

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL APPLICATION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

C.O. 2783 of 2023

Seventh Day Adventist Senior Secondary School
Represented by Mr. Ashok Kumar Gill
Vs.
Ismat Ahmed & ors.

For the petitioner : Mr. Sagar Bandhyopadhyay,
Mr. Safdar Azam,
Mr. Jyotirman Talukder

For the opposite parties : Mr. Amit Kumar Raidani

Hearing concluded on: 05.03.2024

Judgment on: 20.03.2024

Shampa Sarkar, J.:-

1. The revisional application arises out of an order dated July 17, 2023 passed by the learned Chief Judge-in-Charge, City Civil Court at Calcutta in Ejectment Suit No.133 of 2019.

2. By the order impugned, the learned Court rejected the application for condonation of delay filed by the defendant along with the application under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act).

3. The learned Court was of the view that as the applications under Sections 7(1) and 7(2) were not filed within a month from receipt of summons, delay in filing the said applications could not be condoned. When the delay could not be condoned, the learned Court was also powerless to consider the prayers made in the said applications. As the defendant failed

to avail of the opportunity granted to a tenant under Section 7 of the said Act, within the time specified, the Court held that no discretion could be exercised to extend the statutory period. The time specified in the statute under Section 7(1)(b) was mandatory. The steps to be taken by the tenant under Section 7(1)(a) were also mandatory.

4. The petitioner is the defendant/tenant who has challenged the said order on the following grounds:-

- a) The summons were received on September 29, 2022 a day before the 'Puja' vacation, and the applications were filed on November 14, 2022 soon after reopening of the 'Puja' vacation.
- b) The delay was nominal and in any event when the specific contention of the petitioner/tenant was that there were no admitted dues payable as arrear rent to the landlord, the delay would not become fatal.
- c) The time taken by the learned Advocate to prepare the applications, had caused the delay. The Court had reopened only a few days before the applications were filed and the tenant had to brief his learned Advocate during the intervening period.

5. The petitioner represented by Mr. Sagar Bandhyopadhyay, learned Advocate submitted that the decision in ***Bijay Kumar Singh and ors. vs. Amit Kumar Chamariya and ors.*** reported in **(2019) 10 SCC 660** and the decision of the of the Division Bench of this Court in ***Binika Thapa (Nee Rai) and anr. vs. Dambar Kumari Mukhia and anr.*** reported in **2023 SCC OnLine Cal 5478**, would not be applicable in the instant case as there were no admitted arrears.

6. Mr. Bandhyopadhyay submitted that summons were received by the tenant on September 29, 2022. On the following day the Court closed for the 'Durga Puja' holiday, i.e., on September 30, 2022. The Court reopened on October 27, 2022. The petitioner engaged a learned Advocate after reopening of the court and filed the application on November 14, 2022.

7. It was further contended by Mr. Bandhyopadhyay that the plaintiff had instituted the suit on the ground of default, reasonable requirement and subletting. According to the plaintiff, the default in payment of rent was from March 2017. The rent payable was @ Rs.1090/-, payable according to English calendar month. In the application under Section 7(1), it was stated that Mohammad Zaeem, the son-in-law of the plaintiff had collected money in excess of the rent. He received a sum of Rs.40,500/- on February 27, 2018 towards rent for the month of July 2016 to March 2017. Again, he received a sum of Rs.45,000/- on February 27, 2018 towards rent from April 2017 to December 2017. Thereafter, he received a sum of Rs.15,000/- on February 27, 2018 towards rent for the month of January 2018 to March 2018. On January 24, 2022, Rs.1,80,000/- was received for rent towards April 2018 to March 2021. Thus, the son-in-law had collected amounts much in excess of the rent and there was no default in payment of the rent. The application under Section 5 of the Limitation Act which was filed for condonation of delay in the filing the application under Sections 7(1) and (7(2) of the said Act, should be allowed in the facts and circumstances of the case, especially when there was no default. Further prayer was that the petitioner may also be allowed to pay the current rent for the month of November 2022 to the credit of the plaintiffs in the instant suit.

8. In the application under Section 7(2), similar narration was provided, with regard to the factum of alleged collection of rent by the son-in-law of the plaintiff No.1. The tenant also requested the Court to determine the period of default if any and also whether excess amount of rent had been paid to the landlord through his son-in-law.

9. According to Mr. Bandhyopadhyay, when there was no default and when the categorical statement of the tenant was that the payment of rent had been made in excess, there was no requirement under the law to file the applications under Sections 7(1) within one month from receipt of summons, upon payment of admitted arrears with 10% interest. The learned Court was misled into rejecting the application for condonation of delay, without considering the prayer in the applications filed before the Court.

