

Sl.20
27.08.2025
Court No.6
BP

C.O. 3085 of 2025

Pranab Kumar Dey & Ors.
-versus-
Nishit Porey

Mr. Debnath Ganguly
Mr. Partha Sarathi Das
Mr. Aranya Saha
Mr. Supriyo Dutta
... for the petitioners

Mr. Imtiaz Belal
Mr. P. Sinha Roy
..for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against the orders dated February 13, 2023, April 5, 2023 and June 16, 2025 all passed by the learned Chief Judge, Small Causes Court at Calcutta in Ejectment Suit No. 1 of 2023.

By the order dated February 13, 2023 the applications under Section 7(1) and Section 7(2) of the West Bengal Premises Tenancy Act, 1997 was fixed for hearing on 5th April, 2023. By the order dated 5th April, 2023 the application under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 was allowed and the defendant/opposite party was permitted to pay/deposit the admitted 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, if any, within thirty days from the date of the order.

By the order dated June 16, 2025 the hearing of the application under Section 7(2) of the 1997 Act was adjourned.

The learned advocate appearing for the petitioners submits that the summons of the suit was served upon the petitioners on 20th January, 2023. He further submits that in view of the provisions laid down under Section 7(1)(a) read with (b) of the 1997 Act the petitioners were required to deposit the admitted arrears of rent within a period of thirty days from the date of service of summons. He submits that the opposite party did not deposit the rent within thirty days from the date of service of summons. He further submits that the learned trial judge without appreciating the fact that the petitioners could not have been permitted to deposit the admitted arrears of rent beyond the stipulated time limit as mentioned in Section 7(1) of the 1997 Act allowed the opposite party to deposit the arrears of rent by an order dated 5th April, 2023. He places reliance upon an order passed by a Co-ordinate Bench on 23rd April, 2024 in C.O. 576 of 2024 in the case of Veer Agarwal & Anr. Vs. Sri Subrata Senapati in support of his contention that the opposite party ought to have deposited the admitted arrears of rent within the period of thirty days from the

date of service of summons irrespective of pendency of the applications under Section 7(1) and Section 7(2) of the 1997 Act.

Heard the learned advocate for the opposite party on such submission.

The record reveals that the applications under Section 7(1) and Section 7(2) of the West Bengal Premises Tenancy Act, 1997 was filed on 13th February, 2023. It is not in dispute that the said applications were filed prior to expiry of thirty days from the date of service of summons. It appears from the order dated 13th February, 2023 that the learned trial judge fixed the hearing of the applications under Section 7(1) and Section 7(2) of the West Bengal Premises Tenancy Act, 1997 on 5th April, 2023 and for filing of written objection to such applications in the meantime.

There is substance in the submission of the learned advocate for the petitioners that Sections 7(1) of the 1997 Act does not contemplate filing of any application and the tenant is required to pay/deposit 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 @ 10% per annum within one month of the service of summons. Though Section 7(1) of the 1997 Act does not contemplate filing of an application but only requires deposit of rent but the fact remains that an application

praying for permission to deposit the arrears of rent under Section 7(1) of the 1997 Act was filed well within the prescribed time limit and the learned trial judge after considering the said application fixed the date of hearing of the same and also allowed an opportunity to the petitioners/landlord to file a written objection thereto.

Since the application was fixed for hearing by the learned trial judge on a date long after the expiry of thirty days from the service of summons, the petitioners could not have been faulted for making a deposit pursuant to the order passed by the learned trial judge on 5th April, 2023.

It is well settled that a litigant should not suffer for the act of the court.

That apart the order dated 5th April, 2023 was passed in the presence of the petitioners and the instant application under Article 227 of the Constitution of India has been filed only on August 20, 2025 challenging the order dated 5th April, 2023. That apart, the order dated 5th April, 2023 has been challenged after more than two years after the opposite party has already complied with the directions contained in the order dated 5th April, 2023.

For all the reasons as aforesaid, this Court is not inclined to entertain the challenge at the instance of the petitioners against the order dated 5th April, 2023.

Insofar as the order dated 13th February, 2023 is concerned, by the said order only a date for hearing of the applications under Section 7(1) and Section 7(2) of the 1997 Act was fixed. Thus the said order did not decide the rights of the parties.

Insofar as the order dated 16th June, 2025 is concerned, the learned advocate appearing for the petitioners submits that in course of hearing of the application under Section 7(2) of the 1997 Act, the petitioners have raised an objection as to the validity of the deposit made by the petitioners pursuant to the order dated 5th April, 2023 and on such submission being made the learned trial judge left the petitioners free to challenge the order dated 5th April, 2023 in accordance with law.

This Court is not inclined to interfere with the order dated 16th June, 2025 as the right of the petitioners cannot be said to have been affected by the said order in any manner.

In the case of Veer Agarwal (*supra*) the Co-ordinate Bench did not hold that in case a date for hearing of the application under Section 7(1) of the 1997 Act is fixed after thirty days from the date of service of summons all deposits made pursuant to the order allowing the application under Section 7(1) of the 1997 Act would be invalid deposit.

In view thereof, the said decision cannot come to the aid of the petitioners in the case of hand.

For all the reasons as aforesaid, this Court is not inclined to interfere with the order impugned.

Accordingly, C.O. 3085 of 2025 stands dismissed.

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

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

(Hiranmay Bhattacharyya, J.)