

Ejectment Suit No. 35 of 2022

Present: **Shri Subhrajit Basu [J.O. Code: WB01238]**
 Judge, Bench-IV, City Civil Court, Calcutta

Order No. 24
26.03.2025

The learned advocates for the plaintiffs and the defendant are present.

The matter is fixed today for passing order in respect of the application filed by the defendant under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as "WBPT Act, 1997").

Heard the learned advocates.

The application under Section 7(2) of WBPT Act, 1997 is now taken up for passing order.

An important question of law has arisen in this application for consideration of this Court.

Be it noted in this regard that the instant suit was transferred from Bench XII to this Bench for disposal *vide* Order dated 15.04.2024 passed by the Learned Chief Judge, City Civil Court, Calcutta in Misc. Case No. 1477 of 2024.

The crucial facts of the case as revealed from the materials on record and the arguments of the learned advocates are noted hereunder.

The suit has been filed by the plaintiffs on 20.09.2022 for eviction of the defendant from the suit premises, *inter alia*, on the ground of default in payment of rent from the month of August, 2021, recovery of *khas* possession, damages, mesne profits and other relief.

Initially there were two defendants in this suit, but on account of death of the defendant no.1 before institution of the suit which came to the knowledge of the plaintiffs after filing of the suit, the name of the defendant no.1 has since been expunged from the cause title of the plaint and the defendant no.2 had now become the sole defendant in this suit.

Admittedly, the defendant received the summons of the suit on 29.09.2022.

It has been pointed out during hearing of the instant application that this Court remained closed from 01.10.2022 to 27.10.2022 on account of Puja holidays.

On 28.10.2022, i.e., on the reopening day of this Court after Puja holidays, the defendant entered appearance in the suit and on that day, she also filed an application under Section 7(1) of WBPT Act, 1997 whereby she prayed for an order allowing her to deposit the arrears of rent for the months of August, 2021 to March, 2022 along with statutory interest thereon at the rate of 10% per annum as well as the current rent for the month of October, 2022 and to deposit subsequent months' rents month by month.

The defendant filed written statement in the suit on 30.01.2023.

The said application under Section 7(1) of WBPT Act, 1997 remained pending before the Court from 28.10.2022 to 28.02.2023.

On 28.02.2023, the Learned Court allowed the application of the defendant under Section 7(1) of WBPT Act, 1997 and the relevant portion of the order reads as under –

"The petition U/S 7(1) of the W.B.P.T Act filed by the defendant is hereby considered and allowed but at the risk of the defendant. Defendant is hereby permitted to deposit the current rent month by month as prayed for, in the Court by challan."

The instant application under Section 7(2) of WBPT Act, 1997 was also filed on 28.10.2022.

The prayer portion of the instant application under Section 7(2) runs as under –

“It is therefore prayed that your petitioner may kindly be pleased to the Learned Court to adjudicate the following disputes:

- (a) Whether there is a relationship of landlords and tenant between all the plaintiffs and defendant save and except the plaintiff Nos. 1 to 3 and defendant in respect of suit premises.*
- (b) After adjudication of dispute as referred to in prayer (a) to adjudicate further whether the defendant is a defaulter in making payment of rent since the month of August 2021 as well as defaulter in payment of Municipal Tax and maintenance charges in respect of the suit property as alleged in the plaint of instant suit;*
- (c) Pass such other order and/or orders as the Learned Court may deem fit and proper.”*

For proper appreciation of the questions involved in the instant application, it would be profitable at this stage to refer to the provisions of Section 7 of WBPT Act, 1997 and the same is reproduced hereunder –

“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 up to 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 subsection 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."

During his arguments, Mr Shubham Gupta, learned advocate appearing for the defendant, pointed out that initially there were six plaintiffs in this suit and the defendant in her application under Section 7(2) of WBPT Act, 1997 specifically contended that at no point of time the plaintiff nos. 4 to 6 were the landlords of the defendant in respect of the suit premises and as such, there existed a *bona fide* dispute regarding the landlord-tenant relationship between the plaintiff nos. 4 to 6 and the defendant. As such, the defendant in effect admitted the plaintiff nos. 1 to 3 as her landlords in respect of the suit premises, but she denied such relationship with the rest of the plaintiffs.

