

Item No.6
19.12.2025
Court. No. 6
GB

C.O. 775 of 2025

Surya Publishers, Prop. Nemaï Gorai
Vs.
Sri Subir Paul

Mr. Souradipta Banerjee,
Mrs. Fatima Hassan

...for the Petitioner.

Mr. Anshunath Chakraborty,
Mr. N.K. Maity

...for the Opposite Party.

1. The petitioner is aggrieved by an order dated January 14, 2025 passed by the learned Judge, 4th Bench, Presidency Small Causes Court at Calcutta, in Ejectment Suit No. 51 of 2024.

2. The petitioner is the tenant. He was contesting the eviction suit. The suit was filed under the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act'. The petitioner filed an application under Section 7(1) of the said Act, which was allowed. Consequent upon the court allowing the said application, deposits were made. However, there was non-compliance of the provisions of Section 7(1)(c) of the said Act. On account of illness, the petitioner could not deposit the rent for the month of October 2024. The petitioner filed an application under Section 151 of the Code of Civil Procedure, seeking extension of time to deposit the rent for October 2024.

3. The application under Section 7(2) of the said Act seeking determination of the quantum of arrears was pending before the learned court. The application for condonation of delay to deposit the rent for October 2024 was filed on December 5, 2024. The same was dismissed. The application under Section 7(2) was held to be infructuous and the defence was struck off. The petitioner did not deposit the current rent even after October 2024, till date.

4. The petitioner contends to have been suffering from illness and he was unable to deposit the money. The application under Section 151 of the Code of Civil Procedure, seeking permission to deposit the monthly rent of October 2024, upon condonation of the delay was rejected by the learned trial Judge, inter alia, holding that the proviso to Section 7(2) would not come to the aid of the petitioner. The provisions of Section 7(1)(c) was mandatory in nature and extension of time to deposit the current monthly rent, beyond the power and jurisdiction of the said court.

5. Mr. Banerjee, learned advocate for the petitioner submits that the proviso to Section 7(2) should be made applicable in case of default in deposit of current rent. One extension can be granted by the court and such extension shall not be beyond two months. The application was filed within one month of the default. He submits that the decision of ***Bijay Kumar Singh &***

Ors. versus Amit Kumar Chamariya & Anr.

reported in **(2019) 10 SCC 660**, dealt with the mandatory nature of Section 7(1) with regard to the deposit of admitted rents and not with regard to the deposit of current rent, month by month, every month within the 15th of the succeeding month. The provision of Section 7(1)(c) of the said Act was never an issue before the Hon'ble Apex Court.

6. It is further contended that, until the arrear rent payable was determined on the basis of the application under Section 7(2), non-compliance of Section 7(1)(c) cannot lead to striking off the defence of the petitioner. Section 7(3) of the said Act also provides that, if the tenant fails to deposit the amount referred to under Sub-Section (1) or Sub-Section (2) within the time specified therein or within the extended time as may be granted by the court, the defence against delivery of possession shall be struck off. Interpreting this section, Mr. Banerjee submits that defence cannot be struck off if payment is made within the extended time. Thus, the law not only permits extension of time by the court to deposit the rent which was not paid, but also gives an opportunity to the tenant to seek an extension to deposit the unpaid monthly rent. If such payment is made, the defence cannot be struck off.

7. In this case, the petitioner approached the court for extension of the period for deposit of the rent for October

2024. It is submitted that the learned court failed to appreciate the law and erroneously rejected the application. It is also submitted that, the petitioner should be permitted to deposit the rent as per the proviso, upon extension of time, not beyond the period of two months.

8. Learned advocate for the opposite party/landlord submits that Section 7(1)(c) of the said Act is a mandatory provision, just like the Sections 7(1)(a) and 7(1)(b). The proviso is only applicable to Section 7(2) as has been clarified by the Hon'ble Apex Court. He refers to the decision of ***Seventh Day Adventist Senior Secondary School versus Ismat Ahmed and Others*** reported in **2025 INSC 984**.

