

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present: -

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS

C.O. 3381 of 2025
BASAB SHAW
VS.
ANIMA MUKHERJEE & ORS.

For the Petitioner : **Mr. Sounak Bhattacharyya, Adv.**
Mr. Avisek Das, Adv.
Mr. Bikash Kumar Singh, Adv.

Last heard on : **17-11-2025**

Judgement on : **17.11.2025**

Uploaded on : **18.11.2025**

CHAITALI CHATTERJEE DAS, J. :-

1. This is an application under article 227 of the constitution of India directed against an order dated April 9, 2025 and Order No.12 dated August 28, 2025 passed by the Learned Chief Judge, Small Causes Court at Calcutta in Ejectment Suit No.4 of 2025.
2. It is the case of the petitioner that an ejectment suit for ejectment and delivery of Khas possession was filed by him before the learned Chief Judge, Small Causes Court at Calcutta, which was transferred to the Court of Learned 5th Judge, Small Causes Court at Calcutta being registered as Ejectment Suit No.4 of 2025 against the present opposite party/defendants. The Opposite Party no.3 appeared in suit

on January 31, 2025 and filed application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 on February 14, 2025 and direction was given to serve the copy of the said application to the plaintiff/petitioner. It was complied on February 27, 2025 and in spite of non-compliance of the statute under Section 7(1)(b) of the West Bengal Premises Tenancy Act, 1997 the learned Court allowed the prayer with a liberty to the defendant no.3/opposite party to deposit the arrear as well as the current rent, which has prejudiced the present petitioner. Such order cannot be passed under Section 7(1) West Bengal Tenancy Act as the validity of such deposit cannot be questioned under Section 7(2) of the said Act once this liberty has been granted.

3. The petitioner/plaintiff preferred a recall application on April 29, 2025 under Section 151 of the Code of Civil Procedure for recalling/modification of the said order, which was taken up for hearing on August 20, 2025 and the Learned Court instead of disposing of the same granted liberty to the petitioner to agitate the grievance before the higher forum. Being aggrieved, this revisional application has been filed before this Court.
4. None appears on behalf of the opposite parties. The affidavit of service is before this Court and it reveals that the service has been effected as received on October 31, 2024. It is the contention of the learned advocate representing the petitioner that admittedly there was a delay in filing such application under Section 7(1) of the West Bengal Premises Tenancy Act as per the statute and it is settled proposition of law that such delay cannot be condoned. Learned Advocate representing the petitioner relied upon decision of ***Seventh Day Adventist Senior Secondary School Vs. Ismat Ahmed & Ors.***¹ reported in wherein the specific question arises before the Court whether application filed under Section

¹ 2025 INSC 984

7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 without depositing of rent after lapse of statutory period of 30 days along with application under Section 5 of Limitation Act, rejected by Small Causes Court and not confirmed by the High Court is justified there.

5. In paragraph 22 of the said judgment, it was observed by the Hon'ble Supreme Court on perusal of the relevant provision that on institution of a suit, it is incumbent on the tenant to deposit the rent, therefore, the word "tenant shall" has been used with "pay to landlord or deposit". Even in Section 7(1)(b), it is provided that such payment or deposit "shall" be within one month of the service of summons or within one month from the date of appearance. It is further held that in Section 7(1)(c) it is provided that after the payment or deposit has been made by in terms of Section 7(1)(a), the tenant "shall" continue to do the same by 15th of each succeeding month.

It is therefore necessary now relevant to reproduce the provision of West Bengal Premises Tenancy Act, which are to be examined. Hence the provision is reproduced herein above:

"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 the section, pay to be 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.

(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.

(3) 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 defence against delivery of possession to be

struck out and shall proceed with the hearing of the suit.

(4) If the tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant, shall be made by the Civil Judge, but he may allow such cost as he may deem fit to the landlord:

Provided that the tenant shall not be entitled to any relief under this sub-section if, having obtained such relief once in respect of the premises, he again makes default in payment of rent for four months within a period of twelve months or for three successive rental periods where rent is not payable monthly.”

Therefore, it is not in dispute that the arrear rent has to be paid within month either from the date of receipt of the summons of the suit or from the date when the tenant entered appearance in the suit.

6. It was submitted on behalf of the defendant no.3 that without any order the deposit cannot be made and the learned Trial Court held that the plaintiff took adjournment on the date as a result, the petitioner under Section 7(1) of the West Bengal Premises Tenancy Act could not be disposed of on the date of fixed i.e. February 27, 2025 and the plaintiff did not deny the delay in filing the petition under Section 7(1) of the West Bengal Premises Tenancy Act. Accordingly permitted to deposit the rent.

In this regard, again paragraph 37 of the case In **Seventh Day Adventist Senior Secondary School (supra)** is to be looked into, which is as follows”

“37. The Court’s jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the

fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it, which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the read intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character."

7. Therefore, it is clearly observed that word "shall" in Section 7(1)(a), 7(1)(b) and 7(2) is mandatory compliance for a tenant failing, which his defence against the eviction shall be struck up. So, to avail the benefit, when suit for recovery of possession is filed, the pre-requisite is to deposit the rent with dispute/admitted amount within the specified time. In the instant case, it is abundantly clear that the tenant admittedly had the knowledge about the suit on January 18, 2025 and therefore, he entered appearance and filed the application on February 14, 2025 without any application for condonation of delay and even if it would have been filed, the same could not have been considered by the Court in view of the law laid down by the Hon'ble Supreme Court. That apart, admittedly, the tenant did not deposit the amount, which is admitted by him and as it is discussed above

there remains no other alternative for the tenant but to deposit the admitted arrear rent on receiving of the summons or from the date of knowledge of the filing of the suit and if any dispute exists, with an application under Section 7(2) of the Act.

8. Therefore, in view of the above facts and circumstances it goes without saying that the learned court was in utter misconception of legal framework has allowed the tenant to deposit arrear amount without considering that the tenant did not comply with the mandatory provision and the court was denuded to exercise any power to extend the statutory period and hence the order passed by the learned Court has not legal sanctity and therefore, is liable to be set aside.
9. Accordingly, the present petition stands allowed and the order passed by the learned Court is hereby set aside and the court is directed to dispose of the suit in accordance with law.
10. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.
11. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(CHAITALI CHATTERJEE (DAS), J.)