

**Ej. Case No. 116 of 2024**  
**CNR No. WBPS01-000225-2024**

**Order No. 12**  
**Dated 26.03.2025**

Today is fixed for further hearing of the petition under Section 7(2) of the WBPT Act, 1997 filed by the defendant and hearing of the petition under Order 39, rule-7 r/w Section 151 of the CPC filed by the plaintiff, written objection, if any, in the meantime and filing receipt showing payment of cost of the defendant.

Both parties filed hazira through their Ld. Advocates.

Defendant has not filed any receipt showing payment of cost imposed upon him vide order No. 07, dated 20.11.2024.

Heard both sides. Perused.

The application u/s 7(2) of the WBPT, 1997 has been filed by the defendant stating that he has deposited the monthly rent for the month of March, 2024 before the Office of the Rent Controller, Calcutta. It is further submitted by the defendant the due to some dispute and difference of understanding in between the plaintiffs and the defendant, a few months rent has not been paid by the defendant and he is ready and willing to make deposit of arrear rent before the Court after the same is ascertained by the court. He further seeks permission from the Court to deposit the monthly rent at an easy installment of Rs. 500/- per month.

On the other hand, the plaintiff did not submit any written objection. It has been alleged by the plaintiff in the plaint that the defendant is a defaulter in payment of rent from the month of November, 2022 at a monthly rent of Rs. 500/- per month.

Considered.

It appears that on his appearance on 24.06.2024, the defendant filed two applications, one being under Section 7(1) of the WBPT Act, seeking permission to deposit the current rent commencing from June, 2024 and thereafter month by month by 15<sup>th</sup> of each succeeding month which was allowed vide order no. 03, dated 24.06.2024 by the Ld. Chief Judge, Presidency Small Cause Court, Calcutta.

Another application was u/s 7(2) of the Act praying before the Court to ascertain as to whether there is any default in payment of rent and the permission to deposit the monthly rent at an easy installment of Rs. 500/- per month. It was further submitted that from March, 2024 onwards deposit the rent before the Rent Controller, Calcutta. The defendant has admitted that he did not pay rents for few months as there was a dispute going on between the plaintiffs and the defendant and expressed his willingness to deposit the arrear rent.

The plaintiff has alleged that the defendant is a defaulter in payment of rent since November, 2022 in the plaint the rent has been stated as Rs. 500/-.

The documents submitted by the defendant shows that in compliance to order dated 24.06.2024 he has been depositing the rent at the rate of Rs. 1000/- per month before the Court in terms of the provision under section 7(1) of the Act. He has also produced the rent bills for the month of November, 2022 till February, 2023, money order receipts for the months from March, 2023 till September, 2023, challan showing deposit of rent for the month of March, 2024 before the Rent Controller. All these rents have been paid at the rate of Rs. 1000/- per month.

It further appears that no rent receipts challans for the month of October, 2023, November, 2023, December, 2023 and January, 2024, February, 2024 and April, 2024, May, 2024 has been submitted by the defendant.

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In view of the above, defendant is found to be defaulter in payment of rent for the months of October, 2023, November, 2023, December, 2023 and January, 2024, February, 2024 and April, 2024, May, 2024.

In the plaint, the plaintiff has stated that the rate of rent is Rs. 500/-. The rent receipt submitted by him alongwith the plaint for the month of February, 2023, shows that the rent is Rs. 1000/-. The copy of the notice filed along with the plaint also shows that the rent is Rs. 1000/- per month. The defendant has been paying the monthly rent at the rate of Rs. 1000/- per month. He has not asked for determination of the rate of rent. Hence it is hold that the rate of rent is Rs.1000/ per month.

The defendant has prayed before the court for ascertaining the arrear of rent so that he can pay now alongwith the statutory interest. The defendant who did not comply with the provision of 7(1) (a) of the Act, whether can deposit the arrear rent at this stage.

In the decision of the Hon'ble Apex Court in the matter of **Bijay Kumar Singh -vs- Amit Kumar Chamaria reported in (2019) 10 SCC 660**, it was held as follows:

*Sub section (1) of Section 7 of the Act relieves the tenant from the ejection 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.*

*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 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 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.*

In the case of **Debasish Roy vs. Bipul Kumar Roy 2024 (3) CHN (CAL) 171**, the Single Bench of the Hon'ble High Court, has been pleased to held as follows: *Moreover the law is well-settled that without compliance of Section 7(1), Section 7(2) would not come into operation. Even if the defendant had issue regarding the months of arrear of rent, he was required to deposit the admitted arrear rent within a month from the date of receipt of summons calculated at the rate at which it was last paid and upto 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*

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*the landlord or deposit before the court month by month within 15th of every succeeding month, a sum equivalent to the rent at that rate. And 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 rate of rent and arrears payable. Such procedure was not followed.*

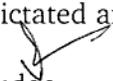
The Single Bench of the Hon'ble High Court in the case of **Deep Chand Hirawat Vs. Kamala Devi Chowdary & Others in C.O. 3681 of 2022** has held that Section 7(2) of the Act cannot be independent of the 7 (1). Without depositing the admitted arrears along with 10 per cent statutory interest, within the time limit prescribed under Section 7, i.e., one month from either receipt of summons or one month from the date of entering appearance, if the defendant/petitioner enters appearance without receipt of summons, had not been complied with. This compliance is a mandatory provision to be fulfilled by any tenant, who seeks protection from eviction under any of the grounds mentioned in Section 6 of the said Act.

In the instant case the defendant has admitted in his application under section 7(2) that he has not paid rent for few months owing to some disputes between the parties. The defendant had to comply the mandatory provisions of section 7(1) of the WBPT Act prior to making an application under section 7(2) of the Act by depositing the admitted arrear rent within the statutory period which would have then entitled him to make an application under section 7(2) of the Act. He should have deposited the admitted arrear rent for those months which he was admitting under the provisions of Section 7 (1) of the Act within the time frame given under the Act. The application under Section 7 (2) of the said Act, without any deposit of admitted arrear rent along with statutory interest within the time prescribed by the statute itself, is itself not maintainable. Therefore, in view of the non compliance of the provisions of section 7(1) of the WBPT Act, 1997, the application of provision of section 7(3) of WBPT Act, 1997 would be automatically attracted, resulting in striking out the defence of the defendant against delivery of possession.

Accordingly the defence of the defendant under section 7(3) of the WBPT Act is struck off for non compliance of the mandatory provision of Section 7(1) of the Act.

Fixing 24.04.2025 for hearing of the application under order 39 Rule 7 of the CPC.

Dictated and corrected by me:

  
Judge

  
Smt. Gladys Bomjan  
(J.O. Code: 01039)  
Judge, 3rd Bench  
Presidency Small Cause Court,  
Calcutta