

M/L- 128
18/03/2025
Ct. No.-6
Aritra

C.O. 1612 of 2024

**Kalyani Saha & Anr.
Vs.
Leepi Mitra Basu**

Mr. Pradip Kr. Dutta, Sr. Adv.
Mr. Debayan Ghosh
...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being No.12 dated February 6, 2024 passed by the learned Civil Judge (Jr. Div.), 4th Court, Alipore in Ejectment Suit No.118 of 2022.

By the order impugned the application under Section 5 of the Limitation Act filed to condone the delay in filing the applications under Section 7(1) and Section 7(2) of the West Bengal Premises Tenancy Act, 1997 stood rejected.

Mr. Dutta, learned Senior advocate appearing for the petitioner submits that the reasons for the delay is due to wrong advise given by the learned advocate of the petitioner. He submits that the petitioner should not be penalised for such lapses on the part of the learned advocate and this Court should condone the delay in filing the application under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997. He further submits that if an opportunity is granted by this Court the petitioner is ready and willing to deposit the entire

arrears of rent within the time limit as may be fixed by this Court.

Section 7(1) of the West Bengal Premises Tenancy Act does not contemplate filing of any application. Taking note of such statutory provision it has now been well-settled that an application under Section 5 of the Limitation Act for condonation of delay in filing the application under Section 7(1) of the 1997 Act is not maintainable.

Section 7(2) of the 1997 Act contemplates deposit of the amount admitted by the tenant to be due from him in case there is any dispute as to the rate of rent or as to the period of default together with an application for adjudication of such dispute.

It is also well-settled that since the Section 7(2) requires deposit to be made along with an application, Section 5 of the Limitation Act cannot apply to such an application.

It is not in dispute that there was delay of 81 days in filing the application under Section 7(1) and Section 7(2) of the 1997 Act. The learned Trial Judge took note of the decisions of this Hon'ble Court and was right in holding that the delay in filing the said applications cannot be condoned under Section 5 of the Limitation Act.

For such reasons this Court is not inclined to interfere with the order impugned, CO 1612 of 2024 stands disposed of.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)