

Ej. Suit No. 72 of 2017
CNR No. WBPS01-000151-2017

Order No. 35

Dated 14.07.2023.

Today is fixed for hearing of petition u/s 5 of the Limitation Act along with the applications u/s 7(2) of WBPT Act, 1997 filed by the defendant on 04.08.2018 and filing of written objection by the plaintiff, if any.

Both sides are present by filing respective haziras.

The plaintiff has not filed written objection today, but submitted before this Court that the plaintiff will contest the above applications by raising oral objection.

The Advocate for the defendant has filed an application stating that the defendant is lying in death-bed condition and is unable to proceed with the hearing of the application u/s 7(2) of the WBPT Act, 1997, and, as such, the defendant has prayed for necessary order to hear out the application u/s 5 of the Limitation Act along with the application u/s 7(2) of the WBPT Act, 1997 along with the main suit.

The Ld. Advocate for the plaintiff raised strong objection against the said petition and prays for rejection of the same.

I heard both sides.

Perused the materials on record.

Considered.

The record reveals that the defendant has not been proceeding with his application u/s 5 of the Limitation Act and the application u/s 7(2) of the WBPT Act, 1997 since 2018 without any justifiable reasons and at this stage he desires to move the application u/s 5 of the Limitation Act along with the application u/s 7(2) of the WBPT Act, 1997 at the time of main trial of the suit which is not permissible under law and the petition seems to be a misconceived one and accordingly the same is rejected.

The parties are directed to get ready for the hearing of the application u/s 5 of the Limitation Act and the application u/s 7(2) of the WBPT Act, 1997.

The matter be kept on passover for 30 minutes.

Dictated and corrected by me:

Judge

Smt. Sudipa Banerjee

J.O. Code : 01148

Judge, 3rd Bench,

***Presidency Small Cause Court,
Calcutta.***

Later

14.07.2023.

Now in presence of both sides, the applications u/s 5 of the Limitation Act, 1973 is taken up for hearing.

It is submitted by the Ld. Advocate for the defendant that the plaintiff has filed the instant suit for evicting the defendant in terms of section 6 of the WBPT Act, 1997 and the defendant appeared in the said suit on 20.01.2018 but due to some accidental injury he could not file the application u/s 7(2) of the WBPT Act, 1997 in due time and the same has been filed on 04.08.2018 along with an application u/s 5 of the Limitation Act praying for necessary order to condone the delay in bringing the application u/s 7(2) of the WBPT Act, 1997.

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The Ld. Advocate for the plaintiff raised vehement objection against the application u/s 5 of the Limitation Act by stating that the above application is not maintainable in the eyes of law and the defendant under statutory obligation to file application u/s 7(1) & 7(2) of the WBPT Act, 1997 within one month from the date of service of summon upon him and in the present case summon has been served upon the defendant on 27.02.2017 but the applications u/s 7(2) of the said Act has been filed on 04.08.2018 which is not permitted under law. Accordingly the Ld. Advocate for the plaintiff prays for rejection of the application u/s 5 of the Limitation Act as well as the applications u/s 7(2) of the WBPT Act, 1997 being not maintainable under law.

Heard both sides.

Perused the materials on record.

Considered.

Now the record is taken up for passing order.

The instant suit has been filed by the plaintiff on 10.02.2017 and summon was served upon the defendant 27.02.2017 as has been declared by the Ld. Chief Judge, Presidency Small Cause Court, Calcutta vide order dated 12.05.2017.

The defendant appeared before this Court on 20.01.2018 and he has stated that he could not file the application u/s 7(2) of the WBPT Act, 1997 in due time due to some accidental injury for which the application u/s 7(2) of the WBPT Act, 1997 was filed on 04.08.2018 coupled with an application u/s 5 of the Limitation Act for condoning the delay in bringing the applications u/s 7(2) of WBPT Act, 1997 in due time and the ground taken by the defendant for such delay has been categorically set forth in the application u/s 5 of the Limitation Act. However, no application u/s 7(1) of WBPT Act, 1997 has been filed by the defendant, though, the defendant has claimed himself to be a tenant in the suit premises at a monthly rent of Rs. 111/- (subsequently enhanced to Rs. 162.52) per month under an Agreement dated 29.05.1980 under Associated Trade Agents, the plaintiff herein.

Now let us see, as to whether an application u/s 5 of the Limitation Act for condoning the delay in bringing an application u/s 7(2) of WBPT Act, 1997 is maintainable or not.

