

**EJECTMENT SUIT NO. 36 OF 2020**  
**C.N.R No. WBPS01-000057-2020**

IN THE COURT OF 4TH BENCH, PRESIDENCY SMALL CAUSE COURT,  
CALCUTTA  
PRESENT: SMT. ARCHITA SEN, JUDGE, 4TH BENCH, PRESIDENCY SMALL  
CAUSE COURT, CALCUTTA.

**ORDER NO- 38**  
**DATED 17.11.2025:**

Today is fixed for passing Order in respect of the petition under section-7(2) of the West Bengal Premises Tenancy Act, 1997 filed by the defendants. Both the parties file separate attendance through their respective Ld. Advocates.

The record is taken up for passing Order.

Perused the record including the said petition, written objection thereof and the documents filed by the parties.

Considered.

It appears from the record that the plaintiff claimed the original defendants to be the defaulters in the payment of rent but did not mention the particular month and the year since when the original defendants defaulted in making payment of rent. On the other hand the defendants stated in the petition that originally the suit property belongs to the Trust of which Ramesh Chandra Mitra was the trustee and the defendants paid the rent to him on regular basis. Ramesh Chandra Mitra and Priyatama Dassi created the debutter trust in respect of the suit property. After sometimes the defendants paid rent to the lessee Indrakumar Gupta as per the instruction of the trustee. Said Ramesh Chandra Mitra died leaving behind two sons Ranjit and Rajat. Ranjit Mitra also died in the year 1983 leaving behind one son Abhijit Mitra. Amongst the other trustees Abhijit Mitra always demanded the monthly rent from all the tenants. But Surajit Mitra, the son of Rajat Mitra also started to demand monthly rent and requested all the tenants including the defendants to not to pay any rent to Abhijit Mitra. So the tenants stopped paying any rent to Abhijit Mitra. From letter dated 01.10.2019, sent by the Ld. Advocate for the plaintiff, the defendants came to know that the plaintiff purchased the suit property vide deed dated 31.07.2019. The defendants replied the said letter through their Ld. Advocate and asked the plaintiff to produce or show the deed of conveyance. But the plaintiff did not produce the deed. So at any point of time the relationship of landlord and tenant existed between the plaintiff and the defendants. In fact the defendants had no knowledge about the purchase of the suit property by the plaintiff. In brief, the defendants admitted the fact that they are the tenants in respect of the suit premises but not under the plaintiff. They disputed the relationship between the parties of this suit but admitted the amount of rent as claimed by the plaintiff. So the defendants prayed for determination of relationship of the parties to the suit, to determine the arrears of rent, if any and to pass an Order allowing the defendants to deposit the determined amount of rent.

The plaintiff filed a written objection against the instant petition denying all the facts stated by the defendants. He further stated that as he purchased the suit property on 31.07.2019, the defendants are liable to pay the rent to the plaintiff since August, 2019. But the defendants, in paragraph no.12 of the written statement, admitted that they have not paid the rent since the year 2015. As such the arrears accrued since the year 2015. But the defendants have not deposited such admitted arrears of rent. They did not even make any prayer in their petition under section-7(1) of the Act to deposit such admitted arrears of rent. So their defence against the delivery of possession is likely to be struck off. It is alleged by the plaintiff that all the facts stated by the defendants in the instant petition are concocted and made with an intention to avoid the payment of rent. The defendants are enjoying the suit premises without paying a single penny. Apart from that the plaintiff also stated that as the defendants, after appearance before the Court, deposited rent to the credit of the plaintiff, the relationship of landlord and tenant is established between the parties. For the above reason the plaintiff prayed that the instant petition should be rejected and the defense of the defendants should be struck out by invoking the provision of section-7(3) of the Act.

