

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

Present:

The Hon'ble Justice Biswaroop Chowdhury

***C.O. 1982 of 2022
Tapan Kumar Santra
VERSUS
Tarak Nath Paul***

For the petitioner:

Mr. Animesh Paul, Adv.

for the opposite party:

Mr. Pinaki Ranjan Mitra, Adv.

Last Heard on : May 17, 2024

Judgment on: June 28, 2024

Biswaroop Chowdhury,J:

The petitioner before this Court is the plaintiff/landlord in a suit for eviction and is aggrieved by the order dated 18.06.2022 passed by the Learned Civil Judge (Junior Division) 7th Court at Howrah in Title Suit No-1417 of 2016. The petitioner being aggrieved by the order passed by the Learned Trial Court has come up with the instant application under Article 227 of the Constitution of India.

The case of the opposite party/defendant in an application under Section 151 of the Code of Civil Procedure with a prayer for granting permission to deposit the arrear rentals @ Rs 180/- per month for 16 months being principal rent of Rs. 2,880/- and interest Rs. 288/- @ 10 of per annum may be summed up thus.

1. The defendant filed an application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 raising some disputes as to arrear rentals and relationship by and between the parties to the suit.
2. The defendant also filed an application under Section 7(1) of the West Bengal Premises Tenancy Act 1997 for depositing the monthly rental @ Rs. 180/- per month with effect from November 2016, and onwards and it appears from the documents that the defendant has deposited the rent before the Learned Court under the provision of Section 7(1) of the West Bengal Premises Tenancy Act 1997 till the month of April 2022, but during period from the year 2019, on and from July 2019 and onwards till date rentals were deposited and during the year 2019, and onwards there the dispute continued by and between the Advocate's Association of Howrah with the Administration of the State, as a result for some months the rentals could not be deposited before the Court by the said clerk and thereafter the COVID-19 arose in the year 2020 which continued till the month of February 2022 when the matters slowly recovered from all those situation. As a result in some occasions rentals could not be deposited as well for some

months. The rentals were deposited and challans were passed on some other months and some deposit challans are also missing from the record of Ld. Advocate.

3. The present defendant has been depositing the monthly rent regularly after the situation became normal and while at the time of hearing it was found that 19 months deposited rent challans are missing from the file of the Ld. Advocate and on searching of the Court records it has been found that challans have been passed on some occasions and on some other occasions it has been deposited and out of 19 number of deposited challans it appears from the search report issued by the Ld. Court that the amount was deposited before the Bank for the month of July 2019, March 2019, April 2019 and February 2020 as per the reports submitted by the concerned clerk appointed by the Ld. Court and such report has been submitted as per the provisions of the Civil Procedure Code.
4. It appears that out of 19 number of deposit challans of monthly rent deposited before the Ld. Court only 4 months deposit are valid as it appears from the certificate issued by the Learned Court. It is stated that out of the challans for the period from July 2019 to February 2020, 16 numbers of deposit challans have not been deposited before the Ld. Court for which the defendant prays for a permission to deposit the rent for the month of May 2019, June 2019, August 2019, September 2019, October 2019, November 2019, December 2019,

January 2020 February 2020, March 2020, April 2020, June 2020, July 2020, August 2020, November 2020 being 15 months @ Rs 180/- per month ie. Principal rent Rs 180/- X 16 months = Rs 2,880/- and interest Rs 288/- @ 10% due to outstanding rent which in total amounting to Rs. 3,168/-.

5. The defendant could not deposit those amount in due time on account of some unavoidable situation which cropped up in between the year 2019, and onwards to February 2022 and thereafter he deposited all the challans before the Learned Court.
6. That due to some unavoidable circumstances the petitioner/defendant could not deposit those rent in due time which may be condoned in view of the above reasons, otherwise the defendant shall suffer irreparable loss and injury.

The plaintiff contested the said application by filing written objection.

In the objection filed by the plaintiff/petitioner it is contended that the defendant has not come before the Court in clean hands and the defendant is not entitled to relief as prayed for. It is further contended that the defendant has not complied with the order of Learned Court below and also failed to deposit the current rent as per provisions of Section 7(1) of West Bengal Premises Tenancy Act 1997 for which the provisions of Section 7(3) of W.B.P.T. Act has been attracted even suo moto and the prayer for regularization of non deposit and irregular deposit cannot allow. It is also contended that the

defendant/tenant is a habitual defaulter in payment of current rent under Section 7(2) of West Bengal Premises Tenancy Act 1997, and the said period of default is not only after spreading pandemic Corona Virus which affected the normal function since the March 2020 but the deposit and non deposit commence from the period of May 2019, and January and February 2020, and these nine months of non-deposit is not covered by the relaxation of limitation considered by apex Court due to spreading of Corona Virus and the defendant cannot after long lapse of time and closing of PW 1 and PW 2 ask for permission for depositing the current rent under Section 7(1) of West Bengal Premises Tenancy Act for the said default period and if the application is allowed the same will make provision of Section 6(1)(b) of West Bengal Premises Tenancy Act nugatory. Moreover Section 7(1) of the said Act provides the application has been made within the period of limitation as contained in the said Act and default of the period in the year 2019 sought to be regularised in the year 2022 for the 1st time is clearly time barred. It is contended that the learned Court in the present matter has no jurisdiction to grant the defendant permission to make payment of rent of the defaulted period after disposal of application under Section 7(2) of the West Bengal Premises Tenancy Act 1997.

The Learned Trial Court upon considering the application and the objection was pleased to dispose the application by observing and directing as follows:

It has to be kept in mind that the Rent Controller Act/Premises Tenancy Act is a social welfare legislation meant to protect and safeguard the interests of the tenants but it does not confer unfettered powers on the tenants to remain in possession of the tenanted premises notwithstanding with the compliance with directions of the Court or the provisions of the statute. The West Bengal Premises Tenancy Act 1997 is intended to protect the interest of bona fide tenants in possession.

Ld. Advocate for the defendant referred 1987(2) CLJ. 297. The said case reference is aptly applicable in this case. In that referred case, the Hon'ble Calcutta High Court referred the judgment of Supreme Court in AIR-1987. S.C. 101 and held that the Court has jurisdiction to condone the delay or to extend the time for deposit or payment of sums specific in sub-section (1) of section 17 of the West Bengal Premises Tenancy Act 1956. Section 17(1) of the West Bengal Premises Tenancy Act 1956 is corresponding with Section 7(1) of West Bengal Premises Tenancy Act 1997.

Considering the above discussion and for ends of justice this Court is inclined to allow the application filed by the defendant to deposit the delayed rent along with interest.

The defendant is allowed to deposit the rent along with interest if not already deposited.

Fix 16.07.22 for depositing rent and evidence of D.W. 1.'

The Petitioner/plaintiff being aggrieved by the Order dated 18-06-2022 passed by Learned Trial Court in T.S. No 1417 of 2016 has come up with this application under Article 227 of the Constitution of India.

It is contended by the petitioner that the Learned Trial Court below acted illegally and with material irregularity in allowing the application under Section 151 of the Code of Civil Procedure for depositing of arrear rents filed by the opposite party herein in a mechanical manner and without applying its judicious mind on the contentions put forth by the petitioner herein in his written objection filed in connection therewith. It is further contended that the Learned Trial Court below acted illegally and with material irregularity in failing to consider that the said application for depositing of arrear rents was made after disposal of the application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997. It is also contended that the Learned Court below has no jurisdiction to entertain such application. It is contended that the Learned Trial Court acted illegally and with material irregularity in failing to consider the mandatory provisions contained under Section 7(3) of the West Bengal Premises Tenancy Act 1997, which stipulates that if the tenant fails to deposit or pay any amount referred to in sub-section (1) within the time specified therein, the controller (in the instant case "Court") shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit and the application of Section 7(3) is automatic in nature as such the failure on the part of the opposite party herein to make payment of the rent in terms of sub-section (1) has already resulted in

automatic operation of Section 7(3) and such statutory advantage having been accrued to the petitioner herein cannot be brushed off by the Learned Trial Court below by exercising power under Section 151 of the Code of Civil Procedure 1908. It is also contended that the order impugned passed by the Learned Trial Court is a non-speaking order as the same lacks reasoning in support thereof. Pursuant to filing this application notice was issued upon the opposite party. Opposite party appeared and contested the case. Both the Learned Advocates apart from arguing the case filed written notes of argument.

Heard Learned Advocates for the parties perused the petition filed written notes of arguments and materials on record.

