

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.O. 3860 of 2024

Sri Sambhu Shaw & Ors.
Vs.
Sri Baijnath Prasad

For the petitioner : Ms. Siva Prasad Ghose

For the opposite party : Mr. Sounak Bhattacharya
Mr. Sounak Mondal

Heard On 13.06.2025

Judgment on : 17.06.2025

Dr. Ajoy Kumar Mukherjee, J.

1. This application has been preferred against the order dated 18th September, 2024 passed by the court below, by which the court below rejected defendants application under section 7(1) and (2) of the West Bengal Premises Tenancy Act, 1997(herein after called as Act of 1997).

2. Petitioners contention is that opposite party filed suit for eviction and recovery of khas possession being Title Suit no. 117 of 2022 *interalia* on the ground of default. The petitioners herein as defendants entered appearance

in the said suit on 28th October, 2022 and filed applications under section 7(1) and 7(2) of the Act of 1997. His further case is that the petitioners deposited all admitted arrear rent payable by the defendants to the petitioners on 14.11.2022. The opposite party herein/plaintiff filed written objection against those applications under section 7(1) and 7(2) of the Act of 1997. Learned trial court by the impugned order has rejected the defendants aforesaid applications.

3. Being aggrieved by the order impugned, it is submitted on behalf of the petitioners that learned Trial court failed to visualise the proposition of law as laid down by the Apex Court, since the defendant/tenant/petitioners filed application under section 7(1) and 7(2) within the statutory period and they have also deposited admitted rent. He further submits that only for one month i.e. for the month of December, 2023, the defendant/petitioner could not deposit rent within 15th January, 2024 due to serious illness of Advocate's father and except for that month, he had deposited rent all along in time in compliance with section 7(1) (c) of the Act of 1997. The court below failed to appreciate that the said Act of 1997 is a beneficial legislation and have been enacted with the object to protect the tenant from illegal eviction. The court erroneously recorded that there is nothing on record to show that the defendant has paid rent upto December, 2021 and thereby not inclined to allow the application under section 7(2) of the Act, inspite of recording the legal provision that the court has the power to extend the time once to deposit arrear rent and thereby has committed grave error by observing that the plaintiff succeeded in proving that the defendant failed to

strictly comply with the provision of section 7(1) of the Act and as such said finding is perverse and liable to be set aside.

4. Mr. Sounak Bhattacharya learned counsel appearing on behalf of the opposite party submits that the defendant/petitioner has deposited rent for the month of December 2022 at a belated stage i.e. on 28th January, 2023, which is much beyond the prescribed time limit specified under section 7(1)(c) of the Act. Under the said provision, the defendant has to deposit monthly rent month by month within 15th of each succeeding month. Since the petitioner failed to comply with the mandatory provision contained under section 7(1)(c), he is not entitled to get protection under section 7(4) of the said Act and as such the defence of the defendant is liable to be struck off in terms of section 7(3) of the said Act. Accordingly he prayed for dismissal of the present application. Mr. Bhattacharya in this context relied upon the judgment passed by a co-ordinate bench of this court in C.O. 1170 of 2020 on 13.02.2024 (Kavita Biswas and others Vs. Sadhan Dasgupta)

5. I have considered submissions made by both the parties.

6. On perusal of the copy of the defendant's application filed under section 7(1) of the Act of 1997, it reflects that defendant admitted in the application that he received summon of the suit on 02.10.2022. Though defendant appeared in the suit on 28.10.2022 but he deposited the admitted arrear rent along with statutory interest on 14.11.2022. Therefore, when it is admitted position in the present case that the defendant/petitioner received summon on 02.10.2022 he ought to have deposited the admitted arrears of rent along with the statutory interest within one month but he

failed to do so and he has deposited the admitted arrear rent along with interest only on 14.11.2022.

7. On perusal of the said application under section 7(1) and 7(2) it further appears that there is no dispute about the rate of rent because defendant categorically stated in his application under section 7(1) that the monthly rent in connection with the suit premises is Rs. 165/- payable according to English calendar month. He himself admitted that the arrear rent which he was obliged to deposit under section 7(1) of the Act of 1997 was from the month of January, 2022 to October, 2022. Therefore, it is crystal clear that the defendant failed to comply the mandatory provision to be fulfilled by a tenant to seek protection from eviction under any of the grounds mentioned in section 6 of the act of 1997. In fact though the petitioner/defendant appeared in the suit on 28.10.2022 after receiving summon on 02.10.2022 i.e. within one month from the date of the receipt of the summon but such filing of application under section 7(1) & 7(2) of the Act of 1997 without deposit admitted arrear rent along with statutory interest within the time prescribed in section 7(1) (b), does not amount to compliance of section 7 which is mandatory and as such there is clear noncompliance of section 7(1) & (2) of the Act of 1997 in the instant proceeding.

8. In ***Bijay Kumar Singh Vs. Amit kumar chamaria and another*** reported in **(2019) 10 SCC 660** Supreme Court held as follows:-

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. (emphasis added)

9. In such view of the matter, I do not find any perversity or illegality or impropriety in the ultimate finding of the trial court, whereby he rejected defendants application under section 7(1) & 7(2) of the Act of 1997 for non-compliance of mandatory provision of section 7 of the Act of 1997.

10. C.O. 3860 of 2024 thus stands dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)