10. Mr. Bandhyopadhyay distinguished the decision of ***Binika Thapa (supra)***, inter alia, holding that in the cases before the Division Bench, there were admitted delay in filing the applications under Sections 7(1) and 7(2) and omission to deposit the admitted arrear rent along with 10% statutory deposit. Under such circumstances, the High Court had held that the decision of the Hon'ble Apex Court in ***Chamariya (supra)*** would operate as a binding precedent. In ***Chamariya (supra)*** also, the question involved was whether provisions of Section 7 with regard to the deposit of admitted arrear rent along with 10% interest within the statutory period of one month from receipt of summon or one month from appearance, was mandatory or not. In the instant case, there was no default. Under such circumstances, there was no requirement under the law for determination of the dispute involved. The

current rent ought to have been allowed to be deposited from the month of November 2022.

11. In the objection filed by the plaintiff/landlord, it was categorically stated that Mohammad Zaeem was neither engaged nor appointed nor employed by the plaintiff to collect the rent. Mohammad Zaeem was not the landlord. The tenant had defaulted in payment of rent from the month of March 2017 and as such he could not be granted the benefit of Section 7 of the said Act.

12. According to the plaintiff, the last rent receipt was issued in the year 2016 in the name of the recorded tenant. Moreover, there was a delay of 17 days in filing the application under Sections 7(1) and 7(2) of the Act and such delay could not be condoned by the learned Court. In view of the decision of the Hon'ble Apex Court in ***Chamariya (supra)*** and the decision of a Division Bench of this Court in ***Binika Thapa (supra)***, Mr. Raidani, learned Advocate prayed that the revisional application be dismissed.

13. The issue before this Court is the propriety of the order impugned.

14. The law provides a complete mechanism to be availed of by a tenant in order to protect himself from eviction. Such mechanism was provided under Section 7 of the said Act. On institution of a suit by the landlord for eviction on any of the grounds referred to in Section 6 of the said Act, the tenant, subject to the provisions of sub-section (2) of the Section 7, was liable to 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 was made, together with interest at the rate of 10% per annum. Such payment or deposit was to be made within one

month from the service of summons on the tenant or when the tenant appeared in the suit without summons being served, within one month from his appearance. Thereafter, the tenant was enjoined by law, to continue to pay to the landlord or deposit with the civil judge a sum equivalent to the rent at that rate, month by month within 15th of each succeeding month.

15. In case of any dispute as to the amount of rent payable by the tenant, within the time specified in the sub-section, the tenant was liable to 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 could be accepted unless it was accompanied by an application for determination of the rent payable. On receipt of the application, the civil judge, having regard to the rate at which the rent was last paid and the period for which default may have been made by the tenant, determine the dispute, and pass an order within a period not exceeding one year, specifying the amount, if any, due from the tenant and thereupon the tenant was liable to pay to the landlord within one month from the date of such order, the amount so specified in the order along with the monthly rent at the rate so determined.

16. According to the Hon'ble Apex Court in ***Chamariya (supra)***, Section 5 of the Limitation Act would not apply in such cases, that is, the delay in filing an application under Sections 7(1) and 7(2) of the said Act could not be condoned by the Court. In paragraph 5 of the said judgment, the scope of the decision was laid down. Paragraph 5 of the ***Chamariya (supra)*** is quoted below:-

“5. In this background, the argument of the learned counsel appearing for the appellant is that the High Court has not maintained judicial decorum and should have referred the matter to the larger Bench to decide the scope and ambit of Section 7(2) of the Act. We find that since a short question of law arises for consideration, therefore, without going into the question as to whether the learned Single Judge should have referred the matter to the larger Bench or not, the question to be decided by this Court is to bring certainty in respect of scope of Section 7 of the Act.”

17. The discussion and conclusion of the Hon’ble Apex Court in paragraphs 19 to 21 of the judgment are quoted below:-

“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 to the landlord or deposits it 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. 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.

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.

18. A Division Bench in the ***Calcutta Gujarati Education Society versus Sri Ajit Naraya Kapoor*** passed in ***C.O.175 of 2017***, answered the reference in view of conflicting decisions on the issue of application of Section 5 of the Limitation Act. The question formulated by the then Acting Chief Justice is quoted below:-

“Does the view of the Division Bench of this court that section 5 of the Limitation Act can be applied to condone delay in making applications under sub-sections (1) and (2) of section 7 of the West Bengal Premises Tenancy Act, 1997, as held in the Subrata Mukherjee case (supra), survive in view of the decisions of the Hon’ble Supreme Court in the Nasiruddin case (supra), the Ashoke Kumar Mishra case (supra), Manjushree Chakraborty case (supra).”

