

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

**Before:**

**The Hon'ble Justice Hiranmay Bhattacharyya**

**C.O. 2415 of 2025  
Sri Indrajit Chakraborty  
VS.  
Sri Tapan Paul  
With  
CO 2227 of 2025  
Sri Tapan Paul  
Vs.  
Sri Indrajit Chakraborty**

|                        |                         |
|------------------------|-------------------------|
| For the Petitioners    | : Mr. Partha Pratim Roy |
| In CO 2415 of 2025     | Mr. Ayanabha Raha       |
| For the Opposite Party | Mr. Pritam Choudhury    |
| In CO 2227 of 2025     |                         |

..... advocates

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| For the Opposite Party | : Mr. Ivan Roy |
| In CO 2415 of 2025     |                |

..... advocate

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| For the Opposite Party | : Mr. Debangshu Bandhu |
| In CO 2415 of 2025     |                        |
| For the petitioner in  |                        |
| CO 2227 of 2025        |                        |

..... advocate

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| Heard on | : 13.08.2025 |
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| Judgment on | : 20.08.2025 |
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**Hiranmay Bhattacharyya, J.:-**

1. The order being no. 46 dated April 22, 2025 passed by the learned Civil Judge (Junior Division) 4<sup>th</sup> Court at Alipore, 24 Parganas (South) in Title Suit No. 56 of 2018 is under challenge in these applications under Article 227 of the Constitution of India. C.O. 2415 of 2025 is at the instance of the plaintiff and C.O. 2227 of 2025 is at the instance of the defendant.

2. By the order impugned, the application under Section 7(2) of the West Bengal Premises Tenancy Act was disposed of on contest by directing the defendant to deposit the arrear rent together with interest by two easy instalments in compliance with Section 7(2) of the West Bengal Premises Tenancy Act, 1997 and the defendant was directed to deposit current rent within the 15<sup>th</sup> of each succeeding month. The adjustment of the adjudicated rate of rent with the renovation cost and salami was left open to be adjudicated at the time of trial.
3. Since both the civil revision applications arise out of the selfsame order, the same were heard analogously and are decided by this common order.
4. For the sake of convenience the parties are referred to according to their rank in CO 2227 of 2025.
5. The opposite parties filed a suit for eviction inter alia on the grounds of default and reasonable requirement against the petitioner.
6. The case made out in the plaint in a nutshell is as follows-

The predecessor-in-interest of the opposite parties namely Sunil Chakraborty inducted the petitioner as a monthly tenant in respect of the suit property by virtue of a tenancy agreement dated 01.12.2000. The rate of rent at the inception of the tenancy was Rs. 1,200/- per month payable in advance. In the agreement there was a stipulation regarding enhancement of rent at the rate of 10% of the existing rent after expiry of 5 years. The defendant paid partial rent at the rate of Rs. 500/- per month up to February, 2016 and is a defaulter in payment of full rent since March, 2016.

7. Petitioner entered appearance in the said suit and filed applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (for short the “1997 Act”).
8. In the application under Section 7(1) of the 1997 Act, the petitioner stated that he was inducted sometimes in the month of September, 1999 as a tenant by Sunil Chakraborty and he used to pay rent of Rs. 500/- per

month to the opposite parties and the opposite parties used to provide rent receipt of Rs. 500/- per month and tendered rent by hand up to April, 2016. It was further stated therein that the opposite party no. 1 refused to accept rent for the month of May, 2016 and the petitioner sent the rent by Money Order and thereafter, started depositing rent before the Rent Controller from May, 2016 till March, 2018 and prayed for permission to deposit the rent at the rate of Rs. 500/- per month from April, 2018 onwards month by month.

9. In the application under Section 7(2) of the 1997 Act, the petitioner has stated that the opposite party no. 1 used to issue rent receipt of Rs. 500/- per month against payment of rent of Rs. 1200/-. The petitioner has disputed the rate of rent as well as the landlord-tenant relationship between the parties. Petitioner claims to have paid a huge amount of Rs. 4,50,000/- to Sunil Chakraborty as salami and with the consent of the landlord renovated the suit premises at his own cost of Rs. 2,50,000/- and the petitioner claimed adjustment of the aforesaid amounts from the monthly rent. Petitioner prayed for determination of the rate of rent and the landlord-tenant relationship between the parties.
10. The learned advocate for the petitioner contended that the rate of rent is Rs. 500/- per month and the petitioner continuously deposited rent at the said rate before the Rent Controller. He contended that the learned Trial Judge held the petitioner to be a defaulter in payment of rent without appreciating that the petitioner is entitled to adjustment of the amount paid by the petitioner as salami and the cost incurred for renovation of the suit property to make it a habitable one.
11. Mr. Roy, learned advocate for the opposite party seriously disputed the submission made by the learned advocate for the petitioner. He contended that the petitioner failed to deposit the rent for the month of April, 2016, which he admitted to be due from him, along with the application under Section 7(2) of the 1997 Act.

