

Ejectment Suit 249 of 2023.

[CNR No. WBPS01 -000524 -2023]

Before – Ashutosh Kumar Singh- Ld. Chief Judge.

Order No:-08.

04-03-2024.

Today is fixed for hearing of petition u/s 7(1) & 7(2) of W.B.P T Act filed by the defendant dt 05-10-2023 and consideration of acceptance of W/S filed by the defendant dt 05-12-2023.

Parties file haziras. Parties are present on call. The petition u/s 7(1) of W.B.P T Act filed by the defendant dt 05-10-2023 is taken up for hearing. Heard both sides.

Perused the petition, its Written Objection filed by the plaintiff on 02/02/2023 and materials on record.

Considered.

By filing the instant application u/s 7(1) of W.B.P T Act, the defendant has prayed for permission to deposit the admitted arrears of rent as well as current rent in Court.

At the time of hearing, Ld. Advocate for the defendant submitted that the defendant received summons through Court on 05-09-2023 in the afternoon and through post on 11-09-2023 and has filed petition u/s 7(1) of W.B.P T Act on 05-10-2023, which is within the prescribed period of limitation. Therefore, the petition may be allowed.

Against, this W/O has been filed by the plaintiff denying all the material contentions made in the petition.

At the time of hearing, Ld. Advocate for the plaintiff submitted that the petition u/s 7(1) of W.B.P T Act is beyond the prescribed time of limitation if the date of receipt of summons , i.e 05-09-2023 is taken into account . He prayed for rejection of the petition.

contd.....

(p-02)

Ejectment Suit 249 of 2023.

[CNR No. WBPS01 -000524 -2023]

Before – Ashutosh Kumar Singh- Ld. Chief Judge.

Order No:-08.

(contd.....)

04-03-2024.

Heard both sides.

So far the question of limitation is concerned, careful scrutiny of the petition u/s 7(1) of W.B.P T Act filed by the defendant dt 05-10-2023, it appears that in paragraph-01 , the defendant has admitted on affidavit that on 11-09-2023, he received the summons along-with the copy of plaint.

However, record goes to show that as per bailiff report dt 05-09-2023 , summons were personally received by the defendant on 05-09-2023. One returned postal A/D has been received bearing date stamp dt 11-09-2023 with the signature of the defendant.

So, from the above, it is crystal clear that summons has been received by the defendant at the first occasion on 05-09-2023 through bailiff , which should be taken into consideration for counting the period of limitation.

Section 7(1) of West Bengal Premises Tenancy Act provides :-

(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.

(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 this 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.

Here, in the present case, it is undisputed fact that the petition u/s -7(1) of W.B.P T Act has been filed by the defendant on 05-10-2023. Therefore, the same has been filed on the 30th day excluding the date of receipt of summons by the defendant.

In this regard, Ld. Advocate for the plaintiff's argument is that the date of service should be included for counting the period of limitation and on that score the petition is beyond the prescribed period of limitation.

In this regard, by virtue of Section 40 of W.B.P T Act, 1997, we can take help of Limitation Act, for the purpose of calculation of prescribed period as stated. Therefore, as per Section 12(1) of the Limitation Act, the first date on which summons was received, shall be excluded to compute the period as prescribed.

It is no matter of doubt that defendant had received the said summons on 05-09-2023, which shall be excluded while computing the prescribed period for the purpose of Section 7(1) of W.B.P.T. Act, therefore, said period shall be calculated from 05-09-2023 and defendant has filed the applications under Section 7(1) & 7(2) of W.B.P T Act, on 05-10-2023 which indicates the gap in between two, is 30 days i.e one month from the date of receipt of summons.

Therefore, this Court finds that the petition u/s 7(1) of W.B.P T. filed by the defendant on 05-10-2023 does not fall outside the timeframe provided under the statute of one month.

(p-04)

Ejectment Suit 249 of 2023.

[CNR No. WBPS01 -000524 -2023]

Before – Ashutosh Kumar Singh- Ld. Chief Judge.

Order No:-08.

(contd.....)

04-03-2024.

Accordingly,

it is

Ordered

that the petition u/s 7(1) of W.B.P T Act filed by the defendant dated 05-10-2023 is allowed on contest but without cost.

Defendant is hereby permitted to pay/deposit the admitted arrear 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 @ 10% p.a, if any within one month from the date of this at his own risk without prejudice to the rights and contentions of the parties.

He further at liberty to pay / deposit current rent month by month by 15th of each succeeding month at his own risk without prejudice to the right and contention of the parties in accordance with law.

To-date (18-04-2024) for hearing of petition u/s 7(2) of W.B.P T Act and consideration of acceptance of W/S filed by the defendant dt 05-12-2023.

Dictated & corrected

by me :-

Chief Judge.

Chief Judge

J.O .Code:- WB 01244.