

14.11.2025  
SL No.9  
Court No.6  
(gc)

**CO 1962 of 2025  
CAN 1 of 2025**

**Sri Sagar Sharma  
Vs.  
Smt. Malati Sharma**

Mr. Debasis Sur,  
Mr. Dilip Kumar Das,  
Mr. Amitava Chowdhury  
...for the Petitioner.

1. The petitioner has challenged an order dated April 23, 2025 passed by the learned Civil Judge (Jr. Divn.), 1<sup>st</sup> Court, Chandernagore, Hooghly. By the order impugned. The learned Court allowed an application filed by the opposite party under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act).
2. According to the learned Court, the petitioner had received the summons, first by registered post with A/D on September 14, 2022 and thereafter through the process server on November 7, 2022. The petitioner appeared before the Court on December 7, 2022 and filed an application on January 6, 2023 with the permission to deposit the arrear rent. The learned Court allowed the deposit at the risk of the petitioner. However, the learned Court found that there was a non-compliance of Section 7(1) of the said Act, when the application under section 7(1) of the said Act

was considered along with the application under section 7(3) thereof.

3. Mr. Debasis Sur, learned Advocate for the petitioner submits that only a day's delay had been caused from the date of appearance of the defendant and as such the delay may be condoned. It is further submitted that the learned Court did not look into the records of H.R.C. Case No.35 of 2018, while considering the application under Section 7(2) of the said Act. The learned Court was not right in holding that the application under Section 7(2) was infructuous and not maintainable in view of the non-compliance of the provisions of Section 7(1) of the said Act. The learned court ought to have decided the application independently.
4. Considered the submissions. The law provides as follows:-

**“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 15<sup>th</sup> 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].”

5. In this case, admittedly the summons was served by registered post with A.D. on September 14, 2022 and by the process server on November 7, 2022. The application under Section 7(1) was filed on January 6, 2023 and thereafter the admitted arrears were deposited. This was not in compliance with the provisions of law. The admitted arrear rent along with statutory interest should have been deposited within one month from the service of summons on the tenant. The Court has found from the records that, the summons were served on September 14, 2022 and again on November 7, 2022. The petitioner failed to comply with the provisions of Section 7(1).
6. The law laid down by the Hon’ble Supreme Court and this Court is that, without compliance of Section 7(1) of the said Act, the question of adjudication of the application under Section 7(2) would not arise at all. Section 7(2) deals with the determination of the rent if there is a dispute with regard to the rent or determination of the relationship between the landlord and tenant. Only if the provisions of Section 7(1) are complied with, the question of deciding the application

under Section 7(2) would arise and admittedly the application under Section 7(2) was also filed after the period stipulated under Section 7(1) had expired.

7. In the decision of ***Seventh Day Adventist Senior Secondary School Vs. Ismat Ahmed & Ors.*** reported in **2025 INSC 984**, the Hon'ble Apex Court held as follows:-

“12. Bare reading of the aforesaid provisions makes it clear that as per sub section (1) of Section 7, in a suit for eviction filed by the landlord on any grounds as specified in Section 6 of the WBPT Act, the tenant shall, subject to provisions of sub-section (2), pay to the landlord or deposit in the Court, all arrears of rent calculated at the rate at which it was last paid together with interest at the rate of ten per cent per annum. As mandated by Section 7(1)(b), the said payment or deposit shall be made within one month from the date of service of the summons on tenant or from the date of appearance in case the tenant appears without service of summons. The said two provisions apply in a case where arrears of rent are admitted. Thereafter, Section 7(1)(c) puts a further condition that after the admitted arrears are paid, the tenant shall continue to pay or deposit with the landlord or Civil Judge, as the case may be, a monthly sum of rent at that rate on or before fifteenth day of consecutive month.

13. As per sub-section (2), if there is a dispute as to the amount of rent payable by the tenant, he is required to deposit the admitted amount due from him in the Court within the time as specified [one month as per Section 7(1)(b)] ‘together’ with an application for determination of the rent payable. It is emphasised that deposit of rent shall not be accepted unless the said prayer is accompanied with an application for determination of the rent. Meaning thereby, to seek protection against eviction, the tenant is required to deposit the admitted amount of rent within the time as specified, i.e., within one month from the date of summons served or where tenant appears in the suit without

the summons being served upon him, along with an application for determination of the rent so payable. As such, in case where there is no dispute as to arrears of rent, it ought to be paid within a month and, in case it is in dispute, even then, tenant would be required to deposit within the same time coupled with an application as discussed above.