Learned Advocate for the petitioner submits that the Learned Court below had no power or jurisdiction to extend the time period under Section 7(1) (c) of the West Bengal Premises Tenancy Act 1997 and this issue was not considered by learned Court while passing the impugned order. Learned Advocate further submits that the judgment reported at 1987(2) CLJ-297, which referred to the judgment of the Hon'ble Supreme Court reported at AIR-1987 S.C. 1010 holding the jurisdiction of the Court to condone the delay or extend the time for deposit of payment of rent, was dealing with Section 17 of the West Bengal Premises Tenancy Act 1956. The said Act of 1956 has been repealed whereby in Section 17 of the Act itself, the Court was given power to do so, however in the present Act of 1997, the legislature has excluded such powers of the Court to extend the time beyond the periods mentioned under

Section 7(1) and 7(2) of the Act of 1997. Learned Advocate also submits that the point as to whether Section 17 of the Act and Section 7 of the Act of 1997, was *pari materia* or different came up for consideration before the Hon'ble Supreme Court in the case of Bijay Kumar Singh and others Vs Amit Kumar Chamariya and Another reported at (2019) 10 SCC. 660 wherein the Hon'ble Supreme Court upon considering a large number of decisions on the subject including the judgment reported at AIR-1987. S.C. 1010 (on the basis of which the Learned Trial Court has allowed the application of the tenant) was pleased to hold that such provisions are materially different in as much as while Section 17 of the Act of 1956 conferred unfettered power on the Court to extend the period of deposit of rent, but the same was circumscribed by Section 7 of the Act of 1997, and the provisions of the Act of 1997 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 of 1997. It is submitted by the Learned Advocate that the Learned Court below erred in relying upon the decision passed in Krishna Gopal Ghoshal Vs Mihir Baran Nandy and ors reported in 1987(2) CLJ. P-297, when the said judgment was passed under Section 17(1) of the West Bengal Premises Tenancy Act 1956 under which Courts had power to condone delay and extend time for making rent deposit but such power does not exist under Section 7 of the West Bengal Premises Tenancy Act 1997. Learned Advocate submits that it would appear from paragraph 5 of the application filed by the tenant (appearing at pg-39 of revisional application) that the tenant has prayed

for permission to deposit rent for 16 nos. of months ie. May, 2019, June, 2019, August, 2019 to August 2020 and November 2020. It would further appear from the searching slips annexed to the written submission filed by the opposite party/defendant, that the tenant has made irregular deposits of the rents as the tenant has paid rents for a few months between the months the tenant has not paid rents. Learned Advocate further draws attention to the certificate issued by the secretary Howrah Bar Association that the Lawyers of the Bar including the clerk concerned did not take part of the judicial proceedings on and from 24.04.2019 to 08.06.2019 as such though not admitting but even assuming it to be correct, it does not appear that there was any difficulty in making payment of the rents for the month of May 2019 which was to be paid within 15th day of June 2019. Similarly there was no difficulty in making payments of the rents for the months thereafter. Learned Advocate also submits that with regard to the ground of COVID-19, it must be mentioned here that the COVID-19, has started in the month of March 2020, when the Hon'ble Supreme Court was pleased to take suo motu cognizance. Though for a few months the Court proceedings was entirely disrupted but thereafter the rent challans were being passed by the Courts and being deposited in Banks and this would be apparent from the pleadings of the opposite party/defendant himself as he has paid rents for the month of September 2020, and October 2020 but did not pay the rent for the month of November 2020. As such it would be apparent that the opposite party/defendant has failed to make

payment of rents atleast upto the month of March 2020 without any just cause.

Learned Advocate relies upon the following Judicial decisions.

Bijay Kumar Singh and Ors VS Amit Kumar Chamaria and Anr.
[Reported in (2019) 10 SCC P660.]

- **Mr. Anwar Hussain. VS Raja Mahammed Amin and Ors.**
[Reported at (2018) 1 ICC. P-361.]
- **Omprakash Thakur. Vs Bhola Shaw.** [Reported at (2018) 1 ICC. 37 (Cal).]
- **Nasiruddin Vs Sitam Ram Agarwal.** [Reported at (2003) 2 SCC. P-577]
- **Loknath Dhal Vs Gita Rani Ray** [Reported at (2016) 2 ICC. P-533.]
- **Saurav Das Vs Kartick Dutta** being CO- 606 of 2018 reported in 2019 SCC Online Cal 9155.

Learned Advocate for the opposite party submits that the tenant/opposite party duly deposited rent in compliance of the order dated 1.04.2017. Learned Advocate further submits that the tenant had every intention to comply the provisions of the Act and in no point of time he made default and he deposited the arrear rent, and monthly rent without filing application for deposit belatedly. Up to the month of March 2019 there was due

deposit and deposit was made in April 2019. Learned Advocate further submits that rents are being deposited by the clerk of the Learned Advocate after passing of challan from the concerned Court and the tenant usually handed over the rent along with other incidental expenses to the Clerk of the Learned Advocate upon whom he reposed faith. Learned Advocate also submits that in April 2019, an unprecedented incident took place in view of Police attack to the members and Courts staff as well as clerks and/or mohorer attached to Howrah Court and Advocates and Clerk concerned of Howrah District Courts did not take part in judicial proceedings on and from 24.04.2019 to 8.06.2019. Learned Advocate draws attention to the certificate of Secretary Howrah District Court Bar Association wherein it is stated that Advocates and clerk of Howrah District Courts did not take part in judicial proceedings on and from 24.04.2019 to 08.06.2019. It is submitted by Learned Advocate that defendant was vigilant and in time tendered the rent to the clerk through whom he was usually depositing rent and he was under the bona-fide impression that as usual rents are being deposited in Court. Fact remains some time from March 2020 onwards for few months he could not deposit and/or handover the rent for deposit of the same in Court but subsequently he handed over the arrear rent at a time to the clerk to whom he reposed faith. In such a situation when the plaintiff adduced evidence and it was the turn of the defendant who is supposed to file challan in support of his contention that he is making deposit in compliance of Courts order found that challans are missing from the brief of Learned Advocate. Learned Advocate accordingly searched the Court records

and found that challans for deposit of rent was passed but all those challans which were passed were not deposited by Pradip the erstwhile clerk to the Learned Advocate. The enquiry was made by filing application for information, on 18.04.2022 wherefrom it appeared that rent for the month of March and April 2019 was deposited by the concerned clerk and challan in respect of deposit of monthly rent for the month of May, June, November and December 2019 was not found in the register. Learned Advocate submits that by filing application for information tenant opposite party came to know that rent for the month of January 2020 was found not in record and similarly challans towards deposit of monthly rent for March, April, May, June, July, August and November 2020 not found in the Register. Learned Advocate further submits that the tenant who for the first time came to know in April 2022 that although he has no fault but rent which he duly tendered in due time could not be deposited in time by taking advantages of the situation of cease work as well as Covid 19 by the concerned clerk to whom the petitioner reposed faith and clerk has left the chamber of Learned Advocate. Learned Advocate also submits that in paragraph 3 of the application the tenant has stated that earlier clerk of the Learned Advocate could not deposit taking advantages of the cease work and Covid 2019 and the fact now has been brought the notice of tenant as to non payment in due time.

Learned Advocate submits that the court allowed such application filed by the tenant/opposite party in view of the extra ordinary circumstances which prevented him to go on depositing monthly rent for some period and for which

he prayed for permission to deposit with 10% interest relying on special bench decision of this court reported in 1987(2) CLJ- 297. Learned Advocate further submits that the decisions relied upon by Learned Advocate for the petitioner is distinguishable in the facts and circumstances of the present case in as much as in the present case the tenant has not committed default and by making deposit of the arrear rent and going on depositing current rent by filing application under Section 7(1) of the Act immediately on his appearance in the suit on 28/11/2016 while suit was filed on 16.11.2016 and after disposal of the application on 11.04.2017 he went on depositing but failed to deposit in the year 2019 when there was strike although tenant had no fault but had to depend upon clerk in the matter of depositing and clerk in past deposited and the tenant reposed faith upon him but taking advantage of the situation he has not deposited the rent although challans were passed. Learned Advocate relies upon the following judicial decision

Krishna Gopal Ghosal Vs Mihir Baran Nandy [Reported in 1987(2) CLJ P-297)]

Before proceeding to adjudicate the issue it is necessary to consider the provisions contained in Section 7 of the West Bengal Premises Tenancy Act 1997.

Section 7 of the West Bengal Premises Tenancy Act 1997 provides as follows

- (1) (a) On a proceeding being instituted by the landlord for eviction on any of the grounds referred to in section 6, the tenant shall, subject to the provisions of sub-section (2) of this section, pay to the landlord or deposit with the Civil Judge all arrears 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.
- (2) (b) Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the proceeding without the summons being served upon him, within one month---of---his---apperance.
- (c) The tenant shall thereafter continue to pay to the landlord or deposit with the Civil Judge month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate
- (2) If in any suit referred to in sub-section (1), there is any dispute as to the amount of the rent payable by the tenant, the tenant shall, within the time specified in that sub-section, deposit with the Civil Judge the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of the application, the Civil Judge shall, having regard to the rate at which rent was last paid and the period for which default may have been made by the

tenant, make, as soon as possible within a period not exceeding one year, an order specifying the amount, if any, due from the tenant and, thereupon, the tenant shall, within one month of the date of such order, pay to the landlord the amount so specified in the order:

Provided that having regard to the circumstances of the case an extension of time may be granted by the Civil Judge only once and the period of such extension shall not exceed two months

(3) If the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, the Civil Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.

(4) If the tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant, shall be made by the Controller, but he may allow such cost as he may deem fit to the landlord: Provided that the tenant shall not be entitled to any relief under this subsection if, having obtained such relief once in respect of the premises, he again makes default in payment of rent for four months within a period of twelve months or for three successive rental periods where rent is not payable monthly

(2) In the case of **Bijay Kumar Singh and others Vs Amit Kumar Chamariya and Another** reported in (2019) 10 SCC P-660 the Hon'ble Supreme Court observed as follows:

'20. Therefore, sub section (1) deals with the payment of arrears of rent when there is no dispute about the rate of rent or the period of arrears of rent. Sub section (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. In that situation, the tenant is obliged to apply within time as specified in sub section (1) that is 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 tenant is also required to file an application for determination of the rent payable. Such deposit is not to be accepted, unless it is accompanied by an application for determination of rent payable. Therefore, sub section (2) of the Act requires two things, deposit of arrears of rent at the rate admitted to be due by the tenant along with an application for determination of the rent payable. If the two conditions are satisfied then only the Court having regard to the rate at which rent was last paid and for which tenant is in default, may make an order specifying the amount due. After such a determination the tenant is granted one month's time to pay to the landlord the amount which was specified. The proviso of the Act, limits the discretion of the court to extend the time for deposit of arrears of rent. The extension can be provided once and not exceeding two months.

