

Court No. 6
(265719)

10.06.2025
(AD 8)
(S. Banerjee)

CO 1798 of 2025

Bipin Behari Jhunjhunwala & Anr.
Vs.
Rajendra Kumar Jaiswal & Anr.

Mr. Partha Pratim Roy
Mr. S. S. Bhutoria
Mr. Amit Sureka

...for the petitioners

Mr. Naman Choudhury
Mr. Pranav Sharma

...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 an order dated February 25, 2025 passed by the learned Civil Judge (Jr. Division) 3rd Court at Howrah in Title Suit No. 1484 of 2016. By the order impugned, the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 was dismissed upon holding that the same is not maintainable. Consequently, the defence of the petitioners against delivery of possession also was struck off.

Mr. Roy, learned advocate appearing for the petitioners submits that there is no amount admitted by the petitioner to be arrears and, therefore, the learned trial judge ought not to have rejected the application under Section 7(2) of the 1997 Act.

Heard the learned advocate for the opposite parties on such submission.

The opposite parties herein filed a suit for eviction on the ground mentioned under Section 6 of the 1997 Act. After entering appearance in the said suit, the petitioners herein filed an application under Section 7(2) of the Act. The specific case of the petitioners in the application under Section 7(2) is that the defendants paid rent for the month of December, 2015 and January, 2016 and February, 2016 and when the petitioners asked for receipts for the said months, the plaintiffs avoided to grant receipts on the plea of non-availability of rent book but assured to grant the same at a later point of time. It is the further case of the petitioners that the rent for the month of March, 2016 was tendered through money order but the opposite parties refused to accept the same and the same returned to the petitioners. The petitioners tendered the rent for the month of April, 2016 through money order and the same was also refused and thereafter the petitioners deposited the rent for the month of April, 2016 and onwards before the Rent Controller.

After going through the averments made in the application under Section 7(2) of the 1997 Act, this court is of the considered view that the rent for the

month of March, 2016 squarely falls within the expression “the amount admitted by him to be due from him” as appearing in Section 7(2) of the 1997 Act. Admittedly the tenant neither deposited the rent for the month of March, 2016 before the Rent Controller nor deposited the same along with the application under Section 7(2) of the 1997 Act. Since the rent for the month of March, 2016, which is an amount admitted by the petitioner to be due, was not deposited along with the application, the learned trial judge was right in rejecting the application under Section 7(2) of the said Act.

Sub-Section (3) of Section 7 of the 1997 Act states 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 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.

The expression “or” appearing in sub-Section (3) of Section 7 of the Act makes the compliance of sub-Sections (1) and (2) of Section 7 disjunctive. Therefore, if there is non-compliance of the provisions of sub-Section (2) of Section 7, Section 7(3) automatically stands attracted and the statute

mandates the Civil Judge to strike out the defence against delivery of possession under Section 7(3) of the 1997 Act. The learned trial judge, in the considered view of this court, was right in striking out the defence of the petitioners against delivery of possession.

For all the reasons as aforesaid, this court does not find any infirmity in the order impugned warranting interference under Article 227 of the Constitution of India. Accordingly, CO 1798 of 2025 stands dismissed.

(Hiranmay Bhattacharyya, J.)