At the outset it should be mentioned that the defendants received the summons of the suit on 08.02.2020 and appeared before the Court on 06.03.2020. The instant petition was filed on the same date of appearance. So the instant petition is well within

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the period of limitation. The defendants admitted that they are the tenants in respect of the suit premises and also admitted the rate of rent. So there is no need of discussion on that. The defendants rather challenged the relationship. Though section-7(2) of the Act states about the determination of dispute as to the amount of rent payable by the tenant, but it is now settled proposition of law that unless such issue challenging the relationship between the parties is decided at an interlocutory stage under section-7(2) of the Act, neither the defence of the tenant may be struck out, nor the tenant will be able to adduce evidence in support of his plea that he is not a tenant under the plaintiff even in trial. [ *Ref: Dipak Mondal Vs. Bikash Dhar, (2022)3 ICC 426 (Cal)* ]. It is further observed by the Hon'ble High Court, Calcutta in *Sushil Kumar Vs. Shatrughna Prasad Singh, 2015(4) ICC 668 (Cal)* that the word "dispute" used in section-7(2) of the Act imbibe within itself conceivable disputes including the dispute relating to the existence of relationship of landlord and tenant. If the tenant disputes the contractual relationship, it is the bounden duty of the Court to determine such dispute either tentatively or along with an issue. It is only after determining such disputes and finding the tenant having committed the default in the payment of rent, the Court shall specify the amount and direct the tenant to deposit the same within one month from the date of such Order. In the instant suit the defendants have not adduced any evidence for establishing that they were the tenants under the trust. One rent receipt has been filed on behalf of the defendants which shows that the rent was paid by the defendants to Indra Kumar Gupta in respect of the suit premises. No substantive evidence has come up in support of the claim of the defendants that the trustees asked them to pay rent to the lessee Indra Kumar Gupta. In absence of any such proof, this Court fails to connect the suit house and Indra Kumar Gupta. Rather the defendants admitted that they received a letter from the Ld. Advocate of the plaintiff stating that the plaintiff has purchased the suit property vide a deed of conveyance dated 31.07.2019. So it is not that the defendants were not known about the purchase of the suit property by the plaintiff. They only agitate that the deed was not produced for their inspection. Definitely the tenant can challenge the derivative title of the landlord. But even if the plaintiff produced the deed and the defendants find it defective, then also this Court does not have the jurisdiction to set aside the sale or cancel the deed. So this Court is not inclined to ponder over the validity of the deed of conveyance. Even if the said deed of conveyance is subsequently found to be not valid, then also the status of the defendants in respect of the suit premises will not change. In the present suit the fact that the plaintiff purchased the suit property was duly intimated to the defendants. Even the defendants also admitted the same. So this Court can hold that the relationship of landlord and tenant exist between the parties.

It appears from the record that the defendants filed an application under section-7(1) of the West Bengal Premises Tenancy Act, 1997 with a prayer for permitting the defendants to deposit rent from the month of March, 2020. That petition was allowed by the Court on 06.03.2020 directing the defendants to pay the rent from the month of March, 2020. The Court deposit challans, filed by the defendants reflect that in compliance with the Order dated 06.03.2020 the defendants deposited the rent since March, 2020 and they are depositing rent on regular basis. But from the petition under section-7(2) of the Act it appears that the defendants came to know about the purchase by the plaintiff vide letter dated 01.10.2019. On the opposite score the defendants admitted in their written statement that they did not pay rent since April, 2015. So even if this Court believes that without any knowledge about the purchase of the suit property by the plaintiff, it was not possible for them to pay rent, then also the question remains that when the defendants knew that the rent has not been paid since April, 2015, they should have paid rent to the plaintiff at least from the date of their knowledge. But the defendants did not pray for any Order permitting them to pay the arrears of rent in spite of their admission in the written statement that the rent is due since April, 2015. So it can not be said the the defendants have duly complied with the provision under section-7(1)(a) of the Act. The consequence for the non compliance of the provision under section-7(1) of the Act is obvious. If the provision of section-7(1) of the Act has not been complied, there there is no question of adjudicating the petition under section-7(2) of the Act, as in that case the petition under section-7(2) of the Act has become not maintainable.

Accordingly, this Court can safely hold that the petition under section-7(2) of the Act is not maintainable due to non compliance of the provision of section-7(1) of

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the Act.

Hence it is

**O R D E R E D.**

That the petition under section-7(2) of the West Bengal Premises Tenancy Act, 1997 filed by the defendants is rejected on contest without cost, as not maintainable due to non compliance of the provision of section-7(1) of the Act.

The petition under section-7(2) of the Act is thus disposed of.

The provision of section-7(3) of the Act has become operative in this suit.

To To 14-01-2026 for framing of issue.

Typed, Corrected and Printed by me.

Judge, Bench-4  
PSCC, Calcutta  
J.O Code WB01174

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