

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 2743 of 2025

Raj Kishore Choudhury @ Chowdhury
Vs.
Devraj Agarwal

For the Petitioner : Mr. Somnath Choudhury
Ms. Arpita Chowdhury

For the Opposite parties : Mr. Pratyush Patwari
Mr. Laxmi Agarwal

Heard on : 13/08/2025

Judgment on : 13/08/2025

Hiranmay Bhattacharyya , J. :

1. This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated November 11, 2024 passed by the learned Civil Judge (Jr. Div.), 5th Court at Howrah in Title Suit No.1230 of 2017.

2. By the order impugned the application under Section 151 of the Code of Civil Procedure filed by the petitioner herein praying for permission to deposit the rent from April, 2019 to March, 2022 together with interest stood rejected and the application under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 stood allowed.
3. The opposite party herein filed a suit for eviction on the grounds enumerated under Section 6 of the West Bengal Premises Tenancy Act, 1997 (for short 1997 Act). After entering appearance in the said suit the petitioner filed applications under Section 7(1) and Section 7(2) of the 1997 Act. The learned trial judge, by an order dated June 21, 2021, disposed of the application under Section 7(2) of the 1997 Act by directing the petitioner to pay the arrears of rent amounting to Rs.60720/- as per the agreement and consent of both the parties as arrear rent from August, 2011 to March, 2019 to the plaintiff within the prescribed period. The petitioner was further directed to pay the rent for the month of April, 2019 to June 2019 to the opposite party and the petitioner was directed to continue to deposit the current rent in Court in accordance with law.
4. The petitioner thereafter paid the sum of Rs.60720/- to the opposite party by a demand draft dated April 2, 2019 and the opposite party accepted the said payment. Alleging non-compliance of the provisions of Section 7(1) and Section 7(2) of the

1997 Act, the opposite party filed an application under Section 7(3) of the 1997 Act praying for striking out the defence of the petitioner against delivery of possession. Such application was filed on February 17, 2022. Thereafter the petitioner filed an application under Section 151 of the Code of Civil Procedure on March 9, 2022 praying for an order permitting the petitioner to deposit the rent for the months of April, 2019 to March, 2022 together with interest and to allow the petitioner to deposit current rent month by month thereafter.

5. The application under Section 151 of the Code of Civil Procedure stood rejected and the application under Section 7(3) of the 1997 Act stood allowed by the impugned order.
6. The learned advocate appearing for the petitioner submits that the petitioner could not deposit the monthly rent from the month of April, 2019 onwards on account of the cease work called by the Bar Association of Howrah Court, subsequent illness of the petitioner as well as COVID-19 pandemic. He further submits that immediately after the situation became normal the petitioner filed the application under Section 151 of the Code of Civil Procedure praying for an order permitting the petitioner to deposit the arrear rent. The learned advocate further submits that the Hon'ble Supreme Court in several orders passed in a *suo moto* writ petition extended the period of limitation under various statutes and, therefore, the petitioner should be permitted to deposit the arrear

rent by extending the time for making deposit of the rent for the aforesaid period. The learned advocate appearing for the petitioner further submits that the petitioner is ready and willing to pay the entire arrears of rent to the opposite party within the time limit as may be directed by this Court.

7. Mr. Patwari, learned advocate appearing for the opposite party seriously disputes the submissions made by the learned advocate for the petitioner. He submits that the petitioner did not comply with the directions contained in the order dated June 21, 2019 thereby disposing of the application under Section 7(2) of the 1997 Act in its true letter and spirit. He further submits that the cease work called by the Bar Association of the Howrah Court continued only up to April, 2019 and in support of such contention he placed a resolution of the Bar Council of West Bengal in that regard. Mr. Patwari further placed reliance upon an order passed in a *suo moto* public interest litigation being W.P.No.9313 (W) of 2019 in support of his contention that the normalcy stood restored at the Howrah Court on and from April 29, 2019. The learned advocate for the opposite party further submits that the time limit indicated for complying with the requirement under Section 7(1) and Section 7(2) of the 1997 Act are mandatory and the same cannot be extended. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Bijay Kumar***

Singh & Ors. vs. Amit Kumar Chamariya & Ors., reported at ***AIR 2019 Sc 5461***.

