

07.04.2025
Sl. No. 24.
M/L.
Mithun
Ct.No.39.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE
CO 1962 of 2023**

**Samir Marik
Vs.
Sree Sree Radha Krishna Jew Thakur Thakurani**

Mr. Rajib Ray,
Ms. Oishanee Ghosh

...for the petitioner

Mr. Saurabh Guhathakurata,
Mr. Surajit Dutta,
Mr. Abhratanu Sarkar

...for the opposite party

Affidavit-of-service filed on behalf of the petitioner
is taken on record.

This civil revisional application has been filed by
petitioner-defendant challenging order dated 2nd August,
2022 and 30th May, 2023 passed by learned Civil Judge
(Junior Division), 1st Court at Sealdah in Ejectment Suit
No.146 of 2018 striking off the defence of the defendant
and rejecting the prayer of the petitioner-defendant for
modification of order dated 2nd August, 2022.

The brief fact of the case is that the opposite
party-plaintiff filed a suit for eviction against the
petitioner-defendant before the learned Civil Judge
(Junior Division), 1st court, Sealdah being Ejectment
Suit No.146 of 2018. In the said suit the petitioner-
defendant filed applications under Section 7(1) and 7(2)

of the West Bengal Premises Tenancy Act, 1997 (*hereinafter referred to as 'the Act of 1997'*). It is the contention of the petitioner that he deposited the admitted arrears of rent along with interest. However, since he failed to produce the Court challans of such deposits, on the ground of non-compliance of statutory provision, the defence of the defendant was struck off under Section 7(3) of the Act of 1997. Further the petitioner also contends that the calculation made towards interest on the admitted arrears of rent in order dated 2nd August, 2022 is not in accordance with law, inasmuch as the said calculation has been made by imposing interest at compound rate which ought to have been on simple interest. On such score, the petitioner filed an application for recalling of the order dated 2nd August, 2022, which was rejected by the learned trial court vide order dated 30th May, 2023. Being aggrieved and dissatisfied with impugned orders, the petitioner has preferred the present civil revision.

Mr. Rajib Ray, learned Advocate for the petitioner submits that due to mis-posting in the diary maintained by the learned Advocate in the Trial Court, the challans could not be submitted when the matter was taken up by the learned Trial Court on 2nd August, 2022, for which reason, the defence of the petitioner-defendant has been struck off. There was no intentional laches on the part of the petitioner-defendant in filing of the

challans. The petitioner-defendant had deposited the admitted arrears of rent and interest but the said challan was not produced/furnished by the learned advocate when the matter was taken-up by the learned trial court, since the date fixed by the learned court was misposted in the advocates' diary. Further it is settled law that simple interest is payable upon the principal arrear amount @ 10% per annum and the question of imposing compound interest upon the arrear amount of rent is beyond the scope of section 7(1) of the Act. However, the learned trial court has calculated the interest on compound rate, which is not sustainable in law. To buttress his contention, he relies on a decision of this Court passed in **CO 1140 of 2023 (*Mata Prasad Shaw –versus- Smt. Sudama Debi*)**. He also submits that the Act of 1997 is a beneficial legislation and the defendant could not be penalized for not filing the challan on a single date when the matter was taken up. In support of his contention, he relies a decision of ***Tapan Kumar Santra-versus- Tarak Nath Paul*** in **CO 1982 of 2022**. He seeks that the impugned orders be set aside for ends of justice.

On the contrary, Mr. Saurabh Guhathakurata, learned Advocate appearing for the plaintiff-opposite party submits that the petitioner-defendant was allowed ample opportunity by the learned Trial Court to furnish the challan. However, neither the challan was furnished

with the statement of accounts nor the same was furnished when the matter was taken up by the learned Trial Court. Moreover, misposting of date in advocates' diary cannot be a ground to entertain under law. Moreover, under the provisions of section 7(1) of the Act of 1997, a tenant has to deposit all arrears of rent together with interest at the rate of 10 % per annum and the word "per annum" clearly postulates that the interest is payable for each year of default and not for the whole period of default which has been clarified by this Court in order passed in C.O. No.1526 of 2020 (***Sree Sree Radha Krishna Jew Thakur Thakurani V. Sri Nirmalendu Sanyal***). In light of his aforesaid submissions, he indicates that there is no illegality in the impugned orders passed by the Trial Court, hence the impugned order does not call for interference and should be affirmed.