In this context, this Court finds it appropriate to refer to the provision of section 7 of WBPT Act, 1997 for better understanding of the situation which is as under:-

“Section 7 - When a tenant can get the benefit of protection against eviction. -

(1) (a) On a suit being instituted by the landlord for eviction on any of the grounds referred to in section 6, the tenant shall, subject to the provisions of sub-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 ten per cent per annum.

(b) 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.

(c) The tenant shall thereafter continue to pay to the landlord or deposit with the Civil Judge month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

(2) If in any suit referred to in sub-section (1), there is any dispute as to the amount of the rent payable by the tenant, the tenant shall, within the time specified in that sub-section, deposit with the Civil Judge the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of the application, the Civil Judge shall, having regard to the rate at which rent was last paid and the period for which default may have been made by the tenant, make, as soon as possible within a period not exceeding one year, an order specifying the amount, if any, due from the tenant and, thereupon, the tenant shall, within one month of the date of such order, pay to the landlord the amount so specified in the order.

Provided that having regard to the circumstances of the case, an extension of time may be granted by the Civil Judge only once and the period of such extension shall not exceed two months.

(3) If the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, the Civil Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.

(4) If the tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant, shall be made by the Civil Judge, but he may allow such cost as he may deem fit to the landlord:

Provided that the tenant shall not be entitled to any relief under this sub-section if, having obtained such relief once in respect of the premises, he again makes default in payment of rent for four months within a period of twelve months or for three successive rental periods where rent is not payable monthly”.

Thus, the provision of u/s 7 of WBPT Act, 1997 is quite clear that which specifically states that when a suit has been instituted by the landlord u/s 6 of WBPT Act, 1997, the tenant shall subject to the provision of sub-section u/s 7(2) of WBPT Act, 1997, pay to the landlord or deposit with all arrears of rent calculated at such rate at which it was last paid together with interest of 10% and such deposit shall be made within one month from the date of service of summon or within one month from the date of his appearance, where no summon has been served, as the case may be. But, in the present case, though the defendant has admitted himself to be a tenant in the suit premises under one Associated Trade Agents i.e. the plaintiff concern but the defendant never made any application u/s 7(1) of the WBPT Act, 1997 for depositing the admitted arrear of rent or the monthly rent but he has only filed an application u/s 7(2) of the WBPT Act, 1997 only on the point of dispute regarding the authority of Omprakash Kajaria who is representing the plaintiff concern namely Associated Trade Agents which is not permissible within the provision of Section 7 of the W.B.P.T. Act, 1997.

In this context, taking into consideration the fact and circumstances of the instant case I find it very much appropriate to rely on a decision of the Hon'ble Calcutta High Court passed in a case in similar circumstances reported in 2017(1)ICC 721 in the case of Arun Prakash Saha vs Asit Baran De & Anr on 23 December, 2016 wherein the Hon'ble Court held -

“It is well settled law that in a case where the statutory provision is plain and unambiguous, the Court shall not interpret the same in a different manner, only because of harsh consequences arise therefrom. No doubt the rent legislation is normally intended for the benefit of the tenants, at the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions and equitable consideration has no place in such matters. An authority for this view can be found in the decision of the Supreme Court in the case of E. Polanisamy vs. Polanisamy reported in (2003) 1 SCC 123. As held by the Supreme Court in the case of [Shri Lakshmi Venkateshwara Enterprises \(P\) Ltd. vs. Syeda Vajhiunnissa Begum](#) reported in (1994) 2 SCC 671 that the Rent Control Act is a welfare legislation not merely beneficial enactment for the tenant, but also for the benefit of the landlord.

In the case of Smt. Bina Devi Binani vs Ramesh Kumar Gupta in C.O. No. 1847 of 2013 the Hon’ble Calcutta High Court on 14.05.2015 following the ratio of the decision of the Supreme Court in the case of Nasiruddin, has held that the word "shall" used in Section 7(3) of the Act is imperative in nature. Therefore, in the absence of any provision for extension of time to deposit the arrear rent directed to be paid by the Court under Section 7(1) of the Act, with the default on the part of the defendant tenant to pay such arrear rent together with the statutory rate of interest within the time stipulated by the order passed by the Court, a right accrues in favour of the plaintiff landlord under Section 7(3) of the Act for striking out of the defence of the defendant tenant against delivery of possession and the Court has no discretion but to pass an order directing striking out of the defence of the defendant tenant against delivery of possession”.