14. To supplement the aforesaid, word 'together' used in Section 7(2) preceding 'with an application for determination of the rent payable' emphasises that the deposit of admitted amount of rent within a period of thirty days as specified must accompany the application for determination of rent payable. At this stage, we can profitably refer to 'P. Ramanatha Aiyar's Advanced Law Lexicon'<sup>5</sup> to understand the meaning of 'together'. According to the same, 'together' means "in company" or "conjointly" or "simultaneously". Accordingly, on contextual application of the word 'together', it is clear that the application for determination of rent must be filed within the same period which is provided for 'deposit' or 'pay', i.e., thirty days.

15. On receiving such application, the Court having regard to the rate of rent last paid and period of which default has been made by the tenant shall make an order on such application not later than one year and thereupon the tenant shall within the period of one month of the date of such order, pay to the landlord the amount so specified in the order. That is to say, the determination of the rent on the parameters as specified in the latter part of sub-section (2) and on such determination within one month of the date of the order, the amount as specified in the order is to be paid. The proviso thereto deals with the extension of time, which can only be once and not beyond period of two months.

16. Having perused Section 7 of WBPT Act, it is apparent that sub-section (1) is subject to sub-section (2). Further, sub-section (3) specifies consequences of non-compliance of sub-sections (1) and (2) by the tenant, leading to striking out of defence against delivery of possession and the Court shall proceed with the hearing of the suit. Sub-section (4) of Section 7 of WBPT Act makes it clear that in a proceeding of eviction, no order for delivery of possession of the premises to the landlord shall be passed by the Court on the ground of default of payment if the tenant deposits the rent under

sub-sections (1) or (2), but the Court may allow such cost to the landlord as deemed fit. As per proviso, it is clear that if tenant was allowed the relief as indicated hereinabove, but later he makes default in payment of rent for four months within one year or in case three successive rental periods, where the rent is not payable monthly, the relief of protection against eviction available under sub-section (4) cannot be allowed granting benefit of protection against eviction to the tenant.

17. In view of the foregoing, while bringing the said Section, the legislative intent was to provide protection to the tenant against eviction, subject to compliance of deposit of arrears of rent if there is no dispute as to amount of rent, within one month from the date of service of summons, along with interest at the rate of ten per cent per annum. The tenant is further required to deposit the regular rent as prescribed in Section 7(1)(c). In case, there is a dispute of the amount of rent payable, the tenant is required to deposit the amount due as admitted by him within thirty days and file an application conjointly for determination of rent within the same period. The said application may possibly be entertained and decided by the Court thereafter only. This Court in the case of Bijay Kumar (supra) had an occasion to consider the scope of Section 7(2) of the WBPT Act wherein the tenant had not deposited or paid the admitted rent while moving an application seeking determination of rent. Trial Court while allowing such application granted time to pay the admitted rent, but High Court set-aside the order of the Trial Court. While confirming the order of the High Court on the issue of deposit of rent admitted by tenant under Section 7(2) on the application for determination of rent, this Court observed as under – “21. ...the deposit of rent along with an application for determination of dispute is a precondition to avoid eviction on the ground of non-payment of arrears of rent. In view thereof, tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not an application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.”

18. Thus, in case of disputed rent, this Court was of the view that to avail the benefit of protection against eviction under the WBPT

Act, the tenant has to do the following to avoid eviction, first, to deposit rent admitted by him to be due; second, an application for determination of rent payable be filed along with. The tenant had neither deposited, nor paid the admitted rent and had only filed the application for determination of rent belatedly along with an application under Section 5 of the Limitation Act, 1963.

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29. In addition, Section 7(1) and first part of sub-section (2) of Section 7 are comparable, both requiring deposit/pay admitted/undisputed amount of rent. However, Section 7(2) casts an additional obligation on the tenant to file an application for determination for rent along with such deposit within the specified time frame. The Legislature in its wisdom did not provide for any extension of time for payment or deposit under Section 7(1), making it clear that no such extension was intended in the corresponding part in Section 7(2). Since the deposit and application are to be made together by the tenant mandatorily within a specific time, in our considered view, extension of time as given in proviso to Section 7(2) is not applicable to either. Therefore, the proviso can only be construed to permit extension in payment of amount so specified in order of determination passed by the Civil Judge as envisaged in the latter part of sub-section (2) of Section 7. Stated differently, the word 'may' used in the proviso of Section 7(2) would only relate to extension of time, which is a discretion vested with the Civil Judge and it would not construe any other meaning. Moreover, it can be said that since in subsection (3) of Section 7, the consequence of non-compliance has been specified, therefore, use of the word 'shall' in Sections 7(1)(a), 7(1)(b) and 7(2) is a mandatory compliance for the tenant, failing which, his defence against eviction shall be struck off.

