

Ejectment Suit 211 of 2023.

[CNR No WBPS 01 000452 2023.]

Before – Ashutosh Kumar Singh- Ld. Chief Judge.

Order No:05.

08-01-2024.

Today is fixed for necessary order with direction upon the defendant no-1 to file W/S within the prescribed period of limitation and also for clarification by plaintiff regarding the death report in respect of defendant no-1 as intimated by defendant no-1.

Plaintiff files hazira. Defendant no-1 also files hazira.

Today defendant no-1 files an application u/s-5 of Limitation Act along with two separate applications u/s 7(1) & 7(2) of W.B.P T Act together with Written Statement. Copies served. Objection endorsed.

On call, Ld. Advocate for the plaintiff and Ld. Advocate for defendant no-1 is found present. The matter is taken up for hearing.

Heard both sides.

Perused the petitions , W/S as well as materials on record.

Considered.

By filing the petition u/s 7(1) of W.B.P T Act , defendant no-1 has prayed for permission to deposit admitted arrears of rent as well as current rent from the month of December 2023 in Court on the ground stated therein.

At the time of hearing, Ld. Advocate for the defendant prayed for allowing the petition u/s 7(1) of W.B.P T Act.

Against this, vehement objection has been raised by Ld. Advocate for the plaintiff who submitted that the instant petition has not been filed within the prescribed period of limitation and that in view of the order passed by the Hon'ble Supreme Court in Bijay Kumar Singh and others vs Amit Kumar Chamariya and another reported (2019) 10 Supreme Court Cases 660, there is no scope for consideration of the petitions u/s 7(1) & 7(2) of

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W.B.P T Act, which has been filed beyond the prescribed period of limitation. He prayed for rejection of the petitions.

Heard submissions of the parties.

Careful perusal of the petition u/s 7(1) of W.B.P T Act filed today by defendant no-1, it appears that in paragraph -1 of the instant petition, defendant no-1 has specifically admitted that he received summons on 04-08-2023. The petition u/s 7(1) of W.B.P T Act has been filed today itself i.e on 08-01-2024 . So, there is a delay of almost five months in filing of the application. No explanation is provided in the petition u/s 7(1) of W.B.P T Act as to what caused the defendant no-1 to file the application at such a belated stage. It may be mentioned here that a petition u/s-5 of Limitation Act filed by the defendant no-1 today wherein the defendant no-1 has prayed for condonation of delay in filing of the Written Statement , but there is no whisper in the petition u/s 5 of Limitation Act regarding cause of delay in filing the petition u/s 7(1) & 7(2) of W.B.P T Act.

Be that as it may, a plain reading of provisions of Section 7 (1) of the West Bengal Premises Tenancy Act, goes to show :-

(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 upto 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.

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(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.

This provision of u/s 7(1) of W.B.P.T Act is mandatory and required to be scrupulously followed by tenant , if tenant has to avoid eviction on account on non-payment of arrears of rent u/s-6 of Act.

Besides, in the decisions of the Hon'ble Apex Court passed in the Judgement reported in (2019) 10 SCC [660], Bijay Kumar Singh and others vs Amit Kumar Chamaria and another, wherein the Hon'ble Apex Court has been pleased to observe in paragraph 16, 19, 20 and 21 which is as follows:-

“ 16. While examining as to when the provision of a statute is to be treated as directory or mandatory, this Court held in **Nasiruddin case** that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences thereof are specified . It was held as under:-

“37. The Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provisions is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of expression “shall or may” is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be

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found out from the scheme of the Act. It is also equally well settled that when negative words are used , the Courts will presume that the intention of the legislature was that the provisions are mandatory in character.

38. Yet there is another aspect of the matter which cannot be lost sight of. It is well settled principle that if an act is required to be performed by a private person within a specified time, the same would be ordinarily be mandatory but when a public functionary is required to perform a public function within a time –frame, the same will be held to be directory unless the consequences therefore are specified. In Sutherland’s Statutory Construction, 3rd Edn, Vol-3 at page 107, it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that rule is just the opposite to that which obtains with respect to public officers. Again at p-109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statue itself of the result that shall follow non-compliance with the provision.

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40. Thus, on analysis of the aforesaid two decisions, we find that wherever the special Act provides for extension of time or condonation of default, the Court possess the power therefore, but where the statue does not provide either extension of time or to condone the default in depositing the rent within the stipulated period, the Court does not have the power to do so.