The learned advocate for the defendant argued that such specific objection of the defendant was eventually accepted by the plaintiffs as they made an application under Order I Rule 10(2) of the CPC on 03.08.2023 for transposition of the plaintiff nos. 4 to 6 as the proforma defendants in the suit. The said application of the plaintiffs was allowed by this Court on 26.09.2024. As such, at present there remains no dispute as regards landlord-tenant relationship between the present three plaintiffs and the defendant in this suit.

According to Mr Gupta, since the defendant filed the application under Section 7(1) of WBPT Act, 1997 on 28.10.2022, i.e., on the first available date on reopening of the Court after Puja holidays and since the said application remained pending and was ultimately allowed by the Learned Court only on 28.02.2023, in view of the provisions of Section 7(1), the defendant was required to make the deposits towards arrears of rent with statutory interest as well as the current month's rent within one month from 28.02.2023.

In this regard, the learned advocate for the defendant tried to impress upon this Court that there was no specific direction in the Order dated 28.02.2023 passed by the Learned Court under Section 7(1) of WBPT Act, 1997 requiring the defendant to deposit the arrears of rent positively within any fixed date and in such circumstances, the defendant was required to make such deposits within the period of one month from the date of passing the said Order on 28.02.2023 in terms of the provisions of Section 7(1) of WBPT Act, 1997.

It is further submitted by Mr Gupta that in terms of the Order of the Learned Court dated 28.02.2023 allowing the application under Section 7(1) of WBPT Act, 1997, the defendant duly deposited the arrears of rent together with statutory interest thereon as well as the current month's rent for February, 2023 on 20.03.2023, which is well within the period of one month of passing of the Order under Section 7(1) and accordingly, it is urged by the learned advocate that the instant application under Section 7(2) of WBPT Act, 1997 should be allowed in the facts of circumstances of the instant case and the defendant is thereby entitled to the benefits of the provisions of Section 7(4) of WBPT Act, 1997.

In this regard, it is further submitted by Mr Gupta that there is a practical difficulty in making deposit towards arrears of rent since without an order of Court permitting such deposit to be made in the Court, the Office of this Court does not accept such deposit.

As regards the necessity of filing of the application under Section 7(1) of WBPT Act, 1997, Mr Gupta relied on the judgement on the Hon'ble Calcutta High Court in ***M/s Smart Enterprises v. Shree Ram Trust, 2017 SCC OnLine Cal 12088***, particularly the observations made by the Hon'ble High Court in paragraph 7 thereof, which reads as under –

“7. Strictly speaking, Section 7(1) of the Act does not conceive of any application being made thereunder. But a practical difficulty arises in a deposit being made in Court without anything in writing. Thus, a practice has developed whereunder an application is made under Section 7(1) of the Act, even if only to make good the default or pay the entire amount that is perceived to be due, at least for the first time. The monthly deposits may be more easily made if there is a file opened in the department of the relevant Court in the name of a particular suit where at least one previous deposit has been made.”

On the other hand, Mr Manabendra Saha Roy, learned advocate appearing for the plaintiffs, during his arguments pointed out that on a combined reading of Clauses (a), (b) and (c) of Section 7(1) of WBPT Act, 1997, it would be apparent that the defendant/tenant was mandatorily required to pay to the plaintiffs/landlords or deposit with the Court all arrears of rent together with statutory interest thereon within one month of service of summons on her and thereafter, she was also required to deposit the current months' rents month by month within the 15th day of each succeeding month.

Mr Saha Roy urged that since the defendant did not raise any dispute as regards the rate of rent, there was neither any scope nor any necessity of the defendant to file any application under Section 7(1) of WBPT Act, 1997 as she ought to have deposited the arrears of admitted rent within one month of the service of summons on her. However, according to the learned advocate, the defendant neither paid the arrears of rent within one month of service of summons upon her nor did she pay any amount towards current months' rents and instead, in order to cause delay, she filed the application under Section 7(1) only on 28.10.2022, i.e., after expiry of 29 days after receiving summons on 29.09.2022.

