

Ejectment Suit:-347 of 2019

(CNR No WBPS 01-000878-2019.)

Before Uttam Kumar Shaw- Ld. Chief Judge,

Order No.17

13-12-2021.

Today is fixed for hearing of petition u/s-5 of Limitation Act,1963 filed by the defendant dated 12-12-2019 praying for condonation of delay in filing petitions u/s 7(1) & 7(2) of W.B.P T Act, 1997 and consideration of petition u/o-39 Rule 7 read with Section 151 of C.P Code dated 22/09/2021 filed by the plaintiff praying for local inspection and also for consideration of petition u/s 151 of C.P Code filed by the defendant dated 22/09/2021 praying for calling for of the case records of Ejectment Suit No. 4537 of 2014 and Ejectment suit 4536 of 2014 from the Court of Ld. 5th Bench, Presidency Small Cause Court, Calcutta

Plaintiff is present by filing hazira. However, no steps taken by the defendant, none appears on repeated calls on behalf of the defendant.

Ld. Advocate for the plaintiff submitted that the petitions are pending for a long time and prays for disposal of the same.

Heard Ld. Advocate for the plaintiff. Perused the petitions placed in the case record.

At first , the petition u/s-5 of Limitation Act, 1963 filed by the defendant dated 12-12-2019 is taken up for consideration.

By filing the instant application, defendant has contended that the defendant has received the summons on 05/11/2019 through Court bailiff and the petitions u/s 7(1) & 7(2) of W.B.P T Act, 1997 were filed by the defendant on 11-12-2019 with a delay of six days since the petitions could not be drafted within time. There was no intentional laches on the part of the defendant and by filing the instant petition u/s 5 of Limitation Act, defendant is praying for condonation of the said delay of six days in filing of the petitions u/s 7(1) & 7(2) of W.B.P T Act, 1997.

Plaintiff has disputed the contentions made out by the defendant by filing written objection on 28-01-2020 against the petition u/s 5 of Limitation Act.

Ld. Advocate for the plaintiff, at the time of hearing relied upon decisions reported in (2019) 10 Supreme Court Cases 660 in the case of (Bijay Kumar Singh and others vs Amit Kumar Chamarla and others), and submitted that the defendant cannot take the recourse of Section-5 of Limitation Act in view of the observations made by the Hon'ble Apex Court.

Heard Ld. Advocate for the plaintiff. Perused the materials on record. It is well settled in law that in view of the Citation as above, Section-5 of Limitation Act is not applicable in respect of petition filed u/s 7(1) of W.B.P.T Act. It is clearly observed that, "if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within the time frame, the same will be held to be directory unless the consequences thereof are specified."

This Court is also have the same view as per the observations of the Hon'ble Apex Court and "ordinarily" clause give some passage of time to the Defendant for appropriate relief.

So, considering the entire facts and circumstances, in order to the adjudicate the real dispute between the parties on merit and to foster the principle of natural justice, and to give a fair chance to the defendant to contest the suit on merit, the delay in filing the petitions u/s 7(1) & 7(2) of W.B.P T Act is hereby condoned.

At this stage, the petition u/s 7(1) of W.B.P T Act dt 12/12/2019 is taken up for hearing.

Heard Ld advocate for the plaintiff.

By filing the instant application, defendant has prayed for permission to deposit rent in respect of the suit premises in Court from July 2019 and thereafter current rent , month by month.

It appears that the delay in filing of the petition u/s 7(1) of W.B.P T Act has already been condoned . So,unless the petition is allowed, the defendant shall suffer irreparable loss and injury.

Hence,

it is,

Ordered

that the application filed U/s. 7(1) of W.B.P.T Act filed by the defendant dated 12-12-2019 is allowed.

Defendant is also permitted to deposit the admitted arrear 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 @ 10% p.a, commencing from the month of July 2019 ,within 31 days from the date of this order.

The defendant is at liberty to pay / deposit current rent month by month by 15th of each succeeding month at his own risk without prejudice to the right and contention of the parties as per law.

The petition u/s 7(1) of W.B.P T Act is thus disposed of.

Now, the petition u/o-39 Rule 7 read with Section 151 of C.P. Code dated 22/09/2021 is taken up for consideration.

Heard Ld. Advocate for the plaintiff , perused the instant petition, plaint, written statement , and other materials on record.

Considered.

By the application dated 22/09/2021, plaintiff has prayed for appointment of an advocate commissioner to hold inspection of the suit premises as per schedule mentioned in the instant application in order to show the accommodation available to both the parties.

Record reveals that no written objection has been filed by the defendant against this application of the plaintiff.

At the time of hearing, Ld lawyer for the plaintiff submits in terms of the averments made in his application. On the other hand, none came to controvert the contentions of the plaintiff on behalf of the defendant.

Perusal of the plaint reveals that plaintiff has filed in the instant suit for eviction of the defendant from the suit premises on the ground of bonafide requirement of the suit premises by him along with other grounds . On the contrary, Defendant has denied the same in his written statement.

So, and in order to properly adjudicate the real dispute between the parties, and in order to ascertain the actual accommodation available to the parties local inspection of the premises in question is found necessary. Terms as mentioned in the instant application also appears to be legal.

As such, considering the facts and circumstances, I find that if the prayer of the plaintiff is required to be allowed..

Hence,

it is,

Ordered

That the petition u/o- 39 Rule 7 read with Section 151 of C.P Code dt 22-09-2021 filed by the plaintiff is hereby allowed on ex-parte hearing.

Let Sri Ashis Ranjan Kundu practicing advocate of this Bar be appointed as Ld Commissioner to hold inspection in respect of the suit premises, subject to tentative payment of cost Rs.5,000/- by the plaintiff towards the fees of the Ld. Commissioner .

Ld commissioner is directed to visit the locale after due service of notice upon both sides as well as their ld advocates well in advance and conduct the commission work in presence of both parties in accordance with law in terms of the schedule mentioned in the application and submit a report thereof before the Court, preferably within one month from the date of receipt of the writ.

Plaintiff is directed to supply copy of the instant application, and other necessary documents which shall be required to facilitate the commission work to the Ld Commissioner.

Both parties are directed to extend full cooperation to the Ld. Commissioner in completion of the Local Inspection. Ld. Commissioner is also directed not to record any evidence which is not within the ambit of his work or not in accordance with law.

To **03-03-2022** for filing receipt showing payment of cost by the plaintiff, thereafter writ shall be issued.

To date also for hearing petition u/s 151 of C.P Code filed by the defendant dt 22/09/2021 praying for calling for of the case records of Ejectment suit 4537 of 2014 and Ejectment suit 4536 of 2014 from the Court of Ld. 5th Bench, Presidency Small Cause Court, Calcutta and also for hearing of petition u/s 7(2) of W.B.P T Act filed by the defendant dt 12/12/2019.

Dictated & Corrected

by me

Chief Judge.

Chief Judge.

J.O .Code:- 00372