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 (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 of sub sections (2) and (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 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.'

In the case of **Saurav Das Vs Kartick Dutta and ors** reported in 2019 SCC Online Cal 9155 the Hon'ble Calcutta High Court observed as follows:

'19. Taking up next perspective (i), as mentioned above, it could not be said that the subsequent defaults were independent of Section 7, since an order under Section 7(2) was already operative and is supposed to continue to do so till disposal of the suit. Once the provisions of Section 7(2) are invoked by the tenants, the order passed under such provision continues till a terminus is reached by disposal of the suit and there is nothing in the statute to indicate that the operation of such an order can come to an end at any point of time prior to the disposal of the suit, unless, of course, the defence of the defendants is struck out under Section 7(3), rendering further deposits meaningless.

20. Moreover, in the event the tenant initially complies with an order passed under Section 7(2) and after some time stops doing so, construing such default to be independent of Section 7(2) order would have disastrous consequences. Any and every unscrupulous tenant would then deposit the initial arrears directed under Section 7(2) and perhaps continues with a few current deposits

after that, but thereafter stop such deposits altogether, pleading that a second default could not be committed in the same suit but only in a previous suit.’

In the case of **Omprakash Thakur Vs Bhola Shaw** reported at (2018) 1 ICC. 37(Cal) the Hon’ble Calcutta High Court observed as follows:

‘8. Following the decision of the Supreme Court in the case of *Nasiruddin* (supra) and *Subrata Mukherjee* (supra), this Court, in the case of *Bina Devi Binani*, held that the word “shall” used in Section 7(3) of the Act of 1997 is imperative and in view of the provisions contained in Section 7(3) of the Act of 1997, the striking out of defence of the defendant-tenant takes place by operation of law. Even in an unreported decision dated December 15, 2016 passed in CO. 3971 of 2016 (*Jaladeb Guchait @ Jaladev Guchait v. Sankar Kumar Das*) this Court once again held that from a reading of the provisions of Section 7 and the sub-Sections thereunder, it is clear that it is only as per the proviso to Section 7(2) of the Act of 1997 the Court has the power to extend the time for payment of the arrear rent, adjudicated by it, only once but the Court has no power to extend the time for deposit of the current rent month by month by the 15th of each succeeding month under Section 7(1)(c) of the Act of 1997. Therefore, the learned Court below had no jurisdiction to exercise any discretion to extend the time to deposit the defaulted rent by the opposite party.

9. In the present case, when the defendant opposite party did not deposit the admitted amount of monthly rent within May 15, 2009 the provisions

contained in Section 7(3) of the Act of 1997 became operative and his defence against delivery of possession of the suit property stood struck out and the impugned order passed by the learned Court below cannot be sustained. For the reasons as aforesaid, the revisional application, being C.O. 3876 of 2016, stands allowed and the impugned order passed by the learned Civil Judge (Junior Division), 4th Court at Sealdah is set aside.'

In the case of **Mr. Anwar Hussain Vs Raja Mahammed Amin and ors** reported in 2017 SCC. Online Cal 15 683 the Hon'ble Calcutta High Court observed as follows:

'Let us now consider as to whether, in the present case, the application on behalf of the petitioner and the defendant no. 4 under Section 151 of the Code for deposit of the admitted arrear rent from January, 2008 to March, 2013 was maintainable. I have already upheld the decision of the learned Single Judge rejecting the application filed on behalf of the defendants in the suit under Section 7 (2) of the Act of 1997 on the ground of their default to deposit the admitted arrear rent. The time for filing an application under Section 7 (2) of the Act of 1997 has been stipulated in the said section itself read with Section 7 (1) of the Act. Of course as held by the decision of the Division Bench of this Court in the case of Subrata Mukherjee vs. Bishakha Das reported in (2012) 3 CHN (Cal) 423. Section 5 of the Limitation Act applies to an application under Section 7 (2) of the Act of 1997. It is settled law that when a statute provides for a specific remedy in a particular case the Court

does not have any inherent power under Section 151 of the Code for granting the same remedy. Therefore, in the instant case when the application of the petitioner and the defendant no.4 under Section 7 (2) of the Act of 1997 was rejected for not being accompanied by the deposit of the arrear rent their subsequent application under Section 151 of the Code for deposit of admitted arrear rent was not maintainable. Though it is a fact that the learned Court below had first rejected the prayer of the petitioner for condonation of delay in filing the said application under Section 151 of the Code but when the main application under Section 151 of the Code was not maintainable, I do not find any reason to interfere with the impugned second order of the learned Court below rejecting the application under Section 5 of the Limitation Act.'

In the case of **Jaladeb Guchait VS Sankar Kumar Das** being C.O. 3971 of 2016 Hon'ble Calcutta High Court observed as follows:

'Provided that having regard to the circumstances of the case an extension of time may be granted by the Civil Judge only once and the period of such extension shall not exceed two months. (3) If the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, the Civil Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.'

'(4) If the tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no order for delivery of possession of the premises to the

landlord on the ground of default in payment of rent by the tenant, shall be made by the Civil Judge, but he may allow such cost as he may deem fit to the landlord.'

Provided that the tenant shall not be entitled to any relief under this subsection if, having obtained such relief once in respect of the premises, he again makes default in payment of rent for four months within a period of twelve months or for three successive rental periods where rent is not payable monthly."

From a reading of the above provisions of Section 7 and sub-Sections thereunder, it is clear that it is only as per the proviso to Section 7(2) of the Act, the Court has the power to extend the time for payment of the arrear rent, adjudicated by it, once and the Court has no power to extend the time for deposit of the current rent month by month by the 15th of each succeeding month under Section 7(1)(c) of the Act. From a plain reading of the above provisions of Section 7 of the Act of 1997 it is clear that the words " or within such extended time as may be granted" appearing in Section 7(3) relate to Section 7(2) and the proviso thereto. Thus, I find substance in the contentions of the plaintiff opposite party.'

As the issue to be decided in this matter requires interpretation of Section 7 and the judicial decision with regard to the said provision it is necessary at the outset to remember the principles of Interpretation of statutes.

The Hon'ble Supreme Court in the case of **Nasiruddin Vs Sita Ram Agarwal** reported in (2003) 2 SCC 577 observed as follows:

'The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well-settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression 'shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well-settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.'

Before considering the judicial decisions relied upon by Learned Advocates it would be reasonable to consider judicial decisions on the law of precedent and articles written on the issue.

In the Article of PRECEDENT, JUDGE – MADE LAW AND THE ROLE OF LAW REPORTING. The HON'BLE JUSTICE B.V. Nagarathna, Judge Supreme Court of India, commented as follows:

Doctrine of precedent was evolved with a view to necessarily fulfil the goals of law viz. Stability, certainty and continuity. However it is to be noted that formulations of legal rules are not always final. This is because of multiple reasons. First, the number of possible fact combinations that may occur are infinite; Second our society is producing infinite problems. Therefore a Judge is bound to maintain certainty in law. However, rules are not to be deemed as eternally fixed and unchanging. Such need to balance the demands of change with stability has necessitated the adoption of several judicial techniques, including drawing a distinction based on facts.

The principle upon which rests the authority of judicial decisions as precedents in subsequent litigations, is embodied in the maxim *stare decisis et non quita movere*, which means to abide by precedents and not to disturb settled points. This doctrine provides that when a point of law has been solemnly settled by a competent court, it will no longer be considered to be open to examination by way of a new ruling, by the same Court or by any other Court bound to follow its adjudications. However in the Indian context, the principle of stare decisis is not an exorable command. In the words of Frank further C.J. of the American Supreme Court, the doctrine of *Stare decisis* is not “an imprisonment of reason”. As observed by a Constitution Bench of the Supreme Court in *State of Gujrat Vs Mirzapur Moti Kureshi Kassab Jamat*, the doctrine of *stare decisis* is adopted to the needs of the Indian Legal system, by permitting a fresh look where the need for the same is prompted by demands of changed facts and circumstances and supported by logic. It is the norm that

the doctrine of *stare decisis* is generally to be adhered to and well settled principles of law founded on a series of authoritative pronouncements ought to be followed, however the law permits developments of new precedent where social constitutional or economic change calls for the same.

In the case of **Shah Faisal VS Union of India** reported in (2020) 4 SCC. P.1 the Hon'ble Supreme Court observed as follows:

‘17.usually the Courts do not overrule the established precedents unless there is social constitutional or economic change mandating such a development. The numbers themselves speak of restraint and the value of this Court attaches to the doctrine of precedent. This Court regards the use of precedent as indispensable bedrock upon which this Court renders justice. The use of such precedents to some extent, creates certainty upon which individuals can rely and conduct their affairs. It also creates a basis for the development of the rule of law. As the Chief Justice of the Supreme Court of the United States, John Roberts observed during his senate confirmation hearing “It is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and even-handedness.”

In the case of **Rahim Khan Vs Khurshid Ahmed** reported in (1974) 2 SCC. P-660 the Hon'ble Supreme Court observed as follows:

‘20.precedents on legal propositions are useful and binding, but the variety of circumstances and peculiar features of each case cannot be

identical with those in another, and judgments of Courts on when and why a certain witness has been accepted or rejected can hardly serve as binding decisions. There are no legal litmus tests to discover the honest conscience of a human being and the canons of truthfulness of oral evidence sans commonsense, are but misleading dogmas. The golden rule is as George Bernard Shaw tells us, that there are no golden rules.'

