

EJECTMENT SUIT NO. 239 OF 2004 [305/2014]
C. N. R. NO. WBPS01-000981-2004
Before Smt. A. Bhattacharya, Ld. Judge, 5th Bench.

ORDER NO. 106 DATED 29.11.2024

Plaintiff files hazira.

Plaintiff has also filed one downloaded copy of order of C.O. No.2844 of 2022 and case status.

Defendant has filed one petition praying for time for hearing of the petition under Sec.7(3) of the W. B. P. T. Act on the ground stated therein.

Today is fixed for filing certified copy of order in respect of the C.O. No.2844/2022 and hearing of the petition under Sec.7(3) of the W. B. P. T. Act.

Ld. Advocates for both sides are present.

Heard ld. Advocates for both sides.

There is no order of stay passed by the Hon'ble High Court at Calcutta in connection with C.O. No.2844/2022. The suit is already 20 years old. I am not inclined to allow any time to the defendant to cause delay in the suit.

Prayer for time by the defendant is considered and rejected.

Now, the record is taken up for hearing of the petition under Sec.7(3) of the W.B.P.T. Act filed by the plaintiff by which it is stated by the Plaintiff that in view of order dated 06.09.2005, defendant was paying rent to the plaintiff's ld. Advocate against granting receipt as per order passed in respect of petition under Sec.7(2) of the W. B. P. T. Act but he has failed and neglected to pay current rent since March 2021 in compliance with order dated 06.09.2005. Since the defendant has neither complied with provisions under Sec.7(1) of the W. B. P. T. Act nor paid rent either directly to the Plaintiff or his ld. Advocate on record nor even by money order nor in Court and therefore, prayed that the defence against delivery of possession of the defendant is liable to be struck off.

On the other hand, though no written objection is filed by the defendant but it is submitted by the ld. Advocate for the defendant that the Plaintiff has intentionally and deliberately refused to take rent from the ld. Advocate for the defendant. It is further submitted by the ld. Advocate for the defendant that she paid rent directly to the ld. Advocate for the Plaintiff up to February 2021 but thereafter refused to take rent with ill motive so that he can take steps in accordance with law and prays for rejection of the instant petition.

ORDER NO. 106 contd.

On careful perusal of the case record, it appears that vide order no.08 dated 06.09.2005, the petition under Sec.7(2) of The West Bengal Premises Tenancy Act was disposed of on contest holding that there is no arrear rent due and payable from the defendant. It is submitted by the Id. Advocate for the plaintiff that he directly received current rent from the defendant through his Id. Advocate on issuance of rent receipt but since March 2021, plaintiff refused to take rent for the reasons best known to him. On the other hand, Id. Advocate for the Plaintiff vehemently raised objection to the submission of Id. Advocate for the defendant regarding refusal to take rent since March 2021 and submitted that none on behalf of the defendant approached either to the plaintiff or the Plaintiff to pay rent since March 2021.

Sub Sec.2 of Sec.7 of the Act provides that *“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 determinatin of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determinatin 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, whtin one month of the date of such order, pay to the landlord the amount so specified in the order”*.

Sub Sec.3 of Sec.7 of the Act provides that *“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 shall order the defence against delivery of possession to be struck out and shalol proceed with the hearing of the suit”*.

Defendant had filed an application on 23.12.2021 praying for depositing the rent since March 2021. This petition was heard and rejected by this Court vide order no.92 dated 10.08.2022. Thereafter, defendant did not make payment of current monthly rent till date. The order dated 10.08.2022 is still in operation and has not been set aside by any higher court. Thus, the admitted position is that the defendant has not paid the monthly rent since March 2021. Thus, the order passed under Sec.7(2) of the W. B. P. T. Act has not been complied with by the defendant as a result of which Sec.7(3) of the W. B. P. T. Act comes into play making the defence of the defendant against delivery of possession be struct out.

On further careful perusal of the record, it appears that not a single scrap of paper is filed on behalf of the defendant to prove that the defendant has paid rent in any manner to

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the plaintiff and as such, I find no impediment to allow the instant petition filed by the plaintiff.

Hence, it is

ORDERED

that the petition under Sec.7(3) of the W. B. P. T. Act filed by the plaintiff on 10.08.2022 is allowed on contest but without cost.

Let the defence of the defendant against delivery of possession be struck off.

Fix 27.02.2025 for P. Hearing of the suit.

DICTATED AND CORRECTED BY ME,

JUDGE

JUDGE
[5TH BENCH]