

Item No. 19
17.11.2025
Court. No. 6
GB/Sudipta

C.O. 3892 of 2025

Kanak Devi Sharma & Anr.
Vs.
Asha Bansal & Ors.

Mr. RAchit Lakhmani,
Mr. Subham Gupta,
Mr. Raunak Shaw,
Mr. Piyush Kumar,
Mr. Rajsekhar Bal Bakshi

...for the Petitioners.

Mr. Meghnath Dutta,
Mr. Arijeet Dash Mallick,
Mr. Saptarshi Bhattacharjee,
Ms. Harshita Nath

...for the Opposite Parties.

1. By the order dated July 16, 2025, the learned Judge, 5th Court, City Civil Court at Calcutta rejected the application filed under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act') in Ejectment Suit No.45 of 2022.
2. Mr. Lakhmani, learned advocate for the petitioners submits that the learned court rejected the application under Section 7(1) of the said Act without considering the fact that the pleadings in the application clearly indicated the bona fide intention of the tenant to pay the arrears and accordingly, permission was sought for from the learned court.
3. It is further submitted that adjudication of the arrears and quantum of rent should have been done by the learned court under Section 7(2) of the said Act, before the court had the occasion to dismiss the

application under Section 7(1) of the said Act. Mr. Lakhmani submits that the dues from August 2021 to March 2022 were waived and as such, there were no admitted arrears. The collecting 'sarkar' of the landlord refused to accept the rent and as such, the question of admitted arrears did not arise. The rest of the monthly rents were deposited with the rent controller. It is further contended by Mr. Lakhmani that as an application under 7(2) was filed and the relationship between the petitioner and the opposite parties was challenged, an application for addition of party had been filed, which is pending.

4. Thus, the contentions of the petitioner should have been gone into by the learned court on the issues involved both in the applications under Sections 7(1) and 7(2) of the said Act.
5. Reliance has been placed on the decisions of this Court in the matter of *M/s. Smrat Enterprise vs. Shree Ram Trust* reported in *2017 SCC OnLine Cal 12088* and in the matter of *Sachindra KumarJha and Others vs. Asha Bansal and Others* reported in *2025 SCC OnLine Cal 3313*. Mr. Lakhmani further submits that the petitioner was ready to deposit the money, but was awaiting a leave from the court to do so. Unless such leave was granted, the department would not accept the money.
6. The learned court held that the application was filed on October 29, 2022, along with an application under

Section 7(2) of the said Act. The defendant appeared in the suit on October 29, 2022. Section 7(1) of the said Act provides an in built limitation period and no court has the power to extend the time for deposit of the admitted arrears. The tenant failed to discharge his obligation with regard to compliance of Section 7(1). Along with the application, the deposit of admitted arrears with a statutory interest of 10% ought to have been made. The tenant had admitted that the last paid rent was Rs.662/- per month. Thus, the admitted arrears from August 2021 to March 2022 had not been deposited. It is admitted that the collecting 'sarkar' refused the rent tendered. The money sent by the money orders were also returned. Upon applying the law and discussing the same the learned court held that the provision of Sub-Section 1 of Section 7 required the tenant either to pay the landlord or deposit in the court, the admitted rent within one month from the date of receipt of summons or within one month from date of appearance, in the event the tenant appears without receiving the summons. Although, the petitioner appeared within one month from service of summons and filed an application, but the said application was not accompanied by any deposit of admitted rent.

7. I do not find any illegality in the order impugned. Moreover, when the tenant fails to deposit the admitted rent within the time stipulated, such time

cannot be extended by court. The prayer under Section 7(2) could not be heard by the court as compliance of Section 7(1) is a sine qua non to the adjudication of the application under Section 7(2). Unless the tenant complies with the mandate of the law under Section 7(1) within the time stipulated in the said section, the question of adjudication of the applicant under Section 7(2) would not arise. The learned court has rightly rejected the application.

8. Reference is made to the provision of the law which is quoted below:-

“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.

(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 subsection, 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 subsection (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].”

9. The relevant decisions are quoted below.

10. In the decision of **Seventh Day Adventist Senior**

Secondary School Vs. Ismat Ahmed & Ors. reported

in **2025 INSC 984**, the Hon’ble Apex Court held as follows:-

“12. Bare reading of the aforesaid provisions makes it clear that as per sub section (1) of Section 7, in a suit for eviction filed by the landlord on any grounds as specified in Section 6 of the WBPT Act, the tenant shall, subject to provisions of sub-section (2), pay to the landlord or deposit in the Court, all arrears of rent calculated at the rate at which it was last paid together with interest at the rate of ten per cent per annum. As mandated by Section 7(1)(b), the said payment or deposit shall be made within one month from the date of service of the summons on tenant or from the date of appearance in case the tenant appears without service of summons. The said two provisions apply in a case where arrears of rent are admitted. Thereafter, Section 7(1)(c) puts a further condition that after the admitted arrears are paid, the tenant shall continue to pay or deposit with the landlord or Civil Judge, as the case may be, a monthly sum of rent at that rate on or before fifteenth day of consecutive month.

