

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

C.O. 1085 of 2024

**M/s Chhapte Chhapte
(Daily Evening Hindi Newspaper) & Anr.
Versus
Shamayita Sen**

For the Defendants/ : Ms. Anju Manot
petitioners

For the opposite party : Mr. Sounak Bhattacharya
Mr. Anirban Saha Roy
Mr. Sounak Mandal
Mr. Abhirup Haldar

Heard on : 14.02.2025.

Judgment on : 14th February, 2025.

Raja Basu Chowdhury, J.:

1. Challenging the order no.36 dated 13th February, 2024 passed by the learned 3rd Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit no. 135 of 2020, whereby the application for acceptance of rent for the month of September to November, 2023 was rejected by the learned Judge and consequentially holding that the defence of the defendants against the delivery of possession in the present suit be struck out in terms of the provisions of Section

7(3) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the “said Act”), the instant revisional application has been filed.

2. Records reveal that the plaintiff/opposite party has filed the instant suit under the provisions of Section 6 of the said Act, *inter alia*, praying for recovery of khas possession. It appears that the defendants/petitioners had applied before the learned Court under the provisions of Sections 7(1) and 7(2) of the said Act. By order dated 24th March, 2022, the learned Court had allowed the petition filed under Section 7(1) of the said Act thereby permitting the defendants/petitioners to pay/deposit the arrears of rent from January, 2011 to February, 2022 calculated at the rate at which it was last paid and up to the end of the month previous to that in which the payment is made together with interest @10% per annum within 30 days from the date of such order. The defendants/petitioners were also granted liberty to pay/deposit current monthly rent from March, 2022 month by month by 15th of each succeeding month. The said order would demonstrate that the written statement filed by the defendants/petitioners was also accepted. Subsequently, the application under Section 7(2) of the said Act was disposed of by order dated 28th April, 2022, recording that no rent is due and payable from the defendants till date. Copies of the orders dated 24th March, 2022 and 28th April, 2022 as placed before this Court by the parties are retained with the record.

3. Subsequently, during the pendency of the above suit, the petitioners had defaulted in payment of current rents thereby not complying with the provisions of Section 7(1)(c) of the said Act. It is the petitioners' case that the learned advocate's clerk was sick and could not deposit rent for the months of September and October, 2023 before the learned Court. Accordingly, an application was filed before the learned Court on 6th December, 2023, *inter alia*, praying for a direction on the concerned department to accept the requisite rent for the month of September to November, 2023 and to pass order, as the Court deems fit and proper.
4. By order dated 13th February, 2024 such application was rejected.
5. Ms. Manot, learned advocate appearing in support of the instant revisional application by drawing attention of this Court to the provisions contained in Section 7(2) of the said Act and the proviso thereof, submits that having regard to the proviso, there is no time limit provided for complying with the provisions contained in Section 7(1)(c) of the said Act. According to her, time to make payment can be extended at the discretion of the Learned Judge. In this context, she has placed reliance on an unreported judgment delivered by a Coordinate Bench of this Court on 28th June, 2024 in the case of ***Tapan Kumar Santra v. Tarak Nath Paul*** in ***C.O. 1982 of 2022*** for the proposition that the default committed by the advocate's clerk can be condoned by invoking the inherent power of this Court. In support of her contention that the provision

contained in Section 7 of the said Act is directory, she has placed reliance on a judgment delivered by the Hon'ble Supreme Court in the case of **Ganesh Prasad Sah Kesari & Anr. v. Lakshmi Narayan Gupta** reported in **AIR 1985 SC 964**.

6. *Per contra*, Mr. Bhattacharya, learned advocate appearing on behalf of the opposite party submits that in the instant case, admittedly an order was passed under Section 7(1) of the said Act. Subsequently, when the order under Section 7(2) of the said Act was passed, the learned Court categorically recorded that there was no default. The default committed by the opposite party was subsequent to passing of the order under Section 7(2) of the said Act. Having regard thereto, according to him the proviso to Section 7(2) of the said Act cannot be made applicable.
7. Admittedly, in this case while passing the order under Sections 7(1) and 7(2) of the said Act, the Court had extended the time limit to make payment. According to him the Court has the power to extend the time for making payment of arrear rentals which may have fallen due only once. By placing reliance on a judgment delivered by the Hon'ble Division Bench of this Court in the case of **Binika Thapa (nee Rai) and another v. Damber Kumari Mukhia and another** with **Passang Lama v. Shri Poonam Kumar Sharma and another** reported in **2023 SCC Online Cal 5478**, he submits that as to whether the Court is competent to invoke the provisions of Section 5 of the Limitation Act for extending the time period for

making payment of rent under Section 7(1)(c) of the said Act *de hors* the provisions of Section 7(2) of the said Act, has already been adjudicated by the Hon'ble Court in the above judgment. He submits that Section 5 of the Limitation Act cannot be made applicable in the instant case since there is no room for application of Section 5 of the Limitation Act, having regard to the scheme of the Act. As such the learned Court had rightly rejected the application and struck off the defence of the defendants against the delivery of possession. In the facts, no interference is called for.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. It appears that the issue that falls for consideration in the revisional application is whether the provisions of Section 5 of the Limitation Act can be made applicable in respect of payment of rent made in terms of Section 7(1)(c) of the said Act after an order under Section 7(2) of the said Act has been passed. To morefully appreciate the provisions of Section 7(1) and 7(2) of the said Act, the said provisions are extracted hereinbelow: -

“ Section 7(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.

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, 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 of 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.”