In such circumstances, according to Mr Saha Roy, in order to avoid her defence against delivery of possession being struck out under Section 7(3) of WBPT Act, 1997, the defendant was required to deposit the entire admitted arrears of rents along with statutory interest on the day immediately following the date of passing order under Section 7(1) and she was also required to deposit current month's rent for February, 2023 within 15.03.2023. Mr Saha Roy argued that none of these mandatory statutory requirements were complied with as the defendant made the deposits only on 20.03.2023.

Mr Saha Roy elaborated his arguments of these points by submitting *firstly*, that the deposit made by the defendant on 20.03.2023 towards arrears of rent is palpably beyond the period of one month of receipt of summons by her in contravention of Clause (b) of Section 7(1) and *secondly*, the deposit made by her on 20.03.2023 towards current month's rent for February, 2023 is also beyond time being in contravention of Clause (c) of Section 7(1) and as such, the said deposits cannot be accepted as valid deposits by this Court while considering the instant application under Section 7(2) of WBPT Act, 1997.

Mr Saha Roy pointed out that as per the *proviso* under Section 7(2) of WBPT Act, 1997, an extension of time not exceeding two months can be granted by the Court only once and he

argued that the said *proviso* is applicable only in case of an order passed under Section 7(2) of WBPT Act, 1997 and in no other case. It is further argued by the learned advocate that the time limits mentioned in Clauses (b) and (c) of Section 7(1) of WBPT Act, 1997 are mandatory in nature requiring strict compliance thereof and the same cannot be extended under any circumstances whatsoever and the provisions of Section 5 of the Limitation Act also do not come to the aid of the defendant in this regard.

According to Mr Saha Roy, the essence of these statutory provisions lie in making of the deposits of the arrears of rents at the rate of rent admitted by the tenant within the time specified therein and not in filing of an application praying for an order to that effect.

However, Mr Saha Roy argued that the defendant initially consumed a period of 29 days from the date of service of summons upon her to file the application under Section 7(1) and thereafter, during the entire period of pendency of the said application before the Court till its disposal on 28.02.2023, the defendant simply avoided her responsibility in making any deposit towards rents on account of arrears or current months and practically she killed time on this pretext.

According to Mr Saha Roy, had the defendant been diligent, she ought to have tendered the admitted arrears of rent directly to the plaintiffs but she did not do so and in fact she waited for almost a month even after disposal of the application under Section 7(1) to make such deposit.

It is, thus, submitted by the learned advocate that in the given facts and circumstances of this case, the deposits made by the defendant in this case cannot be accepted to be valid deposits under Section 7(1) of WBPT Act, 1997.

As an alternative argument, Mr Saha Roy submitted that even if it is presumed for argument's sake that the defendant is entitled to one month's time to make deposit of arrears of rent, even in such a case, a reasonable interpretation of the legislative intent behind the statutory provisions may be made whereby the period of one month should be interpreted as the cumulative period during which the defendant, after service of summons, has to both make the application under Section 7(1) and make the relevant deposits and only the period during which the application under Section 7(1) remained pending before the Court can be excluded and by this interpretation, the defendant was required to make the deposits towards arrears of rent immediately on the next day of disposal of the application under Section 7(1) on 28.02.2023 as she had already consumed a period of 29 days earlier in filing the said application under Section 7(1) after receiving summons.

As regards the deposit made towards current month's rent for February, 2023, the learned advocate submitted that the same is also palpably beyond the time limit specified under Clause (c) of Section 7(1) of WBPT Act, 1997.

According to Mr Saha Roy, none of these delayed deposits can be condoned or accepted under any circumstances.

Upon making such submissions, Mr Saha Roy, learned advocate for the plaintiffs, urged that the instant application of the defendant under Section 7(2) of WBPT Act, 1997 has no merit and the same is liable to be dismissed as the defendant made the deposits beyond mandatory time limits fixed by Clauses (b) and (c) of Section 7(1) of WBPT Act, 1997 and consequently, the defence of the defendant against delivery of possession should be struck out under Section 7(3) of WBPT Act, 1997 in the facts and circumstances of this case.

