

Ct.
No.
29
181
Bd

**07.05
2025**

C.O. 3755 of 2024

**Minati Karar & Ors.
Vs.
Tapas Kumar Chatterjee**

Ms. Aditi Kumar ...For the Petitioners

Mr. Saurav Chaudhury ...For the Opposite Party

Being aggrieved by and dissatisfied with the order dated 12.09.2024 passed by learned Additional District Judge, 13th Court, Alipore in Ejectment Appeal 35 of 2018 arising out of Ejectment Suit No. 60 of 2013, the present application has been preferred by the plaintiff/landlord/petitioners.

By the order impugned learned court below has rejected the plaintiff/petitioner's application under section 7(3) of the West Bengal Premises Tenancy Act, 1997, (in short Act of 1997) observing that the plaintiff never challenged the order dated 2.2.2010 passed by learned Additional Civil Judge (Junior Division) 3rd Court, Alipore, while disposing the application under section 7(2) of the said Act of 1997. He made further observation that application under section 7(3) of the Act of 1997, which was filed

before the Appellate Court is not tenable, since such application is required to be filed before the trial court. Accordingly, Court below had given liberty to the defendant/tenant/opposite party herein to deposit arrear rent from July 2023 to January 2024 along with interest within one month.

From the above-mentioned order No. 9 dated 2.2.2010 it appears that the defendant/tenant after appearance filed an application under section 5 of the Limitation Act, along with his application under section 7(2) of the Act of 1997, and it further discloses that in the said applications defendant admitted due arrear of rent from March 2007 to May 2009 @ Rs. 250/- per month, though he did not pay the admitted arrear amount within the statutory period for some reasons and for which he filed another application under section 5 of the Limitation Act, for condonation of delay, which the court below allowed without assigning any reason.

When this was brought to the notice of Court below, he observed that petitioner cannot

have any right to challenge the aforesaid order dated 02.02.2010 after a period of 14 years.

In ***Bijay Kumar Singh & Ors. -vs- Amit Kumar Chamariya & Anr.*** reported in **(2019) 10 SCC 660** while interpreting section 7 of the Act of 1997 held that if the tenant fails to deposit admitted arrears of rent within one month of receipt of summon 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 of determining of the arrears of rent, will entail the eviction of tenant. The relevant paragraph 19, 20 and 21 may be quoted below:

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 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.*

In the present case defendant has not disputed before trial court about default in payment of rent from March 2007 to May 2009 @ Rs. 250/- per month, when the trial court passed the aforesaid order dated 2nd February, 2010.

Now the question is whether court below was justified in rejecting the plaintiff's challenge thrown upon order dated 02.02.2010 only on the ground that such challenge has been made after 14 years of passing order.

Needless to say that the interpretation of law in respect of section 7 of the Act of 1997 as made by the Apex Court in ***Bijay Kumar Singh & Ors.(supra)*** is retrospective in operation i.e., the date from which the Act came into being.

In ***Kanishk Sinha & Anr. -vs- State of West Bengal & Ors.*** (judgment dated 27.02.2025) Supreme Court reiterated the law of prospective and retrospective operation, which says that a law made by the legislature is always prospective in nature unless it has been specifically stated in the statute itself about its retrospective operation, the reverse is true for the law which is laid down by a Constitutional court or law as it is interpreted by the Court. The judgment of the Court will always be retrospective in nature unless the judgment specifically states that the judgment will operate prospectively. Needless to say that in ***Bijay***

Kumar Singh & Ors. (supra) judgment no where it is said that said interpretation will be prospective in operation.

Having considered the retrospectivity of the interpretation of the law laid down by the Apex court, in connection with section 7 of the Act of 1996 in **Bijay Kumar Singh & Ors. (supra)**, the impugned order dated 12.9.2024 passed by the Court below in Ejectment Appeal no. 35 of 2018 is hereby set aside.

The learned appellate court is hereby directed to dispose of the appeal preferred by the appellant in connection with the suit for eviction filed inter alia on the ground of default in the light of ratio laid down by Apex court in the case of **Bijay Kumar Singh & Ors. -vs- Amit Kumar Chamariya & Anr.** reported in (2019) 10 SCC 660, at the earliest preferably within a period of six months from the date of communication of the order.

Accordingly, C.O. 3755 of 2024 is thus disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon

compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)