13. As per sub-section (2), if there is a dispute as to the amount of rent payable by the tenant, he is required to deposit the admitted amount due from him in the Court within the time as specified [one month as per Section 7(1)(b)] ‘together’ with an application for determination of the rent payable. It is emphasised that deposit of rent shall not be accepted unless the said prayer is accompanied with an application for determination of the rent. Meaning thereby, to seek protection against eviction, the tenant is required to deposit the admitted amount of rent within the time as specified, i.e., within one month from the date of summons served or where tenant appears in the suit without the summons being served upon him, along with an application for determination of the rent so payable. As such, in case where there is no dispute as to arrears of rent, it ought to be paid within a month and, in case it is in dispute, even then, tenant would be required to deposit within the same time coupled with an application as discussed above.

14. To supplement the aforesaid, word ‘together’ used in Section 7(2) preceding ‘with an application for determination of the rent payable’ emphasises that the

deposit of admitted amount of rent within a period of thirty days as specified must accompany the application for determination of rent payable. At this stage, we can profitably refer to 'P. Ramanatha Aiyar's Advanced Law Lexicon'⁵ to understand the meaning of 'together'. According to the same, 'together' means "in company" or "conjointly" or "simultaneously". Accordingly, on contextual application of the word 'together', it is clear that the application for determination of rent must be filed within the same period which is provided for 'deposit' or 'pay', i.e., thirty days.

15. On receiving such application, the Court having regard to the rate of rent last paid and period of which default has been made by the tenant shall make an order on such application not later than one year and thereupon the tenant shall within the period of one month of the date of such order, pay to the landlord the amount so specified in the order. That is to say, the determination of the rent on the parameters as specified in the latter part of sub-section (2) and on such determination within one month of the date of the order, the amount as specified in the order is to be paid. The proviso thereto deals with the extension of time, which can only be once and not beyond period of two months.

16. Having perused Section 7 of WBPT Act, it is apparent that sub-section (1) is subject to sub-section (2). Further, sub-section (3) specifies consequences of non-compliance of sub-sections (1) and (2) by the tenant, leading to striking out of defence against delivery of possession and the Court shall proceed with the hearing of the suit. Sub-section (4) of Section 7 of WBPT Act makes it clear that in a proceeding of eviction, no order for delivery of possession of the premises to the landlord shall be passed by the Court on the ground of default of payment if the tenant deposits the rent under sub-sections (1) or (2), but the Court may allow such cost to the landlord as deemed fit. As per proviso, it is clear that if tenant was allowed the relief as indicated hereinabove, but later he makes default in payment of rent for four months within one year or in case three successive rental periods, where the rent is not payable monthly, the relief of protection against eviction available under sub-section (4) cannot be allowed granting benefit of protection against eviction to the tenant.

17. In view of the foregoing, while bringing the said Section, the legislative intent was to provide protection to the tenant against eviction, subject to compliance of deposit of arrears of rent if there is no dispute as to amount of rent, within one month from the date of service of summons, along with interest at the rate of ten per cent per annum. The tenant is further required to deposit the regular rent as prescribed in Section 7(1)(c). In case, there is a dispute of the amount of rent payable, the tenant is required to deposit the amount due as admitted by him within thirty days and file an application conjointly for determination of rent within the same period. The said application may possibly be entertained and decided by the Court thereafter only. This Court in the case of Bijay Kumar (supra) had an occasion to consider the scope of Section 7(2) of the WBPT Act wherein the tenant had not deposited or paid the admitted rent while moving an

application seeking determination of rent. Trial Court while allowing such application granted time to pay the admitted rent, but High Court set-aside the order of the Trial Court. While confirming the order of the High Court on the issue of deposit of rent admitted by tenant under Section 7(2) on the application for determination of rent, this Court observed as under – “21. ...the deposit of rent along with an application for determination of dispute is a precondition 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.”

18. Thus, in case of disputed rent, this Court was of the view that to avail the benefit of protection against eviction under the WBPT Act, the tenant has to do the following to avoid eviction, first, to deposit rent admitted by him to be due; second, an application for determination of rent payable be filed along with. The tenant had neither deposited, nor paid the admitted rent and had only filed the application for determination of rent belatedly along with an application under Section 5 of the Limitation Act, 1963.

