

28.01.2026
Court No. 06
Monthly List 330
January 2026
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 1505 of 2025

Tushar Doshi
-Versus-

Sri Dindayal Kayan

Mr. Subir Banerjee,
Md. Hossain

.....for the petitioner

- 1) The application has been filed challenging the order dated March 11, 2025, passed by the learned Judge, 4th Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 86 of 2018.
- 2) By the order impugned, the learned Court rejected an application dated January 15, 2025. The petitioner filed the said application as a tenant, seeking permission to deposit the rent in connection with the suit property as was adjudicated on November 27, 2024.
- 3) Learned advocate for the petitioner contends that the calculation of the arrear rent that was found to be payable under Section 7(2) of the West Bengal Premises Tenancy Act, 1997, (hereinafter referred to as the said Act) was erroneous. The Court had directed payment of arrear rent for 92 months, along with maintenance charges and quarterly corporation tax together with the statutory interest. The petitioners were directed to go on paying the current rent and the Corporation tax for the upcoming quarters of the financial

year within the time specified in Section 7(1)(c) of the West Bengal Premises Tenancy Act.

4) On perusal of the application for extension of time to make the payment of the amount determined under Section 7(2) of the said Act, it does not appear that the petitioner was at all aggrieved by the order passed under Section 7(2) of the said Act. All that the petitioner prayed for was to extension of time to deposit the arrears and the monthly rent.

5) Section 7 of the said Act provides a mechanism by which the tenant can be protected from eviction for non-payment of rent. This protection is available to the tenant irrespective of the ground for eviction. Even in cases where the suit for eviction is sought under other grounds than default, upon compliance of Section 7, the tenant is protected to the extent that he has a right to contest the eviction proceeding.

6) Section 7(1)(a) provides that 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 the 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 was made together with interest at the rate of 10% per annum. Under the said provision the tenant was required to deposit the arrear rent with 10% interest. Sub-section 7(1)(b) provides that such payment or deposit shall be made within one month of the service of summons on the tenant or, where the tenant appears in the suit without the

summons being served upon him, within one month of his appearance. Section 7(1)(c) provides that 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.

7) Section 7(2) provides that, 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, or the tenant disputes the relationship, in that case, within the time specified in that sub-section, the tenant shall deposit with the civil judge the amount of admitted rent and file an application for determination of the rent payable and/or the relationship between the parties. 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 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.

8) Having regard to the circumstances of the case, extension of time may be granted by the civil judge only once and the period of such extension shall not exceed two months. If the tenants 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. 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.

9) In this case, the application under Section 7(2) was disposed of on November 27, 2024 with the following order:-

“ORDERED

That the petition under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 filed by the defendants is disposed of on contest without cost.

Defendants are held to be defaulters for the month of April, 2017 to November, 2024.

Defendants are directed to pay the arrears of rent for aforesaid 92 months including the maintenance charges and quarterly Corporation tax together with the statutory interest (in total Rs. 76,120/-) within one month from the date of passing of this order.

The defendants are directed to go on paying the current rent and the Corporation tax for the upcoming quarters of the financial year within the time specified in Section 7(1)(c) of the W.B.P.T Act.

To 09/01/2025 for framing of issue.”

10) The petitioner failed to deposit the sum as directed by the court. The tenant did not comply with the statutory legal position.

11) Secondly, under Section 7(1)(c) the petitioner was required to deposit the monthly rent month by month by 15th of each succeeding month, being a sum equivalent to the rent at the rate adjudicated. Thirdly, one

extension was permissible to the petitioners for a period of two months, under the proviso to Section 7(2) of the said Act, to pray for extension for depositing the amount as directed under Section 7(2) of the said Act. After two months from the default, the petitioner prayed for extension. The Court was not in a position to extend such period, as the same would be contrary to law. Moreover, there is another default, that is, the monthly rent to be paid month by month within 15 of each succeeding month under Section 7(1)(c) was also not paid. This default cannot be condoned by court under any of the statutory provisions.

12) Under such circumstances, there is no scope to entertain the application and extension of time to deposit the arrear rent and monthly rent cannot be permitted. The revisional application therefore is dismissed without any order as to costs. Moreover, when the consequences of default has set in, the question of revisiting the order passed under Section 7(2) of the said Act at this stage does not arise.

13) Reference is made to 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) Moreover, from the order impugned, it appears that Section 7(1) was also not complied with and the petitioner had not deposited the admitted arrears of rent within the time specified under the law. This failure also cannot be condoned by the court. The court records that, admittedly, as per the tenant’s version the landlord refused to accept rent between April 2017 to August 2017.

15) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)