8. Heard the learned advocates for the respected parties and perused the materials placed.
9. Record reveals that the learned trial judge disposed of the application under Section 7(2) of the 1997 Act filed by the petitioner herein by an order dated June 21, 2019. By the said order the petitioner was held to be a defaulter in payment of rent since August, 2011. The learned trial judge directed the petitioner to pay the arrear rent amounting to Rs.60720/- as per the agreement and consent of the petitioner and the opposite party as the arrear rent from August, 2011 to March, 2019 to the opposite party within the period stipulated thereunder.
10. It is not in dispute that the aforesaid amount of Rs.60720/- was duly paid by the petitioner by way of a demand draft to the opposite party within the time limit indicated in the order dated June 21, 2019. However, the said order dated June 21, 2019 also directed the petitioner to pay rent for the months from April, 2019 to June, 2019 to the opposite party and the petitioner was also directed to continue to deposit the current rent in Court in accordance with law.
11. The petitioner took a specific stand in the application under Section 151 of the Code of Civil Procedure that due to ongoing cease work called by the Bar Association of the Howrah Court he

could not deposit the amount in Court. However, it appears from the order dated June 21, 2019 that the petitioner was directed to pay rent for the month of April, 2019 to June, 2019 to the opposite party and the petitioner was not directed to deposit the same in Court. The application under Section 151 of the Code of Civil Procedure does not state as to what prevented the petitioner from paying the amount to the opposite party directly.

12. Be that as it may, it appears from the resolution taken by the Bar Council of West Bengal that the cease work against atrocities of the police at Howrah Court including the learned advocates continued up to April 29, 2019. At this stage it would also be relevant to take note of the order passed by the Hon'ble Division Bench on April 29, 2019 in *suo moto* writ petition being W.P. No.9313 (w) of 2019 wherefrom it appears that the Hon'ble Division Bench observed that the High Court on the Administrative Side, at the appropriate level, will carry out requisite exercise to ensure that judicial functioning of the Courts at Howrah is smoothly carried out and for that purpose the organizations of the advocates, including the Bar Council of West Bengal and other requisite stake-holders were requested to extend such cooperation as the High Court may require and call for.
13. No material has been produced by the petitioner before this Court in support of his case that the cease work continued even after April 29, 2019. The other ground taken in the application under

Section 151 of the Code of Civil Procedure is that the petitioner could not deposit the rent due to his illness. However, no documents in support of illness has been produced either before the learned trial judge or before this Court at the time of hearing of this civil revision application.

14. It is not in dispute that the Hon'ble Supreme Court in the *suo moto* writ petition passed orders excluding the period from March 15, 2020 till February 28, 2020 for the purpose of calculation of the period of limitation under various statutes. Said order(s) cannot come to the aid of the petitioner as the period of default is for a prior period also.
15. The order disposing of the application under Section 7(2) of the 1997 Act was passed after the cease work was withdrawn by the Association of the learned advocates.
16. It is now well-settled that the provisions of sub-section (2) of Section 7 are mandatory and required to be scrupulously followed by the tenant, if the tenant has to avoid eviction on account of non-payment of arrears of rent under Section 6 of the 1997 Act. Though there is an outer limit for extension of time to deposit the arrears of rent in terms of proviso to sub-section (2) of Section 7 of the Act but the same can be allowed only upon a prayer to such effect being made in that regard.
17. It is not in dispute that the petitioner did not pray for extension of time within the time limit as indicated in the proviso to Section 7(2)

of the 1997 Act. Proviso cannot be resorted to after expiry of the time-limit till which the Court can extend.

18. At this stage it would be relevant to take note of the observation of the Hon'ble Supreme Court in the case of **Bijay Kumar Singh (supra)** which is extracted hereunder:-

“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 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 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 (2A) and (2B) which was being examined by this Court in *B.P. Khemka*. Sub sections (2A) and (2B) of Section 17 of 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso of sub sections (2) and (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 pre-condition 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.” **(emphasis supplied).***

19. It is not in dispute that the application under Section 151 of the Code of Civil Procedure praying for permission to deposit the arrear rent was filed only after the application under Section 7(3) of the 1997 Act was filed by the opposite party herein. In view of provisions under Section 7(3) of the 1997 Act, this Court is of the considered view that once there is failure on the part of the tenant to comply with the requirements under Section 7(1) or Section 7(2) of the 1997 Act within the extended time limit, the provisions of Section 7(3) of the 1997 Act automatically stands attracted.

20. Petitioner failed to comply with the directions contained in the order passed under Section 7(2) of the 1997 Act dated June 21, 2019. This Court holds that the learned trial judge was right in rejecting the prayer for deposit of the arrear rent for the months of April, 2019 onwards and striking out the defence of the petitioner against delivery of possession. The order impugned does not suffer from any infirmity.
21. For all the reasons as aforesaid this Court is not inclined to interfere with the order impugned.
22. With the above observations CO 2743 of 2025 stands dismissed.
23. There will be no order as to costs.
24. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)