

28.01.2026
Item No.40
Ct. No. 30
Aloke

CO 2484 of 2024

Malay Bose
Vs.
Bibhas Nandy

Mr. Sanjay Mukherjee
Mr. Arghadip Das
Mr. Priyodip Pal
..for the petitioner

Mr. Pinaki Ranjan Mitra
...for the opposite party

1. The civil revision has been preferred challenging Order No. 8 dated 18.06.2024 passed by the learned Civil Judge (Junior Division), 2nd Court, Howrah in Title Suit No. 1772 of 2023.
2. Vide the impugned order the trial Court has been pleased to allow the defendants to file their application under Section 7(1) and Section 7(2) of the W.B.P.T. Act, 1997 on the following findings :

“On perusal it is found that the defendant received summons from this Court on 12.12.2023. It is seen that the defendant appeared on the fixed date i.e. 29.01.2024 before this Court and the next date was fixed for 28.03.2024 for filing W.S. On 12.02.2024 the defendant files petitions u/s 7(1) and 7(2) of WBPT Act 1997. Although the defendant did not file the petitions within one month of the receiving of the summons, but on perusal of the dates, this court finds that there is no intentional delay in filing of the said petitions. Thus, this court is an opinion to

allow the application u/s 5 limitation Act for the ends of justice.”

3. Subsequently, on hearing, allowed the said application filed under Section 7(1) and Section 7(2) of the WBPT Act along with the application under Section 5 of the Limitation Act.

4. Learned counsel for the petitioner has relied upon the following judgments :

i) Bijay Kumar Singh & Ors. vs. Amit Kumar Chamariya & Anr. (2019) 10 SCC 660;

ii) Debasish Paul & Anr. vs. Amal Borah (2024) 2 SCC 169.

5. Section 7 of the West Bengal Tenancy Act lays down as follows :

“7. When a tenant can get the benefit of protection against eviction.-(1) (a) On a ¹[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 ²[the Civil Judge] all arrears of rent, calculated at the rate 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.”

6. **Admittedly, the defendant received summons in this case on 12.12.2023 and filed application on 12.02.2024, that is beyond the period prescribed under the said provision.**

7. It is submitted by the learned counsel for the defendant/opposite party herein that on receiving the summons on 12.12.2023, the defendant/opposite party approached the Court on 29.01.2024, which was the date fixed in the summons and he has filed his application within one month from the said date of appearance.

8. Section 7 is very clear that an application is to be filed within one month from the **date of receipt of summons** herein on 12.12.2023 and within one

month from the date of appearance in case no summon is received. In the present case, petitioner has received summon admittedly on 12.12.2023 and, as such, the provision being mandatory in nature, the trial Court's order is erroneous and not in accordance with law.

9. Order No. 8 dated 18.06.2024 passed by the learned Civil Judge (Junior Division), 2nd Court at Howrah in Title Suit No. 1772 of 2023, is thus set aside.

10. The tenant/defendant/opposite party herein shall appear before the trial Court and pray for appropriate relief as per the provisions of the Act and the trial Court is directed to proceed in accordance with law with the suit expeditiously.

11. Civil revision stands disposed of.

12. Connected application, if any, stands disposed of.

13. Interim order, if any, stands vacated.

14. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Shampa Dutt (Paul), J.)