In the case of **Chandra Prakash Vs State of U.P.** reported in (2002) 4 SCC P-234 the Hon'ble Supreme Court observed as follows,

22. A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this court should be certain clear and consistent. As stated in the above judgements, it is of common knowledge that most of the decisions of this court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system therefore there is need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this court in the case of Raghbir Singh held that a pronouncement of law by a Division Bench of this

Court is binding on a Division Bench of the same or smaller number of Judges. It is in furtherance of this enunciation of law, this Court in the latter judgment of *Pariya* held that: (SCC P 4 and para 6)

“But if a Bench of two Learned Judges concludes that an earlier judgment of three Learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three Learned Judges setting out, as has been done here the reasons why it could not agree with the earlier judgment. If then the Bench of three Learned Judges also comes to the conclusion that the earlier judgment of a Bench of three Learned Judges is incorrect, reference to a Bench of five Learned Judges is justified.”

In the instant matter argument is advanced by Mr. Paul appearing for petitioner/Landlord relying upon the decision of *Nasiruddin and others* (Supra) and *Bijay Kumar Singh and others* (Supra). Upon perusing the decisions of the Hon'ble Supreme Court in the case of *Nasiruddin* (Supra) it will appear that the suit was filed against the tenant for default in payment of rent. Upon institution of the suit the Learned Trial Judge determined the provisional rent @ Rs. 80 per month and by an order dated 9-9-1991 directed the tenant to deposit the arrears as also the current rent in court. The tenant did not deposit the same within the period specified therein. The tenant filed an application under Section 13(5) of the Rajasthan Premises (Control of Rent and Eviction) Act 1950 and also filed an application for condonation of delay, which was

rejected by the Learned Trial Court but was allowed by Hon'ble Rajasthan High Court in Appeal. The Hon'ble Supreme Court in the appeal against the order of Hon'ble Rajasthan High Court was pleased to decide the issue regarding application of Section 5 of the Limitation Act in the matter of deposit of rent in terms of Section 13(4) of the Rajasthan Premises (Control of Rent and Eviction) Amendment Act 1975. The Hon'ble Supreme while deciding the issue was pleased to observe and direct as follows:

‘45. On perusal of the said Section it is evident that the question of application of Section 5 would arise where any appeal or any application may be admitted after the prescribed period, 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) provides that in a suit for eviction on the ground set forth in clause (a) of sub-section (1) the tenant shall on the first date of hearing as on or before such date the court may on the application fixed in this behalf or within such time the tenant shall deposit in Court or pay to the Landlord in Court as determined under sub-section (3) from the date of such determination 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 specified period within which deposit has to be made which cannot be exceeding three months as extended by the Court.

46. The matter may be examined from another angle. 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.'

Thus upon plain reading of the decision of the Hon'ble Supreme Court in the case of Nasiruddin it will appear that the Hon'ble Court was pleased to hold that section 5 of the Limitation Act cannot apply in deposit of rent or complying with an order under Section 13(4) of Rajasthan Premises (Control of Rent and Eviction) Act

In the case of Bijay Kumar Singh and others the fact of the case was that the Landlord/Respondent filed suit for eviction against the tenant/appellant for default in payment of rent. The tenant did not deposit the rent but filed an application to determine the arrear of rent asserting that they have paid monthly rent to the receiver, who was appointed in Money Execution case. It was the contention of the tenants in the application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 that the Receiver has not informed them as to the persons authorized to collect rent therefore they could not pay it. The Learned Trial Court was pleased to allow the application filed under Section 7(2) of the West Bengal Premises Tenancy Act 1997 but the said order was set aside by Hon'ble High Court. The order of the Hon'ble High Court was assailed before the Hon'ble Supreme Court. The issue before the Hon'ble Supreme Court was whether Section – 5, of the Limitation Act is applicable in

depositing rent before the Court under Section 7(1) of the West Bengal Premises Tenancy Act 1997 or for determination of rent under Section 7(2) of the West Bengal Premises Tenancy Act 1997. The Hon'ble Supreme Court in the said case was pleased to observe as follows:

‘19. Sub-section (1) of Section 7 of the Act relieves the tenant from the ejectment on the ground of non-payment of arrears of rent if he pays the landlord or deposit it with the Civil Judge all arrears of rent 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. Such payment or deposit shall be made within one month of the service of summons on the tenant or where he appears in the suit without the summons being served within one month of his appearance.

20. Therefore, sub-section (1) deals with the payment of arrears of rent when there is no dispute about the rate of rent or the period of arrears of rent. Sub-section (2) of section 7 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. In that situation the tenant is obliged to apply within time as specified in sub-section (1). That is 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 tenant is also required to file an application for determination of rent payable such deposit is not to be accepted unless it is accompanied by an application for determination of the rent payable. Therefore,

sub-section (2) of Section 7 of the Act requires two things deposit of arrears of rent at the rate admitted to be due by the tenant along with an application for determination of the rent payable. Therefore sub-section (2) of section 7 of the Act requires two things, deposit of arrears of rent at the rate admitted to be due by the tenant along with an application for determination of rent payable. If the two conditions are satisfied then only the Court having regard to the rate at which rent was last paid and for which tenant is in default, may make an order specifying the amount due. After such a determination the tenant is granted one month's time to pay to the landlord the amount which was specified. The proviso of the Act limits the discretion of the Court to extend time for deposit of arrears of rent. The extension can be provided once and not exceeding two months.

21. Sub-section (3) provides for consequences of non-payment of rent ie. 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-Section (2-A) and (2-B) which was being examined by this Court in B.P. Khemka. 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 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 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 re-course to Section 5 of the Limitation Act as it is not application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.

22. In view of the judgment in Nasiruddin we do not find any error in the order passed by the Learned Single Judge. The trial Court shall proceed with the suit in accordance with law. The appeals are dismissed.'

Upon plain reading of the decisions of Nasiruddin (supra) and Bijay Kumar Singh (Supra) it will appear that the fact in issue in the former case was default of the tenant in not depositing the arrear amount of rent after determination by the Learned Trial Court in eviction suit and in the later case the fact in issue was that application made by the tenant in eviction suit for

determination of arrear rent without depositing any rent. The Hon'ble Supreme Court in the case of Nasirruddin (Supra) was pleased to observe that deposit by the tenant within the statutory period 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 of Court directing deposit. The Hon'ble Supreme Court in the case of Bijay Kumar Singh (Supra) upon following the view of the judgment in Nasirruddin was pleased to observe that 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.

In the instant case the fact in issue is different from that of Nasirruddin (Supra) and Bijay Kumar Singh (Supra).

The tenant/opposite party in the instant case upon entering appearance in the eviction suit before trial Court paid arrear rent by depositing before Court under Section 7(1) of the West Bengal Premises Tenancy Act 1997. The tenant/opposite party also filed application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 for determination of rent. The Learned Trial Court while disposing the application under Section 7(2) of the West

Bengal Premises Tenancy Act 1997 was pleased to observe and direct as follows:

‘The landlord tenant relationship and the rate of rent has been admitted by the parties. As such after going through the order sheet of the instant case it is seen that the defendant has already filed the arrears rent for the month of June 2016 to October 2016 before this Court along with statutory interest of 10 per cent on 29.11.2016.

As such the instant application under Section 7(2) of WBPT. Act is disposed off on contest without any order as to cost with a direction upon the defendant to pay monthly rent without fail in compliance of section 7(1) of WBPT Act.’

Pursuant to the order dated 01/04/2017 passed by Learned Trial Court the tenant/opposite party went on depositing monthly rent before the Court, till March 2019, but thereafter the tenant/opposite party failed to deposit the rent in Court, on the ground of cease work of Learned Advocates and clerks of the Court.

Now the question which comes for consideration is whether the decisions of the Hon’ble Supreme Court in the case of Nasiruddin (Supra) and Bijay Kumar Singh (Supra) are applicable to the facts of the case and should be treated as precedent. In order to find answer to this question it is necessary to consider some judicial decisions as to when a case should be treated to be a precedent.

In the case of **Baluwant Rai Saluya V AIR INDIA LTD** reported in AIR-2015. S.C. P. 375. The Hon'ble Supreme Court observed as follows:

'25. In our view, the binding nature of a decision would extend to only observations on points raised and decided by the Court and neither on aspects. which it has not decided nor had occasion to express its opinion upon. The observation made in a prior decision on a legal question which arose in a manner not requiring any decision and which was to an extent unnecessary, ought to be considered merely as an obiter dictum. We are further of the view that a ratio of the judgment or the principle upon which the question before the Court is decided must be considered as binding to be applied as an appropriate precedent.

A Constitution Bench of the Hon'ble Supreme Court in the case of State of Punjab V Baladev Singh (1999) 6 SCC. 172: (AIR 1999 S.C. 2378: 1999 AIR SCW 2494), held that a judgment has to be considered in the context in which it was rendered and that a decision is an authority for what it decides and it is not everything said therein constitutes a precedent.'

In the case of **Bihar School Examination Board V. Suresh Prasad Sinha** reported in AIR – 2010. S.C. P.93 the Hon'ble Supreme Court observed as follows:

14. The Courts should guard against the danger of mechanical application of an observation without ascertaining the context in which it was

made. In CIT VS Sun Engg. Works(P) Ltd. 1992(4) SCC 363: (1992 AIR SCW 2600) (vide para 39) this Court observed:

“It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, discovered from, the context of the question under consideration and treat it to be complete ‘law’ declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case the Courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment divorced from the context of the questions under consideration by this Court, to support their reasonings.”

