

M/L- 523
20/08/2025
Ct. No.-6 Aritra

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

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

C.O. 382 of 2025

**Champak Dutta
Vs.
Manju Ganguly**

For the Petitioner	: Mr. Ayan Banerjee, Ld. Advocate Mr. Suman Banerjee, Ld. Advocate
For the Opposite Parties	: Ms. Shebatee Dutta, Ld. Advocate Ms.Poulami Roy, Ld. Advocate
Reserved on	: 20.08.2025
Judgment on	: 20.08.2025

Hiranmay Bhattacharyya, J.:-

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being No.14 dated July 28, 2022 and the order being No.65 dated December 17, 2024, both passed by the learned Civil Judge (Jr. Div.), 1st Court at Howrah in Title Suit No.891 of 2021.

By the order dated July 28, 2022, the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (in short 1997 Act) was disposed of upon holding that the petitioner is a defaulter in payment of rent and directing the petitioner to deposit an amount of Rs.407/- by the next date. The petitioner claims to have deposited the said amount on November 9, 2022. The opposite party filed an application under Section 7(3) of the 1997 Act and the learned trial judge by an order dated December 17, 2024 allowed the application under Section 7(3) of the 1997 Act thereby striking out the defence of the petitioner against delivery of possession.

Mr. Banerjee, learned advocate appearing for the petitioner submits that the petitioner was held to be a defaulter only for one month. He submits that the petitioner could not have been held to be a defaulter as under Section 6(1)(b) of the 1997 Act, the cause of action for filing a suit on the ground of default is for three months within a period of 12 months. Mr. Banerjee further submits that immediately after the order was passed under Section 7(2) of the 1997 Act, the petitioner approached the Court for deposit of the amount as directed by Order dated July 28, 2022 and the challan was passed on August 30, 2022, but the same was not returned to the petitioner by the concerned department. Immediately thereafter the trial court was closed on account of Puja Vacation and after the

court reopened after Puja Vacation, petitioner deposited the said amount. He therefore, submits that the petitioner has complied with the directions passed in the order passed under Section 7(2) of the 1997 Act and the defence of the petitioner could not have been struck off.

Ms. Datta, learned advocate appearing for the opposite party submits that the petitioner cannot challenge the order dated July 28, 2022 after having accepted the said order and making a deposit of the amount as indicated in the said order. She further submits that the amount was not deposited within the time limit indicated in the said order. She further submits that the amount as claimed to have been deposited by the petitioner was even beyond the time limit as stipulated in the proviso to Section 7(2) of the 1997 Act.

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

Section 6 (1)(b) states that a suit for eviction on the ground of default can be filed where the tenant has made default in payment of rent for three months within a period of 12 months, or for 3 rental periods within a period of 3 years where the rent is not payable monthly.

Section 7 (1) of the 1997 Act states that on a suit being instituted by a landlord for eviction on any one of the grounds under Section 6, the tenant has 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 is made together with interest at the rate of 10% *per annum*. Even though a decree for eviction can be passed only if there is a default as contemplated under Section 6(1) (b) of 1997 Act but the fact remains that in order to get the benefit of protection against eviction the tenant has to comply with the provisions laid down under Section 7 (1) or 7(2) of the 1997 Act as the case may be.

Upon reading the Section 7(1) and Section 7(2) of the 1997 Act, this Court is of the considered view that even if there is arrear of rent for one month, the tenant has to pay the same to the landlord or deposit the same with the Civil Judge in accordance with the provisions of Section 7 (1) or 7 (2) of the 1997 Act.

If rent for one or more month(s) is/are due from the tenant, he is obliged to pay/deposit the rent in accordance with the provisions of Section 7(1) or 7(2) of the Act as the case may be.

If any amount on account of rent is due from the tenant, then he is undoubtedly a defaulter in payment of rent for such period. Whether the period of default is one contemplated under Section 6(1)(b) for a decree for eviction to be passed on the ground of default is to be considered at the time of final hearing of the suit.

Thus, this Court is not inclined to accept the submission of Mr. Banerjee, learned advocate for the petitioner that the petitioner could not have been held to be a defaulter for one month while passing the order under Section 7 (2) of the 1997 Act.

That apart, the petitioner having approached the Court for making a deposit pursuant to the order passed under Section 7 (2) of the 1997 Act cannot now turn around and challenge the said order by filing an application under Article 227 of the Constitution of India.

Now the issue arises as to whether the defendant/petitioner herein complied with the provisions laid down under Section 7 (2) of the 1997 Act. Record reveals that the challan was passed by the court for deposit of the arrear rent in terms of the order dated July 28, 2022 on August 30, 2022.

It is the case of the petitioner that the challan was misplaced by the court and the same was not returned to the petitioner.

It is however, not in dispute that the petitioner deposited the said amount of Rs.407/- by a court challan on November 9, 2022 after the Court reopened after Puja Vacation. The question that arises for consideration is whether the said deposit can be accepted as a deposit made in terms of the order passed under Section 7 (2) of the 1997 act or the petitioner can get the benefit of extension as provided in the proviso to Section 7 (2) of the 1997 Act. The learned trial judge in the order dated December 17, 2024 observed that since the petitioner did not file any application informing the court that the challan was missing from the office of the court and held that the petitioner failed to comply with the provision of Section 7 (2) of the 1997 Act.

It is not in dispute that the petitioner did not file any application explaining the reasons as to why the amount could not be deposited even though the challan was passed on August 30, 2022. Since it is evident from the records that the challan was passed on August 30, 2022 i.e. within the time limit as indicated in the order under Section 7(2) of the 1997 Act, this Court feels that an opportunity should be granted to the petitioner to file an appropriate application

before the learned trial judge explaining the reasons as to why the amount could not be deposited even though the challan was passed on August 30, 2022. This Court is inclined to grant such liberty only on the ground that the challan was passed within the stipulated time and the petitioner alleges that the challan was misplaced by the Court. It is well settled that a litigant should not be made to suffer for the act of the Court.

With the above observations, CO 382 of 2025 stands disposed of by giving opportunity to the petitioner to file an appropriate application before the learned trial judge. If such an application is filed, the learned trial shall consider the same after giving an opportunity to the opposite party to file a written objection thereto and the learned trial judge shall decide the same in accordance with law without being influenced by the fact that this Court has not set aside the order dated December 17, 2024 at this stage.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)