

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

BEFORE:

THE HON'BLE JUSTICE OM NARAYAN RAI

C.O. 1145 of 2025

**Smt. Uma Beriwal @ Beriwal & Others
Vs.**

Sree Shree Iswar Annapurna Mata & Others

For the Petitioners : Mr. Prabal Kumar Mukherjee, Sr. Adv.
Mr. Shubham Gupta, Adv.
Mr. Sovan Bera, Adv.
Mr. Atanu Basu, Adv.
Mr. Gaurav Das, Adv.

For the Opposite Parties : Mr. Tanmoy Mukherjee, Adv.
Mr. Anirban Saha Roy, Adv.

Heard on : 19.05.2026

Judgment on : 15.06.2026

OM NARAYAN RAI, J.:-

1. This revisional application under Article 227 of the Constitution of India is directed against an order dated March 13, 2025 passed by the learned Judge, 3rd Bench, Presidency Small Cause Court, Calcutta whereby the petitioners' application under Section 151 of the Code of Civil Procedure, 1908 (hereafter "the Code") has been rejected on contest.

FACTS OF THE CASE:

2. Briefly summed up the petitioners' case as follows:-

- a.** The opposite parties have instituted Ejectment Suit No. 473 of 2005 before the learned Judge, Presidency Small Cause Court, Calcutta praying *inter alia* for a decree of eviction of the petitioners *inter alia* on the grounds of default of payment of rent and reasonable requirement.
- b.** In the said suit the petitioners entered appearance and filed applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereafter “the 1997 Act”) praying for appropriate directions for deposit of current rent as well as arrears thereof. Pursuant to the orders passed by the learned Trial Court the petitioners deposited the arrears that had been determined by the learned Trial Court and had also been depositing current rent before the learned Trial Court.
- c.** The petitioners had entrusted a law clerk for the purpose of depositing the monthly rent, in respect of the suit premises, in Court. The clerk used to provide rent receipts as regards such rent deposits.
- d.** On March 12, 2025 when the petitioners visited the said law clerk for making payment of the rent for the month of March 2025 so that the same could be deposited in Court, the petitioners asked for the rent deposit challan for the month of January, 2025. However, the said clerk did not give any challan for deposit of rent for the month of January 2025.
- e.** It was then that the petitioners conducted enquiry and came to know that rent for the months of January and February 2025 had not been deposited in the learned Court within the statutory time although money had been duly made over by the petitioners to the said clerk for the purpose of deposit.

- f. Having come to learn so, the petitioners lodged a complaint before the jurisdictional police station and made an application under Section 151 of the Code before the learned Trial Court appending therewith a copy of the complaint lodged by the petitioners before the jurisdictional police station. By the said application the petitioners prayed to the learned Court to permit them to deposit monthly rent in accordance with the order dated November 23, 2006 passed by the learned Trial Court while disposing of the petitioners' application under Section 7(2) of the 1997 Act.
- g. The said application was rejected by the learned Trial Court with the observation that the petitioners had failed to comply with the provisions of Section 7(1)(c) of the 1997 Act. Feeling aggrieved by such order the petitioners have approached this Court by way of the present application.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. Mr. Mukherjee learned Senior Advocate appearing for the petitioners submitted that the learned Trial Court has committed a serious error in dismissing the petitioners' application under Section 151 of the Code by observing that the petitioners had failed to comply with the provisions of Section 7(1)(c) of the 1997 Act.
4. It was submitted that the penalty of striking out of defence of a tenant was applicable only to initial default and was not applicable to any unintentional default that might have happened after regular payments over a long period of time.

5. Mr. Mukherjee relied on a judgment of the Hon'ble Supreme Court in the case of ***Dharmendra Kalra & Others vs. Kulvinder Singh Bhatia***¹ to contend that striking out defence is a serious matter and ought not to be resorted to unless there is a clear case of deliberate default or contumacious conduct on the part of the tenant.
6. He next relied on a judgment of the Hon'ble Supreme Court in the case of ***Shibu Chandra Dhar vs. Pasupati Nath Auddya***² to contend that a similar provision which was there in the predecessor Act of 1956 had been interpreted to be directory and not mandatory. It was contended that the Court has power to enlarge time to make deposits even if the statutory time limit has been failed by the tenant.
7. Another judgment in the case of ***Gaya Prasad Kar vs. Subrata Kumar Banerjee***³ was pressed into service for the proposition that rent control legislations are benevolent legislations enacted for the benefit of the tenant.
8. A further judgment of the Hon'ble Supreme Court in the case of ***Debasish Paul & Another vs. Amal Boral***⁴ was cited to assert that Limitation Act would generally be applicable to the proceedings under the Tenancy Acts and that the proviso to sub-section (2) of Section 7 of the 1997 Act applies to sub-section (1) of Section 7 of the said Act as well.
9. It was further submitted by Mr. Mukherjee that penalty of striking out defence of a tenant on a single default, despite the tenant having regularly paid and

¹ 2026 INSC 492 : 2026 SCC OnLine SC 863 : 2026 Supreme (SC) 540

² (2002) 3 SCC 617

³ (2005) 8 SCC 14 (3)

⁴ (2024) 2 SCC 169

deposited the current rent for so many years down the line since the institution of the suit, would be too harsh.