It is also necessary to keep in mind the following principles laid down in **Government of Karnataka and Ors Vs Gauramma and Ors.** (AIR-2008 S.C. 863): (2008 AIR SCW 182, Paras 9,10, and 13) with reference to precedential value of decisions’

“Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judges decision binding a party is the principle upon which the case is decided

and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents every decision contains three basic postulates.

- i) Finding of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts;
- ii) Statements of the principles of law applicable to the legal problems disclosed by the facts; and
- iii) Judgement based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: *State of Orrisa V Sudhansa Sekhar Mirza and Ors.* (AIR-1968.S.C.647). and *Union of India and Ors V Dhanuwanti Devi and Ors.* (1996(6) SCC 44):(1996 AIR SCW 4020). A case is a precedents and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of parliament. In *Quinn V Leathern* (1901) AC 495 (H.L) Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved since the generality of the expression which are found there are not intended to be exposition of the whole law but governed and

qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact-situation of the decision on which reliance is placed. Observations of Courts are neither to be read of Euclid's theorems nor as provisions of the Statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

The following words of Lord Denning in the matter of applying precedents have become *locus classicus*:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases. One should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide,

therefore, on which side of the line, a case falls the broad resemblance to another case is not at all decisive.

Precedent should be followed only so far as it marks the path of justice but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.

15. In *Sarwa Shramik Sanghatana (K.V.) Mumbai VS State of Maharashtra and Ors.* AIR. 2008 S.C. 946 the Court cited the following passage from *Quinn V Leathern* [1901 AC 945] with approval. “Now before discussing the case of *Allen V Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved since the generality of the expressions which may be found there are not intended to be expositions of the whole law but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.”

Now the point for consideration is whether the defence of the opposite party/tenant against delivery of possession should be struck out in view of the fact that the opposite party/tenant has defaulted in payment of rent for some months although the tenant/opposite party, paid arrear rents after entering appearance in the suit made application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 within time and after passing order by Learned Trial Court on 1/04/2017 for payment went on depositing the monthly rent in Court till March 2019 and thereafter failed to make the deposit for certain period on the grounds cited by him in the application. In Order to get the answer it is necessary to deal with the provisions contained in Section 7 of the West Bengal Premises Tenancy Act 1997, once again.

Section 7 of the West Bengal Premises Tenancy Act 1997 provides as follows:

7. When a tenant can get the benefit of protection against eviction – (1)
 - (a). On a suit being instituted by the landlord for eviction on any of the grounds referred to in Section 6, the tenant shall subject to the provisions of Sub-section (2) of this section pay to the landlord or deposit with the Civil Judge all arrears of rent, calculated at the rate at which it was last paid and up to 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.

b) Such payment or deposit shall be made within one month of the service of summons on the tenant or where he appears in the suit without the summons being served upon him within one month of his appearance.

c) The tenant shall thereafter continue to pay to the landlord or deposit with the Civil Judge month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

2) If in any suit referred to in sub-section(1) there is any dispute as to amount of the rent payable by the tenant, the tenant shall within the time specified in that sub-section, deposit with the Civil Judge the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of the application the Civil Judge shall having regard to the rate at which rent was last paid and the period for which default may have been made by the tenant, make as soon as possible within a period not exceeding one year an order specifying the amount if any due from the tenant and thereupon the tenant shall within one month of the date of such order, pay to the landlord the amount so specified in the order.

Provided that having regard to the circumstances of the case an extension of time may be granted by the Civil Judge only once and the period of such extension shall not exceed two months.

3) If the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, the Civil Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.

4) If the tenant makes deposit or payment as required by Sub-Section (1) or Sub-Section (2) no order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant, shall be made by the Civil Judge as he may deem fit to the landlord.

Provided that the tenant shall not be entitled to any relief under this sub-section if, having obtained such relief once in respect of the premises, he again makes default in payment of rent for four months within a period of twelve months or for three successive rental periods where rent is not payable monthly.

Now in the light of above judicial pronouncements it is to be considered as to whether the defence of the tenant/opposite party should be struck off in view of the mandatory provision contained in Section 7(3) of the West Bengal Premises Tenancy Act 1997. In order to find answer to this it is necessary to travel bit further and consider the judicial decisions regarding interpretation of

statutes and decisions with regard to Rent Control legislations of different states.

In the case of **Union of India Vs A.K. Pandey** reported in (2009) 10 SCC. P-552 the Hon'ble Supreme Court observed as follows:

“15. The principle seems to be fairly well-settled that prohibitive or negative words are ordinarily indicative of mandatory nature of the provision; although not conclusive. The Court has to examine carefully the purpose of such provision and the consequences that may follow from non-observance thereof. If the context does not show nor demands otherwise the text of a statutory provision couched in a negative form ordinarily has to be read in the form of command. When the word ‘shall’ is followed by prohibitive or negative words the legislative intention of making the provision absolute, peremptory and imperative becomes loud and clear and ordinarily has to be inferred as such. There being nothing in the context otherwise, in our judgment there has to be clear ninety-six hours” interval between the accused being charged for which he is to be tried and his arraignment and interval time in Rule 34 must be read as absolute. There is a purpose behind this provision: that purpose is that before the accused is called upon for trial, he must be given adequate time to give a cool thought to the charge or charges for which he is to be tried, decide about his defence and ask the authorities, if necessary, to take reasonable steps in procuring the attendance of his witnesses. He may even

decide not to defend the charge(s) but before he decides his time of action he must be given clear ninety-six hours”

In the case of **Bhaunagar University VS Palitana Sugar Mills PVT Ltd** and others reported in AIR-2003 SC. P 511 the Hon’ble Supreme Court observed as follows:

‘23. It is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and words by words. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of statute and unless absolutely necessary no part thereof shall be rendered surplusage or redundant.

24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable unworkable or totally irreconcilable with the rest of the statute.

26. It is also well settled that a beneficent provision of legislation must be liberally, construed so as to fulfil the statutory purpose and not to frustrate it.

As Rent Control Legislations are beneficial legislations the provisions should be so construed that the statutory purpose is not frustrated.

In the case of **Amritlal Ratilal VS State of Gujrat** reported in AIR 1980 S.C.P-299 the Hon'ble Supreme Court was pleased to observe as follows:

'It is too platitudinous to preach and too entrenched to shake the proposition that rent control legislation in a country of terrible accommodation shortage is a beneficial measure whose construction must be liberal enough to fulfil the statutory purpose and not to frustrate it. So construed, the benefit of interpretative doubt belongs to the potential evictee unless the language is plain and provides for eviction. That intendment must by interpretation be effectuated. This is the essence of rent control jurisprudence.'

In the case of **Ram Murti Vs Bhola Nath and Another** reported in AIR 1984 S.C 1392 the Hon'ble Supreme Court observed as follows:

10. 'In Hem Chand's case AIR 1977 S.C. 1986 supra, this court partly reversed the Full Bench decision of the Delhi High Court in Delhi Cloth and General Mills Ltd. V Hem Chand (AIR. 1972 Delhi 275) holding that the default on the part of the tenant to comply with the requirements of S.15(1) vests an 'indefeasible right' in the landlord and is not merely procedural right and therefore the Rent Controller was bound to pass order for eviction under S.

14(1)(a) of the Act and the Rent Controller had no power to condone the default by the tenant in making payment or deposit of arrears of rent within one month of the date of the order of the Rent Controller or of future rent month by month, by the 15th of each succeeding month. The underlying fallacy lay in the wrongful assumption by the Full Bench that S. 14(2) was meant for the protection of the landlord. This Court while reversing the judgment of the Full Bench observed.

“While we agree with the view of the Full Bench that the Controller has no power to condone the failure of the tenant to pay arrears of rent as required under S. 15(1), we are satisfied that the Full Bench fell into an error in holding that the right to obtain an order for recovery of possession occurred to the landlord. As we have set out earlier, in the event of the tenant failing to comply with the order under S.15(1) the application will have to be heard giving an opportunity to the tenant if his defence is not struck out under S.15(7) and without hearing the tenant if his defence is struck out. The Full Bench is therefore in error in allowing the application of the landlord on the basis of the failure of the tenant to comply with an order under. S.15(1).”

In the concluding part of the judgment, there is an observation to the effect:

“The Rent Control Act protects the tenant from such eviction and gives him an opportunity to pay the arrears of rent within two months from the date of notice of demand as provided in S.14(1)(a). Even if he fails, a further

opportunity is given to the tenant to pay or deposit the arrears within one month under S.15 (1). Such payment or deposit in compliance with the order under S.15 (1) takes away the right of the landlord. To claim recovery of possession on the ground of default in payment of rent, the legislature has given statutory protection to the tenant by affording him an opportunity to pay the arrears of rent within one month from the date of the order. This statutory provision cannot be modified as rights of parties depend on the compliance with an order under Section 15(1). In the circumstances, we agree with the Full Bench that the Rent Controller has no discretion to extend the time prescribed under S.15(1)”

With respect the observations in Hem Chand’s case (AIR.1977 S.C. 1986) expressing the view that the Rent Controller has no power to extend the time prescribed in S.15(1) cannot be construed to mean that he is under a statutory obligation to pass an order for eviction of the tenant under S.14(1)(a) without anything more due to the failure on his part to comply with the requirements of S.15(1). The question would still remain as to the course to be adopted by the Rent Controller in such a situation in the context of S.15(7) which confers on the Rent Controller a discretion not to strike out the defence of the tenant in the event of the contingency occurring namely failure on the part of the tenant to meet with the requirements of Section 15(1).’