12. Mr. Roy contended that the application under Section 7(2) is liable to be dismissed on account of failure to deposit the admitted arrears of rent and consequently the defence of the petitioner is liable to be struck off. Mr. Roy further contended that the petitioner admitted that the rate of rent is Rs. 1200/- per month but he paid only Rs. 500/- before the Rent Controller on and from May 2016 and, therefore, the petitioner ought to have deposited the balance amount at the rate of Rs. 700/- per month along with the application under Section 7(2). Mr. Roy placed reliance upon the decision in the case of **Remington Rand vs. Sohanlal Rajgharia** reported at **87 CWN 922** in support of his contention that while deciding the dispute under Section 7(2), Court has to determine the rate of rent which is the contractual rent and not the fair rent. Mr. Roy submitted that the petitioner is not entitled to any adjustment of the amount alleged to have been paid as salami and on account of expenses incurred for renovation of the suit premises as there was no agreement between the parties with regard to such adjustment.
13. Heard the learned advocates for the parties and perused the materials placed.
14. The opposite party filed a suit for eviction on the grounds enumerated under Section 6 of the West Bengal Premises Tenancy Act, 1997. The opposite party claims that as per the tenancy agreement dated 01.12.2000, the rate of rent was fixed at Rs. 1200/- per month. The agreement provides for enhancement of 10% of the existing rent after expiry of every 5 years.
15. Indrajit Chakraborty i.e., the plaintiff no. 1 adduced evidence as OPW-1. OPW-1 during his cross examination admitted that his father during his lifetime used to issue rent receipt of Rs. 500/- per month in respect of the suit property. He also admitted to have issued rent receipt of Rs. 500/- per month to the petitioner after the demise of his father. OPW-1 further admitted during cross-examination that he did not claim from the petitioner that the monthly rent would increase by 10% in every 5 years.

16. Tapan Paul, i.e., the defendant deposed as PW-1. PW-1 stated in his evidence that he used to pay Rs. 1200/- per month as monthly rent to Sunil Chakraborty but he used to issue rent receipt of Rs. 500/- only per month. However, the petitioner did not take any steps against the landlord for issuing rent receipt for an amount much less than the amount alleged to have been paid by the petitioner.
17. Though the petitioner alleged that he paid rent at the rate of Rs. 1200/- per month, but could not prove such fact by way of evidence either oral or documentary.
18. In the absence of any other acceptable evidence apart from the rent receipt, this Court holds that the rate at which rent was last paid is Rs. 500/- per month.
19. Petitioner claims to have deposited rent from March 2016 before the Rent Controller at the rate of Rs. 500/- per month.
20. Section 21 of the 1997 Act, deals with deposit of rent by the tenant with the Controller where the landlord does not accept the rent tendered by the tenant. Section 21(5) lays down that the tenant shall also produce for scrutiny by the Controller the last rent receipt. It is not in dispute that the last rent receipt issued by the landlord was for Rs. 500/-. The petitioner deposited rent with the office of the Rent Controller at the rate of Rs. 500/-.
21. The learned trial judge proceeded to adjudicate the arrears of rent by accepting the initial rate of rent to be Rs. 1200/- per month as per the tenancy agreement with enhancement by 10% every 5 years.
22. At this stage it would be profitable to take note of the provisions of Section 7(1) and 7(2) of the 1997 Act, for which the same are extracted hereinafter.

**“S.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 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.*

*(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.*

*(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 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.”*

23. Section 7(1) (a) casts an obligation upon the tenant 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 up to the end of the month previous to that in which the payment is made together with interest.
24. Section 7(1) (c) mandates that the tenant shall thereafter continue to pay to the landlord or deposit with the Civil Judge within the time limit specified therein, a sum equivalent to the rent at that rate.
25. To the mind of this Court the expression “a sum equivalent to the rent at that rate” used in Section 7(1) (a) refers to the rate at which rent was last paid.
26. Section 7(2) of the 1997 Act states that 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 an order specifying the amount, if any, due from the tenant.

