

17.11.2025
rc/ct.no.06
Item No.57

C.O. No. 1206 of 2025
Smt. Bidisha Mullick & Ors.
Versus
Ram Prosad Mondal

Mr. Sourav Sen
Mr. Alope Chatterjee
Mr. Muhammad Obaid
Ms. Subhangi Bhattacharya ...for the petitioners

1. Affidavit of service filed by the petitioners is taken on record.
2. Despite service on various occasions, the opposite party has not appeared. On the last occasion also, this Court had directed service. Such service was effected still opposite party is absent. The affidavit of service is taken on record.
3. By this application, the petitioners challenge an order dated March 20, 2025 passed by the learned Civil Judge (Junior Division), 3rd Court, urba Bardhaman in Title Suit No. 110 of 2018.
4. By the order impugned the learned Court rejected an application under Section 7(3) of the West Bengal Premises Tenancy Act, 1997, inter alia, holding that as the suit for eviction was not on the ground of default, the defence of the tenant could not be struck off. The Court has erred by not following the law as settled. Section 7 of the West Bengal Premises

Tenancy Act, 1997 was not appreciated by the Court. It is a settled law that, even if default is not a ground for eviction, the defence of the tenant shall be struck off in the event the tenant does not take advantage of the provisions of Section 7(1) of the West Bengal Premises Tenancy Act, 1997, and does comply with the provision. Admittedly, applications are under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 were rejected by the learned Trial Judge on April 19, 2024 as being time barred. Under such circumstances, the Court had no other option but to strike off of the defence of the tenant. The order impugned is set aside. The defence of the tenant is struck off.

5. The decision relied upon by the petitioner in the case of Gouri Shankar Navatia Vs. Sm. Mrinalini Gupta & Ors. reported in AIR 1973 Calcutta 410 (60 C 92) is applicable. The relevant portion of the said decision is quoted below:-

“In the first place, it was contended that the instant suit, not being a suit for ejectment on the ground of default, Section 17(3) had no application to this case. This objection was rejected by the learned trial Judge and, in our opinion, rightly. A look at the language of Section 17(1) would be enough to convince one that it applied in all cases of ejectment on grounds, contemplated by Section 13 of the Act,

the ground of default being only one of those grounds. In that context, Section 17(3) would be available in suits for ejectment on grounds, mentioned in Section 13 including, of course, the ground of default and its application would not be confined only to suits for ejectment on the ground of default.”

6. Sections 17(1), 17(2), 17(3) of the West Bengal Premises Tenancy Act, 1956 is pari material with the provisions of Sections 7(1), 7(2), 7(3) of the West Bengal Premises Tenancy Act, 1997. In any event, the correct interpretation of the law is that a tenant shall not have a right of defence in the suit for eviction unless the tenant complies with the provisions of Section 7(1) of the said Act.
7. Section 7 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]."

8. Thus, compliance of Sections 7(1) and 7(2) of the said Act, is a *sine qua non* for setting up of defence by the tenant in a suit for eviction on any ground under section 6, even if default is not a ground for eviction.
11. Under such circumstances, the revisional application is allowed. The order impugned is set aside.

12. It is made clear that even if the tenant cannot set up his own defence, the tenant/opposite party can demolish plaintiffs' case through cross-examination.
13. The revisional application is accordingly disposed of.
14. There shall be no order as to costs.
15. Parties are to act on the serve copy of this order.

(Shampa Sarkar,J)