19. The reference was specific as to whether Section 5 of the Limitation Act could be applied to condone the delay in filing the applications under Section 7(1) and 7(2) of the said Act. The Hon'ble Division Bench held that the Limitation Act, 1963 had no manner of application in respect of an application by a tenant under Section 7 for determination of arrear rents and disputed rents. Paragraphs 46 and 47 of **Nasiruddin & Ors. v. Sita Ram Agarwal**, reported in **(2003) 2 SCC 577** were considered by the Hon'ble Division Bench and it was held that in Nasiruddin (supra), it was decided that the court could condone delay only when the statute conferred such a power on the court or not otherwise. The Hon'ble Division Bench held as follows:-

“West Bengal Premises Tenancy Act, 1997 is an Act of the State legislature providing for period of limitation in respect of deposit and determination of rent. Section 6 in the Act has the non-obstante clause on application of other laws, regarding eviction. Section 40 makes applicable Limitation Act, 1963 subject to provisions in the Act relating to limitation.

The application for determination of rent not having prescribed period of limitation anywhere else in the third division, article 137, if applied, will provide for it to be made within three years from when the right to apply accrues. In case of such an application it is not the right of the tenant that would accrue, to make such an application. The Act of 1997 mandates that deposit of rent or where there is dispute regarding quantum of rent, deposit of admitted rent alongwith application for determination of rent, must be made by the tenant within time specified and as extendable under said Act. This is in relation to the suit filed for eviction, where compliance with the deposit mandate will enable the tenant to seek the protection provided. This enabling provision cannot be seen as an assertive right of a tenant, to be enforced. Here, provision in article 137 cannot be made applicable. Furthermore, where it is a requirement of compliance by the tenant to seek protection, mandated by the statute as competently legislated by the State legislature and specifically limiting application of the 1963 Act, there cannot be occasion for application of the period of three years, overriding the period and extension specified by the local law and thereafter condonation of delay as under section 5.

We answer the question referred to say that Limitation Act, 1963 has no application in respect of an application by a tenant, made under section 7 for determination of arrears of disputed rent. We are aware our answer to the question referred gives rise to conflicting views of two Division Benches of this Court. However, we have answered the question pursuant to direction made in said administrative order. The files be sent back on the reference answered and disposed of.”

20. The Division Bench held that the Act of 1997 mandated deposit of rent or in case of dispute with regard to quantum, deposit of admitted rent along with an application for determination, to be filed by the tenant, within the time specified under the Act. Such deposit was in relation to a suit for eviction, in which compliance with the deposit mandate within the specified time would enable the tenant to seek the protection provided under Section 7. Such enabling provision could not be seen as an assertive right of a tenant to enforce. Article 137 of the Limitation Act would not be applicable. Furthermore, when it was a statutory requirement, compliance by the tenant would entitle the tenant to seek protection. The provision was competently legislated by the State legislature by specifically limiting the application of the Limitation Act of 1963. Grant of extension of time specified by the local law, by seeking condonation of delay under Section 5 of the Limitation Act was not permissible. The question on reference was thus answered. The Limitation Act had no applicability in respect of the tenant’s application under Section 7(1) and Section 7(2) of the said Act.

21. In *Debasish Paul and Anr. vs. Amal Boral* reported in **2023 INSC 925**, the Hon’ble Apex Court also reiterated the ratio of *Chamariya (supra)* and held that the ratio of *Chamariya (supra)* could not be doubted. The briefs facts before the Hon’ble Apex Court were as follows:-

“2. In the proceedings, the respondent made an application under Sections 7(1) and (2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the ‘said Act’). The application was rejected by the Trial Court vide a judgment dated 11.09.2018 on the ground that the respondent had entered appearance in the suit on 09.02.2016 but filed the application only on 14.12.2016 i.e., after a delay of ten months.

3. The application, not being filed within the statutory period of one month, was, thus, rejected. No application was filed under Section 5 of the Limitation Act, 1963.

4. The respondent, aggrieved, by the same preferred a Civil Revision before the High Court and in terms of the judgment dated 21.08.2019, the High Court set aside the judgment dated 11.09.2018 and granted liberty to the respondent tenant to file an application under Section 5 of the Limitation Act, 1963 explaining the circumstances causing the delay for the purpose with the prayer for condonation of delay in support of the application under Sections 7(1) and 7(2) of the said Act already filed.”

