order 9 Rule 7 of the Code of Civil Procedure.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite party. Perused the petition filed and materials on record.

Learned Advocate for the Petitioner submits that the petitioner could not appear on the date fixed and as the petitioner is suffering from blood cancer and due to the ongoing pandemic could not contest the Suit but he appeared on 30/03/2021 and filed written statement, as well as an application under Order IX Rule 7 of the Code of Civil Procedure Learned Advocate further submits that although the petitioner filed petition under Section 7(1) of West Bengal Premises Tenancy Act 1997 within one month from the date of his appearance, the Learned Trial Court erred in rejecting the application on the ground of limitation. Learned Advocate further submits that his client is suffering from blood cancer and due on ongoing pandemic he was unable to attend Court but on the date of appearance his client has filed written statement and thereafter the petitions under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997. Learned Advocate submits that as his client made application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 within one month from date of appearance his applications ought not to have been rejected on the ground of limitation.

Learned Advocate for the opposite party submits that as the petitioner has admitted to have received summons in the month of December 2019, it was obligatory on his part to appear within one month from date of receiving summons, and deposit rent and file the applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997. Learned Advocate for the opposite party relies upon the following Judicial decisions:

Bijoy Kumar Singh and others.

Vs

Amit Kumar Chamariya and others

Reported in 2020 (1) Indian Civil Cases 664 (S.C)

Smt Papiya Sengupta and ors.

Vs

Sri Suvasis Ghosh

Reported in 2020(1) Indian Civil Cases 980 (Cal).

Upon perusing the Order passed by the Learned Trial Judge it appears that the Learned Judge while disposing the applications

under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 observed and directed as follows:

In BIJAY KUMAR SINGH AND OTHERS VS AMIT KUMAR CHAMARIYA AND ANOTHER (2019) 10 Supreme Court cases 660 it has been held that the tenant is obliged to apply within time as specified in 7(1) of the West Bengal Premises Tenancy Act 1997 i.e. within one month of the receipt of summons or within one month of appearance before the Court to deposit with the Civil Judge the amount admitted by him to be due. The deposit of rent along with an application for determination of dispute is a pre condition to avoid eviction on the ground of non payment of arrears of rent. Therefore tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not an application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.

So this Court is of the opinion that the summon has been received by the defendant in month of November 2019, so as per the statute one month will be counted from the date of receiving of summons and not from the date of his appearance i.e. 30-03-2021.

As such the petitions 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 are not maintainable in the eye of law.

Hence the petition under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act is rejected and disposed of on contest.'

The Hon'ble Supreme Court in the case of Bijay Kumar Singh (supra) observed as follows:

'Sub Section (3) provides for consequences of non-payment of rent i.e. striking off the defence against the delivery of the possession and to proceed with the hearing of the suit. Such provision is materially different from sub sections (2A) and (2B) which was being examined by this Court in B.P. Khemka. Sub Sections (2A) and (2B) of Section 17 of 1956 Act confer unfettered power on the Court to extend the period of deposit of rent, which is circumscribed by the proviso to Section 7(2) and Sub-Section 3 of Section 7 of the Act. Therefore, the provisions of Sub Section (2) are mandatory and required to be scrupulously followed by the tenant, if the tenant has to avoid the eviction on account of non-payment of arrears of rent under Section 6 of the Act. There is an outer limit for

extension of time to deposit of arrears of rent in terms of the proviso to sub section (2) of Section 7 of the Act. There is an outer limit for extension of time to deposit of arrears of rent in terms of the proviso to sub-Section – 2 of Section 7 of the Act. The consequences flowing from non-deposit of rent are contemplated under sub Section (3) of Section 7 of the Act. Therefore, if the tenant fails to deposit admitted arrears of rent within one month of receipt of summons or within one month of appearance without summons and also fails to make an application for determination of the disputed amount of rate of rent and the period of arrears and the subsequent non-payment on determining of the arrears of rent, will entail the eviction of the tenant. Section 7 of the Act provides for a complete mechanism for avoiding eviction on the ground of arrears of rent, provided that the tenant takes steps as contemplated under sub Section (2) of Section 7 of the Act and deposits the arrears of rent on determination of the disputed amount. The deposit of rent along with an application for determination of dispute is a pre-condition to avoid eviction on the ground of non-payment of arrears of rent. In view thereof, tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not an application alone which is required

to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.'

