

Ct No.10
AD- 18
25.09.2025
(SSS)

CO 1177 of 2024

Smt. Manju Rana
Vs.
Sri Somnath Chandra and Ors.

Mr. Goutam Das
.....for the petitioner.

Mrs. Sabita Mukherjee Roy Chowdhury,
Mr. Sanket Das
....for the opposite parties.

1. The present challenge has been preferred by the defendant in an eviction suit under the West Bengal Premises Tenancy Act, 1997.

2. By the impugned order, an application filed by the defendant/petitioner under Section 5 of the Limitation Act, 1963, for condonation of delay in making the deposit contemplated under Section 7(1) as well as under the first part of Section 7(2) of the 1997 Act, was turned down.

3. Learned counsel for the petitioner places reliance on a Division Bench judgment of this court in *CO 3443 of 2010 with CO 3054 of 2011*, where it was held that the time limit fixed, as mentioned in sub-sections (1) and (2) of Section 7 of the 1997 Act, to pay or to deposit with the Controller or the Civil

Judge all admitted arrears of rent together with interest, as mentioned in Clause (b) thereof and consequently, the time limit mentioned for this purpose as mentioned in sub-section (2), is not inflexible and it can be extended by the court by virtue of Section 5 of the Limitation Act, 1963.

4. Learned counsel for the petitioner argues on the strength of the said judgment as well as Section 40 of the 1997 Act, which provides that the provisions of the Limitation Act are applicable to the 1997 Act, that the learned Trial Judge proceeded on an erroneous premise in holding that the mandate of deposit under sub-section (1) and sub-section (2) of Section 7 is mandatory and inflexible.

5. Learned counsel appearing for the plaintiffs/opposite parties places reliance on a recent judgment in the matter of *Seventh Day Adventist Senior Secondary School vs. Ismat Ahmed and Ors.*, reported at (2025) SCC Online SC 1696, where the Hon'ble Supreme Court has held that where the provisions of Section 7(1), Clauses (a) to (c), as well as the first part of Section 7(2) of the 1997 Act stipulate a mandatory timeline for deposit of amount or filing application, the same cannot be overridden by the provisions of the Limitation Act, unless such deposits are made. It has further been observed in the said report that, where no such deposit is made

or application is filed under the statutory time-limit, the defendant cannot take benefit under the proviso to sub-section (2) of Section 7 by application of the Limitation Act.

6. It is argued that, as such, the learned Trial Judge was justified in rejecting the application under Section 5 of the Limitation Act.

7. Upon hearing learned counsel for the parties, it transpires that Section 40 of the 1997 Act does not apply the provisions of the Limitation Act to the 1997 Act in an untrammelled and blanket fashion. The very opening words of Section 40 of the 1997 Act are: "Subject to the provisions of this Act relating to limitation...". Thus, the provisions of the Limitation Act, 1963 are applicable to the 1997 Act subject to implicit bars as to limitation as provided in the 1997 Act itself, even as per Section 40 thereof.

8. Seen in such perspective, Section 7(1)(a) is couched in mandatory language by use of the expression "shall" which mandates the tenant, subject to the provisions of sub-section (2), to 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 up to the end of the month previous to that in which the payment is paid, together with interest at the rate of 10% per annum.

9. More importantly, Clause (b) of sub-section (1) of Section 7 provides that 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.

10. Not only that, Clause (c) of sub-section (1) of Section 7 of the 1997 Act mandates the tenant to continue to pay thereafter to the landlord or deposit with the Civil Judge month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate.

11. Sub-section (2) of Section 7 contemplates a situation where a suit referred to in sub-section (1), that is, for eviction under the 1997 Act, is filed and any dispute as to the amount of rent payable to the tenant is raised, in which case the tenant shall, within the time specified in that sub-section (that is, within one month from the date of service of summons or where the defendant appears without summons, within one month of appearance), deposit with the Civil Judge the amount admitted by him to be due from him together with an application for determination of rent payable.

12. The placement of the proviso permitting extension of such time is under sub-section (2), which stipulates 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.

13. The use of the expression “extension” presupposes that such extension has to be sought before the expiry of the statutory timeline. Unless such interpretation is lent to the proviso, an absurd situation may arise where the extension itself is sought much beyond the expiry of the limitation period and it is pleaded that the extension is being sought only once and should be granted for two months from that date, which would defeat the very purpose of the restrictive timeline and limited scope of extension thereof stipulated in the statute.

14. Conjointly reading the sub-sections of Section 7 as discussed above, the inevitable conclusion is that the deposit contemplated in Section 7 (1)(a) and Section 7(2) within the time stipulated therein is mandatory and cannot be extended by operation of Section 5 of the Limitation Act, 1963, read with Section 40 of the 1997 Act.

15. In *Seventh Day Adventist Senior Secondary School* (supra), the Supreme Court reiterated precisely the above proposition.

16. Thus, the proposition laid down in the Division Bench judgment of 2011, cited by the petitioner, has

to give way to the latest adjudication on the said issue by the Supreme Court in *Seventh Day Adventist Senior Secondary School* (supra).

17. Hence, the learned Trial Judge was justified and acted within his jurisdiction in dismissing his application of the defendant/petitioner for condonation of delay in filing the application under Section 7(2) and in making the deposit as contemplated therein beyond the statutory time-limit.

18. Accordingly, CO No. 1177 of 2024 is dismissed on contest, thereby affirming the Order dated January 24, 2024 passed by the learned Civil Judge (Junior Division), Second Court at Sealdah, District – South 24 Parganas in Ejectment Suit No. 48 of 2013.

19. There will be no order as to costs.

20. The parties shall act on the server copy of this order, duly downloaded from the official website of this court.

(Sabyasachi Bhattacharyya, J.)