

Court No. 6
(265719)

CO 44 of 2025

27.03.2025

(AD 69)

(Aritro/Asraf/
S. Banerjee)

Sujan Kumar Das

Vs.

Harihar Thakur and Sri Lakshminata Thakurani Rep. by
Samarendra Nath Ghosh

Mr. Tanmoy Mukherjee
Mr. Argha Chowdhury

... for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated August 20, 2024 passed by the learned Civil Judge (Jr. Div.), 1st Court at Sealdah in Ejectment Suit No.56 of 2021.

By the order impugned the application under Section 5 of the Limitation Act praying for condonation of delay in filing the applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 stood rejected upon holding that the application under Section 5 of the Limitation Act is not maintainable.

The opposite party filed a suit for eviction under Section 6 of the West Bengal Premises Tenancy Act, 1997. The petitioner entered appearance in the said suit on May 8, 2023.

It is the case of the petitioner that he did not receive the summons of the suit but after getting the news of the institution of the suit from reliable source and CIS searching, appeared in the suit.

It is the further case of the petitioner that on May 8, 2023 the petitioner met with a learned advocate, who advised him to apply for the certified copy and after obtaining the certified copy of the relevant documents, the petitioner filed the application under Section 7(2) of the West Bengal Premises Tenancy Act. Since for the aforesaid reason there was a delay in filing the application under Section 7(2) of the West Bengal Premises Tenancy Act, the petitioner filed an application under Section 5 of the Limitation Act praying for condonation of delay in filing the application under Section 7(2) of the 1997 Act, which stood rejected by the impugned order.

Mr. Mukherjee, learned advocate appearing for the petitioner submits that the proviso to Section 7(2) of the 1997 Act allows an extension of time only once and the period of such extension shall not exceed two months. He submits that the proviso to Section 7(2) can be applied for extension of time to deposit the arrears of rent under Section 7(1) of the 1997 Act. In support of such contention Mr. Mukherjee places reliance upon a decision of the Hon'ble Supreme

Court in the case of **Debasish Pal & Anr. Vs. Amal Baral**, reported at **2024 (2) SCC 169**.

Section 7(1) (a) of the West Bengal Premises Tenancy Act, 1997 states that on a suit being instituted by the landlord for eviction on any of the grounds referred to Section 6, the tenant shall, subject to the provisions of sub-section (2) of the 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 10% per annum.

Clause (b) of sub-section (1) of Section 7 of the West Bengal Premises Tenancy Act states that such payment or deposit shall be made within one month of the service of summons on the tenant or, where the tenant appears in the suit without the summons being served upon him, within one month of his appearance.

It is not in dispute that the petitioner did not pay or deposit all arrears of rent within one month of his appearance.

Sub-section (2) of Section 7 comes into play in case there is any dispute as to the amount of rent payable by the tenant.

Sub-section (2) of Section 7 states that *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 subsection, 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.

In the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997, the petitioner has disputed the rate of rent as well as the period of default. However, the fact remains that the amount admitted by the tenant/defendant to be due from him was not deposited within the time specified in subsection (1) of Section 7, i.e., within one month of his appearance.

Mr. Mukherjee submits that the amount admitted by the tenant/defendant to be due from him was deposited on August 18, 2023 together with an

application for adjudication of the dispute on August 18, 2023.

The question that arises for consideration is whether the delay in depositing the amount admitted by the tenant/defendant to be due from him together with an application filed in connection thereto can be condoned by the Court. In other words, whether the time limit for complying with the provisions for deposit of rent admitted by the tenant/defendant to be due from him, can be extended by the Court.

The Hon'ble Supreme Court in *Bijay Kumar Singh –Vs.- Amit Kumar Chamaria*, reported in (2009) 10 SCC 660 held that the tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not an application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.

The Hon'ble Supreme Court in *Bijoy Kumar Singh (supra)* held that subsection (1) of Section 7 deals with the payment of rent when there is no dispute about the rate of rent or the period of arrears of rent. Subsection (2) of Section 7 comes into play if there is dispute as to the amount of rent including the period of arrears payable by the tenant and in that situation the tenant is obliged to apply within time as specified in subsection (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 and the tenant is also required to file an application for determination of the rent payable. Therefore, Subsection (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 the 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. It was further held that the proviso, limits the discretion of the Court to extend the time for deposit of arrears of rent and the extension can be provided once and not exceeding two months.