The Hon'ble Supreme Court further observed as follows:

'In another Three Judge Bench Judgment reported as Nasiruddin and Ors vs Sita Ram Agarwal reported in (2003) 2 SCC P-577 it was held that in terms of clause (a) of Sub-Section (2A) of Section 17 of the 1956 Act the requisite power to extend the time for deposit of rent on an application made by the tenant is without any restriction. It was further held that the question of application of Section 5 of the Limitation Act 1963 would arise if the appellant or the applicant satisfies the Court that he had sufficient cause for not making the appeal or application within such period. Section 13(4) of the Rajasthan Premises (Control of Rent and Eviction) Act 1950 [for short the 'Rajasthan Act'] provides that the tenant shall on the first date of hearing or on or before such date, shall deposit in Court or pay to the Landlord in Court from the date of such determination the amount so determined or within such further time not exceeding three months as may be extended by the Court. Thus Sub-Section (4) itself provides for limitation of a specific

period within which the deposit has to be made, which cannot exceed three months as extended by the Court. Thus Sub-Section (4) itself provides for limitation of a specific period within which the deposit has to be made which cannot exceed three months as extended by this Court. The deposit by the tenant within 15 days is not an application within the meaning of Section 5 of the Limitation Act 1963. Since the deposit does not require any application therefore the provisions of Section 5 cannot be extended where the default takes place in complying with an Order under Sub-Section 4 of Section 13 of the Act. It is thus contended that provisions of the Rajasthan Act are close to the language of Section 7 of the Act. Therefore the Limitation Act is not applicable to seek condonation of delay in filing an application under Section 7(2) of the Act.'

In the case of Smt Papiya Sengupta and ors (supra) a Learned Single Judge of this Court observed as follows:

'9' Mr. Ayan Banerjee Learned Counsel appearing on behalf of the landlord opposite party on the other hand submits that the division Bench of this Court in the case of Subrata Mukherjee Vs Bisakha

Das (Supra) has held that the provision of section 5 of the Limitation Act 1963 can be availed for condonation of delay in depositing the admitted arrear rent but in view of the recent pronouncements of the Hon'ble Supreme Court in the case of Bijay Kumar Singh and ors Vs Amit Kumar Chamariya and ors passed in Civil Appeal No. 7849 of 2019 : [2019 (2) RLR (S.C) 506 : 2020 (1) ICC (S.C) 664] the position now is otherwise. The petitioners cannot resort to the said provision of the Limitation Act 1963 for condonation of delay in depositing the amount of admitted arrear rent.”

In the case of Parivar Enclave Pvt. Ltd. V Samit Dutta 2016 (2) CLJ (Cal) 641 a Learned Judge of this Court observed as follows:

‘Admittedly as per statute in a suit for eviction of a tenant under the provision of the West Bengal Premises Tenancy Act 1997 the application under Section 7(2) of the Act has to be filed before the Learned Trial Court within one month from the date of appearance of the tenant to decide the issue regarding relationship of Landlord and tenant, rate of rent defaulter/arrear of rent to be

paid by the tenant supported by deposit of admitted amount equivalent to rent within one month but it was not filed within the stipulated time. There is a provision under Section 40 of the Act, which was enacted with a view to protect the interest of the parties who were prevented by sufficient cause for taking recourse of law within the stipulated time but the defendant/opposite party dared to take recourse of such section so that his interest in protected.’

