

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**CO 3357 of 2023
Sri Parbati Chorone Roquitte
Vs.
Sri Pawan Agarwal**

For the Petitioner : Mr. Sourodipta Banerjee,
Mr. Ranojoy Mallikadvocates

For the Opposite Party : Mr. Sagar Bandopadhyay
Mr. Safdar Azam ... advocates

Reserved on : 01.03.2024

Judgment on : 18.04.2024

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order being No. 141 dated 11th April, 2023 passed by the learned Judge 6th Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit no.494 of 2010.
2. By the order impugned, the application of the defendant/opposite party herein under Section 151 of the Code of Civil Procedure was allowed thereby permitting the defendant to deposit the balance amount of rent for the disputed period. Consequently the application under Section 7(3) of the West Bengal Premises Tenancy Act 1997 (for short "the WBPT, ACT 1997") stood rejected.
3. Landlord/petitioner herein filed a suit for eviction inter alia on the ground of default in payment of rent since June 2000. After appearance, the tenant/opposite party filed an application under Section 7(1) of the WBPT Act 1997 which was disposed of by directing the tenant/opposite party to

deposit current rent month by month. On an application filed under Section 7(2) of WBPT Act, 1997, the learned trial Judge, by an order being no. 67 dated 20.01.2016, directed the defendant to deposit in Court the arrears of rent together with interest in favour of the plaintiff within one month. The defendant was further directed to deposit an amount equivalent to monthly rent in favour of the plaintiff month by month as per the provision of Section 7(1) of the said Act.

4. The aforesaid order dated 20.01.2016 was challenged by the tenant in CO 593 of 2016 and a co-ordinate bench, by an order dated 07.03.2016, refused to interfere with the order dated 20.01.2016, but was pleased to extend the time to deposit the rent in terms of the aforesaid order by five weeks from the date of the order dated 07.03.2016.
5. The tenant claims that in the month of March, 2021 it was detected that due to mistake of the registered clerk, rent from the month of June 2016 till February, 2021 was deposited at the rate of Rs. 942/- instead of Rs. 972/-. The tenant/opposite party filed an application under Section 151 of the Code praying for an opportunity to deposit the differential amount for the period from June 2016 to February 2021.
6. Landlord/petitioner thereafter filed an application under Section 7(3) of the WBPT Act, 1997 for striking out the defence of the tenant against delivery of possession as he has flouted the order of the Hon'ble High Court.
7. By the order impugned, the learned trial judge permitted the tenant to deposit the balance amount of rent for the disputed period upon holding that the defendant had no intentional laches on its part and also rejected the application under Section 7(3).
8. Being aggrieved, the plaintiff has approached this Court.
9. Mr. Sourodipta Banerjee, learned advocate for the petitioner contended that on the prayer of the tenant/defendant, this Hon'ble Court, in an earlier civil revision application, extended the time to deposit the arrears of rent as was directed by the learned trial judge while disposing of the application under

Section 7(2) of the WBPT Act, 1997. He further contended that the learned trial judge exceeded his jurisdiction by permitting the tenant to deposit the balance amount of rent for the disputed period as it has been held by the Hon'ble Supreme Court of India as well as by this Hon'ble Court that further extension of time is not permissible. In support of such contention, Mr. Banerjee placed reliance upon the decisions of the Hon'ble Supreme Court in the case of ***Bijay Kumar Singh & ors. vs. Amit Kumar Chamariya & ors.*** reported at **(2019) 10 SCC 660** and ***Debasish Paul and another vs. Amal Boral*** reported at **(2024) 2 SCC 169**. For the same proposition, he also placed reliance upon the decisions of the co-ordinate benches in the case of ***Kabita Biswas & ors. vs. Sadhan Dasgupta*** reported at **2024 SCC Online Cal 1456** and an unreported decision in **CO 606 of 2018** in the case of ***Sri Saurav Das vs. Sri Kartick Dutta & ors.*** Judgment delivered on 17.07.2019.