It was also held in *Bijoy Kumar Singh* (supra) that Section 7 of the Act provides for a complete mechanism for avoiding eviction on the ground of arrears of rent, provided the tenant takes steps as contemplated under Subsection (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 precondition to avoid eviction on the ground non

payment of arrears of rent and, therefore, the tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not an application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.

The Hon'ble Supreme Court in the case of *Debasish Pal (Supra)* held that though generally the Limitation Act is applicable to the provisions of the 1997 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. The Hon'ble Supreme Court further proceeded to observe that the reasoning in *Bijay Kumar Singh (supra)* 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. The Hon'ble Supreme Court in the said decision further observed that the Tenancy Acts provides for certain protections to the tenants beyond the contractual rights and, therefore, the provisions must be strictly adhered to. It was further observed that the proceedings initiated on account of non-payment of rent have to be dealt with in that manner as the tenant cannot occupy the premises and then not pay for it and that is also applicable even if there is a dispute about the rent. It was further held that 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 limit stipulated and actually should accompany the application filed under sub-section (1) and (2) of Section 7 of the said Act.

Thus, the Hon'ble Supreme Court in *Debasish Pal (supra)* specifically held that the time limit mentioned in Section 7(1) and 7(2) has to be strictly adhered to and also reiterated the observation of the earlier decision in the case of *Bijay Kumar Singh (supra)* that the tenant will not be able to take recourse to the provision of Section 5 of the Limitation Act in filing an application under Section 7(2) of the said Act.

It is not in dispute that the amount admitted by the tenant to be due was not deposited within the time limit mentioned under Section 7(1) of the Act along with the application for adjudication of the dispute.

The petitioner sought for condonation of delay in making the deposit as well as the filing the application by taking recourse to Section 5 of the Limitation Act which is impermissible in view of the well settled proposition of law laid down by the Hon'ble Supreme Court.

Mr. Mukherjee would submit that paragraph 17 of the decision in Debasish Pal (supra) comes to the aid of the petitioner as it has been observed therein that the proviso in turn refers to sub-section (1) implying the application of the proviso to sub-section (1) too.

In Debasish Pal (supra), there was no dispute either qua the quantum or the time period and on such factual matrix the Hon'ble Supreme Court held that Section 7(1)(a) applies where there neither exists a dispute either qua the quantum or the time period, which is not the case on hand.

The opposite party herein claimed that the rate of rent is Rs. 161/- per month and the tenant/petitioner is a defaulter in payment of rent since January 2017. On the other hand it is the case of the petitioner in the application under Section 7(2) that the petitioner paid rent till December 2017. According to the petitioner, the rate of rent is Rs. 47 per month.

Thus, there is a dispute as to the rate of rent and the period of default for which the provisions of Section 7(2) stands attracted. Admittedly, the application under Section 7(2) was not filed within one month of the date of appearance nor the amount admitted to be due from the tenant was deposited within the stipulated time limit.

By applying the proposition of law laid down in Bijoy Kumar Singh (supra) this Court holds that such delay could not be condoned under Section 5 of the Limitation Act.

Mr. Mukherjee would contend that the petitioner was entitled to extension of two months time for depositing the rent as it has been held in Debasish Pal (supra) that the proviso shall apply to Section 7(1) too. It is well settled that if there is a dispute about the rate of rent or the period of default Section 7(2) comes into play and Section 7(1) deals with payment of arrears when there is no dispute. This Court has already held that there is a dispute as to the rate of rent and the period of default and, therefore, the petitioner was obliged to take steps under Section 7(2) and for such reasons the observation in paragraph 17 of the decision in Debasish Pal (supra) cannot come to the aid of the petitioner.

The learned trial Judge rightly held that the application under Section 5 of the Limitation Act is not maintainable and for such reason this Court is not inclined to interfere with the impugned order rejecting the application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997.

For all the aforesaid reasons, CO 44 of 2025 stands dismissed without, however, any order as to costs.

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

(Hiranmay Bhattacharyya, J.)