In the case of Amal Boral Vs Debasis Paul (2019) 3 Cal LT. 659 (HC) a Learned Judge of this Court observed as follows:

“When it is the specific case of the petitioner that for being ill advised by Learned conducting advocate who was subsequently changed with the appointment of the new advocate by the petitioner, the defendants should not be made to suffer and penalise for advocates default though admittedly after the disposal of application under Section 7(1) and 7(2) of the Act, the petitioner/tenant sought for an adjournment intending to file an application under Section 5 of the Limitation Act for condonation of delay but it would be sufficient enough to reveal the real intention of the petitioner/tenant to have the protection of the rent legislation

after complying with the procedure prescribed in the Rent Act itself particularly in a case of this nature when there is nothing to reveal wilful failure deliberate default or volitional non-performance on the part of the petitioner/tenant so as to deposit the arrears of rent together with monthly rent in Court. Upon considering the rival submissions of the parties the Court is of the view that the justice would be best sub-served, if the petitioner be given an opportunity to file an application under Section 5 of the Limitation Act for condonation for delay in support of the application already filed under Section 7(1) and 7(2) of the West Bengal Premises Act 1997.”

Now upon perusal of the observation made by the Hon’ble Supreme Court in the matter of Bijay Kumar Singh V Amit Kumar Chamariya (supra) that deposit of rent does not require any application and deposit of rent under Section 7(1) is not merely an application but an obligation to be complied this Court with due respect to the Hon’ble Supreme Court this Court is of the view that some factual aspects of the procedure of Sub-ordinate Civil Courts of the State was not argued before the Hon’ble Apex Court and thus there was no scope for the Hon’ble Apex Court to consider the same

and arrive at a decision. In the sub-ordinate Civil Courts once a summon is issued to the defendant/tenant, the said tenant is required to appear on the date fixed and file written statement to defend the case along with other necessary applications. With regard to the compliance of the provision contained in Section 7(1) of the West Bengal Premises Tenancy Act 1997 to deposit in Court all arrear 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, the tenant/defendant is required to appear within one month from date of receipt of summons, and file the application under Section 7(1) of the West Bengal Premises Tenancy Act 1997 for necessary leave/order of the Court. Without Order of the Court the defendant/tenant cannot make the deposit in department. Thus with the Order/Leave of the Court a tenant/defendant can deposit the amount of arrear rent along with interest to the credit of plaintiff in the Suit concerned. However before passing any Order by Court in the petition under Section 7(1) of the West Bengal Premises Tenancy Act 1997 a copy of the said petition is required to be served upon the plaintiff/Landlord and plaintiff Landlord is to be

given an opportunity of being heard. Upon hearing the parties Courts pass Orders under Section 7(1) of the West Bengal Premises Tenancy Act 1997. But when the tenant disputes the allegation of Landlord made in the plaint regarding rent due or the landlord disputes the contention of tenant in application under Section 7(1) of the West Bengal Premises Tenancy Act 1997 the said dispute is to be decided in accordance with Section 7(2) of the West Bengal Premises Tenancy Act 1997. The tenant in the petition under Section 7(2) of the West Bengal Premises Act 1997 has to obtain Leave/Order from Court to pay the amount which he admits and on the basis of Leave/Order of the Court the tenant can deposit the amount admitted by him. Upon payment of admitted amount dispute can be decided. Thus upon considering the procedure followed by Civil Courts in disposing applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 which are necessary for a tenant/defendant to make deposit under sub-Section 1 and 2 of Section 7 of the West Bengal Premises Tenancy Act 1997 there is no other scope but to infer that hearing of applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 are proceedings under the said Act.

Now in Order to decide as to whether Limitation Act 1963 Act applies to all proceedings under the West Bengal Premises Act it is necessary to consider the provision contained in Section 40 of the West Bengal Premises Tenancy Act 1997.

Section 40 of the West Bengal Premises Tenancy Act 1997 provides as follows:

Section 40- 'Subject to the provisions of this Act relating to limitation the provisions of the Limitation Act 1963 (36 of 1963) shall apply to proceedings and appeals under this Act.'

