

**EJECTMENT SUIT NO. 203 OF 2022**  
**C.N.R No. WBPS01-000340-2022**

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- 21**  
**DATED 25-09-2024:**

Today is fixed for hearing of the petition under section-7(3) of the W.B.P.T Act filed by the plaintiff and petition dated 10.08.2023 filed by defendant. Both the parties file separate attendance through their respective Ld. Advocates.

The record is taken up for hearing of the petition dated 10.08.2023 filed by the defendant.

Heard both sides. Perused the record including the said petition and the written objection.

Considered.

The instant petition seeks relief in the form of an Order recalling the Order dated 16.02.2023. It is submitted on behalf of the defendant that on receiving the summons of the suit he contacted with his Ld. Advocate and requested him several time to take appropriate steps in the suit. Ultimately the then Ld. Advocate for the defendant filed the applications under section-7(1) and 7(2) of the W.B.P.T Act along with an application under section-5 of the Limitation Act on 20.09.2022. But on 16.02.2023 when the Court passed the Order rejecting all his applications, the defendant came to know that his the then Ld. Advocate filed those applications at a belated stage, for which those were rejected as time barred. The defendant depended upon his Ld. Advocate absolutely but because of the fault of the Ld. Advocate, the defendant has suffered irreparable loss. So he prayed for recall of Order dated 16.02.2023 vide which the applications under section-7(1) and 7(2) of the W.B.P.T Act and under section-5 of the Limitation Act were rejected.

Ld. Advocate for the defendant relied upon the precedents in the case of **Bahadur Singh Kathoria Vs. Purabi Basu, 2023 SCC Online Cal 350** and **Amal Boral Vs. Debasis Paul, (2019) 3 Cal LT 659 (HC)**.

Ld. Advocate for the plaintiff raised strong objection against the prayer of the defendant and submitted that the Order dated 16.02.2023 was passed by the Ld. Chief Judge, Presidency Small Causes Court, Calcutta after hearing both sides at length. So all the petitions mentioned by the defendant were disposed of by the Court on merit. For that there is no question of recalling the said Order. In support of his submission he relied upon the precedent of **Debasish Paul and Another Vs. Amal Boral, (2024) 2 SCC 169**. Apart from the aforesaid ground, it was also argued that the defendant has challenged the Order dated 16.02.2023 before the Hon'ble High Court, Calcutta by filing an application for revision. So the defendant can not pray for recall of that Order again before this Court.

According to the provision of section-7(1) of the West Bengal Premises Tenancy Act, 1997 the tenant is required to pay to the landlord or deposit before the Court the admitted arrears within the one month of the service of summons on the tenant or where he appears before the Court without the summons being served upon him, within one month from the date of his appearance before the Court. This provision is mandatory in nature and the tenant has to strictly comply the same in order to get protection against the delivery of possession. In the instant suit the service of summons was effected by the Court bailiff by affixing the copy of summons on the outer door of the suit premises on 22.06.2022 and the defendant appeared before the Court on 22.07.2022 but did not file any application under section-7(1) and 7(2) of the said Act. The defendant came up before the Court with those applications along with the petition under section-5 of the Limitation Act, 1963 on 20.09.2022. All the three petitions filed by the defendant on 20.09.2022 were rejected by the Ld. Chief Judge, Presidency Small Causes Court, Calcutta vide Order dated 16.02.2023. Now the defendant is trying to shift the responsibility of delayed filing of the petitions under section-7(1) and 7(2) of the Act on to his Ld. Advocate relying on the observation of the Hon'ble Court in Amal Boral's case wherein it was held that when it is the specific case of the petitioner that for being ill advised by the Ld. Advocate who was subsequently changed with the appointment of the new Advocate by the petitioner, the defendants should not be made to suffer and penalize for the Advocate's default though admittedly after disposal of the application under section-7(1) and 7(2) of the said Act. In that case the Hon'ble Court permitted the petitioner/defendant to file an

application under section-5 of the Limitation Act, 1963 for condonation of delay in support of the application under section-7(1) and 7(2) of the Act, already filed. The defendant also relied upon the case of ***Bahadur Singh Kathoria*** wherein it was held by the Hon'ble Court that as under the West Bengal Premises Tenancy Act, 1997, Limitation Act, 1963 applies to the proceedings and appeals, hearing of applications under section-7(1) and 7(2) of the Act is considered to be proceedings and as there is no express provision to condone the delay in institution of the proceedings under the said sections provided by the said Statute, Limitation Act, 1963 comes into operation by virtue of section-40 of the said Act.

So far as the first case relied upon by the defendant, i.e. the case of ***Amal Boral***, is concerned it should be noted that the factual matrix of that case was different. In that case the petitions under section-7(1) and 7(2) of the Act were filed no accompanied by any application under section-5 of the Limitation Act. So the Hon'ble Court permitted the petitioner/defendant to file the petition under section-5 of the Limitation Act for condonation of delay. In the instant suit the petition for condonation of delay was filed by the defendant along with the applications under section-7(1) and 7(2) of the Act which was considered by the Ld. Chief Judge, Presidency Small Causes Court, Calcutta and rejected the same on merit. So there is no scope of this Court to re-open the issue by recalling the Order dated 16.02.2023. After all this Court can not sit upon the Order of the Ld. Chief Judge. Above all the precedent of ***Amal Boral's case*** has been set aside by the Hon'ble Apex Court in ***Debasish Paul and Another Vs. Amal Boral, (2024) 2 SCC 169*** which is rightly cited by the Ld. Advocate for the plaintiff. In the instant case the Hon'ble Apex Court held that though generally the Limitation Act is applicable to the provisions of the West Bengal Premises Tenancy Act, 1997 in view of the provision of section-40 of the said Act, but if there is a lesser time period specified as limitation in the said Act, then the provisions of the Limitation Act can not be used to expand the same. In view of this observation of the Hon'ble Supreme Court, there remains no doubt that the provision of section-5 of the Limitation Act, 1963 can not be invoked in order to extend the time as provided under section-7(1) of the Act. Consequently there is no question of recalling the Order dated 16.02.2023. So far as other ground of objection raised by the plaintiff is concerned it is to be stated that the civil revision was filed by the defendant before the Hon'ble Court challenging the Order dated 16.02.2023 only to the extent of refusal to accept the written statement. The said civil revision is no way connected to the rejection of the applications under section-7(1) and 7(2) of the Act.

Hence it is

O R D E R E D.

That the petition dated 10.08.2023 filed by the defendant is rejected on contest without cost.

The petition dated 10.08.2023 is thus disposed of.

To 29/11/2024 for hearing of the petition under section-7(3) of the W.B.P.T Act.

Typed, Corrected and Printed by me.

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

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