

EJECTMENT SUIT NO. 157 OF 2017  
C. N. R. NO. WBPS01- 000387 - 2017  
Before Smt. A. Bhattacharya, Ld. Judge, 5<sup>th</sup> Bench.

ORDER NO. 48 DATED 11.09.2025

Both parties file hazira.

Today is fixed for hearing of the petition under Sec.151 of C.P.C.

Ld. Advocates for both sides are present.

The record is taken up for hearing of the petition under Sec.151 of C.P.C. filed by the defendant by filing which it is submitted by the defendant that the defendant is depositing monthly rent since appearance and till date, as per order of the Id. Court passed at the time of hearing of Sec.7(1) of the W. B. P. T. Act. The petition under Sec.7(2) of the Act has also been heard and disposed of vide order no.36 dated 08.06.2022 directing the defendant to pay the due rent @ Rs.450/- p.m. total amounting to Rs.36450/- with statutory interest within one month. The defendant was out of station and as such, could not be able to deposit the amount within 30 days. In the meantime, due to inadvertence and gross negligence of the Advocate, application for extension of time could not be filed. On 04.04.2024, at the time of filing of challans, Advocate of the plaintiff going through the record came to know that the order dated 08.06.2022 has not been complied with and as such, prayed for condonation of delay and to allow the defendant to deposit the aforesaid amount of Rs.36450/- with statutory interest.

On the other hand, though no written objection is filed but it is submitted by the Id. Advocate for the plaintiff that this Court has no jurisdiction to entertain such an application at this juncture and prays for rejection of the instant petition.

Perused the petition and the materials on record.

Heard Id. Advocates for both sides.

Section 7(2) of the West Bengal Premises Tenancy Act provides that, ***“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 within 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 the 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, 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 :*”**

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***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 extension shall not exceed two months.”***

On scrutiny of the case record it appears that the Court vide Order No. 36 dated 08.06.2022 had directed the defendant to deposit a sum of Rs. 36450/- calculated as arrear rent along with statutory interest to be paid within 30 days from the date of the order. Admittedly the defendant has not deposited the said amount in compliance with the said order No. 36 dated 08.06.2022. The said time of one month could only be extended for another month and in no case could this time be extended beyond two months. The defendant could have deposited the said amount within 08.08.2025 at best. The defendant has come up with this application with prayer to deposit the said money and condonation of delay on 03.03.2025, i.e., after expiry of a period of around two years and nine months.

Now it is necessary to see whether Court has the jurisdiction to allow the defendant to deposit rent after expiry of the time specified under Section 7(2) of the W.B.P.T Act. It is also a settled principle of law that provisions of Section 5 of the Limitation Act is not applicable to any of the applications under the said Act. Where the provisions of Section 5 of The Limitation Act has been ousted by Section 40 of the said Act, it cannot be invoked by the Court under the inherent powers of the Court as provided in Section 151 of the CPC. By Sec.40 of the said Act, the applicability of provisions of Limitation Act has been restricted to proceedings and Appeals under the W.B.P.T. Act and thus, the same is not applicable to any application under Sec.7(1) and 7(2) of the W. B. P. T. Act.

Sec.40 of the W. B. P. T. Act specifically provides for application of the Limitation Act to proceedings or appeals under this Act. Thus, the provisions of Limitation Act do not apply to applications made under any provision of this Act which does not initiate any proceedings or Appeals. An application under Sec.7(2) of W. B. P. T. Act is merely an application and not a proceeding and thus, the provision of Limitation Act is not applicable to an application under Sec.7(2) of the W. B. P. T. Act.

In ***Vijay Kumar Singh & ors. v Amit Kumar Chamariya and anr.*** Reported in **(2019) 10 SCC 660 (Relied on)**, Hon'ble Apex Court has held that “*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 Sec.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. Thereafter, if the tenant fails to deposit*

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*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 of 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". Thus, from the decision of Hon'ble Apex Court, it is clear that the provisions of Sec.5 of The Limitation Act is not applicable to condone delay in filing application under Sec.7(2) of the W. B. P. T. Act.*

*In **Om Prakash Agarwal & Anr. v Bijay Singh Dugar & Ors.**, reported in **2023 SCC OnLine Cal 2052 : 2023 AIR CC 2871 (Relied on)** the Hon'ble High Court at Calcutta has held that : "15. Since section 7 of the Act provides for a complete mechanism for avoiding the eviction on the ground of arrear of rent and also deposit of current rent and legislature had not given any relaxation for extension of period prescribed under section 7 (1), section 5 of the limitation has got no application for making a prayer for condonation of delay. Now the question raised by the tenant/defendant that the said application has not been made under section 5 of the Limitation Act nor under section 40 of the Act of 1997 but he has made the said application under section 151 of the Code of Civil Procedure. In this context law is specific which says, the inherent power of a court will not be exercised if its exercise is inconsistent with or comes into conflict with any of the powers expressly or by necessary implication conferred by the other provisions of law. When, there are express provisions covering aforesaid particular topic, that give rise to a necessary implication that no power shall be exercised under section 151 of the code in respect of the said topic, otherwise than in the manner prescribed by the said provision. In view of above since section 5 has got no application in the present context for condonation of delay, section 151 of the code cannot come to its rescue, in order to extend the outer time limit for deposit of rent before the court under section 7(1)(c) of the Act of 1997.*

*16. In view of above application filed under section 151 of the Code of Civil Procedure by the tenant/defendant seeking condonation of delay in making deposit of the monthly rent*

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*before the court below is misconceived. Accordingly the order impugned i.e. order no. 47 dated 13th August 2019 passed by learned 3rd Bench Small Causes Court Calcutta in Ejectment Suit No. 6752 of 2014 is hereby set aside.”*

Thus it is clearly held by the Hon’ble High Court at Calcutta that the provisions of extension of time in depositing monthly rent cannot be allowed the Court under any of the provisions under Section 151 of C.P.C. or under Section 5 of the Limitation Act.

Therefore, the defendant cannot be permitted to deposit the arrear rent after expiry of the statutory period as provided in the proviso to Sec.7(2) of the W. B. P. T. Act that has been prayed for in his application under Section 151 of C.P.C.

Hence, it is

**ORDERED**

that the petition under Section 151 of C.P.C. filed by the defendant on 03.03.2025 is hereby rejected on contest but without costs.

It is now an admitted fact that the defendant has not complied with the provision under Section 7(2) of the West Bengal Premises Tenancy Act and deposited the arrear rent vide Order no.36 dated 08.06.2022 within the statutory period. There is no scope to extend the time beyond two months and accordingly the petition under Section 151 of CPC filed by the defendant for extension of time has been rejected vide the aforesaid order.

Sub Sec.3 of Sec.7 of the Act provides that “*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 shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit*”.

Thus, the provisions of Sec.7(2) of the W. B. P. T. Act has not been complied with by the defendant as a result of which Sec.7(3) of the W. B. P. T. Act comes into play making the defence of the defendant against delivery of possession be struck out.

On further careful perusal of the record, it appears that not a single scrap of paper is filed on behalf of the defendant to prove that the defendant has paid rent in any manner to the plaintiff and as such, defendant is not entitled to any defence on this date.

Hence, it is

**ORDERED**

that the defence of the defendant against delivery of possession be struck off under Sec.7((3) of the West Bengal Premises Tenancy Act.

Fix 01.12.2025 for framing of Issues.

Dictated and corrected by me,

JUDGE

JUDGE  
[5TH BENCH]