

Court No. 6
(265719)

25.03.2025
(AD 25)
(S. Banerjee)

CO 998 of 2025

Shachindra Kumar Jha & Anr.
Vs.
Asha Bansal & Ors.

Mr. Rachit Lakhmani
Mr. Shubham Gupta
Ms. Emon Bhattacharjee
Ms. Pooja Shah
Mr. Piyush Kumar
Mr. Raunak Shaw
Mr. Rajsekhar Bal Bakshi

...for the petitioners

Mr. Rupak Ghosh
Ms. Sabita Mukherjee Roy Chowdhury
Mr. Megnad Dutta
Mr. Arijeet Doss Mullick
Mr. Sanket Das
Ms. Sneha Singh
Ms. Sukriti Sengupta

...for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against orders being nos. 19 and 21 dated December 19, 2024 and February 25, 2025 respectively, both passed by the learned Chief Judge, City Civil Court at Calcutta in Ejectment Suit No. 19 of 2022.

By the order dated December 19, 2024, the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 stood rejected and the

defence of the petitioners against delivery of possession was also struck off. Thereafter, the petitioners filed an application under Section 151 of the Code of Civil Procedure praying for recalling the order dated December 19, 2024 which stood rejected by the order being no. 21 dated February 25, 2025. The opposite parties filed a suit for eviction under Section 6 of the 1997 Act. After entering appearance in the said suit, the defendants/petitioners herein filed an application under Section 7(2) of the 1997 Act praying for adjudication as to whether the petitioners are defaulters in payment of rent and if the petitioners are found to be defaulters, to allow the petitioners to deposit the amount in arrears in easy instalments. The learned trial Judge noted in the order dated December 19, 2024 that the learned advocate for the petitioners have admitted that the deposits for the months of July, 2022, August, 2022 and October, 2022 are bad deposits and on the basis of such admission the learned trial Judge was of the view that rent for the aforesaid months being not deposited along with the application as contemplated under Section 7(2) of the 1997 Act, the application under Section 7(2) of the 1997 Act is liable to be dismissed. Accordingly, the application under Section 7(2) of the 1997 Act was dismissed and consequently

the defence of the petitioners against delivery of possession was struck off.

The learned advocate appearing for the petitioners submits that the learned advocate for the petitioner before the learned trial Judge filed an affidavit stating that such admission were not made by the learned advocate for the petitioners in course of hearing of the Section 7(2) application on December 19, 2024. However, the learned trial Judge rejected the application under Section 151 of the CPC by not accepting such statement of the learned advocate for the petitioners.

Even if it is accepted that the learned advocate made certain admissions, it is well settled that admission by a counsel on a point of law, cannot bind the client.

The larger issue is whether the application under Section 7(2) of the 1997 Act could have been dismissed only on the ground that the rent for the months of July, 2022, August, 2022 and October, 2022 were not deposited in compliance of the provisions of Section 7(1) of the 1997 Act.

Section 7(2) of the 1997 Act stands attracted if there is any dispute as to the amount of rent payable by the tenant. Section 7(1) is subject to the provisions

of Section 7(2) of the 1997 Act. Thus the tenant has to deposit arrears of rent under Section 7(1) of the 1997 Act, which is not in dispute.

Petitioner claims to have deposited rent for the months of July, 2022, August, 2022 and October, 2022 before the Rent Controller and such deposits, according to the opposite party, are bad deposits. Thus, there is a dispute as to whether the defendant is a defaulter in payment of rent for the aforesaid months. This Court, therefore, holds that the learned trial Judge was not right in holding that the petitioners have foregone their right to deposit the arrear rent as they have not included the rent for the aforesaid months in the application under Section 7(1) seeking permission to deposit the same as arrear rent.

Learned advocate for the petitioners would contend that the petitioners deposited rents for the months from April, 2022 to October, 2022 before the Rent Controller and, therefore, the rent for the said months cannot be treated to fall within the expression “the amount admitted by him to be due from him”. In support of such contention he places reliance upon a decision of this Court delivered on March 13, 2025 in CO 633 of 2025 in the case of *Shachindra Kumar Jha & Anr. –Vs.- Asha Bansal & Ors.*

Mr. Ghosh, learned advocate for the opposite parties would contend that the initial deposit before the Rent Controller for the month of April, 2022, was a bad deposit as the same was not deposited within the time limit as contemplated under Section 22 of the 1997 Act. He submits that since initial deposit was bad deposit, all subsequent deposits are invalid deposits in the eye of law. However, the fact remains that the learned trial Judge while deciding the Section 7(2) application only considered the deposits for the months of July, 2022, August, 2022 and October, 2022 to be bad deposits by solely relying upon the alleged admission of the learned advocate for the petitioners herein.

This Court has already observed that the admission of a counsel on a point of law cannot bind the client. The said admission was the sole basis for passing the order dated December 19, 2024.

Mr. Ghosh would contend that the challans for the relevant months starting from the initial deposit before the Rent Controller were not supplied to the opposite parties herein for which no effective objection in that regard could have been raised by the opposite parties before the learned trial Judge. This Court feels that opposite parties should be given a

chance to put in their objection against validity of deposits made before the Rent Controller.

For all the reasons aforesaid, this Court is inclined to interfere with the orders impugned and to remand the matter to the learned trial Judge for deciding the application under Section 7(2) of the 1997 Act afresh in the light of the observations made hereinbefore.

Considering the fact that the challans for the relevant months were supplied to the opposite parties only at the time of hearing of the Section 7(2) application on December 19, 2024, this Court feels that liberty should be granted to the opposite parties to file a supplementary affidavit raising their contentions with regard to the said Rent Control challans.

It will be open to the petitioners herein to file an reply to such supplementary affidavit.

Accordingly, the impugned orders are set aside. The application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 is restored to the file of the learned Chief Judge, City Civil Court at Calcutta.

The learned Chief Judge, City Civil Court at Calcutta is requested to dispose of the said application after affording a reasonable opportunity to

the parties to file supplementary affidavit and reply thereto as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

There shall be no 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.)