41. In that view of matter it must be held that in absence of such provisions in the present Act, the Court did not have the power to either extend the period to deposit of rent or to condone the default in depositing the rent.”

19. Sub-section (1) of Section 7 of the Act relieves that tenant from the ejectment 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

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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.

20. 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 Section 7 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 the time as specified in sub-section (1) that is within one month of 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 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 Section 7 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 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 the extend the time for deposit of arrears of rent. The extension can be provide once and not exceeding two months.

21. Sub-Section (3) provides for consequences for non-payment of rent i.e striking off the defence against the delivery of possession and to proceed with the hearing of the suit. Such provision is materially different from sub-sections (2-A) and (2-B) which was being examined by this Court in B.P

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Khemka. Sub-sections (2-A) and (2-B) of Section 17 of the 1956 Act confer unfettered power on the Court to extend the period of deposit of rent, which is circumscribed by the proviso to Section 7(2) and sub-section (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 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 following 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 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 precondition 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.”

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Moreover, in this context, it is pertinent to cite here a Judgement of the Hon'ble High Court at Calcutta passed on 17-08-2023 in connection with C.O no 1385 of 2023 titled as Kishan Lal Bihari vs Shiv Shakti Real Estate Private Limited, wherein, it has been held that,

' the ratio of Chamariya (supra) applies to the entire provision of Section 7 of the said Act.

Therefore, upon careful scrutiny of the materials on record, it is palpably clear that the defendant no -1 has failed to comply the provisions of Section 7(1) of the West Bengal Premises Tenancy Act 1997 within the prescribed period of limitation and considering the settled law as discussed above and in view of solemn Judgement of the Apex Court in the case of **Bijay Kumar Singh and others and vs Amit Kumar Chamaria and another**, I find that if tenant/ defendant fails to comply with the provisions u/s 7(1) of W.B.P T Act as prescribed under the law within the time frame, the Court cannot help him out.

Therefore, under the attending facts and circumstances and in view of the decisions of the Hon'ble Superior Courts , this Court finds that there is no scope for the Court to entertain the petition u/s 7(1) of W.B.P T Act filed by the defendant no-1.

So far the contention made out by the defendant no-1 in his petition u/s-5 of Limitation Act, as well as in the petitions u/s 7(1) & 7(2) of W.B.P T Act that defendant no-2 died way back in 2016 prior to filing of the suit , from the photocopy of the death certificate attached with the petition , which is also not disputed by the plaintiff, it appears that defendant no-2 Rasik Lal Shah died on 24-09-2016. As such, prima facie it appears that the instant suit is not maintainable so far defendant no-2 is concerned.

Regarding the prayer for condonation of delay in filing the W/S as made out by the defendant no-1 in his petition u/s-5 of Limitation Act , the ground cited by defendant no-1 in page-02,paragraph -09 of the

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petition is that the defendant no-1 is suffering from prolonged illness and communication gap between the defendant and his Ld. Advocate. But no medical documents or any other evidence has been furnished by defendant no-1 in order to substantiate such claim.

Be that as it may, this Court finds that for ends of substantial justice, W/S filed by the defendant no-1 may be accepted but subject to payment of cost of Rs 300/- payable by the defendant no-1 to the plaintiff.

Accordingly,

it is

Ordered

that the petition u/s 7(1) of W.B.P T Act dated 08-01-2024 filed by defendant no-1 is considered and rejected on contest.

In consequences thereof, the petitions u/s 7(2) of West Bengal Premises Tenancy Act filed by the defendant no-1 dt 08-01-2024 is also stand rejected.

The petition u/s-5 of Limitation Act filed by the defendant no-1 praying for condonation of delay in filing Written Statement is considered and allowed , but subject to payment of cost of Rs. 300/- payable by the defendant no-1 to the plaintiff.

The provisions of Section 7(3) of W.B.P T Act shall be operative.

The suit shall not proceed against defendant no-2 any further since defendant no-2 died prior to filing of the suit.

Let the case be **transferred** to the Court of Ld. Judge **3rd** Bench, Presidency Small Cause Court for disposal.

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Parties are directed to appear before the transferee Court on
(**09/02/2024**)

Dictated & corrected

by me :-

Chief Judge

Chief Judge.

J.O .Code:- WB 01244.