

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 4338 of 2024

Dulal Saha
Vs.
Prativa Kantha & Ors.

For the Petitioner : Mr. Satyam Mukherjee
Mr. Jakir Sardar
Ms. Sayani Ahmed
Mr. Purnendu Shekhar Ghosh

For the Opposite parties : Mr. Dilip Kumar Maity
Mr. Uttam Kumar Kamila

Heard on : 11/08/2025

Judgment on : 11/08/2025

Hiranmay Bhattacharyya , J. :

1. Affidavit of service filed in Court today is taken on record.
2. This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being No.30 dated July 26, 2024 passed by the learned Civil Judge (Jr.

Div.), 2nd Court at Alipore, District-South 24-Parganas in Ejectment Suit No.284 of 2018.

3. By the order impugned the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 was rejected and consequently the defence of the petitioner against delivery of possession was struck out under Section 7(3) of the 1997 Act on the ground that the petitioner did not file the applications under Sections 7(1) and 7(2) of 1997 Act within the time limits stipulated thereunder.
4. The learned advocate appearing for the petitioner submits that the summons of the suit was not served. After being aware of the filing of the eviction suit the petitioner entered appearance in the suit by filing a Vakalatnama and immediately thereafter filed applications under Sections 7(1) and 7(2) of the 1997 Act. The learned advocate appearing for the petitioner further submits that Section 7(1) (b) of the 1997 Act states that the deposit of arrears shall be made within one month of the date of appearance in a case where the defendant appears without service of summons being served upon him. He submits that since the summons of the suit was not served upon the petitioner, the applications under Sections 7(1) and 7(2) of the 1997 Act ought to have been held to be filed within the stipulated time limit.
5. The learned advocate appearing for the opposite parties submits that the summons of the suit was served as would be evident from

the bailiff report wherein he has reported that the summons had been returned with the remark “not claimed”. He submits that thereafter the learned trial judge passed an order directing paper publication and in terms of such order the paper publication was made on August 13, 2022. The learned advocate further submits that the applications under Sections 7(1) and 7(2) of the 1997 Act were filed only on December 7, 2022, i.e., more than three months from the date of paper publication. He, therefore, submits that the learned trial judge was right in rejecting the applications Sections 7(1) and 7(2) of the 1997 Act and consequently striking out the defence of the petitioner against delivery of possession.

6. Heard the learned advocates for the respective parties and perused the materials placed.
7. In course of hearing of the civil revision application, the learned advocate appearing for the petitioner files the certified copy of the order sheet containing the orders from order No.1 till the order No.31 dated August 12, 2024. It appears from the order No.11 dated May 11, 2022 that the plaintiff/opposite parties herein filed an application supported by an affidavit stating that the summons sent to the defendant has been returned with the remark “not claimed” and hence prayed for substituted service under the provisions of Order 5 Rule 20 of the Code of Civil Procedure. On an application under Order 5 Rule 20 of the Code of Civil Procedure being filed by the plaintiff/opposite parties herein, the learned trial

judge by an order dated May 11, 2022 allowed the prayer under Order 5 Rule 20 of the Code of Civil Procedure thereby directing the opposite parties to take steps for substituted service of summons upon the defendants by an advertisement in Bengali Daily which is being circulated widely in the locality in which the defendant is lastly known to have actually and voluntarily resided or carried on business or personally worked for gain.

8. It is not in dispute that pursuant to the said order paper publication was made on August 13, 2022. The learned trial judge by an order dated September 22, 2022 recorded that the plaintiff has filed the paper publication and accordingly fixed November 14, 2022 for appearance of the defendant. The defendant/petitioner entered appearance in the said suit on November 14, 2022 i.e. the date when the learned trial judge fixed for appearance of the defendant/petitioner herein. The petitioner thereafter filed two applications one under Section 7(1) and the other Section 7(2) of the 1997 Act on December 7, 2022 i.e. within one month from the date of appearance in the said suit.
9. Though the learned advocate appearing for the opposite parties would strenuously contend that the endorsement “not claimed” amounts to good service but it appears that the petitioner filed an application under Order 5 Rule 20 of the Code of Civil Procedure praying for substituted service.

The provisions of Order V Rule 20 of the Code of Civil Procedure is resorted to only when it is alleged that the defendant is keeping out of the way for the purpose of avoiding service or that for any reason the summons cannot be served in the ordinary way. The opposite party applied for substituted service and the learned trial judge upon being satisfied with the requirements for substituted service allowed such prayer. For such reason, this Court is not inclined to accept the contention of the opposite parties that the summons of the suit was duly served prior to the order of substituted service.

10. The learned trial judge after being satisfied that the paper publication was made in terms of the order passed by the learned trial judge fixed the date of appearance and on such date the defendant/petitioner entered appearance and filed the applications under Sections 7(1) and 7(2) of the 1997 Act within a period of one month from the date of appearance.
11. In view of the provisions laid down under Section 7(1) (b) of the 1997 Act the payment or deposit in terms of Section 7(1) (a) of the 1997 Act 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.

In the case on hand the Court already held that the summons could not be served in ordinary way for which the opposite parties prayed for substituted service.

The petitioner appeared on the date fixed by the learned trial judge for appearance after such paper publication was made and thus, the second limb of Section 7(1) (b) of the 1997 Act stands attracted to the case on hand.

12. It is not in dispute that the applications under Sections 7(1) and 7(2) of the 1997 Act were filed within one month from the date of appearance.
13. The learned trial judge failed to consider the effect of the order directing the substituted service and the directions passed for appearance of the defendant in the said suit pursuant to the paper publication while rejecting the applications under Sections 7(1) and 7(2) of the 1997 Act.
14. The learned trial judge was swayed by the report of the court bailiff which stated that the summons returned as “unclaimed”. Such endorsement in the bailiff report cannot have any impact for the purpose of considering the period of limitation for the filing of the applications under Sections 7(1) and 7(2) of the 1997 Act for the reasons as indicated hereinbefore.

In the case on hand, the petitioner appeared after the paper publication and pursuant to the order passed by the learned trial judge directing the defendant to appear on a particular date. Therefore, the application cannot be said to be barred by limitation.

15. For all the aforesaid reasons, this Court is inclined to interfere with the order impugned. The order impugned accordingly stands

set aside. The applications under Section 7(2) of the 1997 Act stands restored to the file of the learned Civil Judge (Jr. Div.), 2nd Court at Alipore, District-South 24-Parganas.

16. The opposite parties shall be permitted to file a written objection to the application filed under Section 7(2) of the 1997 Act within two weeks from the receipt of a server copy of this order.
17. The learned trial judge is requested to fix a date for hearing of the application under Section 7(2) of the 1997 Act and make an endeavour to dispose of the same as expeditiously as possible without granting any unnecessary adjournments to either of the parties.
18. With the above observations and directions CO 4338 of 2024 stands allowed.
19. There will be no order as to costs.
20. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)