

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 633 of 2025

Shachindra Kumar Jha & Ors.

VS.

Asha Bansal & Ors.

For the Petitioners

: Mr. Rachit Lakhmani
Mr. Shubham Gupta
Mr. Piyush Kumar
Mr. Raunak Shaw
Mr. Raj Sekhar Bal Bakshi

..... advocates

For the Opposite Party

: Mr. Manabendra Saha Ray
Mr. Sabita Mukherjee
Mr. Arijeet Das Mullick
Mr. Anirban Saha Ray
Ms. Sneha Singh
Ms. Shreya Choudhury
Mr. Sanket Das

.... advocates

Reserved on

: 05.03.2025

Judgment on

: 13.03.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against an order dated 21.01.2025 passed by the learned Chief Judge, City Civil Court at Calcutta in Ejectment Suit No. 38 of 2022.
2. By the order impugned, the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (for short "the 1997 Act") stood dismissed and the defense of the petitioner against delivery of possession was struck off.
3. The opposite party herein filed a suit for eviction under Section 6 of the 1997 Act being Ejectment Suit No. 38 of 2022 inter alia on the ground of default, unauthorized construction and subletting. After service of summons, petitioner appeared in the said suit and filed an application under Section 7(1) of the 1997 Act praying for an order permitting the petitioner to deposit the rent for the month of August, 2021 to May, 2022

and September, 2022 along with statutory interest at the rate of 10% per annum as well as the current rent for the month of October, 2022. Petitioners also filed an application under Section 7(2) of the 1997 Act praying for adjudication of the dispute as to the relationship of landlord and tenant and whether the petitioners are defaulters in payment of rent.

4. The plaintiffs/opposite party herein contested the said application under Section 7(2) of the 1997 Act by filing a written objection denying the material allegations contained therein.
5. The learned Trial Judge rejected the application under Section 7(2) of the 1997 Act on the ground that the deposits made for the months of June 2022, July 2022 and August 2022 are invalid deposits as the same were not preceded by valid tender.
6. The learned Advocate appearing for the petitioners submitted that the petitioners deposited the rent for the months of August, 2021 to May, 2022 and September, 2022 to October, 2022 pursuant to the order dated July 11, 2024 passed by the learned Trial Judge on an application under Section 7(1) of the 1997 Act. He further submitted that the rents for the months of June, 2022 and July, 2022 could not be deposited within time due to digitization of the records of the Rent Control Office and the petitioners were not responsible in any manner for such delay. He further submitted that the learned Trial Judge ought to have allowed an opportunity to the petitioners herein to deposit the rents for the months of June 2022, July 2022 and August 2022 within the time limit as specified under Section 7(2) of the 1997 Act.
7. Per contra, Mr. Saha Ray, learned advocate appearing for the opposite parties submitted that the summons were served upon the petitioners herein on 29.09.2022 and the petitioners instead of depositing the admitted arrear along with current rent filed an application under Section 7(1) of the 1997 Act when Section 7(1) does not contemplate filing of any application. He further contended that the deposit of arrear of rent along with the current rent together with interest on 02.08.2024 were not made in accordance with the provisions laid down under Section 7(1) of the 1997 Act. By referring to a judgment passed by this Court on 14.05.2024 in **CO 3452 of 2023** in the case of **The West Bengal Handloom Weavers Cooperative Society Limited vs. Jayanta Saha**, Mr. Saha Ray contended that Section 7(1) does not contemplate filing of any application and, therefore, the tenant cannot take recourse to Section 5 of the Limitation Act for condonation of delay in making deposits contemplated therein.
8. Heard the learned Advocates for the parties and perused the materials placed.
9. Record reveals that the rents for the months of June, 2022 and July, 2022 were deposited before the office of the Rent Controller on 19.07.2022 and 02.09.2022 respectively.