In the case of **Bimal Chand Jain VS Sri Gopal Aggarwal** reported in (1981) 3 SCC.P-486. The Hon’ble Supreme Court observed as follows:

“6” It seems to us on a comprehensive understanding of Rule. 5 of Order XV that the true construction of the Rule should be thus. Sub-rule (1) obliges the defendant to deposit, at or before the first hearing of the suit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent per annum and further, whether or not he admits any amount to be due, to deposit regularly throughout the continuation of the suit the monthly amount due within a week from the date of its accrual. In the event of any default in making any deposit “the Court may subject to the provisions of sub-rule (2) strike off his defence.” We shall presently come to what this means. Sub-rule(2) obliges the Court, before making an order for striking off the defence to consider any representation made by the defendant in that behalf. In other words, the defendant has been vested with a statutory right to make a representation to the Court against his defence being struck off. If a representation is made the Court must consider it on its merits and then decide whether the defence should or should not be struck off. This is a right expressly vested in the defendant and enables him to show by bringing material on the record that he has not been guilty of the default alleged or if the default has occurred there is good reason for it. Now it is not impossible that the record may contain such material already. In that event, can it be said that sub-rule (1) obliges the Court to strike off the defence? We must remember that an order under sub-rule (1) striking off the defence is in the nature of a penalty. A serious responsibility rests on the Court in the matter and the power is not to be exercised mechanically. There is a reserve of discretion vested in

the Court entitling it not to strike off the defence if on the facts and circumstances already existing on the record it find good reason for not doing so. It will always be a matter for the judgment of the Court to decide whether on the material before it, notwithstanding the absence of a representation under sub-rule (2), the defence should or should not be struck off. The word 'may' in sub-rule (1) merely vested power in the court to strike off the defence. It does not oblige it to do so in every case of default. To that extent, we are unable to agree with the view taken by the High Court in *Puran Chand*, we are of the opinion that the High Court has placed an unduly narrow construction on the provisions of clause (1) of Rule 5 of Order XV.

In the case of **Miss Santosh Mehta Vs Om Prakash and Others** reported in (1980) 3 SCC P-610 the Hon'ble Supreme Court observed as follows:

'2. Rent Control laws are basically designed to protect tenants because scarcity of accommodation is a nightmare for those who own none and if evicted will be helpless. Even so, the legislature has provided some grounds for eviction, and the Delhi Law contains an extreme provision for striking out altogether the defence of the tenant which means that even if he has excellent pleas to negative the landlords claim the Court will not hear him. Obviously this is a harsh extreme and having regard to the benign scheme of the legislation this drastic power is meant for use in grossly recalcitrant situations

where a tenant is guilty of disregard in paying rent. That is why a discretion is vested not a mandate imposed. Section 15(7) reads thus:

‘If a tenant fails to make payment or deposit as required by this section, the controller may order the defence against eviction to be struck out and proceed with the hearing of the application.’

3. We must adopt a socially informed perspective while Construing the provisions and then it will be plain that the controller is armed with a facultative power. He may, or may not strike out the tenant’s defence. A judicial discretion has built-in-self-restraint, has the scheme of the statute, in mind, cannot ignore the conspectus of circumstances which are present in the case and has the brooding thought playing on the power that in a Court striking out a party defence is an exceptional step, not a routine visitation of a punitive extreme following upon a mere failure to pay rent. First of all there must be a failure to pay rent which in the context indicates wilful failure, deliberate default or volitional non-performance. Secondly the section provides no automatic weapon but prescribes a wise discretion, inscribes no mechanical consequence but invests a power to overcome intransigence. Thus if a tenant fails or refuses to pay or deposit rent and the Court discerns a mood of defiance or gross neglect, the tenant may forfeit his right to be heard in defence. The last resort cannot be converted into the first resort; a punitive direction of court cannot be used as a booby trap to get the tenant out. Once this teleological interpretation dauns the mist of misconception about matter-

of-course invocation of the power to strike out will vanish. Farewell to the realities of a given case is playing truant with the duty underlying the power.

4. There is no indication whatsoever in the Act to show that the exercise of the power of striking out the defence under Section 15(7) was imperative whenever the tenant failed to deposit or pay any amount as required by Section 15. The provisions contained in Section 15(7) of the Act are directory and not mandatory. It cannot be disputed that Section 15(7) is a penal provision and gives to the Controller discretionary power in the matter of striking out of the defence, and that in appropriate cases, the Controller may refuse to visit upon the tenant, the penalty of non-payment or non-deposit. The effect of striking out of the defence under Section 15(7) is that the tenant is deprived of the protection given by Section 14 and therefore, the powers under Section 15(7) of the Act must be exercised with due circumspection.'

In the case of **Kamala Devi (SMT) Vs Vasudev** , reported in (1995) 1 SCC. P-356 the Hon'ble Supreme Court observed as follows:

'16 On behalf of the appellant it has been contended that this is a clear authority for the proposition that under the provisions of the Delhi Rent Control Act, the Rent Controller has no power to condone the failure of the tenant to pay arrears of rent as required under Section 15(1) of the Delhi Rent Control Act. The judgment in the case of Ram Murti V Bhola Nath which took a contrary view, was wrongly decided by another Bench of two Judges. In that case reliance was wrongly placed on the judgment in the case of Shyamcharan

Sharma V Dharamdas in which the provisions of the Madhya Pradesh Accommodation control Act 1961 fell for consideration.

17. We are unable to uphold this contention. In our view it is not obligatory for the Rent Controller to strike out the defence of the tenant under Section 15(7) of the Delhi Act, if the tenant fails to make payment or deposit as directed by an order passed under Section 5(1). The language of sub-section (7) of Section 15 is that the Controller may order the defence against eviction to be struck out.' That clearly means, the controller, in a given case, may not pass such an order. It must depend upon the facts of the case and the discretion of the Controller whether such a drastic order should or should not be passed.

22. The unreasonableness of the construction suggested by the appellant is well illustrated by the case of Santosh Mehta V Om Prakash. In that case, the tenant was a working woman, who has engaged an advocate to represent her in a dispute with the landlord she duly paid all the arrears of rent by cheque or in cash to her advocate, who failed to deposit the amount or to pay to the landlord as directed by the Rent Controller. On an application made by the landlord, the Rent Controller struck out the defence of the tenant under Section 15(7) of the Delhi Rent Control Act. A Bench of two Judges of this Court held that the exercise of power of striking out the defence under Section 15(7) was not imperative whenever the tenant failed to deposit or pay any amount as required by Section 15. The provisions contained in Section 15(7) of the Act were directory and not mandatory. Section 15(7) was a penal provision

and gave the Rent Controller discretionary power in the matter of striking out the defence of the tenant in the facts of the case was improper. The consequential order of eviction was set aside.

23. We are unable to uphold the contention of the appellant that the case of Ram Murti V Bhola Nath was wrongly decided and reliance was wrongly placed in that case on the decision of a Bench of three Judges of this Court in the case of Shyamacharan Sharma V Dharam Das. In our view, sub-section (7) of Section 15 of the Delhi Rent Control Act, 1958 gives a discretion to the Rent Controller and does not contain a mandatory provision for striking out the defence of the tenant against eviction. The Rent Controller may or may not pass an order striking out the defence. The exercise of this discretion will depend upon the facts and circumstances of each case. If the Rent Controller is of the view that in the facts of a particular case the time to make payment or deposit pursuant to an order passed under sub-section (1) of Section 15 should be extended he may do so by passing a suitable order. Similarly, if he is not satisfied about the case made out by the tenant he may order the defence against eviction to be struck out. But the power to strike out the defence against eviction is discretionary and must not be mechanically exercised without any application of mind to the facts of the case.

In the case of **A.R. Gupta Vs V. Kumar** reported in CHN-2023(4) P-71 at P-84 the Hon'ble Supreme Court observed as follows:

‘Smt. Kamala Devi and Manik Lal Majumder related to the respective rent control legislations, applicable to the respective jurisdictions, which may not be of direct application to the present case but and yet, the relevant propositions to be culled out for the present purpose and that any such provision depriving the tenant of the defence because of default in payment of the due amount of rent/arrears have been construed as directory and not mandatory. In other words, the Courts have leaned in favour of not assigning mandatory character to such provisions of drastic consequence and have held that a discretion is indeed reserved with the Court concerned whether to penalise the tenant or not. However, and even while reserving such discretion this Court has recognized the use of such discretion against the defendant-tenant in case of wilful failure or deliberate default or volitional non-performance . This Court has also explained the principles in different expressions by observing that if the mood of defiance or gross neglect is discerned, the tenant may forfeit his right to be heard in defence the sum and substance of the matter is that the power to strike off defence. The sum and substance of the matter is that the power to strike off defence, is considered to be discretionary, which is to be exercised with circumspection, but relaxation is reserved for a bonafide tenant like those in the cases of Miss Santosh Mehta and Smt Kamala Devi (Supra) and not as a matter of course. The case of Bimal Chand Jain (supra) directly related with Order XV Rule-5 CPC where the tenant had deposited the arrears admitted to be due but, failed to make regular deposits of monthly rent and failed to submit representation in terms of sub-

rule(2) of Rule – 5 of Order XV. The defence was struck off in that matter with the Trial Court and the High Court taking the said provisions of Order XV Rule 5 CPC as being mandatory in character. Such an approach was not approved by this Court while indicating the reserve of discretion in not striking off defence if, on the facts and circumstances existing on record, there be good reason for not doing so. The common thread running through the aforesaid decisions of this Court is that the power to strike off the defence is held to be a matter of discretion where despite default, defence may not be struck off for some good and adequate reason.