* * *

* * *

29. In addition, Section 7(1) and first part of sub-section (2) of Section 7 are comparable, both requiring deposit/pay admitted/undisputed amount of rent. However, Section 7(2) casts an additional obligation on the tenant to file an application for determination for rent along with such deposit within the specified time frame. The Legislature in its wisdom did not provide for any extension of time for payment or deposit under Section 7(1), making it clear that no such extension was intended in the corresponding part in Section 7(2). Since the deposit and application are to be made together by the tenant mandatorily within a specific time, in our considered view, extension of time as given in proviso to Section 7(2) is not applicable to either. Therefore, the proviso can only be construed to permit extension in payment of amount so specified in order of determination passed by the Civil Judge as envisaged in the latter part of sub-section (2) of Section 7. Stated differently, the word ‘may’ used in the proviso of Section 7(2) would only relate to extension of time, which is a discretion vested with the Civil Judge and it would not construe any other meaning. Moreover, it can be said that since in subsection (3) of Section 7, the consequence of non-compliance has been specified, therefore, use of the word ‘shall’ in Sections 7(1)(a), 7(1)(b) and 7(2) is a mandatory compliance for the tenant, failing which, his defence against eviction shall be struck off.

* * *

* * *

32. In the said context, if we see the intent of legislature as discussed and relying upon two cases of three-Judge Bench of this Court, we intend to explain that Section 7 of the WBPT Act prescribes when a tenant can get the benefit of protection against eviction. The opening word of sub-section (1) i.e., ‘on a suit being instituted by the landlord for eviction’ makes it clear that in case the tenant defaults

in payment of rent and the suit is brought as specified in the WBPT Act, then on deposit/payment of admitted rent, an opportunity ought to be provided to get the benefit of protection against eviction. Therefore, for availing such benefit, some pre-requisites are there, which is of deposit of the rent, either disputed or undisputed as admitted, within the specified time. In case, the rent is disputed, the tenant has to mandatorily file an application, by virtue of word 'shall' used to such extent either in Section 7(1)(a)(b)(c) or first part of Section 7(2). However, in the latter part of Section 7(2), which is for payment of amount on determination by the Civil Judge within the time as specified after compliance of the pre-deposit and on filing an application for determination within the specified time, such payment has to be made by the tenant within one month of date of order passed by Civil Judge. The proviso refers to extension of time with an intent to grant one more opportunity to the tenant after determination of rent for deposit.

33. At this juncture, we also deem it relevant to refer sub-section (3) of Section 7, wherein it is specified that if tenant fails to deposit or pay any amount referred in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted by the Court, his defence against delivery of possession shall be struck out. So it deals with the following contingencies; first is of Section 7(1)(a)(b)(c), second is of former part of Section 7(2) and third is of latter part of Section 7(2) and in default of either of the situations, the Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit specifying the consequences of failure to do any of the three situations. While using the word extended time in sub-section (3), the word shall has been used, therefore, this would also be referable to the provision which leads to the conclusion that in case the tenant fails to deposit the determined amount within the time specified or within the extended time. In that contingency the order of striking out of defence be passed and suit be proceeded for hearing. As explained from above discussion, we are constrained to say that the arguments as advanced by the learned counsel for the appellant relying upon the paragraphs 17, 18 and 19 of the judgment in Debasish Paul (supra) are not germane, hence repelled.”

11. In the decision of **Smt. Binika Thapa (nee Rai) & Anr. Vs. Smt. Damber Kumari Mukhia & Anr.** decided in **C.O. No. 64 of 2023**. This court held as follows:-

“Section 7 was interpreted in Amit Kumar Chamariya (supra) and the entire mechanism by which a tenant could seek benefit from eviction on the ground of default, was considered to be mandatory and inter-related. The provisions of the said section were discussed in the following paragraphs thereof:-

“19. Sub-section (1) of Section 7 of the Act relieves the tenant from the ejection 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 Section 7 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 Section 7 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 (2-A) and (2-B) which was being examined by this Court in *B.P. Khemka [B.P. Khemka (P) Ltd. v. Birendra Kumar Bhowmick, (1987) 2 SCC 407]*. Sub-sections (2-A) and (2-B) of Section 17 of the 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso to Section 7(2) and sub-section (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 precondition 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.”

12. The decision in ***M/s. Smart Enterprises (supra)***

does not apply, inasmuch as, the said decision was rendered in a situation when this Court and the Hon'ble Apex Court had not ruled on the non-applicability of Section 5 of the Limitation Act to condone the delay in depositing the rent.

13. The decision in ***Sachindra Kumar Jha & Ors***

(supra) does not apply in the facts of the case, inasmuch as, in the said decision the Court had permitted deposit of rent at the risk of the tenant and the landlord had not challenged the same. Thus, His Lordship was of the view that the application under Section 7(2) should have heard on merits.

14. Accordingly, the revisional application being CO 3892 of 2025 stands dismissed.

15. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Shampa Sarkar, J.)