Having heard the learned Advocates for respective parties, two issues have fallen for consideration.

- (i) Whether the amount of interest of 10% per annum on the arrear amount as per Section 7 (1) would be applicable for each year of default or would be just 10 % of the total arrear amount? and
- (ii) Whether the learned Trial Court was right in striking off the defence rejecting the ground of misposting in the diary of the learned Advocate?

Before dealing with the first point, it would be apposite to reproduce Section 7(1) of the Act of 1997 as hereunder:-

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 15th of each succeeding month, a sum equivalent to the rent at that rate.*

It is not in dispute that the admitted arrears of rent from Kartick 1400 to Bhadra 1425 that is for 299 months @ Rs. 150 per months in Rs. 44,850. Now the question which needs to be examined whether the interest @ 10 % would be only on this total arrear of rent or on each year of default. It is found from the impugned order dated 2nd August, 2022 that the learned trial court has calculated the interest on the arrears of rent @ 10 % annually. Section 7(1) provides that the payment of 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*. The word '*per annum*' literally means yearly or annually. Therefore, the calculation of the interest accordingly has to be made yearly or annually.

At this stage it would be profitable to reproduce the observation of this court in *Shree Shree Radha Krishna Jew (supra)* as hereunder:-

The rent becomes payable on the basis of contract between the parties either orally or in writing and in the absence of any agreement to the contrary, the rent for particular month becomes payable by the 15th of the following month, when the rent for that month becomes arrear. Since legislature has not used the term "10% of the total arrear amount of rent" towards interest, then the logical mode of computation of interest upon the arrear amount would be that interest is to be calculated on every month's rent taking into account the period when it was actually deposited or paid. Though the language of the statute in this context is not very clear but when they have retained the term "per annum", the intention of the legislature must not be interpreted that the tenant is obliged to pay only 10% of the total arrear amount of rent and if it is interpreted in such a way that by omitting the words "from the date when such amount was payable" Legislature wants to mean tenant is liable to pay only 10% of the total arrear amount, then such interpretation would be clearly prejudicial to the landlord's, interest specially in the case like the present one, where the tenant is admittedly defaulted in payment of rent for moiré than 26 years.

Bearing in mind the aforesaid proposition, the calculation of the interest on the arrears of rent calculated by the learned Trial Court vide order dated 2nd August, 2022 does not call for interference. Therefore, the order dated 2nd August, 2022 is affirmed.

This Court find substance in the submission of learned Advocate for plaintiff- opposite party relying on the decision of this Court passed in *Sree Sree Radha Krishna Jew Thakur Thakurani (supra)* which has also considered the decision of *Mata Prasad Shaw(supra)*.

Now with regard to the second point, it is found that the petitioner-defendant on the date fixed, i.e., on 9th June, 2022 for filing challans prayed for some time to file the same on the subsequent date. It is the contention of the petitioner-defendant that the

subsequent date was fixed on 27th September, 2022. However, the matter was taken on 2nd August, 2022 which the learned Advocate for the petitioner misposted in the diary and the defence was struck off. Bearing in mind that that the Act of 1997 is beneficial legislation, this court is of the view that the petitioner-defendant be given an opportunity to comply by filing the challans of the arrears of rent and interest thereon. Accordingly, the order for striking off the defence of the defendant vide order dated 2nd August, 2022 is set aside subject to deposit of the arrears of rent and the amount of interest as calculated by the learned Trial Court vide order dated 2nd August, 2022, less the amount already deposited, within a period of 15 days from the date of communication of this order by either of the parties, failing which, it would be open to the learned Trial Court to take recourse to Section 7(3) of the Act of 1997.

Parties are directed to communicate this order to the learned trial court.

With the aforesaid directions, the civil revision being **C.O.1962 of 2023** stands disposed of.

All connected applications, if any, stand disposed of.

There shall be no order as to costs.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of the order,
if applied for, be given to the parties on
compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)