22. Aggrieved by the order of the High Court, landlord moved the Supreme Court. The Hon’ble Court held that Section 40 of the said Act would not be applicable in this case, as the period of limitation had been prescribed within the provisions of Section 7 itself. The Hon’ble Apex Court held as follows:-

“15. It is relevant to note that the case of Bijay Kumar Singh, 4 in turn, referred to the observations made in Nasiruddin case⁵ in the following terms: “37. ...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 the 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.

38. ...if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified.

16. We have no doubt over the proposition that though generally the Limitation Act is applicable to the provisions of the said Act in view of Section 40 of the said Act, if there is a lesser time period specified as limitation in the said Act, then the provisions of the Limitation Act cannot be used to expand the same. It is in this context that in

Nasiruddin case, it has been mentioned that the real intention of the legislation must be gathered from the language used. Thus, the reasoning in Bijay Kumar Singh case cannot be doubted more so as the requirement is for a tenant to file an application, but he has to deposit the admitted arrears of rent as well, which has certainly not been done.

17.....

18. There is also a larger context in this behalf as the Tenancy Acts provide for certain protections to the tenants beyond the contractual rights. Thus, the provisions must be strictly adhered to. The proceedings initiated on account of non-payment of rent have to be dealt with in that manner as a tenant cannot occupy the premises and then not pay for it. This is so even if there is a dispute about the rent. The tenant is, thus, required to deposit all arrears of rent where there is no dispute on the admitted amount of rent and even in case of a dispute. The needful has to be done within the time stipulated and actually should accompany the application filed under Sub-Sections (1) & (2) of Section 7 of the said Act. The proviso only gives liberty to extend the time once by period not exceeding two months."

23. The observations of the Hon'ble Apex Court was that once the order was passed by the learned Trial Judge for deposit of rent and such order was not complied with, only one time extension, that also not beyond two months could be granted and the same proviso could also be imported in case of Section 7(1)(c), but the applications have to be filed with the period prescribed under Section 7 of the said Act.

24. In ***Binika Thapa (supra)***, the Division Bench held that the decision of the Hon'ble Apex Court in ***Chamariya (supra)*** was a binding precedent and non-applicability of Section 5 of the Limitation Act had been laid down and discussed in great detail:-

"15. Section 7 was interpreted in Amit Kumar Chamariya (supra) and the entire mechanism by which a tenant could seek benefit from eviction on the ground of default, was considered to be mandatory and inter-related. The provisions of the said section were discussed in the following paragraphs thereof:-

16.

17. We proceed to discuss the ratio in *Amit Kumar Chamariya (supra)*. On institution of a suit by the landlord for eviction on any of the grounds referred to in Section 6 of the said Act, the tenant, subject to the provisions of sub-section (2) of the Section 7, was liable to 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 was made, together with interest at the rate of 10% per annum. Such payment or deposit was to be made within one month from the service of summons on the tenant or when the tenant appeared in the suit without summons being served, within one month from his appearance. Thereafter, the tenant was enjoined by law, to continue to pay to the landlord or deposit with the civil judge a sum equivalent to the rent at that rate, month by month within 15th of each succeeding month. In case of any dispute as to the amount of rent payable by the tenant, the tenant was liable to deposit with the civil judge, within the time specified in the sub-section, the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit could be accepted unless it was accompanied by an application for determination of the rent payable. On receipt of the application, the civil judge, having regard to the rate at which the rent was last paid and the period for which default may have been made by the tenant, determine the dispute and pass an order within a period not exceeding one year, specifying the amount, if any, due from the tenant and thereupon the tenant was liable to pay to the landlord within one month from the date of such order, the amount so specified in the order along with the monthly rent at the rate so determined.

24. According to the ratio in *Amit Kumar Chamariya (supra)*, the period of one month as mentioned in paragraph 7(1)(b) was treated to be the inbuilt period of limitation making Section 40 of the said Act inapplicable.

25. Thus, the decision in *Bahadur Kathotia (Supra)* cannot be accepted as good law. The decision was rendered without considering paragraphs 19 to 21 of the *Amit Kumar Chamariya (supra)*. The decision in *Subrata Mukherjee (supra)*, had been distinguished in the *Calcutta Gujarati Education Society (supra)* in which Section 40 of the said Act was considered, but negated upon discussing the decision of *Amit Kumar Chamariya (supra)*. The law was declared by the Apex Court, and it was the duty of the High Court to act in accordance with Article 141 of the Constitution of India and to apply

the same. The High Court could not overrule the decision of the Hon'ble Apex Court on the ground that the Hon'ble Apex Court had laid down the legal position, without considering Section 40 of the said Act. It is not only a matter of discipline for the High Court, but also a mandate of the Constitution as provided in Article 141 that the law declared by the Apex Court should be binding on all courts within the territory of India. All subordinate Courts to the Hon'ble Apex Court are bound by all declarations of law made by the Hon'ble Apex Court, even when the facts of the case, decided by the Hon'ble Apex Court, is distinguishable."

