

02.01.2026
Ct. No. 06
Sl. No.7
skg

C.O. No. 313 of 2025

Sunita Devi Shaw & Ors.
Vs.
Hazi Abdul Razzaque & Ors.

Mr. Ranjit Roy,
Mr. Subir Banerjee,
Md. Hossain,

.....for the petitioners

Mr. Siddheswar Chandra,
Mr. Sandip Dutta,

...for the opposite parties

1. This revisional application arises out of an order dated December 5, 2024 passed by the learned Judge, 5th Bench, Presidency Small Causes Court, Calcutta, in Ejectment suit no. 179 of 2007.
2. By the order impugned, the learned court allowed the application under Section 7(3) of the West Bengal Premises Tenancy Act(hereinafter referred to as the said Act), filed by the opposite parties/ plaintiffs. The learned Court also disposed of the application filed by the added defendants / petitioners. The petitioners as the heirs of the erstwhile defendant no. 2(a)] prayed for adjudication of the relationship between the plaintiffs and the defendants and also for permission to deposit arrear rents with interest.
3. The petitioners contend that the suit was filed for eviction of the defendants from the property, and the

petitioners entered appearance in the same at a later stage. Upon being added as party defendants they came to learn that there were unpaid rents as arrears. By an order passed by the High Court, the petitioners were added as defendants. The petitioners filed their written statement. According to the petitioners they were unaware of the status of the suit. The other defendants were old and were unable to look after the suit. Upon entering appearance in the suit, the petitioners had come to know that rents since 2017 were due. The petitioners made a request to the landlords to accept the rent, but the landlords refused. Thus, the petitioners undertook to pay the entire amount that would be adjudicated by the court towards arrear dues, upon acceptance of the application for appropriate order and upon adjudicating the relationship between the petitioners and the plaintiffs. The plaintiffs contested the said application by filing a written objection. Plaintiffs contended that the petitioners were the legal heirs of the original defendant no. 2(a) and had stepped into the shoes of one of the deceased defendants. Thus, the petitioners did not have any right to pray for further permission to deposit arrear rents as well as the current rent. Moreover, rents were due and payable since 2017, when the original defendant no. 2(a) was alive, but the said defendant did not deposit the rent.

The petitioners could not be given permission to deposit the arrear rents, as the prayer for deposit and the application filed subsequently by the petitioners, had become time barred.

4. The learned Court observed that the original suit was filed against Kashinath Shaw and Mira Shaw. Mira Shaw died. The defendant nos. 2(a) to 2(c) were substituted by order dated November 28, 2018. The defendant no. 2(a) died. The petitioners were added as defendant no. 2(a)(i), 2(a)(ii), 2(a)(iii) and 2(a)(iv). The original defendants had filed an application under Section 7(2) of the said Act and the same was disposed of by the court on June 25, 2009. The said order recorded that the defendants had deposited the rent before the Rent Controller prior to filing of the suit. The petitioners appeared before the Court and filed an application to add themselves as parties to the suit on June 8, 2022, upon death of the defendant No. 2(a). The application was rejected by the learned trial court. The order was set aside and the petitioners were added as defendants nos. 2(a)(i), 2(a)(ii), 2(a)(iii) and 2(a)(iv), by the order of the High court. Thereafter, a written statement was filed by the petitioners. The petitioners challenged the title of the plaintiffs, although the defendant no. 1, who was still alive and was contesting the suit from the very beginning had never disputed the relationship between the parties. Moreover, a

tentative finding as to the existence of the relationship of landlords and tenants was already arrived at when the first application under Section 7(2) of the said Act was disposed of. The said order was never challenged by the defendants before any higher forum. Thus, the learned court held that the issue was barred by the principle of res judicata and/or constructive res judicata. However, the learned court kept the question with regard to the existence of the relationship of the landlord and tenant open and to be agitated by the defendants at the final hearing of suit.

5. The court called for the records from the Accounts Department while adjudicating the application under Section 7(3) of the said Act as also the application for appropriate order filed by the petitioners seeking permission to deposit the arrear rents on and from 2017. The Accounts Department filed a report which indicated that rent was deposited only till December, 2016. Thus, the court observed that although the defendant no.1 was continuously appearing in the suit, the provisions of the law and the direction of the court had not been complied with as regards deposit of current rent. Moreover, the defendants were already given protection under Section 7(2) of the West Bengal Premises Tenancy Act once before. The added defendants were seeking the same relief for the second time in the said suit, although, the default in deposit

of current rent was for more than five years. According to the court, the petitioners were not entitled to seek relief of deposit of rent any further. Accordingly, the prayer for deposit of the arrear rent was rejected and the application under Section 7(3) of the said Act filed by the plaintiff was allowed.

