

Ejectment Suit 224 of 2023.

[CNR No WBPS 01 000482 2023.]

Before – Ashutosh Kumar Singh- Ld. Chief Judge.

Order No:-05.

11-01-2024.

Today is fixed for consideration of petition u/-5 of Limitation Act read with Section 151 of C.P.C dt 13-10-2023 along with consideration of petitions u/s 7(1) & 7(2) of W.B.P T Act filed by the defendant dated 18-09-2023, w/o, if any in the mean time with further direction upon the defendant to file W/s within the prescribed period of limitation.

Parties file haziras. Defendant files W/S along with copy. Plaintiff receives the copy of petition u/s-5 of Limitation Act from the case record. Parties are present.

The matter is taken up for hearing.

Heard both sides.

Perused the petitions and materials on record.

Considered.

Ld. Advocate for the defendant submitted that due to illness of the defendant, the defendant was unable to meet with her Ld. Advocate and accordingly filed the petitions u/s 7(1) & 7(2) of W.B.P T Act beyond 30 days. The delay for the same is for two days only which happened for falling of holidays.

As such, defendant has filed an application on 13-10-2023 u/s- 5 of Limitation Act read with Section 151 of C.P.C for condonation of delay in filing the applications u/s 7(1) & 7(2) of the West Bengal Premises Tenancy Act, 1997 filed on the date of her appearance ie on 18-09-2023.

Ld. Advocate for the defendant prayed for condonation of the delay otherwise the defendant shall suffer an irreparable loss and injury.

Although the plaintiff did not file any W/O against the instant application of the defendant filed u/s 5 of Limitation Act read with Section 151 of C.P.C but at the time of hearing, Ld. Advocate for the plaintiff raised formal objection. He further submitted that the W/S filed by the defendant today is also beyond time and cannot be accepted.

Heard submissions from the parties.

Perused the application u/s-5 of Limitation Act along with applications u/s 7(1) & 7(2) of West Bengal Premises Tenancy Act as filed by defendant .

Also perused the materials on record.

Now , it is well settled law that Section-5 of Limitation Act is not applicable with respect to statutory compliance in connection with provisions of Section 7(1) & 7(2) of West Bengal Premises Tenancy Act, 1997.

Even then, upon careful scrutiny of the materials on record, it is found that as per bailiff report dated 09-08-2023, summons were served upon the agent of the defendant on 09-08-2023. Postal track report available with the case record reveals that the postal article was delivered on 18-08-2023. On the other hand, defendant has filed the petition u/s 7(1) & 7(2) of W.B.P T Act on 18-09-2023.

Therefore the prescribed period of limitation of one month for filing application u/s 7(1) & 7(2) of W.B.P T Act expired on 10-09-2023, if the bailiff report is taken as the date of receipt of summons of the defendant, which should treated as good service since the signatory of the bailiff report and the postal A/D is named the same person.

The ground shown for the delay as shown in the petition is illness of the defendant as well as for falling holidays. So far illness of the defendant is concerned, no document has been furnished on behalf of the defendant to substantiate of the claim of her illness for the relevant period. Regarding the contention of the days falling holidays, it is fact that 10-09-2023 was Sunday being holiday. But it is also true that the

defendant did not take steps to file the applications u/s 7(1) & 7(2) of W.B.P T Act by way of put up applications, and in consequences thereof, caused the delay. Be that as it may, the fact remains that defendant herself has admitted in her petition u/s-5 of Limitation Act that there is a delay in filing the applications u/s 7(1) & 7(2) of W.B.P T Act. The petition is supported by affidavit.

Now, let us take the legal aspect of the case.

From the observations of the Hon'ble High Court , Calcutta as well as of the Hon'ble Apex Court as discussed below, it has been observed :-

1. The Calcutta Gujarati Education Society vs Sri Ajit Narayan Kapoor reported in 2022(1) Indian Civil Cases 414 (Cal) , Calcutta High Court (DB) wherein it has held that,
“ Limitation Act, 1963 has no application in respect of an application by a tenant , made u/s 7 for determination arrears of disputed rent.”
2. (2019) 10 SCC 660 passed by Hon'ble Justice L Nageswara Rao and Hemant Gupta, JJ in *Bijay Kumar Singh & Others vs Amit Kumar Chamariya and Another* wherein Hon'ble Apex Court has held in paragraph 19, 20 & 21 that :-

19. “ Subsection (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 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 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 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 provided once and not exceeding two months.

21. Sub-Section (3) provides for consequences of 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. Khemka. Sub-section (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 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 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.”

Therefore, upon careful scrutiny of the materials on record, it is found that since there is admitted delay by the part of defendant to comply the provisions of Section 7(1) & 7(2) of the West Bengal Premises Tenancy Act 1997 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 tenant/ defendant has no scope to take recourse of Section 5 of Limitation Act.

Although the W/S too has been filed beyond the prescribed period of limitation , the same is accepted , otherwise the defendant will be non-suited.

Accordingly,

it is

Ordered

that the petition u/s-5 of Limitation Act made on behalf of the defendant dated 13-10-2023 is considered and rejected on contest but without cost.

In consequences thereof, the petitions u/s 7(1) & 7(2) of West Bengal Premises Tenancy Act filed by the defendant dt 18-09-2023 are also stands rejected.

W/S filed by the defendant is accepted in the ends of justice.

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

Let the case be transferred to the Court of Ld. Judge **2nd Bench, Presidency Small Cause Court** for disposal. Parties are directed to appear before the transferee Court on (**03-04-2024**)

Dictated & corrected

by me :-

Chief Judge.

Chief Judge

J.O .Code:- WB 01244.