25. In the instant case, the petitioner's contention was that lump sum money had been paid to the son-in-law of the landlord which was to be adjusted against rent and as such there was no due. Such issue was subject to prove. It was a matter of evidence. However, unless there was compliance of the time limit within which the landlord could approach the Court for adjudication of the dispute, the court could not extend the time limit for filing the application on the assumption that there were no dues. Admittedly, the application was delayed by around 17 days and the Court rightly held that such delay could not be condoned. The adjudication as to whether rent had been paid in a lump sum as advance to the son-in-law of the landlord or the amount paid was in excess of rent, would have fallen for a decision if the application under Section 7(2) was filed within the statutory period. Assuming that the tenant had paid rent as submitted by Mr. Bandopadhyay, such determination was also subject to adjudication of the application under Section 7(2) of the said Act. Adjudication of the application under Section 7(2) of the said Act could not be done unless the application was filed within the time prescribed under Section 7(1). If a tenant is allowed to contend that all dues according to him had been paid to

an agent of the landlord who had accepted the money as advance rent with the understanding that the same would be adjusted in future, and such a tenant is allowed to file a belated application for determination of such dispute, then Section 7 of the said Act will be rendered otiose. Such was not the legislative intent. The duty was upon the tenant to comply with Section 7 of the said Act in respect of the time and deposit of admitted arrears and to raise the dispute within the time prescribed by law. In such obligation is not discharged then the tenant would not have any right to have such disputed adjudicated.

26. It is relevant to note that the case of *Bijay Kumar (supra)*, in turn, referred to the observations made in *Nasiruddin (supra)* in the following terms:-

“37. ...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 the 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.

38. ...if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified.”

27. Moreover, if the case of the petitioner is accepted that there were no arrears, nothing prevented the tenant from depositing the monthly rent within one month from receipt of summon in terms of Section 7(1)(c). Averments indicate that excess rent was paid for adjustment upto March 2021, thereafter leave was sought for deposit of rent from November 2022 in the application under Section 7(1). What happened to the rent between April

2021 to November 2022 is not available from the pleadings. No such deposit accompanied the application. The proviso would not apply in this case as there was no determination of rent payable. Section 7(2) is quoted below:-

“(2) If in any proceeding 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.”

28. Such provision would be applicable in case the arrears were determined under Section 7(2) but the tenant failed to deposit the same or failed to deposit the monthly rent under Section 7(1)(c). In that event, benefit of the proviso to Section 7(2) could be availed of. Such was also, the observation in ***Debasish Paul (supra)***, in paragraph 17 which is quoted below:-

“17. We are of the view that a combined reading of the two statutes would suggest that while the Limitation Act may be generally applicable to the proceedings under the Tenancy Act, the restricted proviso under Section 7 of the said Act, providing a time period beyond which no extension can be granted, has to be applicable. The proviso is after Sub-Section (2) of Section 7 but Sub-Section (2) of Section 7 in turn refers to Sub-Section (1) implying the application of the proviso to Sub-Section (1) too.”

29. Under such circumstances, this Court is unable to accede to Mr. Bandhyopadhyay's contention that when there were no arrears at all and

excess money had been paid with the understanding that the same would be adjusted against the rent, the question of filing the application Sections 7(1) and 7(2) within a month from receipt of summons, would not arise. Such contention was subject to proof and no documents accompanied the applications. The Hon'ble Apex Court held that only upon deposit of admitted arrears along with 10% deposit, within one month from receipt of summons, could there be a determination under Section 7(2) of the said Act. In ***Bijay Kumar (supra)***, opining that the provisions of Section 5 of the Limitation Act, 1963 would not apply, the Hon'ble Court observed as under:

“21. 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.”

30. Thus, there was no option left for the learned Trial Court, but to reject the application for condonation of delay which was not applicable in this case. The adjudication of the period of default or the excess payment could not have done by the learned Court on the basis of such a belated application.

31. Thus, the revisional application is dismissed.

32. There shall be no order as to costs.

33. Parties are to act on the basis of the server copy of this judgment.

(Shampa Sarkar, J.)