

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Biswajit Basu

C.O. 348 of 2025

Sakeel Ahmed @ Shakil Ahemed

Versus

Md. Ibrahim Ansari

For the Petitioner : Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das

For the opposite party : Mr. Sanjib Seth
Ms. Soumi Chakraborty

Heard on : 24.12.2025

Judgment on : 24.12.2025

Biswajit Basu, J:

1. The instant application under Article 227 of the Constitution of India is at the instance of the tenant/defendant in a suit for eviction under Section 6 of The West Bengal Premises Tenancy Act, 1997 (herein after referred to as '**the said Act of 1997**' in short) and is directed against the order dated December 20, 2024 passed by the 3rd Court of learned Civil Judge (Junior Division) at Howrah in the said suit being Title Suit No.1499 of 2017.
2. The learned Trial Judge, by the order impugned has dismissed an application under Section 7(2) of the said Act of 1997, holding that the tenant has failed to deposit the admitted arrear rent within the period prescribed under Section 7(1)

thereof and consequently has struck off the defence of the defendant against delivery of possession under Section 7(3) of the said Act of 1997.

3. The connected suit was once decreed *ex parte* on October 04, 2018. The said decree however was set aside on January 25, 2024 on an application filed by the tenant under Order IX Rule 13 of the Code of Civil Procedure, 1908, thereby the suit was restored to its original file and number. The learned Trial Judge, after setting aside the said *ex parte* decree, had fixed April 09, 2024 as the date for appearance of the parties.
4. The tenant on May 07, 2024 had filed applications under Section 7(1) and 7(2) of the said Act of 1997. The learned Trial Judge has dismissed the said applications, holding that the defendant should have deposited arrear rent as admitted by him sharp on the date of appearance after restoration of the suit, as he was aware of the proceeding even during the period of pendency of the restoration application but he has failed to deposit the arrear rent even after filing the application under Section 7(1) of the said Act of 1997 on May 07, 2024, besides filing of the said application was beyond the statutory period, which is required to be reckoned from the date of restoration of the suit.
5. Mr. Tanmoy Mukherjee, learned advocate for the tenant submits that the learned Trial Judge has erroneously held that the application under Section 7(1) of the said Act of 1997 was filed beyond the prescribed period of limitation inasmuch as the tenant, within one month from the date fixed for his appearance in the suit, had filed the said applications.
6. Mr. Sanjib Seth, learned advocate for the landlord submits that the said *ex parte* decree was set aside at the instance of the tenant; therefore, as soon as the suit was restored, it would be presumed that the tenant has entered appearance in the said suit and the time of filing of the application under Section 7(1) of the said Act of 1997 should be reckoned from the said date.

Heard learned advocates for the parties; perused the materials-on-record.

7. The main issue that falls for consideration, in the facts and circumstances of the present case, is what would be the relevant date from which the period of limitation to file an application under Section 7(1) of the said Act of 1997 would be calculated.
8. The provision of Section 7(1) of the said Act of 1997 does not contemplate filing of an application. The said provision is an enabling provision, the tenant in order to get the protection against the eviction, is to deposit the admitted arrear rent along with 10% interest thereon within one month of the service of summons on him or, where he appears in the suit without the summons being served upon him, within one month of his appearance. The provision contemplates two modes to liquidate the arrear rent i.e., deposit with the Civil Judge or payment to the landlord.
9. The Hon'ble Supreme Court in the case of ***BIJAY KUMAR SINGH AND OTHERS vs. AMIT KUMAR CHAMARIA AND OTHERS*** reported in **(2019) 10 Supreme Court Cases 660** has held that the aforesaid deposit/payment is required to be made within the time stipulated under Section 7(1) of the said Act of 1997 and there is no scope to condone the delay in making such deposit. In view of such stringent time period to deposit the admitted arrear rent and serious consequences for non-deposit/compliance within the said period, it is necessary that the first date of appearance of the tenant in a suit under Section 6 of the said Act of 1997 must not be fixed beyond thirty days from the date of institution of the suit, as envisaged under Section 27 of the Code of Civil Procedure. The aforesaid provision since is prescribing a mode to liquidate the arrear rent by making payment to the landlord, the learned Trial Judge shall give an offer to the landlord and the tenant to avail the said mode, so that the tedious process to deposit the arrear rent with the Civil Judge can be avoided. To facilitate the said process, appropriate direction upon the landlord to provide the details of his Bank Account to the tenant should be made.

10. In the present case, the application of the tenant for setting aside the *ex parte* decree was allowed on contest on January 25, 2024, which is the relevant date of appearance of the tenant in the suit, as such, the period of limitation for filing an application under Section 7(1) of the said Act of 1997 must be reckoned from the said date. *The subsequent date fixed by the learned Trial Judge for appearance of the parties is of no consequence in the matter of reckoning of the said period of limitation.* The learned Trial Judge, therefore, has committed no error in holding that the tenant has failed to comply with the requirement of the Section 7(1) of the said Act of 1997 and for the non-compliance of the said requirement, has rightly struck off the defence of the tenant against delivery of possession under Section 7(3) thereof.

C.O. 348 of 2025 is therefore, dismissed without any order as to costs.

11. The learned Registrar (Judicial), High Court, Calcutta shall place this judgment before the Hon'ble Acting Chief Justice for circulation of the same to all concerned Civil Judges taking suits under Section 6 of the said Act of 1997 through the West Bengal Judicial Academy, so that the practice direction given above can be followed, till the Civil Rules and Orders of the Calcutta High Court are suitably amended.

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

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

(Biswajit Basu, J.)