9. Heard the parties. Section 7 of the said Act is quoted below:

"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 upto 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 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:

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 subsection (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]."

10. In my view, Section 7(1)(c) is independent of Section 7(2).

11. In the matter of ***Debasish Paul and Another versus Amal Boral*** reported in ***(2024) 2 Supreme Court Cases 169***, the Hon'ble Apex Court held that the restricted proviso under Section 7(2) of the said Act, providing a time period beyond which no extension could be granted, could be made applicable to a situation under Section 7(1).

12. As per Section 7(1)(a) of the said Act, in a suit for eviction filed by the landlord on any of the grounds as specified in Section 6 of the said Act, the tenant shall,

subject to provisions of Sub-Section (2), pay to the landlord or deposit in the court, all arrears of rent calculated at the rate at which it was last paid together with interest at the rate of 10% per annum. As mandated by Section 7(1)(b), the payment or deposit shall be made within one month from the date of service of the summons on the tenant or from the date of appearance in case the tenant appears without service of summons. The said two mandatory provisions apply in a case where arrears of rent are admitted. Thereafter, Section 7(1)(c) puts a further condition that after the admitted arrears are paid, the tenant shall continue to deposit with the landlord or Civil Judge, as the case may be, rent at that rate, month by month, every month, within 15th of the succeeding month.

13. As per Sub-Section (2), if there is a dispute as to the amount of rent payable by the tenant, he is required to deposit in court the admitted amount due from him, within the time as specified [one month as per Section 7(1)(b)], together with an application for determination of the rent payable. Thus, the application under Sub-Section (2) of Section 7 should be simultaneous with two things :-

(i) Deposit of admitted arrears with the time specified by law and (ii) monthly deposit as per Section 7(1)(c), also within 15th day of the succeeding month.

14. The application under Section 7(2) may be still pending. The determination would be the actual arrear

payable the landlord by the tenant, in the event the tenant raises a dispute with regard to rate of rent. The legislative intent can be understood from the use of the expression 'together' in Section 7(2). It means that, filing of the application for determination of the rent payable in case of dispute and compliance of Section 7(1)(b) are simultaneous. On receiving such application, the court will have to take regard to the default made by the tenant and make an order on such application, not later than one year from such receipt, specifying if amount is due from the tenant. Thereafter, the tenant shall within a period of one month of the date of the such order, pay to the landlord the amount so determined.

15. Before the determination under Section 7(2) is made, the petitioner was required to deposit the monthly rent at the rate last paid according to him. He failed to do so. He has not deposited current rent since October 2024. The non-compliance of Section 7(1)(c) cannot be cured by importing the proviso under Section 7(2). Paragraphs 32 and 33 of ***Seventh Day Adventist Senior Secondary School (supra)*** are quoted below:-

“32. In the said context, if we see the intent of legislature as discussed and relying upon two cases of three-Judge Bench of this Court, we intend to explain that Section 7 of the WBPT Act prescribes when a tenant can get the benefit of protection against eviction. The opening word of sub-section (1) i.e., ‘on a suit being

instituted by the landlord for eviction' makes it clear that in case the tenant defaults in payment of rent and the suit is brought as specified in the WBPT Act, then on deposit/payment of admitted rent, an opportunity ought to be provided to get the benefit of protection against eviction. Therefore, for availing such benefit, some pre-requisite are there, which is of deposit of the rent, either disputed or undisputed as admitted, within the specified time. In case, the rent is disputed, the tenant has to mandatorily file an application, by virtue of word 'shall' used to such extent either in Section 7(1)(a)(b)(c) or first part of Section 7(2). However, in the latter part of Section 7(2), which is for payment of amount on determination by the Civil Judge within the time as specified after compliance of the pre-deposit and on filing an application for determination within the specified time, such payment has to be made by the tenant within one month of date of order passed by Civil Judge. The proviso refers to extension of time with an intent to grant one more opportunity to the tenant after determination of rent for deposit.

