

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

PRESENT:

**THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE**

**C.O. 3907 of 2024**

**Nisha Shah  
Vs.  
Madhuri Chandra & Ors.**

For the Petitioner : Mr. Souvik Sen

Heard on : 12.12.2025

Judgment on : 27.01.2026

**Dr. Ajoy Kumar Mukherjee, J.**

**1.** Petitioner herein has assailed the order dated 7<sup>th</sup> August, 2024 passed by the Civil Judge (Senior Division) 9<sup>th</sup> court Alipore in Ejectment Suit no. 58 of 2022.

**2.** The principal opposite parties(OP) herein as landlords filed aforesaid Ejectment suit no. 58 of 2022 with a prayer for recovery of khas possession and consequential reliefs. The defendant/petitioners appeared in the suit after receiving summons and filed two applications under section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (in short Act of 1997). Plaintiffs /OP herein filed written objection against said application. Upon

contested hearing learned Court below was pleased to dispose of said two applications by an order dated 17.08.2023, with the observation that the challans filed by the defendants portrays that they have paid the rent of the suit premises on and from the month of November, 2011 to October, 2022 before the Rent controller, except the month of May to July 2012. He further observed that the challans in connection with the deposit of monthly rent for the months of March, 2017 to November 2022 was made in the name of a dead person. He also observed that challans in support of payment of rent for the month May 2012 to July 2012 were never submitted and the defendants submitted Carbon copy of General Diary which reflect that the said challans are missing.

**3.** Based on the submissions made by the parties the court below further held that defendant failed to submit valid document in support of payment of rent for the months of September to October 2011, May to July, 2012 and March 2017 to November, 2022 and thereby calculated that the arrear rent for the aforesaid 68 months @ Rs. 9550/- per month is Rs. 6,97,150/-. However, the Court held that since the defendants have stated that they have made payment before the Rent controller in the name of dead person, being the original land lord for the period from March, 2017 till November, 2022 they were directed to withdraw such amount from Rent Controller and to deposit the same afresh before the court, so that the plaintiff can avail the same. He further held that since the defendants are required to make payment of rent for the month of September, 2011 to October 2011 and May 2012 to July 2012 and also from January 2023 to August, 2023, so they were directed to make payment of Rs. 1,24,150/- along with interest within

one month of the date of the passing of the order without fail and they were further directed to make payment of the current rent from the month of September, 2023 within 7<sup>th</sup> of each succeeding month. Be it mentioned that aforesaid order was not challenged by either of the parties and it is also admitted position that the rate of rent in connection with suit premises is of Rs. 9550/- per month.

**4.** Since aforesaid payment was not done within one month from the date of passing of the order, in full satisfaction, the plaintiff opposite parties filed an application under section 7(3) of the Act of 1997 with prayer for striking out defence against delivery of possession. The petitioners herein filed written objection and they also filed an application under section 151 of the Code of Civil Procedure for passing necessary order to withdraw the deposited amount of Rs. 6,49,400/- from the office of the Rent Controller.

**5.** Thereafter the court below had taken up the aforesaid applications filed by plaintiff and defendants and by the impugned order came to a finding that the defendants in order to show that in compliance to order dated 17<sup>th</sup> August, 2023 they deposited the rent with the plaintiff, they have filed one challan dated 7<sup>th</sup> October, 2023, with their written objection and from the said challan, it appears that the defendant paid rent for the month of May to July, 2012 along with interest in the credit of plaintiff and beside that defendants did not make any payment towards arrear due. In respect of petitioners/defendants prayer for direction upon Rent Controller for withdrawing and depositing the amount, he observed that the Rent Controller has already reported that they do not have any such record in the office, regarding any payment made by the defendants and no information in

that connection regarding the deposit of rent in the office of the Rent Controller is available and therefore inclined to pass any direction and came to a conclusion that the defendants have made deliberate default in complying the aforesaid order dated 17<sup>th</sup> August, 2023 passed by the court under section 7(2) of the Act of 1997 and therefore he allowed the plaintiffs prayer to strike out the defendants defence against delivery of the possession of the tenanted premises.