6. Mr. Roy, learned Advocate for the petitioners submits that the application under Section 7(3) of the West Bengal Premises Tenancy Act was disposed of without hearing the petitioner.
7. He next submits that the relationship of the parties as landlords and tenants was kept as an additional issue. The order is rendered nugatory as, the petitioners will not be in a position to disclose their defence and urge such issue before the court, if their defence is struck off.
8. Under such circumstances ,it is prayed that the order striking out the defence of the petitioners be set aside.
9. Heard the parties.The suit for eviction was filed by the plaintiffs as landlords, seeking eviction of the defendants Kashinath Shaw and Mira Shaw, the erstwhile tenants. Mira Shaw died and the defendant nos. 2(a) to 2(c) were substituted in 2018. The defendant no. 2(a) died and the petitioners filed an application for addition of party as the legal heirs of the deceased defendant no.2(a). They were added as defendant no. 2(a)(i), 2(a)(ii), 2(a)(iii) and 2(a)(iv) in

January, 2024. They filed their written statement on January 17, 2024. In the said written statement they challenged the title of the plaintiffs. They filed an additional application for appropriate order dated July 4, 2024. By the said application, the petitioners prayed that, before the application under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 was taken up, the learned Court should adjudicate the issue of ownership and the right of the plaintiffs to institute the suit. A prayer was made to allow the petitioners to deposit the arrear rent with interest.

10. It is well settled that the provisions of Sections 7(1) and 7(2) are mandatory. The time limit prescribed for deposit of arrear rent and current rent, is incorporated within the sections themselves. Section 5 of the Limitation Act is not applicable. Delay in depositing the arrear admitted rent and current rent cannot be condoned. However, the proviso to Section 7(2) of the said Act provides that one extension can be granted by the court to deposit the defaulted amount and such extension shall not exceed beyond two months.
11. In the instant case, the predecessor in interest of the petitioners and the other defendants who were contesting the suit, filed an application under Section 7(2) of the said Act and there was already a decision on such application as to the existence of the relationship between the parties as landlords and

tenants. The court noticed that the rent prior to institution of the suit had already been deposited with the rent controller. Thus, the court directed deposit of current rent. The defendants, including the predecessor in interest of the petitioners, were contesting the suit. They defaulted in deposit of current rent on and from January, 2017. The Accounts Department submitted a report before the learned Court which indicated that the rent was lastly paid for the month of December 2016. Thus, there was clear violation of the provision of Section 7(1)(c), which mandates that the tenant shall continue to pay to the landlord or deposit with the Civil Judge month by month by the 15th of each succeeding month a sum equivalent to the rent at the last paid rate. Here, there was a continuous default by the defendants, even prior to the petitioners coming into the picture. The petitioners came into the picture in January, 2024. They could not have reversed the applicability of Section 7(3) which took its effect by operation of law, the moment consecutive defaults were committed in deposit of the monthly rent on and from January, 2017. The petitioners could at best contest the suit as substituted heirs or legal heirs having been added thereafter, i.e., upon demise of the defendant no. 2(a), but they could not put the clock back in motion by initiating further application in the nature of what is

contemplated under Sections 7(1) and 7(2) of the said Act. Moreover it also appears that the petitioners sought to be added as parties sometime in 2023, after the defendant no. 2(a) expired.

12. Under such circumstances, Mr. Roy's contention that the application under Section 7(3) should be heard afresh upon giving parties adequate opportunity, is not accepted by the court. Section 7(3) is only a consequence of non compliance of Section 7(1) and 7(2). In this case there is ex facie non compliance of the provision of Section 7(1)(c) and as such the prayer for striking out the defence was rightly allowed. The prayer seeking permission to deposit arrear rent was rightly rejected. The application was hopelessly time barred and not maintainable in law. The law does not grant any such opportunity to the added heirs to make good the default already committed in depositing monthly rent under Section 7(1)(c) of the said Act.

13. In the decision of ***Seventh Day Adventist Senior Secondary School Vs. Ismat Ahmed & Ors.*** reported in **2025 INSC 984**, the Hon'ble Apex Court held as follows:-

"12. Bare reading of the aforesaid provisions makes it clear that as per sub section (1) of Section 7, in a suit for eviction filed by the landlord on any grounds as specified in Section 6 of the WBPT Act, the tenant shall, subject to provisions of sub-section (2), pay to the landlord or deposit in the Court, all arrears of rent calculated at the rate at which it was last paid together with interest at the rate of ten per cent per annum. As mandated by Section 7(1)(b), the said payment or

deposit shall be made within one month from the date of service of the summons on tenant or from the date of appearance in case the tenant appears without service of summons. The said two provisions apply in a case where arrears of rent are admitted. Thereafter, Section 7(1)(c) puts a further condition that after the admitted arrears are paid, the tenant shall continue to pay or deposit with the landlord or Civil Judge, as the case may be, a monthly sum of rent at that rate on or before fifteenth day of consecutive month.