11.2. The question of good and adequate reason for not striking off the defence despite default would directly relate with such facts, factors and circumstances where full and punctual compliance had not been made for any bona fide cause, as contradistinguished from an approach of defiance or volitional/elective non performance.’

Thus upon considering the above Judicial pronouncements it will appear that although different states have different rent control legislations but the provision depriving the tenant of defence because of default in payment of the due amount of rent/arrears have been construed liberally and the expression ‘may’ in regard to the power of the Court to strike out defence has been construed as directory and not mandatory. In other words the Courts have leaned in favour of not assigning a mandatory character to such provisions of drastic consequence and have held that a discretion is indeed reserved with the

Court concerned whether to penalise the tenant or not. Now the question for consideration is that whether Court or Rent Controller having discretion to strike out the defence where the expression 'may' is used in the statutory provision has the same discretion if the expression 'shall' is used in statute. In order to find this answer it is necessary to consider the decision of the Hon'ble Supreme Court in the case of **Ganesh Prasad Sah Kesari and Another V Lokshmi Narayan Gupta** reported in AIR 1985. S.C. P 964.

In the case of **Ganesh Prasad Sah Kesari and anr** (supra) the Hon'ble Supreme Court was pleased to observe and direct as follows:

Ordinarily the use of the word 'shall' prima facie indicates that the provision is imperative it would ascertain the intendment of the legislature and the consequences flowing from its own construction of the word shall. If the use of the word 'shall' makes the provision imperative the inevitable consequence that flows from it is that the Court would be powerless to grant any relief even where the justice of the case so demands. If the word 'shall' is treated as mandatory the net effect would be that even where the default in complying with the direction given by the court is technical, fortuitous, unintended or on account of circumstances beyond the control of the defaulter, yet the court would not be able to grant any relief or assistance to such a person. Once a default is found to be of a very technical nature in complying with the earlier order, the court must have power to relieve against a drastic consequence all the more so if it is satisfied that there was a formal or technical default in

complying with its order. To illustrate, if the tenant while he was on the way to the court on the 15th day to deposit the rent for the just preceeding month as directed by an order under Sec. 11A, met with an accident on the road and could not reach the court before the court hours were over, should he be penalised by his defence being struck off. Even if the court is satisfied that he was on the way to the court to make the necessary deposit, that he had the requisite amount with him, and that he started in time to reach the court within the prescribed court hours and yet by circumstances beyond his control, he met with an accident would the court be powerless to grant him relief? This illustration would suffice to the intendment of the legislature that it never used the word 'shall' to make it so imperative as to render the court powerless.

The statute in which the expression is used is The Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947. It is a statute enacted with a view to providing a fetter on the right of a landlord to evict tenant at his whim or fancy. The long title of the Act shows that it was enacted to regulate the letting of buildings and the rent for such buildings and to prevent unreasonable eviction of tenants there from in the Province of Bihar. A provision in such a statute primarily enacted for the protection of tenants against unreasonable eviction that the court is required to find out whether the word 'shall' was used as to make the provision mandatory or imperative. Obviously if one ascertains the intendment of the legislature, the purpose for which the provision was enacted, the beneficent nature of the statute and to protect the harassed tenant obviously it

does not require long argument to hold that the expression 'shall' was used not with a view to making the provision mandatory or imperative but it was to be directory. Such a construction would advance the purpose for which the Act was enacted namely the protection of tenants. It will also not render the court powerless in the face of harsh facts where striking off the defense would be nothing short of miscarriage of justice.

In the case of **Sitala Debi Vs Mon Bahadur** reported in 76 (CWN) P-435, a Division Bench of this Hon'ble Court was pleased to observe as follows:

‘15. Under Section 151 the Court has always the inherent power to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the Court. The exercise of this power has been extended to cover cases where a breach occurs, to the prejudice of a party litigant and to the advantage of the other litigant, not due to any fault or negligence of the defaulting party but on account of an action or inaction of Court on the principle *actus curiae neminem gravabit* (An act of Court shall prejudice no one). In(10) Mahomed Akbar Jaman Khan v. Sukhdeo Pande and another, (1911) 13 Cal LJ 467 the Court was concerned with the question of setting aside a sale and under Order 21, Rule 89 to set aside the sale the aggrieved party has to apply on deposit of the amount in sale proclamation less any sum received by the decree-holder along with five per cent of the purchase money. Such deposit under Rule 92 has to be made within thirty days of the date of the sale. In that case, the judgment debtor through his agent made an

application on the thirtieth day for setting aside the sale and was ready with money to deposit. The challan for deposit was duly filled up and placed for signature of the presiding officer of Court. Later on in the day the party was informed that as the presiding officer had left the Court, his signature could not be obtained on that day. The signature was obtained on the following day when on that authority the money was deposited. Under Rule 92, Sub-rule (1). when inter alia no application under Rule 89 is made with the required deposit within thirty days of sale the Court shall make an order confirming the sale and thereupon the sale shall become absolute. The Court in the said circumstances set aside the sale applying the above principle notwithstanding the mandatory provisions of the Code. Sir Ashutosh Mookerjee. speaking for the Court, observed :

"As Mr. Justice Cresswell put it in *Freeman v. Tranah*, (1852-12 C B 406) this maxim is founded upon justice and good sense, and affords a certain guide for the administration of the law. In other words as Lord Justice James observed in *Tuffzzool v. Rughoonath*, (1871-14 MIA Ind App 40 (51)) it is the duty of a Judge to be always vigilant- so as not to allow the act of the Court itself to do wrong to the suitor. This principle has been extensively recognised and applied by Courts of justice in this country; and the time within which a party is required to perform an act has been extended when it could not be performed by reason of action or inaction of Court It may be conceded that the maxim may not be of universal application and may require qualification

It would in our opinion, be a lamentable failure of justice, if we were to hold that the Court is not competent to do substantial justice in a case of this description. As Lord Penzance observed in *Kendall v. Hamilton*. 1879-4 AC 504 (525). procedure is but the machinery of the law, after all, the channel and the means whereby the law is administered and justice reached; it strangely departs from its office when in place of facilitating, it is permitted to obstruct and even extinguish legal rights, and is thus made to govern when it ought to subserve....."

16. In *P. Bhattacharjee v. Sm. Lakhpati Debi*. (1960) 64 Cal WN 763 the Court was considering a case where the tenant, in a suit for recovery of possession in respect of a tenancy governed by the said Act. claimed to have filed the challan on the 15th which was last due date and deposited the amount on 17th. 16th being a holiday, P. Chatterjee. J following the above decision, held that if there was no fault on the Part of the tenant and it was due to procedural complications, the Court should not take such default into account. The case was accordingly sent back to the trial Court to consider whether there was default on the part of the tenant in making the deposit on 17th,

17. It will thus appear that the Court has recognised relaxations in regard to the provisions of statute, which even may be mandatory in circumstances mentioned above. The Court has also granted reliefs in such cases even though the other party has been thereby deprived of a benefit or right under the mandatory provisions of law. The question that calls for attention is whether

there is scope for further relaxations to the provisions of statutes and of a Court's orders passed on the basis thereof in the context of the present day existence. In the modern times in our country as elsewhere people are frequently faced with manifold events which prevent them from pursuing their normal activities, whether connected with official duties or private affairs. To illustrate some -- there may be a general strike, civil commotion, a failure of communication, a strike or bandh in a particular locality, disrupting and suspending the normal activities of people. There may be an unforeseen incident or accident preventing a person from proceeding with his activities. In short, as it is impossible to exhaust all circumstances, there may be supervening circumstances which may come into existence in the appropriate time, making it impossible for one to perform his part of activity. A Court of law cannot be blind to such events but has to recognise them and mould its procedure accordingly. We are unable to accept the contention put in the extreme form that the Court has no power in any circumstances to travel beyond the provisions of the statute and the sword of justice has to fall as soon as there is a violation of the provisions of the statute irrespective of any other consideration.'

Upon considering the judicial decision it is clear that Rent Control Legislation being a welfare legislation the construction of the provisions should be such that the purpose of such legislation is not frustrated.

From the judicial decisions discussed above it will appear that Rent Control Legislations of different states were taken into consideration and the Hon'ble Courts although leaned in favour of not assigning mandatory character in striking out the defence but the Hon'ble Apex Court while reserving such discretion has recognized the use of discretion against the defendant-tenant in case of willful failure or deliberate default or volitional non-performance.

The Hon'ble Court also observed that a socially informed perspective must be adopted while Construing the provisions and then it will be plain that the Court/controller is armed with a fascilative power. It will appear from Rent Control legislations of different states as discussed above that tenants are given benefit of protection of eviction upon compliance of certain conditions. The conditions laid down are primarily deposit of arrear rents by tenants with interest at the time of appearance in the suit for eviction and continue to deposit the same till disposal of the suit. In the event of default the controller/Court is conferred the power to strike out the defence of the tenant against delivery of possession. Although some of the legislations contain expression 'Controller/Court shall strike out the defence' and some contain expression, 'Court/Controller may strike out the defence' and some contain provision 'Court may subject to consideration of representation made by defendant/tenant strike out the defence but the Hon'ble Apex Court in the case of A.R. Gupta VS V. Kumar (supra) held that discretion should be exercised with circumspection but relaxation is reserved for a bona fide tenant and not as a matter of course. Similarly in the case of Ganesh Prasad Sah Kesari

(supra) the Hon'ble Apex Court observed that if one ascertains the intendment of the legislature the purpose for which the Bihar Building (Lease, Rent and Eviction) control Act 1947 was enacted, the beneficial nature of the statute and to protect the harassed tenant obviously it does not require long argument to hold that the expression 'shall' was used not with a view to making the provision mandatory or imperative but it was to be directory. Thus from the plain reading of the judicial pronouncements regarding power of Court and Controller to strike out the defence of tenant against delivery of possession it is clear that the use of expression 'may' in the provision does not confer unfettered power to the Court to either strike out or refuse to strike out defence of the tenant against delivery of possession. On the other hand the use of expression 'shall' in the provision does not make the Court or Controller powerless in order to decide as to whether defence of the tenant/defendant is to be struck off.