Therefore, the above decision makes it clear that the provision of section 7 is absolutely mandatory and the tenant must comply the same in order to get protection u/s 7(4) of the WBPT Act, 1997 and non-compliance of the said provision would attract the application of provision section 7(3) of WBPT Act, 1997 resulting in striking out the defence of the defendant against delivery of possession.

It is now mandatory for the tenant to comply with the provision of u/s 7(1)(b) of WBPT Act, 1997 and the tenant will not be able to take recourse of the Limitation Act or any other Act to deposit arrear of rent beyond that period as directed by the Hon’ble Supreme Court in the case of [Bijay Kumar Singh and Others -vs- Amit Kumar Chamaria and Another](#) reported in 2019 (10) SCC 660. The Hon’ble Apex Court has clearly held in the above referred case -

“21. Sub section (3) provides for consequences of non-payment of rent i.e. striking off the defence against the delivery of the possession and to proceed with the hearing of the suit. Such provision is materially different from sub sections (2A) and (2B) which was being examined by this Court in B.P. Khemka. Sub sections (2A) and (2B) of [Section 17](#) of 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso of sub sections (2) and (3) of [Section 7](#) of the Act. Therefore, the provisions of sub section (2) are mandatory and required to be scrupulously followed by the tenant, if the tenant has to avoid the eviction on account of non-payment of arrears of rent under [Section 6](#) of the Act. There is an outer limit for extension of time to deposit of arrears of rent in terms of the proviso to sub section (2) of [Section 7](#) of the Act. The consequences flowing from non-deposit of rent are contemplated under sub section (3) of [Section 7](#) of the Act. Therefore, if the tenant fails to deposit admitted arrears of 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 of 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 arrears of rent. In view thereof, tenant will not be able to take recourse to [Section 5](#) of the Limitation Act as it is not an application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well”.

The Hon’ble Calcutta High Court in a very recent decision reported in **2022 (3) ICC 37 CAL in the case of Abhishek Singh -vs- Bholanath Kundu** has reiterated the above principal laid-down by the Hon’ble Apex Court in the case of Bijay Kumar Singh (Supra). In the above case, the Hon’ble Court has held in clear terms that provision u/s 7 is mandatory and required to be scrupulously followed by the tenant if the tenant has to avoid eviction on account of non-payment of arrears of rent u/s 6 of the Act.

Similar view was taken by the Hon’ble Calcutta High Court in the case of **The Calcutta Gujarati Education ... vs Sri Ajit Narayan Kapoor reported in 2022 (1) ICC 414 (CAL)** wherein it has been held -

“[The Act](#) of 1997 mandates that deposit of rent or where there is dispute regarding quantum of rent, deposit of admitted rent alongwith application for determination of rent, must be made by the tenant within time specified and as extendable under said Act. This is in relation to the suit filed for eviction, where compliance with the deposit mandate will enable the tenant to seek the protection provided. This enabling provision cannot be seen as an assertive right of a tenant, to be enforced. Here, provision in [article 137](#) cannot be made applicable. Furthermore, where it is a requirement of compliance by the tenant to seek protection, mandated by the statute as competently legislated by the State legislature and specifically limiting application of the 1963 Act, there cannot be occasion for application of the period of three years, overriding the period and extension specified by the local law and thereafter condonation of delay as under [section 5](#).

We answer the question referred to say that [Limitation Act](#), 1963 has no application in respect of an application by a tenant, made under [section 7](#) for determination of arrears of disputed rent. We are aware our answer to the question referred gives rise to conflicting views of two Division Benches of this Court. However, we have answered the question pursuant to direction made in said administrative order”.

Therefore, [The WBPT Act](#) of 1997 mandates that deposit of rent or where there is dispute regarding quantum of rent, deposit of admitted rent alongwith application for determination of rent, must be made by the tenant within time specified and as extendable under said Act. This is in relation to the suit filed for eviction, where compliance with the deposit mandate will enable the tenant to seek the protection provided. This enabling provision cannot be seen as an assertive right of a tenant, to be enforced. Here, provision in [article 137](#) cannot be made applicable. Furthermore, where it is a requirement of compliance by the tenant to seek protection, mandated by

the statute as competently legislated by the State legislature and specifically limiting application of the 1963 Act, there cannot be occasion for application of the period of three years, overriding the period and extension specified by the local law and thereafter condonation of delay as under [Section 5](#).