13. As per sub-section (2), if there is a dispute as to the amount of rent payable by the tenant, he is required to deposit the admitted amount due from him in the Court within the time as specified [one month as per Section 7(1)(b)] ‘together’ with an application for determination of the rent payable. It is emphasised that deposit of rent shall not be accepted unless the said prayer is accompanied with an application for determination of the rent. Meaning thereby, to seek protection against eviction, the tenant is required to deposit the admitted amount of rent within the time as specified, i.e., within one month from the date of summons served or where tenant appears in the suit without the summons being served upon him, along with an application for determination of the rent so payable. As such, in case where there is no dispute as to arrears of rent, it ought to be paid within a month and, in case it is in dispute, even then, tenant would be required to deposit within the same time coupled with an application as discussed above.

14. To supplement the aforesaid, word ‘together’ used in Section 7(2) preceding ‘with an application for determination of the rent payable’ emphasises that the deposit of admitted amount of rent within a period of thirty days as specified must accompany the application for determination of rent payable. At this stage, we can profitably refer to ‘P. Ramanatha Aiyar’s Advanced Law Lexicon’⁵ to understand the meaning of ‘together’. According to the same, ‘together’ means “in company” or “conjointly” or “simultaneously”. Accordingly, on contextual application of the word ‘together’, it is clear that the application for determination of rent must be filed within the same period which is provided for ‘deposit’ or ‘pay’, i.e., thirty days.

15. On receiving such application, the Court having regard to the rate of rent last paid and period of which default has been made by the tenant shall make an order on such application not later than one year and thereupon the tenant shall within the period of one month of the date of such order, pay to the landlord the amount so specified in the order. That is to say, the determination of the rent on the parameters as specified in the latter part of sub-section (2) and on such

determination within one month of the date of the order, the amount as specified in the order is to be paid. The proviso thereto deals with the extension of time, which can only be once and not beyond period of two months.

16. Having perused Section 7 of WBPT Act, it is apparent that sub-section (1) is subject to sub-section (2). Further, sub-section (3) specifies consequences of non-compliance of sub-sections (1) and (2) by the tenant, leading to striking out of defence against delivery of possession and the Court shall proceed with the hearing of the suit. Sub-section (4) of Section 7 of WBPT Act makes it clear that in a proceeding of eviction, no order for delivery of possession of the premises to the landlord shall be passed by the Court on the ground of default of payment if the tenant deposits the rent under sub-sections (1) or (2), but the Court may allow such cost to the landlord as deemed fit. As per proviso, it is clear that if tenant was allowed the relief as indicated hereinabove, but later he makes default in payment of rent for four months within one year or in case three successive rental periods, where the rent is not payable monthly, the relief of protection against eviction available under sub-section (4) cannot be allowed granting benefit of protection against eviction to the tenant.

17. In view of the foregoing, while bringing the said Section, the legislative intent was to provide protection to the tenant against eviction, subject to compliance of deposit of arrears of rent if there is no dispute as to amount of rent, within one month from the date of service of summons, along with interest at the rate of ten per cent per annum. The tenant is further required to deposit the regular rent as prescribed in Section 7(1)(c). In case, there is a dispute of the amount of rent payable, the tenant is required to deposit the amount due as admitted by him within thirty days and file an application conjointly for determination of rent within the same period. The said application may possibly be entertained and decided by the Court thereafter only. This Court in the case of Bijay Kumar (supra) had an occasion to consider the scope of Section 7(2) of the WBPT Act wherein the tenant had not deposited or paid the admitted rent while moving an application seeking determination of rent. Trial Court while allowing such application granted time to pay the admitted rent, but High Court set-aside the order of the Trial Court. While confirming the order of the High Court on the issue of deposit of rent admitted by tenant under Section 7(2) on the application for determination of rent, this Court observed as under – “21. ...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.”

18. Thus, in case of disputed rent, this Court was of the view that to avail the benefit of protection against eviction under the WBPT Act, the tenant has to do the following to avoid eviction, first, to deposit rent admitted by him to be due; second, an application for determination of rent payable be filed along with. The tenant had neither deposited, nor paid the admitted rent and had only filed the application for determination of rent belatedly along with an application under Section 5 of the Limitation Act, 1963.

