

EJECTMENT SUIT NO.92 OF 2024
C. N. R. NO. WBPS01- 000264 - 2024
Before Smt. A. Bhattacharya, Ld. Judge, 5th Bench.

ORDER NO. 14 DATED 10.03.2025

Both parties file hazira.

Today is fixed for passing order in respect of the petition under Or.6 R.17 of C.P.C. and also the petition under Sec.7(1) of the W. B. P. T. Act.

The record is taken up for passing order.

By filing the petition under Or.6 R.17 of C.P.C. dated 19.08.2024, it is stated by the Plaintiffs that during pendency of the suit, plaintiff no.1 filed an application under Sec.144(2) of Cr.P.C. restraining the defendant from assigning, transferrering and/or subletting the suit shop room on the ground floor of the suit premises no.11/1, Chidam Mudi Lane, Kolkata-700006 and upon hearing, Ld. 3rd Executive/Judicial Magistrate, Kolkata has been pleased to direct the Officer-in-Charge, Burtolla Police Station to enquire into the matter and to submit a report thereof wherefrom it appears that the suit shop room was sublet to one Sushil Kumar Mali which fact has not been incorporated in the plaint and as such, prayed for amendment of the plaint as per schedule of amendment made in the petition.

Though no written objection is filed on behalf of the defendant but it is submitted by the ld. Advocate for the defendant that the instant petition filed by the plaintiffs is not maintainable in law and if the same is allowed, the nature and character of the suit will be changed.

Heard ld. Advocates for both sides.

Considering the petition and the materials on record, I find that the amendment sought for by the plaintiffs is formal in nature and if the same is allowed, it will not change the nature and character of the instant suit. Moreover, to come to a proper conclusion of the suit, the instant petition should be allowed. The plaintiff only intends to add another ground on which he is seeking for eviction of the defendant/tenant. This in no way will change the nature and character of the suit. The plaintiff is bound to prove his pleadings to get a relief in his suit. Thus there is no reason to refuse such amendment.

Hence, it is

ORDERED

that the petition under Or.6 R.17 of C.P.C. dated 19.08.2024 filed by the plaintiffs is allowed on contest.

Let the plaint be amended as per points mentioned in the schedule to the petition dated 19.08.2024.

ORDER NO. 14 contd.

Plaintiffs are directed to file amended copy of plaint within 14 days from the date of this order after serving copy of the same upon the defendant.

Defendant shall be at liberty to file additional written statement, if any, with regard to the amendment made in the plaint vide this order.

Now, the record is taken up for passing order in respect of petition under Sec.7(1) of the W.B.P.T. Act filed by the defendant by which it is stated by the defendant that the plaint of the suit could not be served upon the defendant as on that particular date, when the postman reached the suit premises, defendant was not present there because of his ailment being a patient of "Vascular Lognitire Impairment (VCI)" since 2019 and also of Diabetes. Due to his ailing health, he is almost bed ridden. Defendant is 69 years old cannot move without help and moreso, he cannot speak, hear or interact freely and clearly. Upon receiving a call from Burtolla Police Station on 10.06.2023, wife of the defendant learnt that a postal article in the name of the defendant was tried to be served at the suit premises but the postal peon, in absence of the addressee, did not hand it over to others for which on the next date, the same was collected from the Police Station. Since the defenant was in unconscious stage for a long period, the family members were busy for his medical treatment and could not assist the Advocate. On 10.07.2024, Sri Suman Das, son of the defendant contacted the Id. Advocate with signed Vakalatnama and requested him to appear before the Court. Id. Advocate advised him to get the signature of the defendant on some petitions to be filed on the date of apperance but the son-in-law, on the next day, informed the Id. Advocate that due to deterioration of the health condition of the defendant, it was not possible to get his signatures on those papers. On 11.07.2024, Id. Advocate appeared and prayed for supply of plaint. That the date of filing this petitfon expired on 11.07.2024 but due to physical condition of the defendant, he could put his thumb impression and could not put his signature before 10.09.2024 and there was no deliberate default on the part of the defendant. So, due to such physical condition of the defendant, there was an unintentional delay of 60 days in filing the petition and as such, prayed for accepting the petition under Sec.7(1) of the W. B. P. T. Act after condonation of delay of 60 days on humanitarian ground otherwise the defendant will suffer irreparable loss and injury.

By filing written objection, it is stated by the plaintiffs that the application under Sec.7(1) of the W. B. P. T. Act is not maintainable in law and in facts. The application is void, bad in law and mala fide. The defendant is/was physically fit and in well and good condition all along. Defendant duly received the summons sent under registered post with A/D card. Defendant, with ill motive and mala fide intention, has failed and neglected to file application under Sec.7(1) of the W. B. P. T. Act. So, it is intentional, wilful, deliberate

EJECTMENT SUIT NO.92 OF 2024
C. N. R. NO. WBPS01- 000264 - 2024
Before Smt. A. Bhattacharya, Ld. Judge, 5th Bench.