10. Mr. Banerjee further contended that the story made out by the defendant/opposite party in the application under Section 151 of the Code is not believable. He also submitted that the defendant was negligent as neither the defendant nor the clerk nor the learned advocate ever took any care to look into the challans for 57 months.
11. Mr. Sagar Bandyopadhyay, learned advocate for the opposite party seriously disputed the contentions of the learned advocate for the petitioner. He submitted that the opposite party should not be penalized for the fault of the clerk. In support of such contention he placed reliance upon a decision in the case of ***Gopal Shaw vs. Kanailal Pakhira*** reported at **(1998) 1 CHN 31**. He contended that the opposite party deposited the arrears of rent within the time limit fixed by this Hon'ble Court in a civil revision case and it is not a case of default in payment of current rent but due to mistake, an amount slightly less than the rate of rent was deposited during the disputed period. He submitted that there has been no negligence or inaction on his part in complying with the requirement of the statute or of the orders of the Court. He contended that the learned trial judge upon being satisfied that there has been sufficient cause for short deposit for the disputed period

permitted the defendant to deposit the balance amount and, therefore, this Court should not interfere with the discretion exercised by the learned trial judge. In support of such contention, he placed reliance upon the decision in the case of **Sm. Sitala Debi vs. Man Bahadur** reported at **AIR 1973 Cal 123**. He placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Monoj Lal Seal and ors. vs. Octavious Tea and Industries Ltd.** reported at **(2015) 8 SCC 640** in support of his contention that Court can extend the time to deposit the balance amount in case of a *bona fide* mistake. He also cited a decision of the Hon'ble Patna High Court in the case of **Dr. Anant Prasad Singh vs. Devendra Kumar Sinha** reported at **AIR 1976 Pat 298** in support of his contention that even if the deposit of rent made is short by a marginal amount, it can be said that there was sufficient compliance of the orders of the Court. He referred to a decision of the Hon'ble Supreme Court in the case of **Rajendra Nath Kar vs. Gangadas and ors.** reported at **(1979) 1 SCC 531** in support of his contention that the Court can condone the delay in depositing the balance amount of rent by invoking Section 5 of the Limitation Act as Section 5 is expressly made applicable by Section 40 of the WBPT Act, 1997.

12. Heard the learned advocates for the parties and perused the materials placed.

13. The following issues fall for consideration in the case on hand.

- (i) Whether the Court has the power to grant extension of time for deposit of rent or any portion thereof after such power of extension has already been exercised in terms of the proviso in Section 7 of the West Bengal Tenancy Act?
- (ii) Whether the short deposit of rent for 57 months can be said to be due to a *bona fide* mistake?

14. The second issue shall arise for consideration only if the first issue is answered in the affirmative.

15. For the purpose of deciding the first issue it will be profitable to refer to Sections 7 and 40 of the WBPT Act, 1997 which are extracted hereinafter.

“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 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 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 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. "

"40. Application of the Limitation Act, 1963 to proceedings and appeals.

Subject to the provisions of this Act relating to limitation, the provisions of the Limitation Act, 1963 (36 of 1963), shall apply to proceedings and appeals under this Act."

16. After reading Section 7 of the WBPT Act, 1997, this Court finds that on a proceeding being instituted by the landlord for eviction under Section 6 of the said Act, the tenant can get the benefit of protection against eviction upon compliance of the requirements under Section 7. Clause (a) of Section 7(1) comes into operation if there is no dispute as to the amount of rent payable and states that the tenant shall pay to the landlord all arrears of rent calculated at the rate at which it was last paid together with interest. Clause (b) provides the time limit within which such amount has to be paid. In terms of Clause (c) the tenant shall thereafter continue to pay to the landlord month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate.
17. Subsection (2) of Section 7 come into play where there is a dispute as to the amount of rent payable. In such a case, the tenant is obliged to deposit the amount admitted by him to be due from him together with an application for determination of the rent payable. Upon such application being made, the Civil Judge shall, having regard to the rate at which rent was last paid and the period for which the tenant may have defaulted, pass an order specifying the amount, if any due from the tenant and the tenant shall deposit the amount specified in the order within one month of the date of such order.
18. As per the proviso, an extension of time can be granted by the Civil Judge and such extension shall not exceed two months.
19. Section 7 prescribes the requirements to be complied with by the tenant as well as the time limits within which such compliance is to be made for the tenant to get the benefit of protection from eviction. Mr. Bandyopadhyay would contend that in view of Section 40 of the WBPT Act, 1997 the Court

can condone the delay in complying with such requirement upon being satisfied that there was a bona fide reason behind such non compliance or strict compliance.