10. It was submitted that the Court had ample power under Section 151 of the Code to pass any order for the purpose of rendering justice and that enlargement of time could also be done in exercise of the powers under Section 148 of the Code.

11. Mr. Mukherjee also referred to the recent judgment of the Hon'ble Supreme Court in the case of ***Seventh Day Adventist Senior Secondary School vs. Ismat Ahmed & Others***⁵ and invited the attention of the Court to paragraph 29 thereof. He submitted that a reading of the said paragraph would indicate that penalty of striking out defence is applicable only to the initial default and not to a subsequent default.

SUBMISSIONS ON BEHALF THE OPPOSITE PARTIES:

12. Mr. Tanmoy Mukherjee learned advocate appearing for the opposite parties submitted that the order impugned does not suffer from any jurisdictional error.

13. He submitted that the provisions of Section 7(1) of the 1997 Act required mandatory compliance and even a single default therein would lead to striking out defence.

14. He also relied on the judgment of ***Seventh Day Adventist Senior Secondary School*** (supra) to contend that striking out defence of a tenant upon failure to

⁵ 2025 SCC OnLine SC 1696

meet any of the conditions of Section 7(1)(a), (b) & (c) of the 1997 Act was inevitable and the default committed by the tenant was not condonable.

ANALYSIS & DECISION:

15. Heard the learned advocates appearing for the respective parties and considered the material on record.
16. While it cannot be contested that the 1997 Act is a beneficial legislation aimed at protecting tenants from arbitrary eviction, at the same time, it is also required to be kept in mind that in the name of liberal interpretation of a beneficial legislation, the rigors of law that the legislature in its wisdom incorporated in the legislation should not be rendered nugatory. Section 7 of the 1997 Act reads as follows:-

“7. When a tenant can get the benefit of protection against eviction.—(1)(a) On a suit being instituted by the landlord for eviction on any of the grounds referred to in Section 6, the tenant shall, subject to the provisions of sub-section (2) of this section, pay to the landlord or deposit with the Civil Judge all arrears of rent, calculated at the rate at which it was last paid and upto the end of the month previous to that in which the payment is made together with interest at the rate of ten per cent per annum.

(b) Such payment or deposit 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.

(c) The tenant shall thereafter 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 that rate.

(2) If in any suit referred to in sub-section (1), there is any dispute as to the amount of the rent payable by the tenant, the tenant shall, within the time specified in that sub-section, deposit with the Civil Judge the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of the application, the Civil Judge, shall, having regard to the rate at

which rent was last paid and the period for which default may have been made by the tenant, make, as soon as possible within a period not exceeding one year, an order specifying the amount, if any, due from the tenant and, thereupon, the tenant shall, within one month of the date of such order, pay to the landlord the amount so specified in the order:

Provided that having regard to the circumstances of the case an extension of time may be granted by the Civil Judge only once and the period of such extension shall not exceed two months.

(3) If the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, the Civil Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.

(4) If the tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant, shall be made by the Civil Judge, but he may allow such cost as he may deem fit to the landlord:

Provided that the tenant shall not be entitled to any relief under this sub-section if, having obtained such relief once in respect of the premises, he again makes default in payment of rent for four months within a period of twelve months or for three successive rental periods where rent is not payable monthly.”

(Emphasis supplied)

17. A meaningful reading of Section 7 of the 1997 Act would reveal the following:-

- a.** In terms of Section 7(1)(a) & (b) of the 1997 Act, all arrears of rent calculated at the rate it was last paid are either to be paid to the landlord or deposited with the Court together with interest within one month of service of summons (if summons is served) or within one month of appearance. A comparative reading of Section 7(1)(a) & (b) of the 1997 Act with Section 7(2) thereof would show that the provisions of Section 7(1)(a) & (b) of the 1997 Act deal with undisputed/admitted arrears. The present case does not pertain to these provisions.

- b.** Section 7(1)(c) of the 1997 Act deals with current rent which is either to be paid to the landlord or deposited with the Court every month by the 15th day of each succeeding month. The case at hand clearly falls under this provision.
- c.** Section 7(2) of the 1997 Act deals with disputed arrears. The instant case is not concerned with this provision.
- d.** Insofar as the proviso to Section 7(2) of the 1997 Act is concerned, it is now well settled that the proviso to Section 7(2) of the 1997 Act does not apply to Section 7(1) thereof. The present case does not relate to the said proviso.
- e.** Section 7(3) of the 1997 Act reveals that striking out defence of a tenant is a mandatory consequence of the tenant's failure to pay or deposit any amount referred to in sub-section (1) or sub-section (2) of Section 7 of the 1997 Act within the time specified therein or within such extended time as may be granted. This provision is attracted to the case at hand.
- f.** In the context of this case, it would mean that if the tenant fails to either pay to the landlord or deposit in Court (as the case may be) the current rent for a given month within the 15th day of the succeeding month, then provisions of Section 7(3) of the 1997 Act would be triggered. There is hardly any scope for the learned Court to condone such default and allow further time for either payment of current rent or deposit thereof in Court at any time beyond the 15th day of the month succeeding the month for which the rent is due.