27. Upon reading the provisions of Section 7(2) of the 1997 Act, this Court holds that while passing an order specifying the amount, if any, due from the tenant; the Civil Judge has to take into consideration the rate at which rent was last paid.
28. In view of the aforesaid discussion, this Court is of the considered view that in order to get the benefit of protection against eviction, a tenant against whom a suit under Section 6 of the 1997 Act has been instituted has to pay to the landlord or deposit with the Civil Judge all arrears of rent as per the provisions of Section 7(1)(a) or Section 7(2), as the case may be, as well as current rent, all calculated at the rate at which rent was last paid.
29. To the mind of this Court, the learned trial judge failed to appreciate the provisions of Section 7(1) and 7(2) of the 1997 Act while calculating the arrears of rent to be deposited by the petitioner.
30. Mr. Ray would strenuously contend that the application under Section 7(2) of the 1997 Act was liable to be rejected for not depositing the admitted arrears of rent for the month of April 2016.
31. Section 7(2) of the 1997 Act mandates deposit of the amount admitted by the tenant to be due from him with the Civil Judge along with the application for determination of the rent payable in case of a dispute as to the amount of rent payable by the tenant.
32. In the application under Section 7(1) of the 1997 Act, petitioner claimed that he tendered rent by hand up to April 2016 against the issuance of rent receipt. From the application under Section 7(2), it does not appear that the petitioner has admitted that rent for the month of April 2016 is due from the petitioner to the opposite party.

33. Therefore, this Court is not inclined to accept the contention of Mr. Roy that the application under Section 7(2) was liable to be rejected on the ground of failure to deposit the rent for the month of April, 2016.
34. However, if upon adjudication, it is found that the rent for the month of April 2016 or for any other month(s) are due from the petitioner, the petitioner should be directed to deposit the amount due from the petitioner to the opposite party.
35. Record reveals that the respective parties have also adduced evidence with regard to their respective contentions on the issue of adjustment of the renovation cost and salami. Such issue was, however, left open for adjudication at the time of trial.
36. When the parties led evidence on the issue of adjustment of the aforesaid amounts with the rent, the learned trial judge ought to have decided such issue while deciding the application under Section 7(2) of the 1997 Act, instead of leaving such issue open for adjudication at the time of trial.
37. In course of argument, Mr. Roy, submitted that the decision in the case of ***Dhananjay Das vs. Mrinal Kanti Ghosh & others*** reported at **2024 SCC Online Cal 1927** cannot come to the aid of the petitioner as the facts of the said case is distinguishable.
38. This Court, however, refrains from making any observation with regard to the applicability or otherwise of the decision in the case of ***Dhananjay Das (supra)*** to the facts of this case as the learned trial judge has not decided the issue of adjustment of the aforesaid amounts.
39. There is, however, no quarrel to the proposition of law laid down in ***Remington Rand (supra)*** that under Section 17(2) of the 1956 Act, the Court is not required to determine the fair rent. The said decision is not an authority for the proposition that if the rate at which the rent was last paid is lower than the contractual rate, the contractual rate of rent should be

taken into consideration while passing an order under Section 7(2) of the 1997 Act.

40. The decision of the Hon'ble Supreme Court in the case of ***Puspa Sen Gupta vs. Susma Ghosh*** reported at **(1990) 2 SCC 651** where it was held that rent includes payment in respect of the amenities or services provided by the landlord under the terms of tenancy cannot come to the aid of the opposite party as such an issue did not arise for consideration in these civil revision applications.
41. For all the reasons as aforesaid, this Court is inclined to interfere with the order impugned. Accordingly, the order impugned is set aside and the learned trial judge is directed to decide the application under Section 7(2) of the 1997 Act afresh on the basis of the materials already available on record and in the light of the observations made hereinbefore after giving opportunity of hearing to the respective parties and dispose of the same by passing a reasoned order as expeditiously as possible but preferably within a period of eight working weeks from the date of receipt of a server copy of this order.
42. C.O. No. 2415 and 2025 and C.O. 2227 of 2025 stand disposed of with the aforesaid observations and directions.
43. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

**(HIRANMAY BHATTACHARYYA, J.)**