In support of his arguments, the learned advocate for the plaintiffs has referred to the judgements of the Hon'ble Calcutta High Court in the following cases –

- i. *West Bengal Handloom Weavers Cooperative Society Limited v. Jayanta Saha, 2024 SCC OnLine Cal 4868*
- ii. *Parbati Chorone Roquitte v. Pawan Agarwal, 2024 SCC OnLine Cal 3779*
- iii. *Binika Thapa (nee Rai) v. Damber Kumari Mukhia, 2024 (2) CHN Cal 641*
- iv. *Aatish Das v. Mst. Fatema Begam Mollah, 2023 SCC OnLine Cal 2911*
- v. *Debasish Roy v. Bipul Kumar Roy, 2024 (3) CHN (Cal) 171*
- vi. *Kabita Biswas v. Sadhan Dasgupta, 2024 (2) CHN (Cal) 827*

For proper understanding and determination of the question involved in this matter, at this stage it would be fruitful to have a look into the judgements of the Hon'ble Courts so relied on by the learned advocate of the plaintiffs.

In ***West Bengal Handloom Weavers Cooperative Society Limited v. Jayanta Saha, 2024 SCC OnLine Cal 4868***, the Hon'ble Calcutta High Court held (in paragraphs 43 and 44) as under –

“43. In view of the aforesaid discussion, this court holds that the provision of Section 5 of the Limitation Act cannot come to the aid of the tenant for condonation of the delay in filing an application under Section 7(2) of the said Act.

44. Section 7(1) does not contemplate filing of any application. Therefore, the tenant cannot take recourse to Section 5 of the Limitation Act for condonation of delay in making deposits contemplated therein.”

In ***Parbati Chorone Roquitte v. Pawan Agarwal, 2024 SCC OnLine Cal 3779***, the Hon'ble Calcutta High Court noted (in paragraphs 13 and 14) as under –

“13. The following issues fall for consideration in the case on hand.

- (i) *Whether the Court has the power to grant extension of time for deposit of rent or any portion thereof after such power of extension has already been exercised in terms of the proviso in Section 7 of the West Bengal Tenancy Act?*
- (ii) *Whether the short deposit of rent for 57 months can be said to be due to a bona fide mistake?*

14. The second issue shall arise for consideration only if the first issue is answered in the affirmative.”

In ***Parbati Chorone Roquitte*** (supra), on the aforesaid issues, the Hon'ble High Court, *inter alia*, held (in paragraphs 32, 33, 34 and 35) as under –

“32. This Court, therefore holds that the provision laid down under the WBPT Act, 1997, under Clause (c) of Section 7(1) is mandatory and the same must be strictly adhered to. A deposit/payment of rent under Clause (a) and (c) of Section 7(1) of the WBPT Act, 1997, does not contemplate filing of any application. Therefore, the tenant cannot take recourse to Section 5 of the Limitation Act. This Court is, therefore, of the considered view that the Court does not have the power to condone the delay in depositing the rents for the disputed period under Section 5 of the Limitation Act.

33. The proviso inserted after sub-section (2) of Section 7 of the WBPT Act, 1997, empowers the Court to grant an extension only once and imposes a restriction that such extension shall not exceed two months. Therefore, after granting an extension in terms of the said proviso, Court does not have any power to grant any extension of time for deposit of arrear rent thereafter. It is well settled that the Civil Court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court. However, such powers cannot be exercised to nullify a statutory provision imposing restriction upon the Court to grant such extension. Therefore, the inherent jurisdiction of the Court to make orders *ex debito justitiae* under Section 151 of the Code also cannot be invoked to grant an extension *de hors* the restriction imposed under Section 7 of the WBPT Act, 1997.

34. For the reasons as aforesaid this Court holds that the Court does not have any power to grant any further extension of time for deposit of rent or any portion thereof after the power of extension has been exercised in terms of the proviso contained in Section 7 of the West Bengal Premises Tenancy Act. The decisions of the Co-ordinate Bench in the case of *Kabita Biswas (supra)* and *Saurav Das (supra)* also support the view taken by this Court. The first issue is, therefore, answered in the negative and in favour of the petitioner.

35. Since the first issue has been decided in the negative, the second issue does not arise for consideration in the case on hand.”