**6.** Being aggrieved by the aforesaid order learned counsel for the petitioner submits that she made an application on 31.08.2023 for withdrawal of the amount of Rs. 6,49,400/- but the Rent Controller had not made any response to that Application. She also made application under RTI Act before the Rent Controller but she was not properly informed by the office of the rent controller and since she was eagerly waiting for the positive information, she could not comply the order dated 17.08.2023 without having any *malafide* intention. However, finding no alternative she deposited rent for the month of May to July 2012, before the court below on 07.10.2023, which is beyond the stipulated time frame by the Court. In this context her further submissions is that it was never the intention of the petitioner not to deposit the rent for the aforesaid three months but for the aforesaid reasons few days delay caused. In this context referring 7(2) of the Act of 1997 her counsel submits that under the proviso clause to section 7 (2), it is clear 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. Therefore, if the statute is construed liberally then it appears that the defendants/tenant

deposited the rent in compliance with the order after 20 days from the stipulated date which is well within two months, though it is true that she had not filed any formal application for extension of period. In this context she further submits that being a litigant she was never advised to file an application for extension before the court below before depositing the rent beyond time, instead she was advised to file aforesaid application under section 151 of CPC on 20.09.2023. Accordingly her submission before the Court is that due to said fault/mistake made on the part of petitioners for not filing of the said extension application within one month from the order dated 17.08.2023, it does not give rise to pass the impugned order not to provide the benefit to protect the defence of the tenant as per the spirit of the statute. The court below ought to have considered that it is not a case, where petitioner/tenant failed to comply the order granting special protection for another two months, in as much as tenant under the compelling circumstances could not comply earlier order dated 17.08.2023 and therefore the order impugned is liable to be set aside.

**7.** Mr. Ghosh Learned Counsel appearing on behalf of the opposite party raised vehement objection against the submission made by the petitioners and contended that court below made specific direction by the order dated 17.08.2023 to make the payment within one month of the date of the passing of the order without fail and also to make payment of current rent. Non compliance of any part of the aforesaid order, it brings the tenants to the mischief of subsection (3) of section 7 of the Act of 1997. He further submits that the defendants admittedly did not make the Application for extension and as such the extension cannot be granted under sub section

(2) of section 7 and therefore the court below was justified in striking out the defence against delivery of possession and for which the order impugned does not call for interference.

**8.** I have considered the submissions made by the parties.

**9.** From the submissions and also from the document available in the record and on perusal of the impugned order it is clear that though defence contention is that he paid rent to the land lord for the month of September, and October, 2011 but the land lord did not give him any rent receipt. Thereafter he did not make payment for the said two months and even he did not make payment for the said two months while filed his application under section 7 (1) and 7(2) of the Act but he has deposited the same only on 13.09.2023 i.e. after one year two months of receipt of summons of the suit, because he received summon admittedly on 16.11.2022. Secondly by the impugned order dated 17.08.2023, though court below directed the defendant to pay rent for September, 2011 to October, 2011 and May 2012 to July 2012 with interest within one month without fail but defendant failed to make such deposit of rent for the month of May to July 2012 within one month and also did not make any prayer for extension of time and thereafter he deposited the same only on 7<sup>th</sup> October, 2012. Thirdly, as regards payment of current rent the impugned order portrays that defendant paid rent for the month of November, 2023 in the month of January, 2024 inspite of specific direction about payment of current rent by 7<sup>th</sup> of each succeeding month. Fourthly, court below specifically observed in the impugned order that in respect of alleged deposit of rent in the name of dead person before the Rent Controller from March, 2017 to November, 2022, the

RTI office in reply submitted that they do not have any such record in the office regarding any payment made by defendant and defendant also failed to file any document in support of valid payment of rent for the said months. Therefore in compliance with order dated 17.08.2023, defendant neither had withdrawn rents for the said 69 months (approximately) nor paid the rent for the said months along with interest till date.

