

**In the High Court At Calcutta
CIVIL REVISIONAL JURISDICTION
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

CO/171/2025

**PINTOO AGARWAL
VS
AMAR NAULAKHA**

For the Petitioner :Mr. Hasang Bhutia, Advocate

For the Opposite Party :Mr. Raja Saha, Advocate
Mr. Sujit Sankar Koley, Advocate
Ms. Bedashruti Bose, Advocate
Mr. Subham Chanda, Advocate

Heard & Judgment on: November 19, 2025

Debangsu Basak, J.

1. Revisional application is directed against Order No. 27 dated July 31, 2025 passed in OC Eviction Suit No. 05 of 2023 pending in the Court of the learned Civil Judge (Senior Division), Darjeeling.
2. Revisional application is at the behest of the plaintiff in a suit for eviction.
3. Learned advocate appearing for the petitioner submits that, the plaintiff filed the suit for eviction on October 16, 2023. The summons on the Opposite Party was served on November 1, 2023. The Opposite Party appeared on November 2, 2023. According to

him, therefore, in terms of Section 7(1) of the West Bengal Premises Tenancy Act, 1997, since, the suit property was governed by the provisions of the Act of 1997, was obliged to deposit rent within one month from the service of summons on the tenant. He points out that, the summons were served upon the Opposite Party on November 1, 2023. The deposit of rent even going by the order impugned was made on June 13, 2025. Consequently, the defence of the Opposite Party is liable to be struck out under Section 7(3) of the Act of 1997.

4. In support of the contention that, the defence of the Opposite Party is liable to be struck out, learned advocate appearing for the petitioner relies upon **2019 (10) SCC 660 [Bijay Kumar Singh & Ors. vs. Amit Kumar Chamariya & Ors.]**, and **2024 (2) CHN (CAL) 641 [Binika Thapa (nee Rai) & Ors. vs. Damber Kumari Mukhia & Ors.]**
5. Learned advocate appearing for the petitioner submits that, the learned Judge by the impugned order, acted with material irregularity in dismissing the application under Section 7(3) of the Act of 1997 in the facts of the present case.
6. Learned advocate appearing for the Opposite Party points out that, immediately on the defendant entering into appearance on November 2, 2023, a petition under Section 7(1) and 7(2) of the Act of 1997 was filed. He submits that, there was a dispute with regard to quantum of rent payable. Such dispute is established by the fact that, the petitioner as the plaintiff applied under Order VI Rule 17 of the Code of Civil Procedure, 1908 for the purpose of amendment of the plaint with regard to the quantum of rent due. Therefore, as on the date when the application for fixation of rent

under Section 7(1) and 7(2) of the Act of 1997 was filed, there was a dispute which required adjudication.

7. Materials on record establish that, suit for eviction was filed by the petitioner on October 16, 2023. Summons of such suit was served on the Opposite Party on November 1, 2023. Opposite Party entered appearance in such suit on November 2, 2023. Opposite Party filed an application under Section 7(1) and 7(2) of the Act of 1997 on December 1, 2023.
8. The application under Section 7(1) and 7(2) of the Act of 1997 was within a period of one month from the date of appearance of the Opposite Party, in terms of Section 7(1)(b) of the Act of 1997. The petitioner filed an application under Section 7(3) of the Act of 1997.
9. There subsisted a dispute with regard to the quantum of rent payable in view of the fact that the original plaint, prior to amendment contained a figure different to that which the Opposite Party as the defendant acknowledged as payable, in its application under Section 7(1) and 7(2) of the Act of 1997. Such dispute was sought to be resolved by way of the petitioner's application under Order VI Rule 17 of the Code of Civil Procedure, 1908 amending the plaint to bring the quantum of rent due to be in consonance with the quantum acknowledged by the Opposite Party.
10. By the impugned order, learned Trial Judge, considered two applications filed by the respective parties. Learned Judge found that application under Section 7(1) and 7(2) of the Act of 1997 was filed within 30 days from the date of the Opposite Party entering appearance. Learned Judge also found that there was a dispute with regard to the quantum of rent payable and,

therefore, provisions of Section 7(2) of the Act of 1997 stood attracted. Such dispute was subsequently resolved by way of amendment sought to be introduced to the plaint by the petitioner itself. Learned Trial Judge also noted the fact that, by an order dated May 29, 2025, the Opposite Party was permitted to deposit rent. Deposit of rent was on June 13, 2023. In such factual matrix, learned Judge proceeded to dismiss the application under Section 7(3) of the Act of 1997 filed by the petitioner.

11. **Bijay Kuma Singh (Supra)** on consideration of the provisions of Section 7(2) of the Act of 1997 is of the view that, there cannot be any extension of time to deposit arrears of rent in terms of the proviso to Sub-Section (2) of Section 7 of the Act of 1997. It notes that there are consequences flowing from non-deposit of rent.
12. In the facts and circumstances of the present case, it cannot be said that the Opposite Party is guilty of non-deposit of rent within the time stipulated or applying under Section 7(1) and (2) of the Act of 1997 within time stipulated.
13. The Co-ordinate Bench in **Binika Thapa (nee Rai) (supra)** decided a reference on two issues. One issue was whether, a Single or a Division Bench can take a decision which runs counter to the decision of the Supreme Court and the other issue was whether, Single Bench can take a view different to the view taken by the Supreme Court in the context of recourse to Section 5 of the Limitation Act, 1963 in relation to Section 7(1) and 7(2) of the Act of 1997. It decided the second issue by holding that Section 5 of the Limitation Act, 1963 would not apply, if the defendant failed to comply with the mandatory provisions of Section 7 of the Act of

1997. Factual matrix in the present case is different to those obtaining in **Binika Thapa (nee Rai) Supra**).

14. In such circumstances, I find no material irregularity in the order impugned.
15. CO/171/2025 is **dismissed** without any order as to costs.

(Debangsu Basak, J.)