9. From a perusal of the aforesaid provisions, it appears that Section 7(1)(c) provides that the tenant after complying with the provisions of Section 7(1)(a) and 7(1)(b) shall continue to pay to the landlord or deposit with the Civil Judge the admitted rent month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate at which it was last paid; while sub-section (2) of Section 7 provides that if there is any dispute as to the amount of rent payable by the tenant, the tenant shall within the time specified in Section 7(1) deposit with the Civil Judge the amount admitted by him to be due from him together with an application for determination of rent payable. The aforesaid sub-section carves out an exception for making payment of arrears of rent only in case there is any dispute as regards the amount of rent payable. The said sub-section however makes it clear that no such deposit shall be accepted unless it is accompanied by an application for determination of rent payable. The said sub-section further reveals that on receipt of the application, the learned Judge is obliged to decide the rate at which the rent was last paid and the period of the default, so as to enable the tenant to pay to the landlord the amount so specified in the order within one month from the date of such order.
10. The proviso to Section 7(2) only empowers the learned Judge to extend the time to make payment of the aforesaid sum only once, and the period of such extension shall not exceed two months.

While sub-section (3) of Section 7 the said Act categorically provides that if the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified or within such extended time, the Civil Judge shall order the defence against the delivery of possession to be struck out and shall proceed with the hearing of the suit.

11. It is therefore clear from the above that the object behind Section 7 is to enable the tenant an opportunity to clear all arrear of rents by making payment of current rent by condoning the default subject to the limitation that the default is condonable only once.
12. Admittedly, in the instant case, the defendants/petitioners had previously applied under Sections 7(1) and 7(2) of the said Act. The learned Judge by order dated 24th March, 2022 while determining the arrears of rent had permitted the defendants/petitioners to pay/deposit the arrears of rent along with 10 per cent interest. The defendants/petitioners claim to have complied with such direction. Thereafter, the defendants/petitioners had proceeded to make payment of rent on regular basis and having regard thereto, in my view it cannot be said that the defendants/petitioners had committed any default at least up to 28th April, 2022 when the learned Judge disposed of the application under Section 7(2) of the said Act by recording that no rent is due and payable from the defendants till that date. In the instant case, it is an admitted position that default has been committed by the

defendants/petitioners in complying with the provision of Section 7(1)(c) of the said Act for the months of September to November, 2023. The petitioners claim that the default had occasioned by reasons of the advocate's clerk's sickness. Having regard thereto, it is submitted that this Hon'ble Court is competent enough to extend the time period for acceptance of rent for the period of default committed and the Court by invoking Section 5 of Limitation Act can condone the delay. In support of her aforesaid contention, Ms. Manot has placed reliance on a judgement delivered by a Coordinate Bench of this Court in the case of **Tapan Kumar Santra** (*supra*). According to her, this Court by invoking its inherent power can extend the time for the petitioners to make the deposit.

13. To appreciate the aforesaid contention, it would be relevant to note that on the question as to whether the provisions of Section 5 of the Limitation Act can be made applicable to condone the delay in acceptance of rent under the provision of Section 7(1)(c) of the said Act, the matter was referred to the Hon'ble Division Bench, constituted by the Hon'ble the Chief Justice in the case of **Binika Thapa (nee Rai)** (*supra*). The points of reference are as follows :

“a) Whether the High Court, be it Single or Division Bench, can take a decision which runs counter to the decision of the Hon'ble Apex Court, which is binding on all Courts including the High Court by virtue of Article 141 of the Constitution of India.

b) Whether the Single Bench can take a different view to the view of the Hon'ble Apex Court, where it is clearly laid down that the tenant cannot take recourse to Section 5 of the Limitation Act in relation to the provision contained under Sections 7(1) and 7(2) of the said Act, 1997.”

14. It is true that the Division Bench of this Court had considered the above provisions and in paragraph 19 of the said judgment had concluded that if for any reason the tenant failed to pay / deposit rent month by month as laid down under clause (c) of Sub-Section (1) of Section 7 of the said Act or as directed by the Court under Sub-Section (2) of Section 7, the tenant could get further extension of time for two months, to make such deposit. At the same time the Hon'ble Division Bench has also noted that the provision of Section 40 of the said Act though makes the Limitation Act applicable, the same is subject to other inbuilt period of limitation prescribed. The Division Bench has thus observed that having regard to the ratio in the judgment delivered in the case of ***Bijay Kumar Singh & Ors. v. Amit Kumar Chamaria & Anr.***, reported in **(2019) 10 SCC 660** the one month period as mentioned in Section 7(1)(b) is to be treated as an inbuilt period of limitation making Section 40 of the said Act inapplicable.
15. In the instant case, I find that the defendants/petitioners had already been granted an opportunity to make payment of arrear within the extended period, i.e. 30 days in terms of the order dated 24th March, 2022 whereby the default committed by the petitioners

had already been condoned once. Having regard thereto, I find that there is no scope or opportunity available to the petitioners to seek any further extension for condoning further default. I do not find any irregularity in the learned Judge rejecting the application of the petitioners.

16. Inherent power can only be invoked when there is no specific provision for extending the period for payment of rent, which fell in arrear, however, having regard to the scheme of the said Act provided in Section 7 thereof and the mandatory nature of Section 7(3) of the said Act, I am afraid that there is no scope to condone even a minor delay committed by the advocate/advocate's clerk in complying with the provisions of the said Act. There is no scope even to condone the advocate's default.
17. It is also well settled that a Court cannot be persuaded to pass an order on the basis of sympathy. The learned Judge after elaborately discussing the matter has concluded that in the facts of the instant case, there is no opportunity to extend any further time and accordingly the application filed by the petitioners seeking for extension had been rejected and the defence of the defendants against the delivery of possession has been struck out. The petitioners had not been able to identify any jurisdictional error committed by the learned Judge. Hence, no case for interference is called for. The revisional application fails and C.O. 1085 of 2024 is accordingly dismissed without any order as to costs.

18. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)

Saswata
A.R. (Court)