

06.02.2026
Court No. 06
Item No. 07
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 4236 of 2025

Nemai Chandra Modak
-Versus-

Smt. Kabita Ghosh & Anr.

Mr. Sounak Bhattacharya,
Mr. Souma Bhattacharya,
Mr. Anirban Saha Roy,
Mr. Debjit Mukherjee
.....for the petitioner

Mr. Amitabrata Roy,
Ms. Deboleena Ghosh
....for the opposite parties

- 1) This is an application challenging an order dated November 19, 2025 passed by the learned Civil Judge, (Junior Division) 1st Court at Chandannagar, District – Hooghly.
- 2) By the order impugned, the learned Court rejected the applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act).
- 3) Mr. Sounak Bhattacharya, learned advocate for the petitioner submits that the order is misconceived. The learned Court failed to take into consideration that the applications under Sections 7(1) and 7(2) of the said Act were both filed within a period of one month from the receipt of summons. The learned advocate for the tenant filed an application for condonation of delay in filing the applications under Sections 7(1) and 7(2). The learned Court

ought to have looked into the records and held that the application under Section 5 of the Limitation Act for condonation of delay in filing the applications under Section 7 of the said Act was redundant. Thus, the learned Court should have disposed of the applications on merits.

4) Having perused the order impugned, it appears that the learned Court recorded that an application for condonation of delay of 28 days in filing the applications had been filed. It was stated that summons were received by registered post on September 27, 2022. Later, the defendant wanted to withdraw the application, on the ground that summons through the Court were delivered on November 17, 2022 and the petitions were filed on November 24, 2022, that is, within seven days from the receipt of the summons through court.

5) The defendant also filed an application for amendment of certain portions of the applications under Sections 7(1) and 7(2) seeking deletion of the date of service of summons and deletion of the prayer for condonation of delay in filing the applications beyond the statutory period.

6) The plaintiff opposed such applications on the ground that the applications were belated. Condonation of delay in preferring the applications under Section 7 of the said Act was not permissible in law and the Court did not have any power to condone such delay. The only option left to the court was to strike off the defence.

7) The Court held that, admittedly an affidavit was sworn by the defendant that, as

he was unwell he could not take steps prior to the first week of November 2022, despite receiving the summons on September 2022. The said admission could not be withdrawn by the defendant.

8) As there were discrepancies with regard to date of delivery of summons, the plaintiff filed an application before the Superintendent of Post regarding the date of service of summons upon the tenant by registered post. The Superintendent of Post issued a letter, inter alia, stating that the summons were delivered by the Post Office on September 27, 2022. The plaintiff filed the postal receipt and the letter by first class, which disclosed that the addressee, namely, the defendant Nemai Chandra had received the summons on September 27, 2022 and the postal article was booked on September 23, 2022. The Court drew a presumption of service by applying decisions of the Hon'ble Apex Court with regard to delivery of summons on the basis of the postal report.

9) Under such circumstances, by relying on the various judgements of this Court and the Hon'ble Apex Court, the learned Court was constrained to hold that the petitioner did not comply with the provisions of Sections 7(1) and 7(2), inasmuch as, those applications were filed belatedly and not within the period of limitation which had been provided in the sections itself. The defendant did not approach the court within one month from the date of receipt of summons. Under such circumstances, finding no other alternative the applications were rejected and the consequential effect of such

rejection was striking off the defence of the tenant.

10) Although it is submitted by Mr. Bhattacharya that the summons were delivered through the Court bailiff only on November 22, 2022 and the applications under Sections 7(1) and 7(2) were filed within a month, that is, on November 24, 2022, the Court relied on the documents furnished by the plaintiff which contained a report from the post office that the summons were received on September 27, 2022 by registered post. This fact was also accepted in the original applications filed by the petitioner under Section 7(1) and 7(2).

11) This Court is required to see whether the petitioner had complied with the provisions of Sections 7(1) and 7(2) in its letter and spirit.

12) The application under Section 7(1) has been perused. There are averments where default of rent is admitted. In paragraphs 5 and 6 of the application, the petitioner admitted non-payment of rent from October 2021 till October 2022 and prayed for an order allowing deposit of the said arrears in instalments. This itself shows that the petitioner has violated the provisions of Section 7 of the said Act. The provisions of the said Act are set out below :

“Section 7(1) provides 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].”

13) In the decision of **Seventh Day Adventist Senior Secondary School v. Ismat Ahmed and Others.**, reported in **2025 SCC Online SC 1696**, 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.

* * *

* * *

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.”

14) The law casts a duty upon a tenant to file an application under Section 7(1) of the said Act within 30 days from receipt of summons, by depositing the admitted arrears and then to go on paying the monthly rent under Section 7(1)(c). The arrears are to be deposited within 30 days from the date of receipt of summons. Moreover, payment of admitted arrears cannot be done in instalments. It has to be done at one time. The tenant had not only failed to deposit the arrears, but also waited for an order allowing deposit of admitted arrears in instalments. The application under Section 7(2) was filed, praying for an order to determine the arrears and allow the petitioner to pay back the said arrears in easy instalments. Such prayer was also misconceived. Under such circumstances, even if this Court discounts the factual discrepancy with regard to the date of receipt of summons, the tenant's obligation to deposit the admitted arrear is a mandate of law and the only recourse available to the tenant, to protect himself from suffering an order of

delivery of possession in a suit for eviction. This revisional application is dismissed.

15) The order striking out the defense is a natural consequence for non-compliance of 7(1) and 7(2). Under such circumstances, the validity or legality of the order striking out the defence need not be further dwelled upon. However, striking out the defence will not prevent the tenant from cross-examining the plaintiff, in order to demolish the plaint case. However, the petitioner shall not be entitled to raise his own defence or advance his case through such cross-examination. He is only entitled to demolish the plaint case by pointing out the falsities or defects or weaknesses in the plaint case.

16) Accordingly, the revisional application is disposed of without any order as to costs.

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

(Shampa Sarkar, J.)