ORDER NO. 14 contd.

and motivated on the part of the defendant. Defendant had never tendered rent since January 2023 till August 2024 to the plaintiffs at any point of time. The application is mala fide and not bona fide at all. Defendant has procured false doctor certificate for the purpose of this suit. The thumb impression of the defendant in the application is doubtful and suspicious and prayed for dismissal of the application under Sec.7(1) of the Act.

On careful perusal of the petition, written objection and the materials on record, it transpires that the defendant appeared before the court on 11.07.2024. Thereafter, defendant filed applications under Sec.7(2) of the W. B. P. T. Act on 11.09.2024 which is beyond the period provided in Sec.7(1) (b) of the Act. Sec.7(1)(b) of the W.B.P.T. Act provides that the deposit of rent under Sec.7(1)(a) of the said Act is to be made within one month of service of summons upon the defendant or within one month of his appearance. As no service was held by the Court, so the period of one month is calculated from the date of appearance of the defendant. Even if the time period is calculated from the date of appearance before the Court, then also the petition was not filed within the time period specified in Sec.7(1)(b) of the W.B.P.T. Act.

Ld. Advocate for the defendant, in course of his hearing, submitted that the defendant is bed ridden and he could not instruct his lawyer to take appropriate steps. He also filed xerox copies of medical documents of the defendant. In support of his contention, Id. Advocate for the defendant relied upon the decisions reported in 2023 SCC OnLine Cal 350 and 2017 SCC OnLine Cal 13283.

In 2023 SCC OnLine Cal 350, the Hon'ble High Court at Calcutta had distinguished the judgment passed by the Hon'ble Supreme Court in *Bijay Kumar Singh v Amit Kumar Chamariya*, (2019) 10 SCC 660 on the ground that it was not ventilated before the Hon'ble Apex Court that in trial Court summons are issued with the next date mentioned as a date much longer than the period of one month as specified in Section 7 (1) of the W.B.P.T Act thus causing a misunderstanding to the tenant as to when to appear.

It is a well known legal principle of law encapsulated in the Latin maxim "*Ignorantia juris non excusat*" which means "*Ignorance of law excuses no one*". Thus not having knowledge of the law cannot stand as a defence. The next date mentioned on the summon is mentioned to notify the defendant the time within which he ought to appear before the Court. The period of thirty days of filing of the written statement in terms of Order 8 Rule 1 of CPC is counted from the date of receipt of the summons and not from

ORDER NO. 14 contd.

the date mentioned in the summons. Similarly Section 7(1)(b) of the W.B.P.T Act also specifies the time within which the tenant must approach the Court to deposit the current and arrear rent. It need not be notified to the tenant as to what the law says. Moreover, in the present case it is not that the defendant was misled by the mentioning of a different date in the summons. In this case the defendant had already appeared before the Court and after a period of expiry of two months the defendant/tenant filed the application under Section 7(1) of the W.B.P.T Act.

In fact a co-ordinate Bench of the Hon'ble High Court at Calcutta passed in ***Biswajit Panda v Pratima Poiria & Others reported in 2024 SCC OnLine Cal 4616 (Relied on)*** the Hon'ble High Court at Calcutta has held that has clearly held that "*the decision in Bahadur Kathotia (Supra) cannot be accepted as a good law.*" Thus this judgment being a later passed judgment is to be relied upon as a precedent.

In 2017 SCC OnLine Cal 13283, the Hon'ble High Court at Calcutta has held that "29. *I am in complete agreement with the observation of my learned brother Judge, the Hon'ble Justice I.P.Mukherji as recorded in His Lordship's order dated 13 January, 2015 that the use of the power of the Court to strike out the defence of the defendants has drastic consequences. Such power is to be used as a last resort against a defiant tenant. Section 7(3) of the said Act vests this Court with discretion to extend the time period for paying or depositing the amounts referred to in Secs. 7(1) and (2). Thus, it is not that if there is non payment or non deposit of such amount by the tenant the Court has no option but to strike out the defence. The said Act is a beneficial legislation for protection of tenants and any discretionary power vested in the Court by the said statute should, wherever possible, be exercised in favour of the tenant. Since I have held that there is no deliberate default or real default on the part of the defendants in the present case, I allow the applications under Secs.7(1) and (2) of the said Act. The defendants shall deposit in court the entire amount of arrear rent calculated at the rate at which rent was last deposited by the defendants till date along with interest at the statutorily prescribed rate. However, having regard to the location of the suit premises which is located in a prime commercial hub of the city and having regard to the area of the suit premises and that the same is used for commercial purpose, I direct the defendants to pay rent to the plaintiff or deposit the same in Court month by month at the rate of Rs.10,000/- per month starting with the month of October 2017 till the disposal of the suit. This is an interim measure and shall in no way be taken as a measure of mesne profit to be ascertained at the final hearing of the suit. The plaintiff will be at liberty to withdraw the amount deposited by the defendants with the Rent Controller without prejudice to their rights and contents in the suit.*"

EJECTMENT SUIT NO.92 OF 2024
C. N. R. NO. WBPS01- 000264 - 2024
Before Smt. A. Bhattacharya, Ld. Judge, 5th Bench.

ORDER NO. 14 contd.

