

EJECTMENT SUIT NO. :- 224 OF 2023
(CNR No. WBPS01-000482-2023)
(JO CODE No. WB01165)

Before Smt. P. Shukla, Ld. Judge, 2nd Bench.

Order no. - 11
Dt. 06.11.2024

Today is fixed for order in respect of petition under Section 151 of CPC and the petition under Section 7(3) of W.B.P.T. Act and acceptance of W/S.

Both parties file hazira.

Ld. Advocate for the plaintiff prays to striking out the defense of defendant under Section 7(3) of W.B.P.T. Act on the ground that defendant has been failed to comply with the provisions of section 7(2) of W.B.P.T. Act.

Ld. Advocate for the defendant raised strong objection.

Heard. Considered.

Perused the entire documents available on the case record.

The court is of the view that the provision laid down in Section 7(3) of W.B.P.T. Act is mandatory in nature.

If the defendant fails to comply the provision under Section 7(1) and 7(2) within the time specified therein, then his defense to be struck out and shall proceed with the hearing of the suit.

On perusal of the record, it appears that by order no. 5 dated 11.01.2024 the petition under Section 7(1) and 7(2) of W.B.P.T. Act which was filed by defendant along with Section 5 of the Limitation Act is rejected by this court on the ground that defendant failed to comply the provisions of the said Sections.

The petition under Section 151 of CPC which is filed by defendant is also taken up for hearing as they are interlinked.

It is submitted by Ld. Advocate for the defendant that due to laches on the part of previous Ld. Advocate for the defendant, the delay occurred to file the written statement after 160 days from the date of service of summon.

Defendant prays for acceptance of W/S.

Plaintiff raised strong objection.

The court is of the view that the defendant should not suffer due to fault of his earlier Ld. Advocate and for proper adjudication of the dispute, the dispute should be determined in contested form.

Thus, relying on the principle of “audi altrem partem” the W/S is accepted with a cost of Rs.5000/- by the defendant to the plaintiff.

Further, on the basis of the above mentioned reasons the petition under Section 7(3) of W.B.P.T. Act is allowed on contest.

The defense of the defendant is struck of.

To 02.01.2025 for framing of issue and payment of cost of Rs.5000/- by the defendant to the plaintiff.

D/C by me:

Sd/-

Judge, Bench – II,
Presidency Small Cause Court,
Calcutta.

Sd/-

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Presidency Small Cause Court,
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