

Ej. Suit No. 91 of 2023
CNR No. WBPS01-000195-2023

Order No. 08
Dated 22.08.2023

Today is fixed for hearing on the point of maintainability of the petitions u/s 7(1) & 7(2) of WBPT Act, 1997 dated 02.08.2023 filed by the defendant along with the application dated 02.08.2023 seeking condonation of delay. Written objections against the above three applications have been filed by the plaintiff on 07.08.2023.

Both sides are present by filing respective haziras.

The Ld. Advocate for the defendant submitted that the defendant entered into appearance in the present suit on 05.07.2023 and thereafter filed the applications u/s 7(1) & 7(2) of WBPT Act, 1997 on 02.08.2023 along with a petition dated 02.08.2023 stating that the summon of the instant suit was served upon the defendant on 10.05.2023 but the defendant being an ailing person was suffering from illness from 29.04.2023 to 17.05.2023 for which his activities were restricted as per the advice of the Doctor and finally he became able to enter his appearance on 05.07.2023 and filed the application u/s 7(1) & 7(2) of the WBPT Act, 1997 on 02.08.2023 along with a prayer to accept the above two application on the grounds stated therein.

The plaintiff has filed a series of photo copies of medical papers in the name of Mr. Tuhin Karmakar being the representative of the defendant namely M/s. J.K. Enterprise.

The Ld. Advocate for the plaintiff raised strong objection against the said petitions and prays for rejection of the same being not maintainable under law as there cannot be any extension of time u/s 7(1) & 7(2) of the WBPT Act, 1997.

I 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 under the provision of Section 6 of the WBPT Act, 1997 seeking eviction of the defendant on various grounds as available u/s 6 of the said Act including the ground of default of payment of rent. The instant suit has been filed on 18.04.2023 and summon was served upon the defendant on 06.05.2023 as appearing from the report of the Court Bailiff lying with the case record.

The defendant appeared before this Court on 05.07.2023 and prayed for time for filing written statement and subsequently on 02.08.2023 the defendant filed an applications u/s 7(1) & 7(2) of the WBPT Act, 1997 along with a prayer to accept the above two petitions by way of a separate petition. Needless to say, the defendant has prayed for necessary order for acceptance of the application u/s 7(1) & 7(2) of the WBPT Act, 1997 as the same has been filed beyond the statutory period and the defendant has taken the ground of serious illness of the defendant preventing him to file above applications in due time.

Since the applications u/s 7(1) & 7(2) of the said Act have been admittedly filed beyond the period of one month from the date of service of summon, it has become necessary to hear out the above two applications on the point of maintainability rather than disposing of the same on merit.

Now let us see, as to whether an application for condoning the delay in bringing an application u/s 7(1) & 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.

In the present case, summon is found to be served upon the defendant on 06.05.2023 as per the report of the Baliff but the applications u/s 7(1) & 7(2) of the WBPT Act have been filed on 02.08.2023 along with a prayer for accepting the same by condoning the delay.

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 a 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 Hon'ble 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.

The landmark decision on this point is the decision in the case of **Bijay Kumar Singh and Others -vs- Amit Kumar Chamaria and Another reported in 2019 (10) SCC 660** as decided by the Hon'ble Supreme Court. It is now mandatory for the tenant to comply with the provision of u/s 7(1) & 7(2) 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. 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 06.05.2023 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(1) & 7(2) of WBPT Act, 1997 on 02.08.2023 along with an application for accepting the above two petitions by condoning delay in bringing the application in due time as required u/s 7 of the WBPT Act, 1997.

As such, neither the application dated 02.08.2023 seeking necessary order to accept the applications u/s 7(1) & 7(2) of the WBPT Act, 1997 filed beyond the statutory period of one month from the date of appearance is maintainable under law nor the applications u/s 7(1) & 7(2) of the WBPT Act, 1997 are maintainable in its present form and in law and accordingly this Court is inclined to reject the above applications on the point of maintainability.

Hence, it is,

ORDERED

That the application dated 02.08.2023 for accepting the petitions u/s 7(1) & 7(2) of the WBPT Act, 1997 is considered and rejected on contest but without cost.

Accordingly, the petitions u/s 7(1) & 7(2) of the WBPT Act, 1997 dated 02.08.2023 are also considered and rejected being not maintainable in the eyes of law.

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.

In the present case, as consequence of the rejection of the applications u/s 7(1) & 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 **06.10.2023** 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.