In this case the delay in filing the application under Section 7(1) & 7(2) of W.B.P.T Act was already allowed by the Trial Court which was challenged before the Hon'ble High Court at Calcutta by the plaintiff of that suit.

This point of view has now undergone huge changes by way of various decisions of the Hon'ble High Court at Calcutta and the Hon'ble Apex Court.

In ***Vijay Kumar Singh & ors. v Amit Kumar Chamariya and anr.*** Reported in **(2019) 10 SCC 660 (Relied on)**, Hon'ble Apex Court has held that “Sub sections (2A) and (2B) of Section 17 of 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso of sub sections (2) and (3) of Sec.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. Thereafter, 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 of 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 pre condition 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”. Thus, from the decision of Hon'ble Apex Court, it is clear that the provisions of Sec.5 of The Limitation Act is not applicable to condone delay in filing application under Sec.7(2) of the W. B. P. T. Act.

Sec.40 of the W. B. P. T. Act specifically provides for application of the Limitation Act to proceedings or appeals under this Act. Thus, the provisions of Limitation Act do not apply to applications made under any provision of this Act which does not initiate any

ORDER NO. 14 contd.

proceedings or Appeals. An application under Sec.7(2) of W. B. P. T. Act is merely an application and not a proceeding and thus, the provision of Limitation Act is not applicable to an application under Sec.7(2) of the W. B. P. T. Act.

The W.B.P.T Act is a special statute and the limitation for every application is specified in the provisions of the said Act. It is also a general principle of law that provisions of Section 5 of the Limitation Act is not applicable to any of the applications under the said Act. Where the provisions of Section 5 of the Limitation Act has been ousted by Section 40 of the said Act, it cannot be invoked by the Court under the inherent powers of the Court as provided in Section 151 of the CPC. By Sec.40 of the said Act, the applicability of provisions of Limitation Act has been restricted to proceedings and Appeals under the W. B. P. T. Act and thus, the same is not applicable to any application under Sec.7(1) and 7(2) of the W. B. P. T. Act.

In ***Om Prakash Agarwal & Anr. v Bijay Singh Dugar & Ors.***, reported in **2023 SCC OnLine Cal 2052 : 2023 AIR CC 2871 (Relied on)** the Hon'ble High Court at Calcutta has held that : *"15. Since section 7 of the Act provides for a complete mechanism for avoiding the eviction on the ground of arrear of rent and also deposit of current rent and legislature had not given any relaxation for extension of period prescribed under section 7 (1), section 5 of the limitation has got no application for making a prayer for condonation of delay. Now the question raised by the tenant/defendant that the said application has not been made under section 5 of the Limitation Act nor under section 40 of the Act of 1997 but he has made the said application under section 151 of the Code of Civil Procedure. In this context law is specific which says, the inherent power of a court will not be exercised if it's exercise is inconsistent with or comes into conflict with any of the powers expressly or by necessary implication conferred by the other provisions of law. When, there are express provisions covering aforesaid particular topic, that give rise to a necessary implication that no power shall be exercised under section 151 of the code in respect of the said topic, otherwise than in the manner prescribed by the said provision. In view of above since section 5 has got no application in the present context for condonation of delay, section 151 of the code cannot come to its rescue, in order to extend the outer time limit for deposit of rent before the court under section 7(1)(c) of the Act of 1997.*

16. In view of above application filed under section 151 of the Code of Civil Procedure by the tenant/defendant seeking condonation of delay in making deposit of the monthly rent before the court below is misconceived. Accordingly the order impugned i.e. order no. 47 dated 13th August 2019 passed by learned 3rd Bench Small Causes Court Calcutta in Ejectment Suit

EJECTMENT SUIT NO.92 OF 2024
C. N. R. NO. WBPS01- 000264 - 2024
Before Smt. A. Bhattacharya, Ld. Judge, 5th Bench.

ORDER NO. 14 contd.

No. 6752 of 2014 is hereby set aside.”

Thus it is clearly held by the Hon’ble High Court at Calcutta that the provisions of extension of time in depositing monthly rent cannot be allowed the Court under any of the provisions under Section 151 of CPC or under Section 5 of the Limitation Act. The provision of Section 7(1)(b) of the W.B.P.T Act is qualified by the term “shall” and not “may” leaving any discretion with the Court. The provision is mandatory for the defendant/tenant to make payment or deposit rent within one month from service of summons or within one month from the date of appearance where no summons was served upon him.

Thus, where there is no scope to extend time for filing application under Section 7(1) of W.B.P.T Act, there is no scope to allow an application under Sec.7(1) of the W. B. P. T. Act which is filed beyond the time provided under Sec.7(1)(b) of the W. B. P. T. Act and thus, the same is liable to be rejected.

Hence, it is

ORDERED

that the petition under Section 7(1) of the W.B.P.T Act filed by the defendant on 11.09.2024 is hereby rejected on contest but without costs.

Now, the record is taken up for framing of issues.

Perused the plaint and the written statement.

Issues are framed in a separate sheet. Let the same be tagged with the record.

Fix 24.03.2025 for P. hearing of the suit.

Dictated and corrected by me,

JUDGE

JUDGE
[5TH BENCH]