33. At this juncture, we also deem it relevant to refer sub-section (3) of Section 7, wherein it is specified that if tenant fails to deposit or pay any amount referred in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted by the Court, his defence against delivery of possession shall be struck out. So it deals

with the following contingencies; first is of Section 7(1)(a)(b)(c), second is of former part of Section 7(2) and third is of latter part of Section 7(2) and in default of either of the situations, the Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit specifying the consequences of failure to do any of the three situations. While using the word extended time in sub-section (3), the word shall has been used, therefore, this would also be referable to the provision which leads to the conclusion that in case the tenant fails to deposit the determined amount within the time specified or within the extended time. In that contingency the order of striking out of defence be passed and suit be proceeded for hearing. As explained from above discussion, we are constrained to say that the arguments as advanced by the learned counsel for the appellant relying upon the paragraphs 17, 18 and 19 of the judgment in **Debasish Paul** (supra) are not germane, hence repelled.”

16. The Apex Court held that the inclusion of the proviso, granting one time extension of time was, with an intent to grant one more opportunity to the tenant to deposit the determined rent in case he same was not done. The Hon’ble Apex Court limited the applicability of the proviso to Section 7(2) alone. Hence, the decision of the Hon’ble Apex Court in **Debasish Paul** (supra) in

paragraphs 17, 18 and 19 was repelled. The relevant portion is quoted below:-

“17. We are of the view that a combined reading of the two statutes 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. The proviso is after sub-section (2) of Section 7 but sub-section (2) of Section 7 in turn refers to sub-section (1) implying the application of the proviso to sub-section (1) too.

18. There is also a larger context in this behalf as the Tenancy Acts provide for certain protections to the tenants beyond the contractual rights. Thus, the provisions must be strictly adhered to. The proceedings initiated on account of non-payment of rent have to be dealt with in that manner as a tenant cannot occupy the premises and then not pay for it. This is so even if there is a dispute about the rent. 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 stipulated and actually should accompany the application filed under sub-sections (1) & (2) of Section 7 of the said Act. The proviso only gives liberty to extend the time once by period not exceeding two months.

19. The respondent neither paid the rent, nor deposited the rent by moving the application nor deposited it within the extended time as stipulated in the proviso. The mere allegation of absence of correct legal advice cannot come to the aid of the respondent as, if such a plea was to be accepted it would give a complete licence to a tenant to occupy premises without payment of rent and then claim that he was not correctly advised. If the tenant engages an advocate and abides by his advice, then the legal consequences of not doing what is required to be done, must flow.”

17. Under such circumstances, the application is dismissed.

18. Non-deposit of rent under Section 7(1)(c) leads to the consequence of the defence being struck off. The defence is struck off by operation of law. The application under Section 7(2) was rightly held to have become infructuous. However, striking off the defence will not prevent the petitioner from cross-examining the plaintiff and advancing arguments on the basis of the cross-examination, and on the basis of the plaint case, without setting up a defence.

19. In the decision of the Hon'ble Apex Court in the matter of ***Modula India versus Kamakshya Singh Deo*** reported in **(1988) 4 Supreme Court Cases 619**, the Hon'ble Apex Court had held that in a suit which was appearing undefended, the defendant may enter appearance by exercising a limited right to cross-examine the plaintiff's witnesses and to advance arguments to demolish the plaint case. Relevant paragraph is quoted below:-

“For the above reasons, we agree with the view of Ramendra Mohan Dutta, ACJ that, even in a case where the defence against delivery of possession of a tenant is struck off under [section 17\(4\)](#) of the Act, the defendant, subject to the exercise of an appropriate discretion by the court on the facts of a particular case, would generally be entitled:

(a) to cross-examine the plaintiff's witnesses; and

(b) to address argument on the basis of the plaintiff's case.

We would like to make it clear that the defendant would not be entitled to lead any evidence of his own nor can his cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses."

20. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)