

**Ej. Suit No. 190 of 2023**  
**CNR No. WBPS01-000416-2023**

**Order No. 13**

**Date: 26.03.2025**

Today is fixed for further hearing of the petition u/s 7(2) of the WBPT Act, 1997 and order.

Both sides filed hazira through their Ld. Advocates.

Heard both sides in full.

Perused the application as above and the entire case record.

The defendant has filed the instant application u/s 7(2) of the WBPT Act 1997 denying being a defaulter in payment of rent from the month of the June, 2018 as alleged by the plaintiff. He further stated that he has duly paid the rent upto the month of September, 2018 and thereafter due to the Covid period he was not able to pay monthly rent to the plaintiff. Therefore he prays before the Court for determination of the period of rent due, along with the arrear of rent and the permission to deposit the same alongwith the statutory interest.

The plaintiff did not submit any written objection, but verbally raised objection and submitted that by invoking the Provision u/s 7(1) of the WBPT Act, 1997, the defendant has sought permission from the Court to deposit the current rent from August, 2023, but did not pay arrear rent or admitted arrear rent which was a pre condition for filing the application u/s 7(2) of the WBPT Act, 1997. Thus prays for rejection of the application.

Considered.

In the instant case at hand the defendant on appearing before the court on 22.08.2023 filed two applications, one under section 7(1) and another under section 7(2) of the WBPT Act. By filing application under section 7(1) he sought the permission of the court to deposit the current rent month by month from August 2023 which was allowed vide order no.3 dated 22.08.2023 by the Ld. Chief Judge, Presidency Small Cause Court, Calcutta. In the application under section 7(2) he has prayed for determination of the period of rent due, along with the arrear of rent and the permission to deposit the same alongwith the statutory interest.

The Plaintiff has alleged that the defendant is a defaulter in payment of rent since June 2018. The parties are not in issue with regard to the rate of rent which is Rs.270/-per month. From the application under section 7(2) of the Act, it appears that the defendant has admitted that there are some arrears of rent due. It is a matter of record that though the application under Section 7 of the said Act was filed, but the arrears due or admitted arrears along with 10% statutory interest was not deposited along with application. The defendant only sought permission to deposit the current rent.

The documents filed by the defendant shows that he has paid the rent for the months from August 2023 till November 2024. No other documents has been filed by him. He is found to be a defaulter in payment of rent from the month of June 2018 till July 2023.

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The fact remains that the very mandate of law, i.e. the pre-condition of depositing the admitted arrears along with 10% statutory interest at the time of filing the application under Section 7(1) of the said Act was not complied with. The law requires a mandatory compliance of such statutory pre-condition. 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 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 regarding his dispute of months of arrear of rent, he could file an application asking the court to determine the dispute with regard to the arrears due payable.

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

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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 **Smt. Binika Thapa (nee Rai) & Anr. Vs Smt. Damber Kumari Mukhia & Anr. decided in C.O. 64 of 2023** the Division Bench of the Hon'ble High Court has considered the ratio in **Amit Kumar Chamariya (supra)** holding that the ratio decided therein applies to all situations, when the tenant fails to comply with the provisions of Section 1 of the WBPT Act.

The defendant had to comply the mandatory provisions of section 7(1) (a) 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 then entitle him to make an application under section 7(2) of the Act. He should have deposited the admitted arrear rent for those months as admitted by him under the provisions of Section 7 (1) (a) of the Act within the time frame given under 7(1) (b) of the Act.

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 the date of receipt of summons 31.07.2023 as is seen from the bailiff report kept with the record, the defendant can not avail the opportunity under section 7(2) of the ACT. 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.

The application under Section 7 (2)of the said Act, without any deposit of 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) (a) of the WBPT Act, 1997, the application of provision section 7(3) of WBPT Act, 1997 would be automatically attracted, resulting in striking out the defence of the defendant against delivery of possession.

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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. Glady Bomjan

*(J.O. Code: 01039)*

Judge, 3<sup>rd</sup> Bench

Presidency Small Cause Court, Calcutta