20. In order to deal with the aforesaid contention of Mr. Bandyopadhyay, this Court has to consider whether the provisions laid down under Section 7 of the WBPT Act, 1997 is directory or mandatory.
21. An issue that fell for consideration in **Amit Kumar Chamariya** (supra) was whether the provisions of Section 7(2) are mandatory. While considering such issue, the Hon'ble Supreme Court reiterated the proposition of law laid down in **Nasiruddin vs. Sita Ram Agarwal** reported at **(2003) 2 SCC 577** wherein it was held that 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 thereof are provided.
22. The Hon'ble Supreme Court further observed that Subsections (2A) and (2B) of Section 17 of the West Bengal Premises Act, 1956 confers unfettered power on the Court to extend the period of deposit of rent, which is circumscribed by the proviso to Section 7(2) and Section 7(3) of the WBPT Act, 1997. The Hon'ble Supreme Court held that the provisions of subsection (2) are mandatory and required to be scrupulously followed by the tenant.
23. By applying the aforesaid proposition of law laid down in **Nasiruddin** (supra), this Court holds that the time limits fixed under various clauses of subsection (1) of Section 7 of WBPT Act, 1997 are also mandatory.
24. In the case on hand, the tenant/ opposite party did not apply for extension of time to deposit the arrears of rent as determined by the learned trial judge on an application under Section 7(2) of the WBPT Act 1997. It is not in dispute that the opposite party deposited such arrears of rent within the extended time limit. The learned trial judge while deciding the application under Section 7(2) concluded that the rate of rent is Rs. 972/- payable

according to the English calendar month. After such adjudication, tenant deposited rent for the months of March to May 2016 at the rate of Rs. 972/- but from months of June 2016, the opposite party deposited at the rate of Rs. 942/- for a period of 57 months.

25. The question that arises is whether such default can be condoned under Section 5 of the limitation Act or the time to deposit the differential amount can be extended in exercise of powers under Section 151 of the Code.
26. Clause(c) of Section 7(1) uses the expression “shall thereafter continue to pay” Subsection (3) of Section 7 provides the consequences for default in compliance of Section 7(1) or 7(2) within the time specified therein or within the extended time. Subsection (4) of Section 7 speaks that if the tenant complies with the requirements under Section 7(1) or 7(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 passed. To the mind of this Court, the tenant has to continue to pay during the pendency of the suit a sum equivalent to rent in order to get the benefit of protection against eviction.
27. Subclause (c) of Section 7(1) also uses the expression “at that rate”. Clause (a) of Section 7(1) states that the tenant shall pay all arrears of rent, calculated at the rate at which it was last paid. Subsection (2) states that the learned Civil Judge shall specify the amount to be paid in the order having regard to the rate at which rent was last paid and the period of default. To the mind of this Court, the expression “at that rate” would necessarily mean the rate at which rent was last paid.
28. In the case on hand the rate of rent was calculated by the learned trial judge at Rs. 972/- per month. Therefore, the tenant/ opposite party was under an obligation to pay rent at the rate of Rs. 972/- till the disposal of the suit.
29. The question would be whether any shortfall in such deposit of rent can be condoned or the time to deposit the differential amount can be extended.