**10.** Now so far as the first issue is concerned regarding the defence contention that inspite of payment of rent the plaintiff land lord opposite party did not grant any receipt for the month of September and October 2011 the tenant, had specific penal remedy under section 32 of the Act of 1997 which specifically provides as follows:-

***Penalty for refusal by landlord to grant receipt for rent paid.***---If the landlord refuses to deliver to the tenant a receipt for any rent paid by the tenant, the Controller shall, on application made in this behalf by the tenant within two months from the date of payment and after hearing the landlord, by order, direct the landlord to pay to the tenant, by way of damages, such sum, not exceeding three times the amount of rent paid by the tenant, as the Controller may determine, and the cost of application, and shall issue a certificate to the tenant in respect of the rent paid.

**11.** It is not the case of the tenant/defendant that he had taken any such measure. Furthermore section 21 of the Act of 1997 prescribes remedy where land lord refuses to accept rent for a particular month or months. Here defendant has nothing to show that he had taken recourse either under section 32 or under section 21, when land lord allegedly on receiving rent did not grant any rent receipt. Therefore, when defendant received summon on 16.11.2022, he was duty bound to deposit rent for September, and October, 2011 within one month from 16.11.2012. Here though defendant had taken the plea that court below by the order dated 17.08.2023 permitted him to deposit said rent within one month which he

duly complied and in the absence of any challenge against said order by either party, it had attained its finality, but I am not agreeable with such argument for the reason that in this context the law has been laid down by the Apex Court in ***Bijay Kumar Singh and Ors. Vs. Amit Kumar Chamariya and another*** reported in **(2019) 10 SCC 660** and para 21 of the said judgment runs as follows:-

*21. Sub-section (3) provides for consequences of non-payment of rent i.e. striking off the defence against the delivery of the possession and to proceed with the hearing of the suit. Such provision is materially different from sub-sections (2-A) and (2-B) which was being examined by this Court in B.P. Khemka [B.P. Khemka (P) Ltd. v. Birendra Kumar Bhowmick, (1987) 2 SCC 407]. Sub-sections (2-A) and (2-B) of Section 17 of the 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso to Section 7(2) and sub-section (3) of Section 7 of the Act. Therefore, the provisions of sub-section (2) are mandatory and required to be scrupulously followed by the tenant, if the tenant has to avoid the eviction on account of non-payment of arrears of rent under Section 6 of the Act. There is an outer limit for extension of time to deposit of arrears of rent in terms of the proviso to sub-section (2) of Section 7 of the Act. The consequences flowing from non-deposit of rent are contemplated under sub-section (3) of Section 7 of the Act. Therefore, if the tenant fails to deposit admitted arrears of rent within one month of receipt of summons or within one month of appearance without summons and also fails to make an application for determination of the disputed amount of rate of rent and the period of arrears and the subsequent non-payment on determining of the arrears of rent, will entail the eviction of the tenant. Section 7 of the Act provides for a complete mechanism for avoiding eviction on the ground of arrears of rent, provided that the tenant takes steps as contemplated under sub-section (2) of Section 7 of the Act and deposits the arrears of rent on determination of the disputed amount. 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.*

**12.** Thereafter in ***Debasish Paul and another Vs. Amal Boral, 2023 Live Law SC 919*** Supreme Court reiterated the same view and observed in para 16 that the reasoning in ***Bijay Kumar Singh's Case*** (Supra) cannot be doubted. Moreover the requirement for a tenant is not only to file an application under section 7 but he is also required to deposit the admitted

arrears of rent as well, which has certainly not been done. It is true that said judgment was passed in 2019 but in view of the judgment passed by the Apex Court reported in **(2007) 3 SCC 557, (P.V. George & Others Vs. State of Kerala & Others)** it can be said that the aforesaid law laid down by the Apex Court in ***Bijay Kumar Singh Case*** (Supra) is retrospective in operation as the law in this context was laid down by the Court. Therefore even though Trial court erroneously allowed defendant/tenant to deposit rent for the month of September, to October, 2011 at a later date, but the tenant is not entitled to get such protection as there cannot be estoppel against the law laid down by the Apex court

**13.** Secondly defendant pleaded in support of non deposit of rent for the month of May to July 2012 is that challan in support of such deposit for the said month is missing. However, fact remains that even in compliance with the order dated 17.08.2023, the defendant did not make such payment within one month as stipulated. No prayer for extension has also been sought for within stipulated one month. Learned counsel for the defendant has raised a lame excuse that the defendant was not advised to make such prayer and that the provision of law is to be liberally construed which provides extension of time for two months for first default but here again I am not agreeable to aforesaid contention made by the petitioner as the context of the instant case is different.