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29. In addition, Section 7(1) and first part of sub-section (2) of Section 7 are comparable, both requiring deposit/pay admitted/undisputed amount of rent. However, Section 7(2) casts an additional obligation on the tenant to file an application for determination for rent along with such deposit within the specified time frame. The Legislature in its wisdom did not provide for any extension of time for payment or deposit under Section 7(1), making it clear that no such extension was intended in the corresponding part in Section 7(2). Since the deposit and application are to be made together by the tenant mandatorily within a specific time, in our considered view, extension of time as given in proviso to Section 7(2) is not applicable to either. Therefore, the proviso can only be construed to permit extension in payment of amount so specified in order of determination passed by the Civil Judge as envisaged in the latter part of sub-section (2) of Section 7. Stated differently, the word ‘may’ used in the proviso of Section 7(2) would only relate to extension of time, which is a discretion vested with the Civil Judge and it would not construe any other meaning. Moreover, it can be said that since in subsection (3) of Section 7, the consequence of non-compliance has been specified, therefore, use of the word ‘shall’ in Sections 7(1)(a), 7(1)(b) and 7(2) is a mandatory compliance for the tenant, failing which, his defence against eviction shall be struck off.

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32. In the said context, if we see the intent of legislature as discussed and relying upon two cases of three-Judge Bench of this Court, we intend to explain that Section 7 of the WBPT Act prescribes when a tenant can get the benefit of protection against eviction. The opening word of sub-section (1) i.e., ‘on a suit being instituted by the landlord for eviction’ makes it clear that in case the tenant defaults in payment of rent and the suit is brought as specified in the WBPT Act, then on

deposit/payment of admitted rent, an opportunity ought to be provided to get the benefit of protection against eviction. Therefore, for availing such benefit, some pre-requisites are there, which is of deposit of the rent, either disputed or undisputed as admitted, within the specified time. In case, the rent is disputed, the tenant has to mandatorily file an application, by virtue of word 'shall' used to such extent either in Section 7(1)(a)(b)(c) or first part of Section 7(2). However, in the latter part of Section 7(2), which is for payment of amount on determination by the Civil Judge within the time as specified after compliance of the pre-deposit and on filing an application for determination within the specified time, such payment has to be made by the tenant within one month of date of order passed by Civil Judge. The proviso refers to extension of time with an intent to grant one more opportunity to the tenant after determination of rent for deposit.

33. At this juncture, we also deem it relevant to refer sub-section (3) of Section 7, wherein it is specified that if tenant fails to deposit or pay any amount referred in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted by the Court, his defence against delivery of possession shall be struck out. So it deals with the following contingencies; first is of Section 7(1)(a)(b)(c), second is of former part of Section 7(2) and third is of latter part of Section 7(2) and in default of either of the situations, the Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit specifying the consequences of failure to do any of the three situations. While using the word extended time in sub-section (3), the word shall has been used, therefore, this would also be referable to the provision which leads to the conclusion that in case the tenant fails to deposit the determined amount within the time specified or within the extended time. In that contingency the order of striking out of defence be passed and suit be proceeded for hearing. As explained from above discussion, we are constrained to say that the arguments as advanced by the learned counsel for the appellant relying upon the paragraphs 17, 18 and 19 of the judgment in Debasish Paul (supra) are not germane, hence repelled.”

14. The application for striking out the defence was rightly allowed by the learned court. The consequences of the defence being struck out is that the tenants are at liberty to cross examine the plaintiffs and demolish the

case of the plaintiffs through such cross examination..
Thus, if it is possible for the petitioners to demolish the claim of the plaintiffs as their landlords through cross examination, the petitioners may do so. They can neither set up their own defence, nor can they urge such point in support of their case.

15. The Hon'ble Apex Court in the matter of ***Modula India versus Kamakshya Singh Deo***, reported in ***(1988) 4 Supreme Court Cases 619***, held that in a suit which was appearing undefended, the defendant may enter appearance by exercising a limited right to cross-examine the plaintiff's witnesses and to advance arguments to demolish the plaintiff case. Relevant paragraph is quoted below:-

"For the above reasons, we agree with the view of Ramendra Mohan Dutta, ACJ that, even in a case where the defence against delivery of possession of a tenant is struck off under [section 17\(4\)](#) of the Act, the defendant, subject to the exercise of an appropriate discretion by the court on the facts of a particular case, would generally be entitled:

(a) to cross-examine the plaintiff's witnesses; and

(b) to address argument on the basis of the plaintiff's case.

We would like to make it clear that the defendant would not be entitled to lead any evidence of his own nor can his cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses."

16. Under such circumstances, the revisional application is disposed of. No interference with the order impugned is called for.
17. There shall be no order as to costs.
18. Parties are to act on the server copy of this order.
19. The learned trial judge is requested to dispose of the suit expeditiously, without granting unnecessary adjournments.

(Shampa Sarkar, J.)