

Form No. J (1)

**IN THE HIGH COURT AT CALCUTTA**

**(CIVIL REVISIONAL JURISDICTION)**

**Coram:**

**The Hon'ble Justice Biswajit Basu.**

**C.O. 391 of 2024**

***HIRA DEVI JAIN***

**– VS –**

***PRITEPAL SINGH & ANR.***

For the Petitioner:

Mr. Dhananjay Banerjee,  
Mr. Samrat Chowdhury,  
Ms. Oindrila Ghosh.

For the Opposite Parties:

Mr. Souradipta Banerjee,  
Ms. Fatima Hassan,  
Mr. Arunesh Pathak.

**Heard on                   :                   03.09.2024**

**Judgment on           :                   18.09.2024**

**Biswajit Basu, J:**

1. The defendant in a suit for ejectment is the petitioner of the instant application under Article 227 of the Constitution of India which is directed against the order no. 33 dated December 12, 2023 passed by the learned Judge, 3<sup>rd</sup> Bench, Presidency Small Causes Court at Calcutta in the said suit being *Ejectment Suit No. 146 of 2018*.
2. The learned Trial Judge by the order impugned has rejected the application of the petitioner under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as '*the said Act of 1997*' in short) *ex parte* on the ground that the said application was filed four days beyond the period of limitation prescribed under the aforesaid provision of the said Act of 1997 and in consequence thereof, has rejected the petitioner's other application under Section 7(2) of the said Act of 1997 and upon such rejection, the learned Trial Judge has exercised the power under Section 7(3) of the said Act of 1997 to strike off the defence of the petitioner against the delivery of possession.
3. Mr. Dhananjay Banerjee, learned advocate for the petitioner submits that the summons was served upon the petitioner on April 24, 2018; therefore, in terms of Section 7(1) of the said Act of 1997, he is required to deposit the admitted arrear rent and current rent by May 24, 2018 but the said date fell within the *summer vacation* of the Court, as such by virtue of Section 4 of the Limitation Act,

1963(hereinafter referred to as '*the said Act of 1963*') the date of the re-opening of the Court was the last date for filing of the said applications which the petitioner did, therefore, the learned Trial Judge has acted with material irregularity in dismissing the said applications on the ground of limitation.

4. Mr. Souradipta Banerjee, learned advocate for the opposite parties, on the other hand, submits that none of the provisions of the said Act of 1963 is applicable in respect of an application under Section 7 of the said Act of 1997, to buttress his such argument, he places reliance on the decision of the Hon'ble Supreme Court in the case of **BIJOY KUMAR SINGH vs. AMIT KUMAR CHAMARIA** reported in **(2019) 10 Supreme Court Cases 660** and the decisions of the Hon'ble Division Bench of this Court in the case of **THE CALCUTTA GUJARATI EDUCATION SOCIETY vs. SRI AJIT NARAYAN KAPOOR** reported in **2022 (1) Indian Civil Cases 414 (Cal)** and in the case of **ARSALA KHAN vs. LAND & BRICKS & ENTERTAINMENT LTD.** reported in **2022(3) Indian Civil Cases 37(Cal)**, therefore Section 4 of the said Act of 1963 cannot be resorted to extend the period of limitation prescribed under the said provision of the said Act of 1997.

5. Mr. Dhananjay Banerjee, in response to the said argument submits that even if it is assumed that the said Act of 1963 is not applicable in respect of an application under Section 7 of the said Act of 1997, but by virtue of Section 12 of the Bengal General Clauses Act, 1899, the date of reopening of the Court after the *summer vacation* was the *last*

*date* of the period prescribed for filing of such applications; in support of his such submission, he refers to a Full Bench decision of this Court in the case of **BALAGERIA CENTRAL COOPERATIVE BANK LTD. vs. STATE OF WEST BENGAL & ORS.** reported in **2010 (3) CHN (CAL) 163.**

Heard learned counsel for the parties, perused the materials-on-record.

6. The tenant in a suit for ejectment under Section 6 of the said Act of 1997, in terms of Section 7(1) thereof, is obliged to pay to the landlord or deposit with the Court, arrears of rent calculated at the rate at which it was last paid and upto the end of the month previous to the month in which the payment is made, together with interest at the rate of ten percent per annum, and in terms of sub-section (b) thereof, such payment or deposit shall be made within one month from the date of service of summons upon him, or where he appears in the proceeding without the summons being served upon him, within one month of his such appearance.
7. In the present case, the summons was admittedly served upon the petitioner on April 24, 2018; therefore, in terms of the aforesaid provision of the said Act of 1997, May 24, 2018 was the last date for complying the requirements of Section 7(1) of the said Act of 1997 but the said date fell during the *summer vacation* of the Court as such, the required compliance could not be made.