As under the present West Bengal Premises Tenancy Act 1997 Limitation Act 1963 applies to proceedings and appeals, hearing of applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 is considered as proceedings and as there is no express provision to condone the delay in institution of the proceedings under the said sections provided by the said Statute, Limitation Act 1963 comes into operation by virtue of Section 40 of the statute. Incorporation of Section 40 in the statute indicates the intention of the legislature. As the procedure followed by Civil Courts in our State while disposing application under

Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act and the provision of Section 40 of the West Bengal Premises Tenancy Act 1997 was not, submitted before the Hon'ble Supreme Court in the case of Bijay Singh and ors (supra) there was no scope for the Hon'ble Supreme Court to make any observation on the point of limitation in proceedings under West Bengal Premises Tenancy Act 1997.

As certain arguments were not advanced before the Hon'ble Supreme Court in the matter of Bijay Singh and ors (supra) it is necessary to decide whether doctrine of sub-silencio applies in this issue.

In the case of Debendra Nath Mondal Vs Ratan Kumar Das reported in 2008(1) CLJ Cal. P-912 a Division Bench of this Court observed as follows:

'It is settled legal position applying the principle of doctrine of sub-silencio that a decision is not an authority for what it had not decided on a point, which has not been argued. Reliance may be placed to the judgment passed in the case *M/s. Goodyear India Ltd. V. State of Haryana & Anr.*, reported in AIR 1990 SC 781, Mittal

Engineering Works (P) Ltd. Vs collector of Central Excise Meerat reported in 1997 (1) SCC – P 203 *Municipal Corporation of Delhi v. Gurnam Kaur*, reported in 1989 (1) SCC P-101 Prof P.J.Fitzgerald in the Book ‘Summons on Jurisprudence’ 12th Edition at page 153 has explained the concept of sub-silencio to this effect: “a decision passes sub-silencio in the technical sense that has come to be attached to that phrase when the particular point of law involved in the decision is not perceived by the Court or present in its mind.” It is also a settled legal position that “a decision is an authority for what it decides and not that everything said therein constitute a precedent..... a decision of the Court takes its colour from the questions involved in the case from which it was rendered.” Reliance may be placed to the Constitution Bench judgment passed in the case *State of Punjab v. Baldev Singh*, reported in 1999(6) SCC 172. It has been held by the Apex Court in the case *Commissioner of Income Tax v. Sun Engineering Works (P) Ltd.*, reported in 1992 (4) SCC 363 at para 29 “judgment must be read as a whole and the observation from the judgment have to be considered in the light of the questions which were before the Court. A decision takes its colour from the questions involved-Court

must carefully try to ascertain the true principle laid down by decision and not to pick out words and sentence from the judgment divorced from the context of the questions under consideration by the Court, to support their reasonings.” Further, it is settled legal position that “one additional and different fact can make a world of difference between conclusion in two cases even when the same principles are applied in each case to similar facts.” Reliance may be placed to the judgement passed in the case *The Regional Manager & Ors. V. Pawan Kumar Dubey*, reported in AIR 1976 SC 1766, a three Judges’ Bench judgment, which has been referred to in the case *Chandra Prakash Shahi v. State of U.P. & Ors.*, reported in AIR 2000 SC 1706.’

Now with regard to the period of one month provided for payment of arrears of rent as per Section 7(1) of the West Bengal Premises Tenancy Act 1997 which is one month from the date of receipt of summons undoubtedly the said payment is to be made within the said period but the reality about the procedures followed by sub-ordinate Courts of Civil Judicature cannot be ignored. When summons are issued by Civil Courts in any Suit whether Title Suit

Money Suit or Suit under West Bengal Premises Tenancy Act 1997, a date is fixed in the said summons for the defendant to appear and file statement in support of his defence. The date of appearance in all suits are fixed as the case diary of the Courts permit. Although Section 7(1) of the West Bengal Premises Tenancy Act 1997 provides one month time for payment or deposit of arrear rent from the date of receipt of summons but when date of appearance in a suit is fixed on a particular date as per summons the defendant/tenant will be of the impression that he is required to appear on said day and the defendant tenant concerned will take steps to appear on the said day by engaging an advocate. Thus it is not unnatural that the date of appearance as mentioned in summons may be after a period of one month from the date of receipt of summons. An ordinary man will follow the summons regarding appearance in Court and taking necessary steps as per advice of Advocate. It is only when the tenant/defendant concerned has knowledge about the provisions of Premises Tenancy Act will take steps to deposit rent within one month of receipt of summons.

