

Ejectment 203 of 2022

( CNR NO WBPS 01 000340 2022 ]

Before – Sonia Majumdar- Ld. Chief Judge\_

Order No:-06.

16-02-2023.

Both parties file haziras.

Today is fixed for hearing on the point of maintainability of the petition u/s 7(1) of W.B.P T Act filed by the defendant dt 20-09-2022, w/o if any in the mean time and consideration of acceptance of W/S filed by the defendants on 13-12-2022.

Parties are found on call through their respective Ld. Advocates. The matter is taken up for hearing.

Ld. Advocate appearing for the defendant submitted the defendant has already paid a sum of Rs.180,000/- to the previous landlord namely Sri Biswajit Paul on 13<sup>th</sup> October, 2011. Therefore, the defendant is entitled for adjustment of rent. However, regarding limitation, Ld. Advocate for the defendant candidly admits that the petition u/s 7(1) of W.B.P T Act has not been filed within time and prays for condonation of delay in filing the same.

Though no Written Objection has been filed by the plaintiff against the defendant's petition u/s 7(1) of W.B.P T Act dt 20-09-2022, Ld. Advocate for the plaintiff submitted that in view of the order of the Hon'ble Supreme Court as well as Hon'ble High Court at Calcutta, there is no scope to condone the delay in filing the petition u/s 7(1) of W.B.P T Act. He prayed for passing necessary order.

Heard both sides. Perused the petition and materials on record.

Considered.

Section 7(1) (a) of W.B.P.T Act , 1997 provides:-

*On a suit being instituted by the landlord for eviction on any grounds referred to in Section-6, the tenant shall , subject to the provisions of sub-*

*p.t.o.....*

*Section (2) of this Section, pay to the landlord or deposit 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 10 per cent per annum and such payment shall be made within one month of the service of summons on the tenant or when he appears in the suit, without the summons being served upon him, within one month of his appearance.*

This a mandatory provision and no space is provided by the Statute to the Court to act otherwise.

Record reveals that as per bailiff report dt 27-06-2022, summons were affixed on the front door of the defendant's room whereas one postal envelope returned with remark-“ I/A RTS”.

Record further reveals that defendant has entered appearance in the suit on 22-07-2022 but filed the petitions u/s 7(1) & 7(2) of W.B.P T Act on 20-09-2022 after almost two months. Therefore, the petition is time barred.

Moreover, in the Judgement reported in (2019) 10 SCC [660], [Bijay Kumar Singh and others vs Amit Kumar Chamaria and another, the Hon'ble Apex Court has observed:-

*“ Therefore, if the tenant fails to deposit admitted arrear rent within one month of receipt of summons or within one month of appearance without summons and also fails to make an application for determination of the disputed amount of rate of rent and the period of arrears and the subsequent non-payment on determining the arrears of rent will entail the eviction of the tenant Section-7 of the Act provides for a complete mechanism for avoiding eviction on the ground of arrears of rent provided that the tenant takes steps as contemplated under sub-section-2 of Section-7 of the Act and deposits the arrears of rent on determination of the disputed amount. The deposit of rent along with an application for determination of dispute is a pre-condition to avoid eviction on the ground of non-payment of arrear of rent. In view therefore, tenant will not be able*

*contd.....*

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*to take recourse of Section 5 of the Limitation Act as it is not an application alone which is required to be filled by the tenant but the tenant has to deposit admitted arrears of rent as well.”*

So, the cardinal principle of law as it appears is that if the tenant fails to comply with the provisions u/s 7(1) of W.B.P T Act as prescribed under the law within the prescribed period of limitation. , the Court cannot help him out.

In the above view of the matter, this Court finds that the both the petitions u/s 7(1) & 7(2) of W.B.P T Act filed by the defendant on 20-09-2022 are not entertainable being time barred.

W/S filed by the defendant is also beyond the prescribed period and no explanation is coming from the defendant for not filing the W/S within the time. Accordingly, the W/S cannot be accepted.

Hence,

it is

Ordered

that the petition u/s 7(1) & 7(2) of W.B. P.T Act filed by the defendant dt 20-09-2022 is considered and rejected on contest being time barred.

Let the case be transferred to the Court of Ld. Judge, 4th Bench, P.S.C Court Calcutta for disposal. Parties are directed to appear before the transferee Court on **(22-03-2023)**

Chief Judge.

J.O .Code:- WB 01128

