

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA

Civil Revisional Jurisdictionn

Appellate Side

Present :

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 1031 of 2025

Ashok Tripathy

Vs.

Tapan Kumar Adhya & Ors.

For the petitioner	: Mr. Firojuddin Islam Mr. Dhiman Roy Mr. Dip Chanda
For the Opposite parties	: Mr. Shubham Gupta Mr. Ashok Bhattacharyya Mr. Rajsekhar Bal Bakshi

Heard On: : 28.03.2025

Judgment On: : 28.03. 2025

Hiranmay Bhattacharyya, J.

1. This application under Article 227 of the Constitution of India is at the instance of the tenant and is directed against an order being no. 36 dated November 30, 2024

passed by the learned Judge, 4th Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 85 of 2019.

2. By the order impugned the application filed by the petitioner under Section 151 of the Code of Civil Procedure praying for modification of the order being no. 26 dated February 27, 2023 was allowed. However, the application of the petitioner under Section 151 of the Code of Civil Procedure praying for permission to deposit the arrears of rent stood rejected by the impugned order.
3. Learned advocate appearing for the petitioner submits that there was an error in the order passed under Section 7(2) of the West Bengal Premises Tenancy Act dated February 27, 2023 wherein the amount due from the tenant was specified. For correction of such error the petitioner filed an application for modification of the order dated 27th February, 2023. He submits that the petitioner also filed an application praying for permission to deposit the arrear amount within the extended time.
4. Learned advocate for the opposite parties submits that the petitioner did not deposit the amount as directed to be deposited by the order dated 27th February, 2023 passed under Section 7(2) of the 1997 Act. He submits that the petitioner filed the application praying for

permission to deposit the arrear rent beyond the period of one month from the date of passing the order under Section 7(2) of the 1997 Act. By referring to sub-section 2 of Section 7 of the 1997 Act he submits that the prayer for extension ought to have been made prior to expiry of the period of one month from the date of the order passed under Section 7(2) of the 1997 Act. In support of such contention he placed reliance upon the decision of Co-ordinate Bench in the case of Nilima Das Vs. Bijay Kumar Manish Kumar HUF reported at 2016 5 CHN 367.

5. In reply, learned advocate appearing for the petitioner submits that the proviso to Section 7(2) of the 1997 Act permits extension of time to deposit the arrear amount and the outer limit for such extension is two months. He submits that the application praying for permission to deposit was filed within the period of three months from the date of the order passed under Section 7(2) of the 1997 Act. He submits that the application for permission to deposit was in accordance with the proviso to Section 7(2) and in support of such contention he placed reliance upon a decision of the Co-ordinate Bench delivered on 19th January, 2022 in C.O. 1719 of 2021 in the case of Uttam Kumar Bagaria Vs M/s. O.T. Textile Private Limited. He also referred to the decision of the Hon'ble Supreme Court in the case of Nasiruddin and others Vs.

Sita Ram Agarwal reported at AIR 2003 SC 1543 in support of his contention that where the statute provides the power to extend the time the court has the power to do so.

6. Heard learned advocates of the parties and perused the materials placed.
7. The application under Section 7(2) of the West Bengal Premises Tenancy Act was disposed of by an order dated February 27, 2023 upon holding that the defendant/petitioner herein is a defaulter in payment of rent from the month of May, 2007 to February 2023 for an amount of Rs. 62,700/- and the defendant is also liable to pay interest @ 10% per annum as statutory interest amounting to Rs. 39,996/-. The learned trial judge directed the defendant to pay a sum of Rs. 1,02,696/- within one month from the date of the order.
8. The petitioner filed an application under Section 151 of the Code of Civil Procedure praying for modification of the order dated 27th February, 2023. In the said application it was specifically stated that there is a bona fide error in calculating the arrears of rent in which the rent for months from January 2020 to February 2023 are added along with the period of defaulting months to arrive at the total figure of Rs. 1,02,696/-, whereas the rent for the

period from January 2020 to February 2023 has already been paid in compliance with the order passed under Section 7(1) of the West Bengal Premises Tenancy Act, 1997.