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32. In the said context, if we see the intent of legislature as discussed and relying upon two cases of three-Judge Bench of this Court, we intend to explain that Section 7 of the WBPT Act prescribes when a tenant can get the benefit of protection against eviction. The opening word of sub-section (1) i.e., 'on a suit

being instituted by the landlord for eviction' makes it clear that in case the tenant defaults in payment of rent and the suit is brought as specified in the WBPT Act, then on deposit/payment of admitted rent, an opportunity ought to be provided to get the benefit of protection against eviction. Therefore, for availing such benefit, some pre-requisites are there, which is of deposit of the rent, either disputed or undisputed as admitted, within the specified time. In case, the rent is disputed, the tenant has to mandatorily file an application, by virtue of word 'shall' used to such extent either in Section 7(1)(a)(b)(c) or first part of Section 7(2). However, in the latter part of Section 7(2), which is for payment of amount on determination by the Civil Judge within the time as specified after compliance of the pre-deposit and on filing an application for determination within the specified time, such payment has to be made by the tenant within one month of date of order passed by Civil Judge. The proviso refers to extension of time with an intent to grant one more opportunity to the tenant after determination of rent for deposit.

33. At this juncture, we also deem it relevant to refer sub-section (3) of Section 7, wherein it is specified that if tenant fails to deposit or pay any amount referred in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted by the Court, his defence against delivery of possession shall be struck out. So it deals with the following contingencies; first is of Section 7(1)(a)(b)(c), second is of former part of Section 7(2) and third is of latter part of Section 7(2) and in default of either of the situations, the Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit specifying the consequences of failure to do any of the three situations. While using the word extended time in sub-section (3), the word shall has been used, therefore, this would also be referable to the provision which leads to the conclusion that in case the tenant fails to deposit the determined amount within the time specified or within the extended time. In that contingency the order of striking out of defence be passed and suit be proceeded for hearing. As explained from above discussion, we are constrained to say that the arguments as advanced by the

learned counsel for the appellant relying upon the paragraphs 17, 18 and 19 of the judgment in Debasish Paul (supra) are not germane, hence repelled.”

8. In the decision of ***Smt. Binika Thapa (nee Rai) & Anr. Vs. Smt. Damber Kumari Mukhia & Anr.*** decided in **C.O. No. 64 of 2023**. This court held as follows:-

15. “Section 7 was interpreted in Amit Kumar Chamariya (supra) and the entire mechanism by which a tenant could seek benefit from eviction on the ground of default, was considered to be mandatory and inter-related. The provisions of the said section were discussed in the following paragraphs thereof:-

“19. Sub-section (1) of Section 7 of the Act relieves the tenant from the ejectment on the ground of non-payment of arrears of rent if he pays to the landlord or deposits it 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 made together with interest at the rate of ten per cent per annum. 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.

20. Therefore, sub-section (1) deals with the payment of arrears of rent when there is no dispute about the rate of rent or the period of arrears of rent. Sub-section (2) of Section 7 of the Act comes into play if there is dispute as to the amount of rent including the period of arrears payable by the tenant. In that situation, the tenant is obliged to apply within time as specified in sub-section (1) that is within one month of the receipt of summons or within one month of appearance before the court to deposit with the Civil Judge the amount admitted by him to be due. The tenant is also required to file an application for determination of the rent payable. Such deposit is not to be accepted, unless it is accompanied by an application for determination of rent payable. Therefore, sub-section (2) of Section 7 of the Act requires two things, deposit

of arrears of rent at the rate admitted to be due by the tenant along with an application for determination of the rent payable. If the two conditions are satisfied then only the court having regard to the rate at which rent was last paid and for which tenant is in default, may make an order specifying the amount due. After such a determination the tenant is granted one month's time to pay to the landlord the amount which was specified. The proviso of the Act, limits the discretion of the court to extend the time for deposit of arrears of rent. The extension can be provided once and not exceeding two months.

21. Sub-section (3) provides for consequences of non-payment of rent i.e. striking off the defence against the delivery of the possession and to proceed with the hearing of the suit. Such provision is materially different from sub-sections (2-A) and (2-B) which was being examined by this Court in *B.P. Khemka [B.P. Khemka (P) Ltd. v. Birendra Kumar Bhowmick, (1987) 2 SCC 407]*. Sub-sections (2-A) and (2-B) of Section 17 of the 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso to Section 7(2) and sub-section (3) of Section 7 of the Act. Therefore, the provisions of sub-section (2) are mandatory and required to be scrupulously followed by the tenant, if the tenant has to avoid the eviction on account of non-payment of arrears of rent under Section 6 of the Act. There is an outer limit for extension of time to deposit of arrears of rent in terms of the proviso to sub-section (2) of Section 7 of the Act. The consequences flowing from non-deposit of rent are contemplated under sub-section (3) of Section 7 of the Act. Therefore, if the tenant fails to deposit admitted arrears of rent within one month of receipt of summons or within one month of appearance without summons and also fails to make an application for determination of the disputed amount of rate of rent and the period of arrears and the subsequent non-payment on determining of the arrears of rent, will entail the eviction of the tenant. Section 7 of the Act provides for a complete mechanism for avoiding eviction on the ground of arrears of rent, provided that the tenant takes steps as contemplated under sub-section (2) of Section 7 of the Act and deposits the arrears of rent on determination of the disputed amount. The deposit of rent along with an application for determination of dispute is a precondition to avoid eviction on the ground of non-payment of

arrears of rent. In view thereof, tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not an application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.”