The Hon'ble Calcutta High Court in ***Binika Thapa (nee Rai) v. Damber Kumari Mukhia, 2024 (2) CHN Cal 641*** noted that the moot question involved in that case was whether the Court can extend the time for depositing the admitted arrear rent together with statutory interest as provided in Section 7(1) upon condoning the delay under Section 5 of the Limitation Act. Relying on the judgements of the Hon'ble Apex Court in ***Bijay Kumar Singh v. Amit Kumar Chamariya, (2019) 10 SCC 660*** and ***Debasish Paul v. Amal Boral, (2024) 2 SCC 169***, it was, *inter alia*, held in this case that Section 5 of the Limitation Act would not apply if the tenant failed to comply with the mandatory provisions of Section 7 of WBPT Act, 1997.

It may be noted in this regard that in ***Bijay Kumar Singh v. Amit Kumar Chamariya, (2019) 10 SCC 660***, the Hon'ble Apex Court, while considering the provisions of Section 7 of WBPT Act, 1997, held (in paragraphs 19 to 21) as under –

“19. Sub-section (1) of Section 7 of the Act relieves the tenant from the ejectment on the ground of non-payment of arrears of rent if he pays to the landlord or deposits it with the Civil Judge all arrears of rent, calculated at the rate at which it was last paid and up to 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. 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.

20. Therefore, sub-section (1) deals with the payment of arrears of rent when there is no dispute about the rate of rent or the period of arrears of rent. Sub-section (2) of Section 7 of the Act comes into play if there is dispute as to the amount of rent including the period of arrears payable by the tenant. In that situation, the tenant is obliged to apply within time as specified in sub-section (1) that is within one month of the receipt of summons or within one month of appearance before the court to deposit with the Civil Judge the amount admitted by him to be due. The tenant is

also required to file an application for determination of the rent payable. Such deposit is not to be accepted, unless it is accompanied by an application for determination of rent payable. Therefore, sub-section (2) of Section 7 of the Act requires two things, deposit of arrears of rent at the rate admitted to be due by the tenant along with an application for determination of the rent payable. If the two conditions are satisfied then only the court having regard to the rate at which rent was last paid and for which tenant is in default, may make an order specifying the amount due. After such a determination the tenant is granted one month's time to pay to the landlord the amount which was specified. The proviso of the Act, limits the discretion of the court to extend the time for deposit of arrears of rent. The extension can be provided once and not exceeding two months.

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.”

Be it also noted at this stage that in ***Debasish Paul v. Amal Boral, (2024) 2 SCC 169***, the Hon'ble Apex Court, while considering the provisions of Section 7 of WBPT Act, 1997, held (in paragraphs 16 to 18) as under –

“16. We have no doubt over the proposition that though generally the Limitation Act is applicable to the provisions of the said Act in view of Section 40 of the said Act, if there is a lesser time period specified as limitation in the said Act, then the provisions of the Limitation Act cannot be used to expand the same. It is in this context that in *Nasiruddin case [Nasiruddin v. Sita Ram Agarwal, (2003) 2 SCC 577]*, it has been mentioned that the real intention of the legislation must be gathered from the language used. Thus, the reasoning in *Bijay Kumar Singh case [Bijay Kumar*

Singh v. Amit Kumar Chamariya, (2019) 10 SCC 660] cannot be doubted more so as the requirement is for a tenant to file an application, but he has to deposit the admitted arrears of rent as well, which has certainly not been done.

17. We are of the view that a combined reading of the two statutes would suggest that while the Limitation Act may be generally applicable to the proceedings under the Tenancy Act, the restricted proviso under Section 7 of the said Act, providing a time period beyond which no extension can be granted, has to be applicable. The proviso is after sub-section (2) of Section 7 but sub-section (2) of Section 7 in turn refers to sub-section (1) implying the application of the proviso to sub-section (1) too.

18. There is also a larger context in this behalf as the Tenancy Acts provide for certain protections to the tenants beyond the contractual rights. Thus, the provisions must be strictly adhered to. The proceedings initiated on account of non-payment of rent have to be dealt with in that manner as a tenant cannot occupy the premises and then not pay for it. This is so even if there is a dispute about the rent. The tenant is, thus, required to deposit all arrears of rent where there is no dispute on the admitted amount of rent and even in case of a dispute. The needful has to be done within the time stipulated and actually should accompany the application filed under sub-sections (1) & (2) of Section 7 of the said Act. The proviso only gives liberty to extend the time once by period not exceeding two months.”