8. Section 4 of the said Act of 1963 provides that where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens but the plaintiffs have taken an objection that in view of the judgment of the Hon'ble Supreme Court in the case of **BIJOY KUMAR SINGH (supra)** and the decisions of the Hon'ble Division Bench of this Court in the case of **THE CALCUTTA GUJARATI EDUCATION SOCIETY (supra)** and in the case of **ARSALA KHAN (supra)**, the said Act of 1963, in its entirety, is not applicable in respect of an application under Section 7 of the said Act of 1997, as such Section 4 of the said Act of 1963 cannot come to the rescue of a tenant who has failed to file an application under 7(1) of the said Act of 1997 within the period prescribed under sub-section(b) thereof.
9. Let me now consider how far the said objection of the plaintiffs is sustainable. The Hon'ble Supreme Court in the case of **BIJOY KUMAR SINGH (supra)** has held that the tenant will not be able to take recourse of Section 5 of the Limitation Act, 1963 as it is not an application alone which is required to be filed by the tenant, but the tenant has to deposit the admitted arrears of rent as well. Paragraph 21 of the said decision being relevant is quoted below:-

*“21. 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 (2-A) and (2-B) which was being examined by this*

Court in *B.P. Khemka*<sup>5</sup>. Sub-sections (2-A) and (2-B) of Section 17 of the 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. 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 take steps as contemplated under sub-section (2) 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 precondition 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.(Emphasis supplied)”

10. In the case of **CALCUTTA GUJARATI EDUCATION SOCIETY (supra)** the following question was referred to the Hon’ble Division Bench of this Court for answer:-

“.....“Does the view of the Division Bench of this Court that section 5 of the Limitation Act can be applied to

*condone delay in making applications under subsections (1) and (2) of Section 7 of the West Bengal Premises Tenancy Act, 1997, as held in the Subrata Mukherjee case (supra), survive in view of the decisions of the Hon'ble Supreme Court in the Nasiruddin case (2003(1) RLR (S.C.) 477), the Ashoke Kumar Mishra case (supra), Manjushree Chakraborty case (supra).”....”*

- 11.** The said Division Bench while answering the said question at paragraph 15 of the said judgment has observed as follows:-

*“...15....Here, provision in Article 137 cannot be made applicable. Furthermore, where it is a requirement of compliance by the tenant to seek protection, mandated by the statute as competently legislated by the State legislature and specifically limiting application of the 1963 Act, there cannot be occasioned for application of the period of three years, overriding the period an extension specified by the local law and thereafter condonation of delay as under Section 5.....”*

and has answered the said question at paragraph 16 of the said judgment as under:-

*“...16....we answer the question refer to say that the Limitation Act, 1963 has no application in respect of an application by the tenant under Section 7 for determination of arrears of deposited rent.....”*

- 12.** The scope of the reference, the discussion made in the body of the judgment of the said Hon'ble Division Bench are not agreeing with the concluding part of the said decision at paragraph 16 quoted above, therefore the said conclusion is of no consequence.
- 13.** The Hon'ble Supreme Court, in the case of **BIJOY KUMAR SINGH (supra)** and the Hon'ble Division Bench of this Court in the case of

**THE CALCUTTA GUJARATI EDUCATION SOCIETY (supra)** and in the case of **ARSALA KHAN (supra)** have excluded the applicability of Section 5 of the said Act of 1963 *only* to extend the period of limitation prescribed under Section 7(1)(b) of the said Act of 1997 to comply with the provision of Section 7(1) thereof.

14. Apart from the aforesaid, when in a proceeding, the said Act of 1963 does not apply, the provision of Section 12 of the Bengal General Clauses Act, 1899 does and by virtue thereof, whereby any Bengal Act/West Bengal Act made after the commencement of the said Act of 1899, any Act or proceeding, if directed or allowed to be done or taken in any Court or Office on a certain day or within a prescribed period, then if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time, if it is done or taken on the next day afterwards on which the Court or Office is open.
15. The Full Bench of this Court in the case of **BALAGERIA CENTRAL COOPERATIVE BANK LTD.(supra)**, considering the scope of Section 12 of the Bengal General Clauses Act, 1899, has held that the general principles for computing the period of limitation, which principles are otherwise also applicable, even when the provisions of the Limitation Act, 1963 do not apply.

Summing up the discussion made above, this Court overrules the objection taken by the opposite parties as to the maintainability of

the applications of the petitioner under Sections 7(1) and (2) of the said Act of 1997 on the ground of limitation, consequently, sets aside the order impugned. The learned Trial Judge is requested to dispose of the said applications expeditiously, in accordance with law.

C.O. 391 of 2024 is allowed with the above terms without any order as to costs.

Parties to act on the server copy of this judgment duly downloaded from the official *website* of the Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(BISWAJIT BASU, J.)**