

EJECTMENT SUIT NO.178 OF 2015
C. N. R. NO. WBPS01-000019 - 2015
Before Smt. A. Bhattacharya, Ld. Judge, 5th Bench.

ORDER NO. 62 DATED 05.07.2025

Plaintiff files hazira.

No steps taken by the defendant.

Plaintiff has also filed one petition on affidavit praying for expunging the name of the defendant no.1 from the cause title of the plaint of the instant suit on the ground stated therein. Copy not served and annexed herewith.

Today is fixed for hearing of the defenant's petition dated 18.10.2023 and filing receipt showing payment of balance amount of cost of commission cost of Rs.8960/- by the plaintiff.

Ld. Advocate for the plaintiff is present.

None moves for the defendant on repeated calls. It is now 11.35 A.M.

The record is taken up for hearing of the petition dated 18.10.2023 by filing which it is stated by the defendant that M/S. Shri Ambica Surti Farsan Mart, a partnership firm has entered into a tenancy agreement with Mr. Shashi Kan B. Shah in respect of one room on the rear portion of the mezzanine floor of the suit building. As per said tenancy agreement, M/S. Shri Ambica Surti Farsan Mart becme the tenant of the tenanted property. As per order dated 10.05.2016, the tenant deposited arrear rent and rent till September 2023. That Mr. Gopal Lal Dave, one of the partners died intestate on 22.08.2023 leaving behind his two sons and wife as mentioned in the instant petition and out of them, one son namely Abhishek Dave has joined as partners of the said firm and praying for permission to deposit the rent for the month of October 2023.

Perused the petition and the materials on record.

Heard ld. Advocate for the plaintiff.

On going through the petition, it appears that Sri Amit Kumar Dave was already a party/defendant to this suit representing the defendant firm and has also sworn affidavit in support of the written statement filed by both the defendants on 24.09.2015. Thus, it was well witihin the knowledge of Amit Kumar Dave that the suit is pending and the applications under Sec.7(1) and Sec.7(2) of the W. B. P. T. Act filed by the defendants on 31.07.2015 also had affidavit sworn by both Gopal Lal Dave and Amit Kumar Dave.

Amit Kumar Dave, according to this petition, continues to be one of the partners to the defendant firm to which Abhishek Dave has joined as another partner. Now, Abhishek Dave cannot seek benefit of such addition as partner and pray for

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deposit of monthly rent since October 2023.

Sec.7(1)(c) of the W. B. P. T. Act speaks of the responsibility of the tenant to deposit the monthly rent within the 15th day of succeeding month. Admittedly, the defendant firm, being survived by Amit Kumar Dave, has failed to deposit the rent since October 2023. Defendant cannot avail that same benefit in the garb of Sec.5 of The Limitation Act or Sec.151 of C.P.C. or by filing of an application by another partner. Accordingly, the petition filed by the defendant is devoid of any merit and the same is liable to be rejected.

Hence, it is

ORDERED

that the petition dated 18.10.2023 filed by the defendant is rejected on contest but without any cost.

Sub Sec.3 of Sec.7 of the Act provides that *“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 shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit”*.

Where the defendant has failed to comply with the provisions of Section 7(1)(c) of the West Bengal Premises Tenancy Act, 1997 and the application for deposit of rent by partner of defendant firm has been rejected by the Court as a result of which Sec.7(3) of the W. B. P. T. Act comes into play making the defence of the defendant against delivery of possession be struck out.

On further careful perusal of the record, it appears that not a single scrap of paper is filed on behalf of the defendant to prove that the defendant has paid rent in any manner to the plaintiff since October 2023 and as such, I find no impediment to allow the instant petition filed by the plaintiff.

Hence, it is

ORDERED

that the defence of the defendant against delivery of possession be struck off in terms of Sec.7(3) of the W. B. P. T. Act.

Now, the record is taken up for hearing of the petition filed by the plaintiff today by filing which it is submitted by the Id. Advocate for the plaintiff that the instant suit has been filed against the defendant for eviction and recovery of khas possession of the suit premises. During pendency of the suit, plaintiff came to learn through Id. Advocate for the defendants that the defendant no.1 namely Gopal Lal Dave, who was one of the proprietors of the defendant firm, has died on 22.06.2023 and prays for expunging the name of defendant no.1 from the cause title of the plaint.

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Heard ld. Advocate for the plaintiff.

Perused the petition and the materials on record.

Considered the submission of ld. Advocate for the plaintiff and the petition filed by the plaintiff today. Defendant is a firm represented by two partners of whom one has died and another is living. Right to sue survives upon the living partner. Thus, I find no impediment to allow the instant petition of the plaintiff.

Hence, it is

ORDERED

that the petition filed by the plaintiff today is allowed.

Let the name of the defendant no.1, Gopal Lal Dave be expunged from the cause title of the plaint.

D.A. is directed to note it in the plaint as well as in the relevant register accordingly.

Fix 26.08.2025 for framing of Issues.

Dictated and corrected by me,

JUDGE

JUDGE
[5TH BENCH]