In ***Aatish Das v. Mst. Fatema Begam Mollah, 2023 SCC OnLine Cal 2911***, the Hon'ble Calcutta High Court (in paragraph 23) observed as under –

“23. From a conjoint reading of Sections 7(1) and 7(2) of the said Act, and on the ratios of the judgments discussed earlier, it is clear that the court has no power to extend the time for payment of admitted arrear rent in instalments. The provisions of payment by instalments were consciously omitted in the 1997 Act. Moreover, unless the arrears admitted by the tenant was deposited within one month from receipt of summons or within one month from appearance, along with an application for determination of the arrear rent, Section 7(2) could not be pressed into action. A simpliciter application by the tenant for payment of arrear rent in instalments on the ground that the rent could not be paid as the business did not do well during the covid period, would not be maintainable under Section 7(2) of the Act. The Act of 1997 does not provide for instalments. The petitioners were aware of the arrears, from May, 2021. They filed an application under Section 7(1) of the said Act. The petitioners did not mention anything about the arrears, but filed the application only for permission to deposit the monthly rent from September, 2022 at the rate of Rs. 1700/-. Prior to this, a suit was already filed for declaration of tenancy and injunction and as such, the factum of non-acceptance of rent from May, 2021 was well within knowledge. Such fact was not mentioned in the application under Section 7(1). The admitted arrears of rent were not deposited within the statutory period. No dispute was raised for determination of the rent. Such failure could not be overcome by seeking payment of admitted arrears in instalments, by filing an application under Section 7(2) of the said Act.”

In ***Debasish Roy v. Bipul Kumar Roy, 2024 (3) CHN (Cal) 171***, as regards Section 7 of WBPT Act, 1997, the Hon'ble Calcutta High Court, *inter alia*, held (in paragraphs 6 to 9) as under –

“6. Section 7 of the said Act provides a complete mechanism for protection of the tenant from eviction on any of the grounds under Section 6 of the said Act. Section

7(1) of the said Act mandates that the admitted arrears of rent along with 10% statutory interest should be deposited within a month from the receipt of summons and when the defendant appears without summons within a month from appearance.

7. It is an admitted position in this case that the application under Section 7(1) of the said Act was filed, but the admitted arrears along with 10% statutory interest was not deposited along with application. Even though the tenant was willing to deposit the arrears, the fact remains that the very mandate of law, i.e. the pre-condition of depositing the admitted arrears along with 10% statutory interest at the time of filing the application under Section 7(1) of the said Act was not complied with. The law requires a mandatory compliance of such statutory pre-condition.

8. Moreover, the law is well-settled that without compliance of Section 7(1), Section 7(2) would not come into operation. The tenant was required to deposit the admitted arrear rent within a month from receipt of summons calculated at the rate at which it was last paid and up to the end of the month previous to that in which the payment was made, together with the interest at the rate of 10% per annum. Thereafter, the tenant was required to continue to pay to the landlord or deposit with the civil judge month by month within 15th of every succeeding month, a sum equivalent to the rent at that rate.

9. In case of any dispute, the tenant was required to deposit the amount as per sub-section (1) within the statutory period of one month and file an application asking the court to determine the dispute with regard to the rate of rent and arrears payable. Such procedure was not followed.”

In **Kabita Biswas v. Sadhan Dasgupta, 2024 (2) CHN (Cal) 827**, the Hon'ble Calcutta High Court held (in paragraph 19) as under –

“19. On a plain reading of entire section 7 of the Act of 1997 it is clear that there is no scope for the learned court to extend the time for the payment of the current monthly rent beyond the period of the 15th day of each succeeding month as stipulated in section 7(1)(c) of the Act of 1997. It is only the proviso to section 7(2) of the Act which confers power to the civil judge to extend the time for deposit of the rent as directed under section 7(2) of the Act that too for a period not exceeding two months. When the word ‘shall’ is used both in section 7(1) and 7(2), there is no scope to give different meaning for the said two provisions. The word ‘shall’ appearing in the second part of sub-section (2) of section 7 is imperative and as such the same word “shall” when appearing in sub-section (1) of section 7 of the Act of 1997, it also must be given an imperative meaning.”

