

Order No. 50 dated 08.09.23

Today is fixed for further hearing.

The plaintiff filed hazira whereas the defendant filed an application u/o 151 CPC r/w section 4 CPC together with a shift back application.

Shift back application for shifting the record from P. Board is allowed and the application is taken up for hearing.

Heard. Considered. Perused the record.

All that the defendant seeks is that he intends to deposit the deficit interest which neither he nor the Court had detected while entertaining his application u/s 7(1) WBPT Act or permitting deposit under that section. Although section 7(1) requires deposit of the arrear or admitted arrear, if the same is disputed, together with an interest @ **10% per annum** but within 30 days of the defendant's appearance; the defendant in this case had calculated the interest @ simple 10% ignoring the word "per annum"; and that had not been detected either by the Court or the plaintiff or the defendant. Now, she wants to deposit the amount falling deficit on account of the error in calculation. The fault, to my mind, has not occasioned due to the fault of the defendant alone but the plaintiff and somehow the court also has a contributory part in it and that is apparent on the face of the record. So, section 151 CPC, to my mind, should be invoked to undue the error that had happened in the section 7(1) proceeding for a party can not be punished – especially in a civil proceeding – for his fault when the court has also contributed to some extent for the error. I, therefore, would allow the application permitting the defendant to deposit the deficit interest on the arrear rent deposited u/s 7(1) but within 30 days of this date.

Thus the application is disposed of on contest.

Fix 09.10.23 for deposit of arrear interest and evidence.

D/C by me:
Sd/
CJJD,KSG

Sd/
(**Sk. Md. Arif Hasan**)
Civil Judge(Jr Div)
Kurseong.