9. The learned trial judge took up the hearing of the said application on 30.11.2024 and after considering the materials on record returned a factual finding that the challans filed by the defendants reflect that the defendants started depositing rent before the court since January 2020 and he continued to deposit the rent till February, 2023. The learned trial judge after scrutinising the challans held that all the challans for the aforesaid period are valid.
10. In the light of the aforesaid factual finding the learned trial judge held that the rent deposited before the court for the period of January 2020 to February 2023 could not have been included in the calculation of the arrears of rent under Section 7(2) of the 1997 Act. The learned trial judge further recorded that inadvertently the rent for that period which was already deposited before the court amounting to Rs. 12,540/- that is for 38 months which was added in the arrears of rent calculated under Section 7(2) of the Act is an arithmetical error on the part of the court and the same has to be rectified. Accordingly

the learned trial judge rectified the arithmetical error which crept in the order no.26 dated 27th February, 2023 by modifying the ordering portion only to the extent of calculation of the arrears of rent.

11. The opposite parties herein are not aggrieved by such order.
12. The question that arises for consideration is what should the starting point of limitation for depositing the arrears of rent as per the provisions of Section 7(2) of the 1997 Act in the case on hand.
13. It is the contention of the opposite parties that the starting point of limitation would be the date when the initial order under Section 7(2) of the 1997 Act was passed.
14. In order to decide such 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 hereinafter:

“ Section 7 (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.”

15. After going through the provisions of Section 7(2) this Court finds that a duty is cast upon the Civil Judge, upon receipt of an application under Section 7(2), to pass an order specifying the amount, if any, due from the tenant and, thereafter, the tenant shall, within one month of the date of such order, pay to the landlord the amount so specified in the order.

16. Thus, the object of Section 7(2) of the 1997 Act is to adjudicate the dispute as to the amount of rent payable by the tenant. It is only after such a dispute is adjudicated and the amount due from the tenant is specified in the order, the tenant will be under an obligation to pay the amount specified in the said order.

17. Record reveals that the learned Trial Judge on an application under Section 151 of the Code of Civil

Procedure praying for modification of the order passed under Section 7(2) of 1997 Act held that there was an error in the calculation of the arrear amount in the order passed under Section 7(2) of the West Bengal Premises Tenancy Act, 1997.

18. Accordingly, the order passed under Section 7(2) specifying the amount to be deposited by the tenant was modified by the learned Trial Judge by the subsequent order dated November 30, 2024. Thus, the order specifying the amount due from the tenant as contemplated under Section 7(2) of 1997 Act shall be deemed to have been passed only on November 30, 2024 that is the date when the arithmetical error in the amounts specified in the order dated February 27, 2023 was corrected.

19. Since the learned Trial Judge, by the order dated November 30, 2024, corrected the arithmetical error and specified the amount to be paid by the tenant, the tenant was entitled to a period of one month from the date of the order dated November 30, 2024 to deposit the amount specified in the order dated November 30, 2024 to be paid by the tenant.

20. It appears from the order dated November 30, 2024 that the learned Trial Judge directed the petitioner to pay

Rs.50,106/- along with statutory interest at the rate of 10% per annum.

21. This Court however, finds that the learned Trial Judge though directed the defendant to pay a sum of Rs.50,106/- along with statutory interest at the 10% per annum but did not grant one month time from the date of such order to enable the petitioner to deposit the said amount.

22. After going through the provisions under Section 7(2) of the West Bengal Premises Tenancy Act, this Court finds that after specifying the amount due from the tenant in the order, the tenant has to be given one month time from the date of such order to pay such amount. Since the order dated November 30, 2024 did not allow such time to the petitioner to deposit the arrear amount, the said order suffers from infirmity. For such reason this Court is inclined to interfere with the order impugned.

23. In view of the aforesaid discussion this Court holds that the time limit mentioned under Section 7(2) of the West Bengal Premises Tenancy Act shall start to run from the date of modification of the order passed under Section 7(2) that is with effect from November 30, 2024.

24. In the light of the aforesaid discussion, this Court is of the considered view that the tenant should be granted one month time to deposit the amount as indicated in the order dated November 30, 2024.

25. In view thereof the other issues raised by the respective parties in this civil revision application has become academic and, therefore, this Court refrains from dealing with the contentions raised by the respective parties and the decisions relied upon on such issue.

26. For the reasons as aforesaid, the impugned order is modified only to the extent by directing the petitioner to deposit the amount directed to be paid along with statutory interest at the rate of 10% per annum by the order dated November 30, 2024 within a period of one month from the date of this order.

27. With the observations and directions CO 1031 of 2025 stands disposed of.

28. There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)