On consideration of the facts of this case and the arguments advanced on behalf of the parties, the question that arises for consideration and determination by this Court in the instant application is whether the deposits made by the defendant on 20.03.2023 towards arrears of rent and current month's rent for February, 2023 are valid deposits in the eye of law, being within the respective time limits specified in Clauses (b) and (c) of Section 7(1) of WBPT Act, 1997 or not.

Upon due consideration of the provisions of Section 7 of WBPT Act, 1997 and keeping in view the law laid down by the Hon'ble Courts in the judgements discussed above, the following principles of law, as is relevant to the question under consideration, emerge –

- i. Section 7 of WBPT Act, 1997 gives a complete mechanism for protection of the tenant from eviction on the ground of default in payment of rent.
- ii. Clause (a) of Section 7(1) relieves the tenant from ejection on the ground of non-payment of arrears of rent if he pays to the landlord or deposits with the Civil Judge all arrears of rent, calculated at the rate at which it was last paid and up to the end of the month previous to that in which the payment is made, together with interest at the rate of 10% per annum.
- iii. Clause (b) of Section 7(1) requires that such payment or deposit shall be made within one month of service of summons on the tenant or, where he appears in the suit without summons being served upon him, within one month of his appearance.
- iv. Clause (c) of Section 7(1) entails the tenant to 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.
- v. The deposit or payment of rent under Clauses (a) and (c) of Section 7(1) does not contemplate filing of any application.
- vi. The provisions of Section 7(1) are mandatory. The tenant cannot take recourse to the provision of the Limitation Act for condonation of delay in making the deposit or payment contemplated under Section 7(1).
- vii. The Court has no power to extend the time for deposit or payment of either the admitted arrears of rent or the current monthly rent beyond the 15th day of the succeeding month.
- viii. Section 7(2) comes into play only if there is dispute as to the amount of rent or the period of arrears of rent payable by the tenant. In that situation, Section 7(2) mandatorily requires the tenant *firstly*, to deposit the amount admitted by him to be due from him within the time specified in Clause (b) of Section 7(1), and *secondly*, to file an application for determination of the rent payable. However, no such deposit shall be accepted unless it is accompanied by an application of the tenant for determination of rent payable. The provisions Section 7(2) are also mandatory and required to be scrupulously followed by the tenant.
- ix. The *proviso* under Section 7(2) limits the discretion of the Court to grant extension of time only once and not exceeding two months.
- x. Only if both the conditions of Section 7(2) are satisfied, then the Court, having regard to the rate at which rent was last paid and for which tenant is in default, shall make an order specifying the amount due. Upon such determination, the tenant is granted one month's time to pay to the landlord the amount so specified by the Court.
- xi. Section 7(3) provides for the consequences of non-compliance of the mandatory requirements of Section 7(1) or Section 7(2) by the tenant. In case of such non-compliance, the Court is enjoined with the duty to strike out the defence of the tenant against delivery of possession and to proceed with the hearing of the suit.
- xii. Section 7(4) provides that if the tenant makes deposit or payment in compliance of Section 7(1) or Section 7(2), the Civil Judge shall not make any

order for delivery of possession against the tenant on the ground of default in payment of rent, but may allow such cost as may be deemed fit to the landlord. The *proviso* under Section 7(4), however, declares that if the tenant, once having obtained the relief under Section 7(4), 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, he shall not be entitled to any further relief under Section 7(4).

Keeping in mind the above position of law, it would be worthwhile at this stage to come back to the facts of the case in hand in order to decide the question under consideration.

One of the grounds pleaded by the plaintiffs for the decree of eviction against the defendant in the instant suit is the ground of default in payment of rent by the defendant.

As per the plaint case, the rate of rent payable by the defendant in respect of the suit premises is Rs.1655/- per month inclusive of municipal tax and maintenance charges and according to the plaintiffs, the arrears of rent was due from the month of August, 2021.

