

21.1.2025
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Ct. no. 237
sb

CO 3786 of 2024

Bholanath Shaw
Vs.
Kunti Devi Saha @ Kunti Saha

Mr. Imdodul Haque ...for the Petitioner

Mr. Partha Sarathi Das
Mr. Tapas Kr. Mondal
Mr. Syed Chandan Hossain
...for the opposite party

This application has been preferred against the order dated 13th September, 2024 passed by the learned Civil Judge (Junior Division), 2nd Court, Alipore. By the impugned order, learned court below has been pleased to reject the petitioner's prayer made in the application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997.

It appears from the order impugned that the defendant filed an application under Section 7(1) and 7(2) of the Act of 1997 on 14.2.2019, though from postal A/D card, it reflects that summon of the suit was served on 27.7.2018.

The ingredients of Section 7(2) would come into play if there is any dispute as to relationship or rate of rent or period of arrear of rent or both, but the tenant is obliged under Section 7(1) to deposit with the Civil Judge's Court the amount admitted by him

to be due within one month of service of summon or where there is no proof of service, within one month from his appearance. Here though defendant in his application under Section 7(1) has stated that he received summon on 2nd February, 2019 but such statement appears to be incorrect and has not been substantiated by proof.

Therefore, under the settled law as laid down in **Bijay Kumar Singh & others Vs. Amit Kumar Chamaria & others, (2019) 10 SCC 660**, if the aforesaid pre-conditions are not satisfied, the tenant could not take recourse to Section 5 of the Limitation Act and consequence of sub-section (3) of Section 7 will follow for non-compliance of said provision of law.

Here it is apparent that the petitioner did not approach the court by filing applications under Section 7(1) and 7(2) of the Act of 1997 within one month of service of summon and the admitted arrear rent with interest was also not deposited within statutory period. Instead, belated applications under Section 7(1) & 7(2) are filed seeking permission to deposit the rent.

Supreme Court in **Vijay Kumar Singh's case (supra)** held that the deposit of rent along with an application for determination of dispute is a pre-condition to avoid eviction on the ground of non-payment of arrears of rent and Section 5 of Limitation

Act is not applicable 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 and thereby the provision mandated the time limit mentioned in Section 7(1).

Accordingly, I am of the view that the court below has rightly rejected the applications under Section 7(1) & 7(2) filed by the petitioner on 14th February, 2019 as the said applications are bereft of merits and there is no scope of interference at all with the impugned order.

Accordingly, C.O. 3786 of 2024 stands dismissed.

Urgent Photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)