Now upon receipt of the summons when a defendant/tenant knows that he will be required to appear in Court he will take steps to engage an Advocate on the date fixed or few days before by searching for an Advocate in Court unless he is able to contact with an Advocate in his locality. Moreover a defendant/tenant who is poor will have no other alternative but to approach Legal Service Authority for providing an Advocate to defend his case and engagement of Advocate by Legal Service Authority may require time as necessary procedure is required to be complied. When Learned Advocates seek time on the dates fixed for appearance and unable to file petitions under Section 7(1) or 7(2) of the West Bengal Premises Tenancy Act 1997, the litigant tenant should not suffer due to the laches of Learned Advocate.

It has been held in different judicial pronouncements that Rent control Acts are remedial measures conceived for the protection and welfare of tenants, to guard against unreasonable eviction and collection of excessive rents.

In the case of Jivanlal and Co. V Manot and Co. Reported in 64CWN-932 this Court held that the object of West Bengal Act is to

protect tenants as long as possible and to eject them when it is not otherwise possible.

The object Section 7 of the West Bengal Premises Tenancy Act 1997 is to grant benefit of protection to a tenant against eviction on compliance of certain conditions as provided in the said Section, thus reasonable opportunity should be given to the tenant to comply such condition and to deprive him when he fails to avail the same in spite of getting the said opportunity.

In the case of Madhav Rao Seindia V Union of India reported in AIR-1971 S.C. 530 at p-576 the Hon'ble Supreme Court observed as follows:

“The Court will interpret a statute as far as possible agreeable to justice and reason and that in case of two or more interpretations, one which is more reasonable and just will be adopted for there is always a presumption against the law-maker intending injustice and unreason-----. A provision in a statute will not be construed to defeat its manifest purpose and general values which animate its structure.”

In the case of Dy. Custodian V Offl. Receiver reported in AIR-1965 S.C. the Hon'ble Supreme Court observed as follows:

'If it appears that the obvious aim and object of the statutory provisions would be frustrated by accepting the literal construction suggested by the respondent then it may be open to the Court to enquire whether an alternative construction which would serve the purpose of achieving the aim and object of the Act is reasonable possible.'

Upon hearing the Learned Advocates and considering the facts of the case and the decision of the Hon'ble Supreme Court in Bijay Kumar Singh (supra) and the decision of this Court in Smt. Papiya Sengupta (supra) with due respect to the Hon'ble Supreme Court, and the Learned Judge delivering judgement in the case Smt. Papiya Sengupta (supra) this Court is of the view that the decision of the Hon'ble Supreme Court in the case of Bijay Kumar Singh (supra) is the law to be followed in disposing applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 and deviation from the same should be in very exceptional

circumstances. The Court disposing the said applications may condone the delay in the following circumstances.

Firstly where the date of appearance of defendant as fixed in the summons is such that it exceeds one month from the date of receipt of summons by the defendant/tenant.

Secondly where the defendant/tenant is unable to appear on the date fixed in the summons due to unavoidable circumstances.

Thirdly where in the opinion of the Court refusal to condone delay will result in miscarriage of Justice.

Upon hearing the Learned Advocates and considering the facts of the case this Court is of the view that as the petitioner/defendant is 72 years old, suffering from blood cancer and appeared in Court on March 31, 2021 during pandemic period the petitioner should be granted one more opportunity to get the petitions under 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 disposed by condoning delays.

In the facts and circumstances discussed above this Revisional Application stands allowed. The Order date 26-07-2022

passed by Learned Civil Judge Junior Division 3rd Additional Court Alipore South – 24 Parganas in Ejectment Suit 276 of 2019 is set aside. The delay in filing the petition under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 is condoned. The matter is remitted back to the Trial Court to dispose the petitions filed under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 in accordance with law.

Biswaroop Chowdhury.,J