Sub-section 3 of Section 7 of the West Bengal Premises Tenancy Act 1997 provides as follows:

3) If the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted the Civil Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.

Although sub-section (3) of Section 7 of the West Bengal Premises Tenancy Act 1997 contains the expression 'shall order the defence against delivery of possession to be struck out' is used but the said provision cannot be used in a mechanical manner. In the event the intention of the legislature was that the defence against delivery of possession is deemed to be struck off or automatically struck off without order of Court such language would have been mentioned in the Section. For example in case of abatement of suit when there is no compliance of condition mentioned in Order 22 Rule 3 sub-rule 1 and sub-rule – 2 of Rule 4 of the said order the suit automatically abates without order of the court. The position in sub-section 3 of section 7 of the West Bengal Premises Tenancy Act is different. By use of the language 'Court shall order' power and responsibility is conferred upon the Court to pass a reasoned order considering the facts of the case and applying the mind and satisfying the conscience. As striking out the defence is in the nature of penalty as observed in the case of Bimal Chand Jain (supra) before passing such order the tenant/defendant should be given an opportunity of being heard.

In the case of Union of India Cal Vs JN. Sinha reported in AIR-1991 S.C. P-40 the Hon'ble Supreme Court observed as follows:

'An endeavor must be made to interpret a statutory provision with the principles of natural justice.'

Now the point for consideration is whether the default committed by the opposite party tenant is bona fide or is willful.

It appears from the order dated 1-04-2017 passed by Learned Trial Court that the opposite party/tenant pursuant to entering appearance in the suit and prior to filing application under Section 7(2) of the West Bengal Premises Tenancy Act the tenant/opposite party already deposited arrear of rent for the month of June 2016 to October 2016 before the Court along with statutory interest of 10 per cent on 29-11-2016 and the application under Section 7(2) of the West Bengal Premises Tenancy Act was disposed off on contest with a direction upon the defendant to pay monthly rent without fail in compliance of Section 7(1) of West Bengal Premises Tenancy Act. Pursuant to the order passed by Learned Trial Court the opposite party/tenant went on depositing the monthly rent in Court till April 2019. It is on May 2019 the opposite party/tenant failed to make the deposit of rent. The ground furnished by the opposite party/tenant is due to cease work of Learned Advocate of Howrah District Court Bar Association. Thus rent till the month of April 2019 was deposited by the opposite party/ tenant. Apart from the ground of Cease Work of Learned Advocates and their Clerks of Howrah District Judges Court Bar Association the opposite party/ tenant contended that he went on depositing the monthly rent till the month of April 2019, and thereafter due to dispute between learned advocates and state administration there was cease work and rents for few months could not be deposited. It is further contended that after situation became normal and cease work was withdrawn rent was given to clerk for depositing the same in court. The opposite party/ tenant also contended that when Covid pandemic broke out rents for some months could

not be deposited. It is contended that at the time of hearing of the suit it was found that 19 months challan was missing from the file of Learned Advocates and on searching it was found that out of 19 number of challans passed 4 months deposit was valid. Learned Advocate for the opposite party/ tenant in his written notes of submission has stated that the opposite party was vigilant and in time tendered the rent to the clerk of Learned Advocate who was usually depositing the rent and the opposite party was under bona-fide impression that as usual rents are being deposited in court. Upon perusing the challans filed by Learned Advocate for the opposite party it appears from the information slips that Rent was deposited in March 2019, April 2019, July 2019 but rents were not deposited for the month of May 2019, June 2019. August 2019 to August 2020 and November 2020. Now with regard to default for the month of May 2019 the same can be condoned as there was cease work of Learned Advocates and their clerks from 24-04-2019 to 8-06-2019. Although cease work was lifted on 9-06-2019 but the fact that it takes time for resumption of normal work after cease work is lifted and that rents are to be deposited within 15th of every succeeding month a sympathetic view may be taken, for month of June. With regard to default from April 2020 to November 2020 as it was within covid period the same may also be condoned in terms of the decision of the Hon'ble Supreme court in some cases, relating Covid. However the prayer for condonation of default with regard to the period August 2019 till March 2020 is to be considered. It is the case of the opposite party/ tenant that he entrusted the clerk of his learned advocate to make the deposit as he was

earlier doing but he neglected to do so from August 2019 for many months. When such fact is pleaded in the petition u/s- 151 CPC and also submitted by his Learned Advocate in his written notes of submission which relates to his former clerk such contention cannot be disbelieved. As an Advocate is the officer of the court any petition prepared by him relating to the acts of his former clerk should not be disbelieved.

It has to be remembered that there is a distinction between the procedure of paying directly to landlord and depositing in Court. Payment of rent directly to landlord is an easy task and there is no procedural complication. On the other hand payment to court requires filling up of challan, passing of the challan and thereafter depositing of monthly rent. As a litigant may not be able to come every month to court for depositing rent he has to depend on his Learned Advocate and his clerk. Thus Advocates and their clerks are also part of the court machinery, and Advocates are not merely agents of the litigants. Hence a litigant should not be penalized for the laches of their Advocates or clerks.

In order to enlighten on this issue it is necessary to refer once again the decision of the Hon'ble Supreme Court in the case of Miss Santosh Mehta (Supra). In the case of Miss Santosh Mehta the tenant, a working woman had regularly paid the rent to her advocate, who neither deposited the same in the court nor paid it to the landlord. In the given circumstances this Court found it unjustified to punish the tenant by striking out the defence. As the facts of the

case are similar to that of Miss Santosh Mehta (Supra) the law laid down in the said decision may be followed.

As learned advocate for the petitioner relied upon the decision in the case of Saurav Das Vs Kartick Dutta and Ors being C.O No 606 of 2018 reported in 2019 SCC Online Cal 9155 where a single bench of this Hon'ble Court held even if the default was in respect of a subsequent current deposit and not arrears strictly in terms of sub-section (2) of section 7 having chosen to give a go-by to sub-section (1) and invoke sub-section (2) and having availed of the benefit of sub-section (2) the tenant/ opposite parties could not invoke section 5 of the Limitation Act afresh thereby seeking a lease of life specifically prohibited by statute this court with due respect to the decision is of the view that although the limit for extension of time to make deposit is under the proviso to sub-section 2 of section 7 of West Bengal Premises Tenancy Act 1997 but the background of the enactment of entire provision of section 7 of the said act may be considered. At the time of framing of the Act power to adjudicate eviction proceedings was conferred upon the Rent Controller. Section 6(1) and section 7(1) of the Act contained the following provision

‘6(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract no order or decree for the recovery of the possession of any premises shall be made by the Controller against the tenant except’

Section 7(1) contained clause/expression that 'on a proceeding being instituted by the Landlord for eviction on any of the grounds referred to in section 6, the tenant shall subject to the provisions of sub-section (2) of this section pay to the landlord or deposit with the Controller all arrears of rent,'

Section 42 of the Act provides that the hearing of every application made to the Controller under this Act shall be completed within a period of six months, unless for reasons to be recorded by the controller in writing it is not possible for him to complete the hearing within that period.

Thus when power was vested with the controller to adjudicate eviction proceedings, time limit for extension of deposit of rent was also provided once and not exceeding two months. The provisions with regard to limitation of extension of period was given under the contemplation that eviction proceedings would be complete within 6 months. However pursuant to the amendment, power to adjudicate eviction proceedings is now conferred upon Civil Judge and deposit of rent under section 7 of the act are also to be made before the Civil Judge. At present it is noticed that cases of eviction are pending before Civil Courts for many years. When eviction proceedings are disposed within a very short period there may not be any default of deposit of current rent or even if there is default once extension can be granted. On the other hand when the cases are pending for many years in Court there may be unavoidable

circumstances during the period for which there may be default in payment of rent. All factors may not be contemplated by legislature at the time of framing law thus when there is a situation which is not covered under the express provision of statute or there is change of circumstances courts may exercise inherent power to do justice. Thus even if section 5 of the limitation act is not applicable for deposit of rent, and the power to extend time to make deposit is once but courts can invoke inherent power to prevent miscarriage of justice. In the case of Ganesh Prasad Sah Kesari (Supra) and Sitala Devi (Supra) it was held that the courts have inherent power to do justice even if the expression shall is used in the statute to strike out the defence.

As the decision of the Hon'ble Supreme Court in the case of Ganesh Prasad Sah Kesari and the decision of Division Bench of this Hon'ble Court in the case of Sitala Debi (Supra) were not placed before the Learned Judge deciding the case of Saurav Das there was no scope for the learned judge to consider the issue further in the light of those decisions. Thus the said decision of the Learned Single Bench is not taken into consideration in this matter with due respect, to the Learned Judge.

In the facts and circumstances mentioned hereinabove, this court is of the view that in the interest of justice it would not be proper to strike out the defence of the opposite party/ tenant against delivery of possession. Hence this Revisional Application stands dismissed. Order

dated 18/06/2022 passed by Learned Civil Judge (Junior Division) 7th Court at Howrah in T.S 1417 of 2016 is affirmed. The opposite party/tenant is directed to comply the Order dated 18/06/2022 regarding deposit of rent along with interest forthwith if not complied.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury,J)