

Ejectment Suit 61 of 2024.
[CNR No WBPS01- 000135-2024]
Before – Ashutosh Kumar Singh- Ld. Chief Judge.

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04/04/2025.

Today is fixed for hearing petition u/s 7(1) & 7(2) of W.B.P T Act, w/o if any the mean time with direction upon the defendant to file Written statement within the prescribed period of limitation.

Parties file haziras.

Defendant also files a petition praying for time for filing W/S on the ground stated therein.

Parties are present on call through their respective Ld. Advocates.

The petitions filed by the defendant u/s 7(1) & 7(2) of W.B.P T Act dated 10-05-2024 are taken up for hearing.

Ld. Advocate for the defendant submitted that by filing the petition u/s 7(1) of W.B.P T Act, defendant is willing to deposit the admitted arrears of rent with interest and current rent in Court from the month of April 2024 in Court. He prayed for allowing the petition.

Ld. Advocate appearing for the defendant further submitted that there may be a two to three days delay in filing the application u/s 7(1) of W.B.P T Act.

Although the plaintiff has filed W/O against the petition u/s7(2) of W.B.P T. Act but not against the petition u/s 7(1) of W.B.P T Act filed by the defendant however at the time of hearing, Ld. Advocate for the plaintiff argued that the Court has no power to extend the time limit for deposit of admitted arrear of rent and current rent if the same is beyond the prescribed period of limitation.

Relying on an unreported decision titled as Omprakash Thakur vs Bhola Shaw and a reported decision published in 2024 SCC OnLine Cal 4616, he prayed for rejection of the petitions with cost.

Heard both sides.

Perused the petition, w/o as well as materials on record.

Also perused the citations and decisions relied by the plaintiff.

Considered.

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Before going deep into the merits of the applications, it is worthwhile to mention here that although the defendant has filed the petitions u/s 7(1) & 7(2) of W.B.P T Act on 10-05-2024, thereafter on successive two dates ie on 29-06-2024 & 02-08-2024, defendant remain absent from taking part in hearing by filing petition for adjournment. On 02/08/2024, the adjournment petition filed by the defendant was rejected by this Court since none came up to move the petition and accordingly, order of show cause was issued against the defendant. Defendant filed his show cause on 04-12-2024 but on the next date ie on 29-01-2025 ,the defendant again remain absent from taking part in the hearing by filing petition for adjournment.

Thereafter finally on 27-02-2025, defendant moved his show cause petition dt 04/12/2024 which was allowed by the Court on the self same date ,and only then, the petitions u/s 7(1) & 7(2) of W.B.P T Act could come up before the Court today for hearing .

Now let us consider the petitions from factual and legal aspects.

So far the question of filing of the applications u/s 7(1) & 7(2) of W.B.P T Act are whether within the prescribed period of limitation or not are concerned , in the petition u/s 7(1) of W.B.P T Act , in paragraph-1 of the said petition, defendant has contended that he has received summons on 12-04-2024.

From the postal track report filed by the plaintiff also goes to show that postal article has been received by the defendant on 12-04-2024.

There is one signed A/D card available in the case record bearing signature of the defendant, which also corroborates that the postal envelope was received by the defendant.

However, if service of summons through Court bailiff is looked into, record goes to show that as per bailiff reports available in the case record dated 04/04/2024, defendant himself has received the copies of summons by signing on the original sent to his both his addressees on 04/04/2024.

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After comparing with the signature in the bailiff report with that of the same available in the postal A/D card, this Court finds that both are identical and was signed by the same person. As such, this Court finds no reason to disbelieve the report of the bailiff from which it is clearly established that the date of receipt of summons by the defendant is 04/04/2024.

Admittedly, the instant petitions u/s 7(1) & 7(2) of W.B.P T Act has been filed on 10-05-2025.

Now, let us look at the provisions law and views and observations of the Hon'ble Supreme Court and Hon'ble High Court in this regard.

Provisions of Section 7 of West Bengal Premises Tenancy Act clearly specifies that :-

(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 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.

So from the above, it is crystal clear that the permissible time limit in which the tenant has to deposit or pay current rent and admitted arrears of rent, if any , that is within one month of service of summons.

Therefore, in the present case, the prescribed time limit for the defendant for filing the applications u/s 7(1) & 7(2) of W.B.P T Act expired on 04/05/2024 and the applications were filed on 10/05/2024.

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Moreover , in the decision reported in 2022(1) Indian Civil Cases 777 titled as **Abhishek Singh vs Bholanath Kundu**, the Single Bench of the Hon’ble High Court at Calcutta has been pleased to observe:-“provision under Section u/s 7(1) of W.B.P.T Act is mandatory and required to be scrupulously followed by the tenant , if tenant has to avoid eviction on account on non -payment of arrears of rent under Section -6 of Act.....”

From the discussions made above, as well as the facts and circumstances of the case it appears that in the present case, it is crystal clear that the defendant has failed to comply with the above stated provisions of law.

Above all, the Hon’ble Supreme Court of India has been pleased to observe the following as reported in:-

(2019) 10 SCC 660 passed by Hon’ble Justice L Nageswara Rao and Hon’ble Justice 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

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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

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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.”

Further , in the decision title as **Arsala Khan vs Land & Bricks & Entertainment Ltd reported of 2022(3) Indian Civil Cases 37 (Cal)**, in paragraph 12 , the Division Bench of Hon’ble High Court at Calcutta has been pleased to observe:-

“ 12. one month time for deposit of arrear rent along with interest, at the rate at which it was last paid, as envisaged in Section 7(1) (b) of West Bengal Premises Tenancy Act is mandatory and tenant will not be able to take recourse of Limitation Act or any other Act to deposit said arrear rent beyond that period”.

Therefore, it is needless to say that Section 7(1) of the said Act of 1997 saddled the tenant with the imperative obligation to pay the landlord to deposit all arrears of rent calculated at the rate of which it was last paid and up to the end of the month previous to that in which the payment is made

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together with an interest at the rate of 10 per cent per annum as well as payment of current monthly rent within the specified period of time as mentioned therein

Sub-section (2) of Section 7 of the said Act 1997 deals with cases where there is dispute as to amount of rent payable by the tenant but in the present case, tenant has failed to pay/deposit the monthly rent as well as admitted arrear of rent with interest within time frame prescribed under the law . Therefore, the requirement of law to deposit of current rent has not been complied with.

Therefore , upon careful scrutiny of the materials on record, it is found that since there is delay by the part of defendant to comply the provisions of Section 7(1) 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*, that there is no scope for the Court to entertain the petitions u/s 7(1) & 7(2) of W.B.P T Act, which has been filed beyond the prescribed period of time, and if the same is allowed, it would defeat the express provisions of statutory law.

Accordingly,

it is

Ordered

that the petitions u/s 7(1) & 7(2) of West Bengal Premises Tenancy Act filed by the defendant dt 10-05-2025 stands rejected on contest being barred by limitation.

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

Prayer for further time for filing W/S as prayed by the defendant is also found to be not entertainable because more than 120 has already lapsed after receipt of summons by the defendant and accordingly, the same also stands rejected.

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Let the case be **transferred** to the Court of Ld. Judge **2 nd Bench,**
Presidency Small Cause Court for disposal. Parties are directed to
appear before the transferee Court on **(08/05/2025)**

Chief Judge.