**14.** Petitioner has already defaulted in payment of rent for the month of September to October, 2011 as well as defaulted also in paying current rent for the month of November, 2023 within time and above all there is nothing

to show that he has made any valid deposit of rent from march 2017 to November, 2022.

**15.** In ***Golam Vs Hazi*** reported in **62 CWN 858** it was held that even if there is a violation in respect of a single deposit or in the deposit of any disputed amount as required under sub section (1) it attracts sub section (3).

**16.** In ***Smt. Bina Devi Binay Vs. Ramesh Kumar Gupta*** reported in **(2015) 3 SCC Cal 384** where all the previous judgments were referred and the court observed in para 19 that the word extension must relate to the date fixed by the original order under sub section (2) of section 7 and the only conclusion that can be arrived at with regard to proviso (2) sub section 2 of section 7 of the Act of 1997, that an application for extension of time to deposit the arrear rent within the period fixed by the original order passed by the court below must be made on or before the date of expiry of the original time limit fixed by the Civil Judge.

**17.** In this context it is also to be mentioned that in view of the judgment of the Apex Court in ***Nasiruddin and others Vs. Sita Ram Agarwal*** reported in **(2003) 2 SCC 577** the word “shall” used in the said provision though ordinarily imperative in nature but where the statute does not provides extension of time, the court cannot extend time nor condone the delay.

**18.** In addition to that though defendant has taken a plea without having any document that he deposited rent for about 69 months from March, 2017 to November, 2022 before the Rent Controller but such deposit even if taken to be truly made, has been made admittedly in the name of a

deceased person. In this context plaintiff's specific case is that by a letter dated 26.12.2018 they informed the defendants that original land lord died which they had acknowledged by giving reply. Defendants in their written objection against plaintiffs application under section 7(3) have merely made a denial which stands as oath Vs. oath. Section 22 (2) of the Act of 1997 specifically states that if wilfully or negligently tenant makes false statement, the deposit made by him cannot be said to be a valid deposit. Therefore, even if any such deposit is made by defendant that must be invalid deposit, for which court below by the aforesaid order dated 17.08.2023 directed that even if deposit is made in the name of a dead landlord, it is to be withdrawn and to be deposited before the Court below within one month without fail. Defendant here also did not comply the said order and had taken a plea that Rent controller did not make cooperation for such withdrawal. Though as indicated above that in reply to petitioners RTI application the concerned office replied that no such record in support of defendants aforesaid deposit of rent is available in the office. Therefore, even if it is assumed that there was any alleged non co-operation by controller, defendant could have complied the aforesaid order dated 17.08.2023 by depositing said amount of rent on protest within one month with leave to withdraw if subsequently excess payment of rent for any month is detected, so as to avoid eviction on the ground of non payment of arrear rent and /or to save herself from defence to be struck off against delivery of possession for default in payment of rent. But she has not taken any step and till date defendant has nothing to show that he made such deposit of rent for the aforesaid 69 months validly and therefore the court rightly held

that the defendants have made deliberate default in complying the order dated 17<sup>th</sup> August, 2023 passed by the same court while disposing his application under section 7(2) of the Act of 1997 and therefore, the circumstances attracts invocation of his power under section 7(3) of the Act.

**19.** Last but not the least, it is settled law that High Courts under Article 227 of the constitution of India have little scope to interfere with the order of the courts below as a matter of routine. Here the trial court has arrived at a conclusion assigning reason and the court below has not committed any grave injustice nor exceeded its jurisdiction in passing the order impugned. If the power under supervisory jurisdiction is used where it is not proper to exercise, it will become counter productive and such power may lose its vitality. Since there is nothing to show that the order impugned passed by the court below is either illegal or irrational or suffering from procedural impropriety, I find nothing to interfere with the order impugned.

**20. CO 3907 of 2024** thus stands dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

**(Dr. AJOY KUMAR MUKHERJEE, J.)**