From the statements made in the instant application under Section 7(2) of WBPT Act, 1997 filed on 28.10.2022, the following stand of the defendant emerges –

- a. The defendant did not raise any dispute regarding the rate of rent as claimed by the plaintiffs as she admitted the rent of the suit premises to be Rs.1655/- per month inclusive of municipal tax and maintenance charges;
- b. According to the defendant, she has already paid the rent for the months of April, 2022 to August, 2022 before the Rent Controller under Section 21 of WBPT Act, 1997. Thus, it is the admitted case of the defendant that rent was due from her for the months of August, 2021 to March, 2022 and then for the month of September, 2022.
- c. The defendant raised dispute regarding landlord-tenant relationship between the plaintiff nos. 3 to 6 and the defendant. However, it may be noted here that this objection of the defendant has lost its relevance at present as the plaintiff nos. 4 to 6 have since been transposed as proforma defendants in this suit as per order of this Court at the instance of the plaintiffs.

The defendant admittedly received the summons of the suit on 29.09.2022.

In the background of the above factual position and in view of the settled position of law discussed in detail hereinabove, the defendant was mandatorily required under the provisions of Section 7 of WBPT Act, 1997 to deposit the amount admitted by her to be due from her on account of arrears of rent along with an application for determination of the rent payable within one month of 29.09.2022, i.e., within 29.10.2022.

Needless to mention in this regard that since this Court had reopened on 28.10.2022 after Puja holidays and also since this Court was open on 29.10.2022, the fact that this Court remained closed from 01.10.2022 to 27.10.2022 has no relevance in the present case.

As noted earlier, the defendant entered appearance in the suit on 28.10.2022 and filed an application under Section 7(1) of WBPT Act, 1997 on that day.

However, as noted earlier, it has been specifically held by the Hon'ble High Court in **West Bengal Handloom Weavers Cooperative Society Limited** (supra) that Section 7(1) of WBPT Act, 1997 does not contemplate filing of any application. Such being the settled position of law, there was no legal stipulation for the defendant to file the application under Section 7(1) in order to make the deposit or make payment towards admitted arrears of rent

within one month of service of summons on her on 29.09.2022 and accordingly, the pendency of the said application under Section 7(1) cannot come to the aid of the defendant in this case.

Moreover, at no stage the defendant brought it to the notice of the Court that though she intended to deposit the admitted arrears of rent within one month of service of summons on her but the Office of this Court refused to accept the same. As such, the plea taken by the defendant in this regard also has no base to stand upon.

The defendant admittedly made the deposits both towards arrears of rent as well as the current month's rent for February, 2023 only on 20.03.2023.

If one goes by the argument of the learned advocate of the defendant that his client had one month's time to make the deposits from the date of disposal of the application under Section 7(1) on 27.02.2023, even then the deposit made by the defendant towards the current month's rent for February, 2023 was beyond time as she ought to have deposited the same by 15.03.2023 in terms of the provisions of Clause (c) of Section 7(1).

As such, it is apparent that there is a clear contravention of the mandatory provisions of law as contained in Section 7(1) of WBPT Act, 1997 in respect of making deposits towards admitted arrears of rent as well as the current month's rent for February, 2023.

Thus, this Court has no hesitation to hold that the deposits made by the defendant on 20.03.2023 towards arrears of rent and the current month's rent for February, 2023 are not valid deposits in the eye of law since such deposits were made beyond the mandatory time limits specified under the provisions of Section 7(1) of WBPT Act, 1997.

As noted earlier, the objection raised by the defendant in the instant application under Section 7(2) of WBPT Act, 1997 regarding landlord-tenant relationship between the plaintiff nos. 4 to 6 and the defendant has lost its force at present by transposition of the said plaintiffs as proforma defendants in this suit and the defendant admits the present three plaintiffs of this suit as her landlords in respect of the suit premises and accordingly, no further order needs to be passed by this Court in this regard.

With the aforesaid observations, the instant application under Section 7(2) of WBPT Act 1997 stands disposed of.

Consequently, the defence of the defendant against delivery of possession is, thus, struck out under Section 7(3) of WBPT Act, 1997.

The instant suit be fixed on **29.04.2025** for hearing of the application under Order 39 Rule 7 of the CPC.

W.O., if any, be filed in the meantime.

At my dictation

Judge

**Judge, Bench-IV
City Civil Court, Calcutta**