Therefore, borrowing wisdom from the above referred Authorities of the Hon'ble Apex Court in the case of Amit Kumar Chamaria (Supra) as well as the decisions of the Hon'ble Calcutta High Court as referred above, it can be said that in terms of the provision of section 7 of WBPT Act, 1997 it becomes absolutely mandatory for the tenant to file an application u/s 7(1) of WBPT Act, 1997 permitting him to deposit the admitted arrear of rent, if any, due from him and to make deposit of current monthly rent **within one month from the date of service of summon or date of appearance, where no summon has been served upon him**, as the case may be and to file another application u/s 7(2) of WBPT Act, 1997 for determination of the rent payable, where there is any dispute as to the amount of rent. Sub-section 2 of section 7 of WBPT Act, 1997 makes it further clear that no deposit shall be accepted unless it is accompanied by an application for determination of the rent payable.

In the present case, the defendant received summon on 27.02.2017 but no application was filed u/s 7(1) & 7(2) of WBPT Act, 1997 within one month from the date of his appearance and he filed applications only u/s 7(2) of WBPT Act, 1997 on 04.08.2018 along with an application u/s 5 of the Limitation Act for condoning delay in bringing the application in due time as required u/s 7 of the WBPT Act, 1997.

This being the situation, it can be said that the defendant has not complied with the mandatory provision of section 7 of WBPT Act, 1997 as he did not deposit either the admitted arrear of rent, if any, or the monthly rent, even though, he has admitted to be a tenant in respect of the suit property under the plaintiff concern namely Associated Trade Agents and, as such, the application u/s 5 of the Limitation Act is not maintainable in the eyes of law and the same is liable to be rejected.

Hence, it is,

ORDERED

That the application under Section 5 of the Limitation Act, 1963 dated 04.08.2018 for condoning the delay in filing petitions u/s 7(2) of the WBPT Act, 1997 is considered and rejected on contest but without cost.

Now the applications u/s 7(2) of WBPT Act, 1997 is taken up for hearing as filed by the defendant on 04.08.2018.

As already appearing from the record that the application u/s 5 of the Limitation Act, 1963 in connection with the applications u/s 7(2) of WBPT Act, 1997 has been rejected by this Court being not maintainable in the eyes of law.

This being the situation, when the application u/s 7(2) of WBPT Act, 1997 has been filed by the defendant beyond the statutory period of one month from the date of service of summon upon the defendant on 27.02.2017 and without complying with the statutory provision of Section 7(1) of the WBPT Act, 1997, there is no scope of entertain the petitions u/s 7(2) of WBPT Act, 1997, the same being not maintainable in the eyes of law. Accordingly, the applications u/s 7(2) of WBPT Act, 1997 filed by the defendant as on 04.08.2018 is considered and rejected.

Hence, it is,

O R D E R E D,

That the applications u/s 7(2) of WBPT Act, 1997 dated 04.08.2018 is considered and rejected on contest being not maintainable in the eyes of law.

In this context, it would not be out of place to mention that in the case of **Smt. Bina Devi Binani vs Ramesh Kumar Gupta** in C.O. No. 1847 of 2013 the Hon'ble Calcutta High Court on 14.05.2015 following the ratio of the decision of the Supreme Court in the case of Nasiruddin, has held that the word "shall" used in Section 7(3) of the Act is imperative in nature and with the default on the part of the defendant tenant to pay admitted arrear of rent together with the statutory rate of interest or to make monthly payment of rent within the time stipulated a right accrues in favour of the plaintiff landlord under Section 7(3) of the Act for striking out of the defence of the defendant tenant against delivery of possession and the Court has no discretion but to pass an order directing striking out of the defence of the defendant tenant against delivery of possession.

In the present case, as consequence of the rejection of the applications u/s 7(2) of WBPT Act, 1997 the provision of section 7(3) of WBPT Act, 1997 has come into operation resulting in striking out the defence of the defendant against delivery of possession. Hence, the defence of the defendant against delivery of possession in the present suit is hereby struck out in terms of the provision of section 7(3) of WBPT Act, 1997.

Fixing **21.08.2023** for framing of issues.

Dictated and corrected by me:

Judge

Smt. Sudipa Banerjee
J.O. Code : 01148
Judge, 3rd Bench,
Presidency Small Cause Court,
Calcutta.