

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA

Civil Revisional Jurisdictionn

Appellate Side

Present :

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 2726 of 2024

**Ram Prabash Singh @ Ram Prabaesh Singh
-Versus-
Nityananda Paul & Anr.**

For the petitioners : Mr. Anirban Gope

For the Opposite parties :

Heard On: : 20.03.2025

Judgment On: : 20.03. 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 being no. 52 dated March 12, 2024 and order being no. 55 dated 5th June, 2024 both passed by the learned Judge, 4th Bench, Presidency

Small Cause Court, Calcutta in Ejectment Suit No. 7019 of 2014.

2. The opposite parties herein filed a suit for eviction under Section 6 of the West Bengal Premises Tenancy Act, 1997. After entering appearance in the said suit, the petitioner herein filed applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997. The application under Section 7(2) of the West Bengal Premises Tenancy Act was allowed on August 25, 2015 permitting the defendant/petitioner herein to deposit the arrears of rent for the period from July, 2011 to January, 2015 within one month from the date of the order.
3. It is not in dispute that the arrears of rent directed to be deposited by the order dated August 25, 2015 was deposited. However, the petitioner subsequently defaulted in payment of rent for the period from January, 2018 to June, 2022. The petitioner thereafter filed an application under Section 151 of the Code of Civil Procedure praying for an order permitting the petitioner to deposit the arrears of rent @ Rs. 175/- per month for the period from January, 2018 to June, 2022.

4. The learned trial judge by an order being no. 40 dated July 7, 2022 permitted the defendant/petitioner herein to deposit the arrears of rent as stated in the petition at his own risk without any prejudice to the landlords/plaintiffs and also not hampering any right, if any, already accrued to the plaintiffs due to non-deposit of rent by the defendant side for the period from January, 2018 to June, 2022.
5. Subsequent to the said order another order was passed on 3rd August, 2022 taking note of the earlier order dated July 7, 2022 and observing that in continuation of the aforesaid order the defendant is also permitted to deposit the arrears of interest at the risk of the defendant without causing any hindrance to the rights, if any, accrued to the plaintiff due to non-deposit of rent in time.
6. In the meantime the plaintiffs/opposite parties herein filed an application under Section 7 (3) of the West Bengal Premises Tenancy Act, 1997 which was allowed by an order dated March 12, 2024 thereby striking out the defense of the petitioner against delivery of possession.
7. Thereafter, the petitioner filed an application under Section 151 of the Code of Civil Procedure

praying for recalling of the order dated 12th March, 2024 on the ground that the learned advocate for the petitioner could not file the court deposit challan to show that arrear rent for the period from January, 2018 to June, 2020 has been deposited.

8. Learned advocate appearing for the petitioner submits that when the learned trial judge allowed the petitioner to deposit the arrear rent for the period from January, 2018 to June, 2022 and deposit has been made by the petitioner in compliance with the said order, the learned trial judge ought not to have allowed the application under Section 7 (3) of the West Bengal Premises Tenancy Act, 1997. He further submits that a litigant should not suffer due to the fault of the learned advocate and as the learned advocate for reasons beyond his control could not appear when the order dated 12th March, 2024 was passed for which the court deposit challan could not be produced to show compliance of the order dated 7th July, 2022.

9. Section 7(1)(a) of the West Bengal Premises Tenancy Act states that the tenant shall 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 was made together with interest @ of 10% per annum on a suit being instituted by the landlord for eviction on any one of the ground referred to in Section 6. Sub-section 7 (1)(b) states that the payment in terms of Section 7(1)(a) has to 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. Sub-section (c) of Section 7(1) states that 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. Sub-section 2 of Section 7 deals with a case when there is a dispute as to the amount of rent payable by the tenant. In such a case the tenant after entering appearance has to deposit the rent admitted by him to be due from him together with an application for adjudication of the dispute and the learned Civil Judge, upon receipt of such application, is under an obligation to decide such dispute and if after such adjudication it is found that any amount is due from the tenant an order specifying the amount due from the tenant should be passed and thereupon the tenant defendant shall deposit such amount within the time limit as stipulated in the said section. Proviso to Section 7(2) states that an

extension of time may be granted by the Civil Judge only once and the period of such extension shall not exceed two months.

10. In the case on hand, it is not in dispute that the petitioner has complied with the directions contained in the order passed by the learned civil judge under Section 7(2) of the 1997 Act but the fact remains that the petitioner defaulted in complying with the provisions under Section 7(1) (c) of the West Bengal Premises Tenancy Act after adjudication of the dispute under Section 7(2) of the 1997 Act. Section 7(1) (c) of the 1997 Act does not contemplate filing of any application.

11. In view thereof, this court is of the considered view that the provisions of Section 5 of the Limitation Act shall not apply for condonation of any delay in complying with the requirement as contemplated under Section 7(1)(c) of the 1997 Act.

12. Admittedly the petitioner herein defaulted in payment of rent for the period from January, 2018 to June, 2022.

13. Though the petitioner prayed for permission to deposit the same and the learned trial judge by an order dated July 7, 2022 permitted the defendant to deposit the same but the same was permitted to be deposited

at the risk of the tenant and without any prejudice to the plaintiffs and also without hampering any right, if any, already accrued to the plaintiffs due to non-deposit of rent by the defendant since January 2018 to June, 2022.

14. Sub-section (3) of Section 7 states that if the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, the Civil Judge shall order the defense against delivery of possession to be struck out and shall proceed with the hearing of the suit.

15. The expression 'shall' used in Section 7 (3) makes it a mandatory one. Thus if the tenant fails to deposit or pay any amount referred to in Section 7(1) or 7(2) within the time limit specified therein or within such extended time limit the Civil Judge is under a statutory obligation to order the defence against delivery of possession to be struck out.

16. Section 7(3) also does not contemplate filing of any application. Thus once there is a default in complying with the provisions of Section 7(1) or Section 7 (2) the provisions of Section 7(3) of the 1997 Act stands attracted automatically and the Civil Judge is

under a statutory obligation to strike off the defence against delivery of possession. In the case on hand, since there is an admitted default of rent for the period from January, 2018 to June, 2022 right accrued in favour of the plaintiffs /opposite parties herein under Section 7(3) to have the defence against delivery of possession to be struck out and the same is not dependent upon filing of any application for such purpose.

17. The order dated 7th July, 2022 as well as the subsequent order dated 3rd August, 2022 permitting the petitioner to deposit the arrear rent for the period from January, 2018 to June, 2022 and the accrued interest respectively was at the risk of the petitioner and without causing any hindrance to the rights, if any, accrued to the plaintiffs due to non-deposit of rent.

18. Even if the argument of the petitioner is accepted that he has deposited rent as well as the interest in terms of the order passed on 7th July, 2022 and 3rd August, 2022 the same cannot take away the right which accrued in favour of the plaintiff under Section 7(3) of the 1997 Act. The learned trial judge assigned cogent reasons for allowing the application under Section 7(3) of the West Bengal Premises Tenancy

Act,1997. This Court is not inclined to interfere with such order.

19. For the reasons as aforesaid, this Court is also not inclined to interfere with the order dated 5th June, 2024 rejecting the application under Section 151 of the Code of Civil Procedure filed by the petitioner praying for recalling of the order dated 12th March, 2024.

20. For the reasons as aforesaid, C.O. 2726 of 2024 stands dismissed.

21. There shall be, however, no order as to costs.

22. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)