

Ejectment Suit 314 of 2024.  
[ CNR WBPS01 000640-2024 ]  
Before – Ashutosh Kumar Singh- Ld. Chief Judge.

05.

02/04/2025.

Today is fixed for hearing of petition u/s 7(1) of W.B.P T Act filed by the defendant on the point of maintainability with liberty to the plaintiff to file W/O in the mean time with direction upon the defendant to file W/S within the prescribed period of limitation.

Parties file hazira.

Defendant files a petition praying for time for filing W/S on the ground stated therein. Defendant also files a list of documents in High Court Form (J) 22 acknowledging receipt of documents from the plaintiff.

Parties are present on call.

The petition u/s 7(1) of W.B.P T Act filed by the defendant dt 20-02-2025 is taken up for hearing along with the supplementary affidavit filed on 03/03/2025

Ld. Advocate for the defendant submitted that there is no arrear amount of rent to be paid by the defendant. Therefore, by filing the application u/s 7(1) of W.B.P T Act, defendant is praying for deposit of current rent from the month of March 2025 in Court at his own risk.

Ld. Advocate for the plaintiff on the other hand submitted that he shall not file any Written Objection against the instant application u/s 7(1) of W.B.P T Act but verbally argued that the petition is time barred and cannot be allowed.

Heard submissions from the parties.

Perused the petition as well as materials on record.

Considered.

Contd.....

Ejectment Suit 314 of 2024.

[ CNR WBPS01 000640-2024 ]

Before - Ashutosh Kumar Singh- Ld. Chief Judge.

05.

(contd .....)

02/04/2025.

So far the date of receipt of summons by the defendant is concerned, as per bailiff report dated 18-01-2025, due to absence of the defendant, wife of the defendant namely Soma Deb received summons on behalf of the defendant on 18-01-2025.

Postal requisites are still lying in the case record.

Be that as it may, neither in the petition u/s 7(1) of W.B.P T Act dated 20-02-2025 nor in the supplementary affidavit filed on 03/03/2025, the defendant has mentioned any other date of receipt of summons nor has differed with the bailiff report or comes out any other evidence in contrary.

If that be so, then from the documentary evidence on record , in this case, the bailiff report , date of receipt of summons by the defendant stands out to be 18-01-2025 since it has been received for and on his behalf by his wife.

Admittedly, the petition u/s 7(1) & 7(2) of W.B.P T Act has been filed by the defendant on 20/02/2025, which is beyond one month.

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 :-

(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.

Further, 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.*

*Contd.....*

Ejectment Suit 314 of 2024.

[ CNR WBPS01 000640-2024 ]

Before – Ashutosh Kumar Singh- Ld. Chief Judge.

05.

(contd .....)

02/04/2025.

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.”*

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

// 6 //

Ejectment Suit 314 of 2024.

[ CNR WBPS01 000640-2024 ]

Before – Ashutosh Kumar Singh- Ld. Chief Judge.

05.

(contd .....)

02/04/2025.

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 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 within timeframe prescribed under the law . Therefore, the requirement of law to deposit of current rent has not been complied with.

So, 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 20-02-2025 stands rejected on contest being barred by limitation.

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

Contd.....

// 7 //

However, prayer for time for filing W/S as prayed by the defendant is considered and allowed.

Defendant is directed to file W/S within the prescribed period of limitation.

Let the case be **transferred** to the Court of Ld. Judge **5 th Bench, Presidency Small Cause Court** for disposal. Parties are directed to appear before the transferee Court on ( **14/05/2025** )

Chief Judge.

J.O .Code:- WB 01244.