30. Three Hon'ble Judges of the Supreme Court in **Rajendra Nath Kar** (supra) held that the true meaning and effect of Section 39 of the West Bengal Premises Tenancy Act, 1956 is that if any special period of limitation is prescribed by the Act, that period will govern the proceedings under the Act in preference to the period, if any, prescribed under the Limitation Act. Section 40 of WBPT Act, 1997 is in *pari materia* with Section 39 of the 1956 Act. In **Debasish Paul** (supra), the Hon'ble Supreme Court after noting the provisions of Section 40 of the WBPT Act, 1997 held that a combined reading of two statutes i.e., the WBPT Act, 1997 and the Limitation Act, 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. It was further held that the proviso is after subsection (2) of Section 7 but subsection (2) of Section 7 in turn refers to subsection (1) implying the application of the proviso to subsection (1) too.
31. The Hon'ble Supreme Court further observed that the Tenancy Acts provide for certain protection to the tenants beyond their contractual rights and, therefore, the provisions must be strictly adhered to.
32. This Court, therefore holds that the provision laid down under the WBPT Act, 1997 under Clause (c) of Section 7(1) is mandatory and the same must be strictly adhered to. A deposit/payment of rent under Clause (a) and (c) of Section 7(1) of the WBPT Act, 1997 does not contemplate filing of any application. Therefore, the tenant cannot take recourse to Section 5 of the Limitation Act. This Court is, therefore, of the considered view that the Court does not have the power to condone the delay in depositing the rents for the disputed period under Section 5 of the Limitation Act.
33. The proviso inserted after subsection 2 of Section 7 of the WBPT Act 1997 empowers the Court to grant an extension only once and imposes a restriction that such extension shall not exceed two months. Therefore, after granting an extension in terms of the said proviso, Court does not have any power to grant any extension of time for deposit of arrear rent thereafter. It is well settled that the Civil Court has inherent power to make such orders

as may be necessary for the ends of justice or to prevent abuse of the process of Court. However, such powers cannot be exercised to nullify a statutory provision imposing restriction upon the Court to grant such extension. Therefore, the inherent jurisdiction of the Court to make orders *ex debito justitiae* under Section 151 of the Code also cannot be invoked to grant an extension *de hors* the restriction imposed under Section 7 of the WBPT Act, 1997.

34. For the reasons as aforesaid this Court holds that the Court does not have any power to grant any further extension of time for deposit of rent or any portion thereof after the power of extension has been exercised in terms of the proviso contained in Section 7 of the West Bengal Premises Tenancy Act. The decisions of the co-ordinate bench in the case of **Kabita Biswas** (supra) and **Saurav Das** (supra) also support the view taken by this Court. The first issue is, therefore, answered in the negative and in favour of the petitioner.
35. Since the first issue has been decided in the negative, the second issue does not arise for consideration in the case on hand.
36. The learned Trial Judge rightly noted that it is a settled position of law that there is no such provision to extend the time to deposit/pay the admitted arrears of rent/current rent and there is also no scope to extend the time to the tenant who has failed to comply the order of the Court. The learned Trial Judge rightly observed that it is no more *res integra* that the benefits conferred on the tenants through the Rent Act can be enjoyed only on the basis of strict compliance with the statutory provisions and equitable considerations has no place in such matter.
37. However, even after returning such a finding the learned Trial Judge permitted the defendant-tenant to deposit the arrears of rent for the period for which the rent was deposited at a lesser rate. This Court finds that the learned Trial Judge posed to itself a wrong question as to whether the defendant is entitled to get the mercy of the Court and may be permitted to make a prayer to deposit such arrears of rent. Such question could not arise in the backdrop of the earlier observations of the learned trial judge. The

learned Trial Judge was perhaps swayed by the fact that the tenant deposited rent for certain period at a rate marginally lower than the rate calculated by the learned Trial Judge while deciding the application under Section 7(2) of the said Act. The learned Trial Judge held that there was no intentional laches on the part of the tenant defendant and for such reason permitted the tenant to deposit the applications amount for period in question.

38. This Court has already held that the Court does not have power to grant any further extension of time for deposit of rent as such power of extension has already been exercised in favour of the defendant opposite party on an earlier occasion. The issue as to whether the reason for short deposit of rent for the disputed period was *bona fide* and unintentional pales into insignificance as the Court lacks power to grant any extension of time to comply with the statutory provisions. This Court is, therefore, of the considered view that the order impugned permitting the defendant to deposit the arrears of rent for the period for which the same was deposited at a lesser rate suffers from infirmity and is liable to be set aside.
39. By the impugned order, the learned Trial Judge rejected the application under Section 7(3) of the WBPT Act 1997. This Court has already held that the tenant in order to get the benefit of protection against eviction has to comply with the provisions relating to deposit of rent strictly. Admittedly the defendant tenant deposited rent for the period of about 57 months at a rate less than the rate of rent calculated by the learned Trial Judge in a proceeding under Section 7(2) of the WBPT Act, 1997. At this stage, it would be relevant to point out that such rate of rent calculated by the learned trial judge has not been interfered with by this Hon'ble Court in a Civil Revision Application. Therefore, the tenant failed to strictly comply with the order passed by the Court with regard to deposit of current rent. Even if the argument of Mr. Bandopadhyay is accepted that there has been substantial compliance of the requirements of Section 7 of the WBPT Act 1997 with regard to deposit of rent, this Court holds that in order to claim benefit of protection against eviction the tenant has to comply with the requirements

laid down under the said statute as to deposit of rent strictly and substantial compliance cannot confer the benefit of protection against eviction.