10. It is not in dispute that the rent for the months of June, 2022 and July, 2022 were not deposited within the time limit as contemplated under Sections 21 and 22 of the 1997 Act. The learned Trial Judge has recorded that deposit of rent for the months of June 2022, July 2022 and August 2022 with the office of the Rent Controller were not preceded by valid tender. The learned Trial Judge was of the view that deposit of rents for the month of June 2022, July 2022 and August 2022 are invalid deposits.
11. It is not in dispute that the summons of the suit was served on 29.09.2022 and the defendant/petitioner herein appeared in the suit of 28.10.2022 and filed the application under Sections 7(1) and 7(2) of the 1997 Act on 28.10.2022. Therefore, the application under Section 7(2) of the 1997 Act was filed within the time limit stipulated under Section 7(2) read with Section 7(1) of the 1997 Act.
12. The learned Trial Judge, by an order dated 11.07.2024, allowed the application under Section 7(1) of the 1997 Act on contest, at the risk of the defendant and the plaintiff raised no objection to it. The opposite parties herein have not challenged the order dated 11.07.2024 allowing the application filed under Section 7(1) of the 1997 Act. The petitioners herein deposited the rents for the months of April, 2022 to May, 2022, September, 2022 and October, 2022 on 02.08.2024. Such deposit has not been held to be invalid deposit by the learned Trial Judge.
13. Though there is no quarrel to the proposition of law laid down in ***The West Bengal Handloom Weavers Cooperative Society Limited*** (supra) that Section 7(1) does not contemplate filing of any application but when an application has been filed within the time limit stipulated under Section 7(1) of the 1997 Act praying for permission to deposit all the arrears of rent and such permission to deposit was granted by the Court by passing an order, to the mind of this Court, the deposit made in compliance with such order, cannot be held to be in violation of the provisions laid down under Section 7(1) of the 1997 Act.
14. For such reason, the decision in the case of ***The West Bengal Handloom Weavers Cooperative Society Limited*** (supra) cannot come to the aid of the opposite parties herein.
15. The only reason for dismissal of the application under Section 7(2) of the 1997 Act was that the rents for the months of June, 2022, July, 2022 and August, 2022 were not deposited along with application filed under Section 7(2) of the 1997 Act. The learned Trial Judge held such deposits made before the Rent Controller to be invalid as the same were not preceded by valid tender.
16. The question that arises for consideration is whether the petitioners were obliged to deposit the rents for the months of June, 2022, July, 2022 and August, 2022 together with the application for determination of the rent payable as per the provisions of Section 7(2) of the 1997 Act.

17. For the purpose of effective adjudication of the aforesaid issue it would be relevant to take note of the provisions laid down in Section 7(2) of the 1997 Act for which the same is extracted herein after.

“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.”

18. If in a suit instituted by the landlord for eviction on any of the grounds referred to in Section 6 of the 1997 Act, the tenant raises a dispute as to the amount of rent payable by the tenant, the tenant shall within the time specified in Sub-Section (1) of Section 7 deposit with the Civil Judge the amount admitted by him to be due from him together with an application for the determination of the rent payable. The question of deposit of rent under Section 7(2) shall arise only if there is an admitted arrears of rent.
19. The expression “the amount admitted by him to be due from him” is of prime relevance. It is only the amount which the tenant admits to be due from him has to be deposited together with an application for determination of the rent payable in case a dispute is raised by the tenant as to the amount of the rent payable by the tenant.
20. It is the specific case of the petitioners that rents for the months of June, 2022, July, 2022 and August, 2022 have been deposited with the office of the Rent Controller. Thus the rents for the aforesaid months cannot fall within the expression “the amount admitted by him to be due from him” used in Section 7(2) of the 1997 Act and the effect of the deposits made before the Rent Controller is the result of an adjudication of the dispute as contemplated under Section 7(2) of the 1997 Act.
21. The tenants/petitioners herein claimed that such deposits were made with the office of the Rent Controller. The tenants/petitioners herein filed an application for adjudication of the dispute as contemplated under Section 7(2) of the said Act. Upon adjudication, the learned Trial Judge found that such deposits were not preceded by valid tender.

22. On receipt of an application under Section 7(2) of the 1997 Act, the Civil Judge is obliged to pass an order specifying the amount if any, due from the tenant and, thereupon the tenant shall, within one month from the date of such order, pay to the landlord the amount so specified in the order.
23. This Court has already held that the rents for the months of June, 2022, July, 2022 and August, 2022 cannot be said to be the amount admitted by the petitioner to be due from him and, therefore, the learned Trial Judge after arriving at a finding that the rents for the months of June, July and August, 2022 were not preceded by valid tenders ought to have passed an order specifying the amount, if any, due from the tenant and there upon the tenant shall pay to the landlord the amount so specified in the order within one month of the date of such order.
24. This Court holds that the learned Trial Judge after arriving at a finding that the deposits for the months of June 2022, July 2022 and August 2022 were not preceded by valid tender was under a statutory obligation to specify the amount, if any, due from the tenant. Having not done that, the learned Trial Judge, to the mind of this Court, has failed to exercise its jurisdiction as per the mandate of Section 7(2) of the 1997 Act.
25. For all the reasons as aforesaid, this Court is inclined to interfere with the order impugned. The order dated 21.01.2025 stands set aside. The learned Trial Judge is directed to consider the application under Section 7(2) afresh on the basis of the materials that are available in the records and in the light of the observations contained hereinbefore and to pass an order specifying the amount, if any, due from the tenant/petitioner herein and the consequential directions in accordance with law. The learned Trial Judge is requested to complete the entire exercise as directed by this order as expeditiously as possible but preferably within a period of 6 weeks from the date of receipt of a server copy of this order. The learned Trial Judge shall be authorized to reject any prayer for necessary adjournments in this regard. CO 633 of 2025 stands allowed and there shall be, however, no orders as to costs.
26. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)