15. The Hon’ble Apex Court took note of the decisions rendered in *B.P. Khemka (P) Ltd. vs. Birendra Kumar Bhowmick* reported in (1987) 2 SCC 407, *Shibu Chandra Dhar vs. Pasupati Nath Auddya* reported in (2002) 3 SCC 617 and *Nasiruddin v. Sita Ram Agarwal* reported in (2003) 2 SCC 577, and arrived at the conclusion that the tenant would not be able to take recourse to the provisions of Section 5 of the Limitation Act. The Hon’ble Apex Court noticed the decisions in the above cases and still arrived at the conclusion that filing of the applications and deposit/payment of the admitted arrears with statutory interest, within the aforementioned period, were both mandatory pre-conditions to be complied with by a tenant, in order to avoid eviction.

16. We proceed to discuss the ratio in *Amit Kumar Chamariya* (supra). On institution of a suit by the landlord for eviction on any of the grounds referred to in Section 6 of the said Act, the tenant, subject to the provisions of sub-section (2) of the Section 7, was liable 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 upto the end of the month previous to that in which the payment was made, together with interest at the rate of 10% per annum. Such payment or deposit was to be made within one month from the service of summons on the tenant or when the tenant appeared in the suit without summons being served, within one month from his appearance. Thereafter, the tenant was enjoined by law, to continue to pay to the landlord or deposit with the civil judge a sum equivalent to the rent at that rate, month by month within 15th of each succeeding month. In case of any dispute as to the amount of rent payable by the tenant, the tenant was liable to deposit with the civil judge, within the time specified in the sub-section, the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit could be accepted unless it was accompanied by an application for determination of the rent payable. On receipt of the application, the civil judge,

having regard to the rate at which the rent was last paid and the period for which default may have been made by the tenant, determine the dispute and pass an order within a period not exceeding one year, specifying the amount, if any, due from the tenant and thereupon the tenant was liable to pay to the landlord within one month from the date of such order, the amount so specified in the order along with the monthly rent at the rate so determined.”

9. Thus, in view of the aforesaid, the learned trial

Court rightly held as follows:-

“From bare reading of the two afore-mentioned provisions as well as thorough perusal of the Summons served through

Registered Post as well as through Process Server, there is no doubt that both have been received on behalf of the defendant by his son "Sarwan Sharma" by putting his signature of the A.D. as well on the summon that has been received by him after understanding the meaning of the notice, as being reported by the process server. It seems that the summons have been received by the defendant's own family members or his relatives. Defendant in the garb of such misleading submission tried to coverup the lacuna that has already been created by his own insouciant conduct. Where there is no scope to go beyond the mandate of Section 7(1)(b), the deposit of the admitted arrear as well as the monthly rent by the defendant at his own risk cannot be taken to valid in view of the fact that the defendant has acted in clear contravention of directive laid down under Section 7 of the Act, when the date of service of summons was always well within the knowledge of the defendant. Petition under Section 7(2) can only be taken up for consideration after statutory obligation under Section 7(1) is discharged by the defendant. The present scenario does not disclose any such situation which would reflect that the defendant complied with the compulsory provision of law as laid down under Section 7(1)(b).

Thus, in light of the above discussion, this Court is inclined to allow the prayer of the plaintiff under Section 7(3) of the W.B.P.T. Act & reject the prayer of plaintiff to call for the record from Rent Control for the purpose of determination of actual rent under Section 7(2) as the same is non maintainable anymore since the prayer under Section 7(2) stands infructuous.”

10. The Court does not find any irregularity in the order impugned. The learned Court has rightly struck off the defence. Section 7(3) of the said Act provides that if the tenant fails to deposit the amount as referred to in Section 7(1) or Section 7(2) within the time specified or within the extended time that may be granted, the defence against delivery of possession shall be struck off and the Court shall proceed with the hearing of the suit. However, it is made clear that the petitioner will have the right to cross-examine the plaintiff and also demolish the case of the plaintiff through such cross-examination. He cannot set up his own case.
11. Accordingly, the civil revisional application along with the connected application is disposed of.
12. There shall be no order as to costs.
13. Parties are to act on the server copy of this order.

**(Shampa Sarkar, J.)**