40. In **Dr. Anant Prasad Singh** (supra), a Hon'ble Single Judge of the Patna High Court on the facts of that case held that a short deposit of a marginal amount cannot render the written statement to be struck off as there was a sufficient compliance of the orders of the Court. The said decision was rendered in the light of the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947. The said decision cannot be said to be a binding precedent in view of the decisions of the Hon'ble Supreme Court as well as this Court interpreting various provisions of the W.B.P.T. Act, 1997. This Court has already held that substantial compliance is no compliance for the tenant to get the benefit of protection against eviction.
41. This Court, therefore, holds that the provisions of Subsection 3 of Section 7 of the WBPT Act 1997 stands attracted to the case on hand as the tenant opposite party herein has admittedly failed to deposit the current rent at the rate calculated in a proceeding under Section 7(2) of WBPT Act 1997. This Court is, therefore, inclined to allow the application under Section 7(3) of the Act filed by the plaintiff/petitioner herein and the portion of the impugned order dismissing the said application is also liable to be set aside.
42. This Court shall now deal with the other decisions cited by Mr. Bandopadhyay. In **Smt. Sitala Debi** (supra) the Hon'ble Division Bench after noting the provisions of Section 17(2A) (b) of the West Bengal Premises Tenancy Act held that if the Court is satisfied that there had been no negligence or inaction on the part of the defaulting party in complying with the requirements of the provisions of the statute or of the Court's order, the Court may treat the delayed compliance to be in terms of the statutory requirement.
43. In **Gopal Shaw** (supra) a co-ordinate bench after noting the provisions laid down under Sections 17 (2A)(a) of the 1956 Act read with Section 5 of the

Limitation Act permitted the defendant to deposit the arrear rents for two months.

44. The Hon'ble Supreme Court in **Amit Kumar Chamariya** (supra) observed that subsections (2A) and (2B) of Section 17 of the 1956 Act confers unfettered power on the Court to extend the period of deposit of rent. For such reason the decisions in the case of **Sitala Debi** (supra), **Gopal Shaw** (supra) cannot come to the aid of the opposite party herein as the said reported decisions were passed considering the provisions of Section 17 of the 1956 Act. The Hon'ble Division Bench in **Binika Thapa (nee Rai) and Anr. Vs. Damber Kumari Mukhia and anr.** reported at **(2023) SCC Online Cal 5478** held that Section 5 of the Limitation Act did not have any applicability in case of belated deposit/ payment of rent. It was further held therein that the decision in the case of **Amit Kumar Chamariya** (supra) is a binding precedent upon all Court, be it the Trial Court as well as High Court.
45. In **Rajendra Nath Kar** (surpa) the Hon'ble Supreme Court after being satisfied that the appellant therein had sufficient cause for not filing the application under Section 17-A of the 1956 Act condoned the delay in filing that application under Section 5 of the Limitation Act. This Court has already observed that Section 5 of the Limitation Act cannot be applied to condone the delay in depositing the arrear rents under Section 7(1) of WBPT, Act 1997. The said decision being distinguishable on facts cannot come to the aid of the opposite party.
46. In **Monoj Lal Seal** (supra) the Hon'ble Supreme Court after noting that the amendments in Section 7 of WBPT Act 1997 came into effect on 01.06.2006 held that the deposit of rent by the tenant with the Rent Controller instead of the civil judge was due to a bona fide mistake. The said decision being distinguishable on facts do not have any manner of application to the case on hand.
47. For all the reasons as aforesaid the impugned order stands set aside. The application filed by the plaintiff/petitioner under Section 7(3) of WBPT Act

1997 stands allowed thereby directing that the defence of the opposite party herein against delivery of possession be struck out. CO 3357 of 2023 stands allowed. There shall be, however, no order as to costs.

48. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)