18. The above conclusions owe their genesis to the following observations of the Hon'ble Supreme Court in the case of **Seventh Day Adventist Senior Secondary School** (supra):-

“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.

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.*

(Emphasis supplied)

19. It is thus clear that the provision of Section 7(3) of the 1997 Act is mandatory.

It is noteworthy that the said judgment in **Seventh Day Adventist Senior Secondary School** (supra) has been rendered by the Hon'ble Supreme Court after considering the scope of **Debasish Paul** (supra).

20. As regards the judgment in the case of **Dharmendra Kalra** (supra) the same cannot aid the petitioners. In the said case, the provisions of Order XV Rule 5

of the Code had fallen for consideration before the Hon'ble Supreme Court. Order XV Rule 5(1) of the Code reads as under:-

“5. Striking off defence on failure to deposit admitted rent, etc.—(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per centum per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making, the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2), strike off his defence.....⁶”

(Emphasis supplied)

21. A comparison of Section 7(3) of the 1997 Act and Order XV Rule 5(1) of the Code would instantly reveal that the former reads in mandatory terms and the latter is discretionary. Thus while **Dharmendra Kalra** (supra) considered, a provision that was (is) drastic in nature but discretionary in application, the case in hand pertains to a measure that is mandatory and absolute.
22. **Seventh Day Adventist Senior Secondary School** (supra) is a direct authority on the point that if default is committed in compliance with the provisions of Section 7(1)(a) & (b) or 7(1)(c) of the 1997 Act striking out of defence would be a necessary consequence since time mentioned therein is not extendable.
23. The judgment in the case of **Gaya Prasad Kar** (supra) and **Shibu Chandra Dhar** (supra) are authorities on the West Bengal Premises Tenancy Act, 1956.

⁶ Vide U.P. Act 57 of 1976, Section 7 (1-1-1977), vide Noti. No. 121/IV-h-36-D, dated Feb. 10, 1981, w.e.f. Oct. 3, 1981

In view of the direct authority of **Seventh Day Adventist Senior Secondary School** (supra) on the presently obtaining law (i.e. the 1997 Act) the said two judgments cannot help the petitioners in anyway.

- 24.** As regards the petitioners' submissions that the Court has power to enlarge time under its inherent powers under Section 151 of the Code, the same cannot be accepted. It is well settled that provisions of Section 151 of the Code cannot be used to circumvent statutory prohibitions or override express statutory mandates. In **K.K. Velusamy vs. N. Palanisamy**⁷ the Hon'ble Supreme Court had while dealing with the width of inherent powers of Court and the scope of Section 151 of the Code stated as follows:-

“12(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may be exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions.....”

(Emphasis supplied)

- 25.** The argument based on the Court's authority to enlarge time using its powers under Section 148 of the Code is equally unmeritorious. The very opening words of the said provision negate its applicability to the present case. To wit, the said provision applies to cases *“Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed **by this Code...**”* The provision clearly does not empower the Court to enlarge time prescribed by any

⁷ (2011) 11 SCC 275

other statute for doing any act prescribed or allowed by that statute (in this case the 1997 Act).

- 26.** The other submission of the petitioners that it would be too harsh a penalty to strike out defence upon a single default if the tenant has all along been depositing rent regularly indeed arrests attention but in the absence of jurisdiction to extend time, prior good conduct by itself would not vest the Court with authority to condone the default and refrain from striking out defence of the petitioner upon permitting the petitioner to deposit the defaulted sum. In such cases the doctrine of “*dura lex sed lex*” - which means “law is hard but it is the law”, becomes clearly applicable. This is all the more so since the provisions of Section 7 of the 1997 Act prescribe absolute statutory deadlines for payments/deposits of rent by the tenant and completely block judicial discretion to condone delays thereby permanently extinguishing the tenant’s right to defence if the timelines are missed (except in situations where the proviso to Section 7(2) of the 1997 Act applies).
- 27.** The other argument of the petitioners that the wrath of Section 7(3) of the 1997 Act is incurred by a tenant only on the initial failure/default also fails to appeal. In fact the proviso to Section 7(2) of the 1997 Act permits extension of time to deposit the rent arrears determined under Section 7(2) of the 1997 Act only once and that too for a period of two months. In case of a default of payment or deposit of the current rent under Section 7(1)(c) of the 1997 Act there is no scope for extension at all. The learned Trial Court has rightly held so.

- 28.** Furthermore, it must be remembered that this Court is exercising supervisory jurisdiction under Article 227 of the Constitution of India. It is well settled that such jurisdiction should be *exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to.*⁸ The view taken by the learned Trial Court is a reasonable and a plausible view. That being so, this Court is not inclined to interfere therewith.
- 29.** For all the reasons aforesaid, the order impugned is sustained. C.O. 1145 of 2025 stands dismissed. There shall be no order as to costs.
- 30.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)

⁸ **Garment Craft vs. Prakash Chand Goel, (2022) 4 SCC 181**