

Ej. Suit No. 346 of 2006
CNR No. WBPS01-001824-2006

Order No. 103

Date: 03.01.2023

Today is fixed for hearing of petition u/s 7(2) of WBPT Act, 1997 and filing of challans by the defendant and awaiting record of Ej. Suit No. 377 of 1993.

Parties have filed their respective haziras.

The record reveals that the case record of Ej. Suit No. 377 of 1993 was called for by this Court vide order dated 21.11.2022 on the basis of petition filed by the defendant on 21.11.2022.

However, a report has been received from the Record Keeper of Record Department mentioning that **“No record bearing No. Ej. 377 of 1993 decreed on 25.01.2006 has been found in the register of the Record Department”**.

The Ld. Advocate for the defendant at this stage at 12.50 p.m. has come up with an application mentioning that the defendant intends to adduce evidence with regard to the application u/s 7(2) of WBPT Act, 1997 and file subsequent challans for which adjournment is required.

The Ld. Advocate for the plaintiff, on the other hand, raised vehement objection stating that the defendant is intentionally delaying the case to harass the plaintiff. It is also submitted that the defendant is also not making payment of current rent on regular basis as directed by this Court in terms of an application under section 7(1) of WBPT Act, 1997 filed by the defendant. Accordingly, the Ld. Advocate for the plaintiff prays for rejection of the application of the defendant.

Heard both sides.

Perused the materials on record.

Considered.

Upon perusal of the case record, it is found that the instant case has been filed in the year 2006 and vide order dated 14.06.2007 the defendant was directed to deposit the current rent on the basis of their application filed u/s 7(1) of WBPT Act, 1997.

The record further reveal that the matter was fixed for hearing of application u/s 7(2) of WBPT Act, 1997 way back in the year 2007, precisely on 17.08.2007 and even after elapse of 16 (sixteen) long years the application u/s 7(2) of WBPT Act, 1997 has not been disposed of.

The record further reveals that the defendant initially prayed for calling for case record of Ej. Suit No. 377 of 2003 on the ground of producing challans showing payment of rent since 1991 which are allegedly lying with the case record of Ej. Suit No. 377 of 2003. The said record was called for but no such challans could be traced in the said record.

Thereafter, the defendant filed another application to call for the case record of Ej. Suit No. 377 of 1993 which was allowed by this Court. However no such record could be traced out by the Record Department.

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It needs no special mentioning that the burden of proving a particular fact solely lies upon the person who alleges it and in the present case, the burden of proving the fact of “no default” lies upon the defendant and it is for him to prove the same. But the defendant has taken unnecessary time in proceeding with the application u/s 7(2) of WBPT Act, 1997 only by taking the plea that the relevant documents are lying with another case record. Neither the Court nor the plaintiff is under obligation to wait for an indefinite period till the desired documents of the defendants are being traced out as it is the duty of the defendant to keep his own document ready and no other person can be blamed for that.

However, the defendant after elapse of 17 years from the date of filing the instant case has find it necessary to proceed with the evidence with regard to application u/s 7(2) of WBPT Act, 1997 and in my considered view, a last opportunity should be given to the defendant to proceed with the same on condition that no further adjournments shall be given to the defendant on any ground whatsoever.

Accordingly, the adjournment petition filed by the defendant is allowed on special consideration subject to the condition mentioned above.

The record reveals that the defendant has been directed by this Court to file the current challans showing deposit of rent vide order dated 02.09.2022 and 21.11.2022. However, no such challans has yet been filed without specifying any reason to that effect.

Accordingly, the defendant is hereby directed to file the current challans showing compliance of order dated 14.06.2007 positively before this Court by the next date in terms of compliance of order of this Court.

Fix **16.03.2023** for evidence of PW with regard to application u/s 7(2) of WBPT Act, 1997 and filing of Court deposit challans by the defendant upto date without fail.

Dictated and corrected by me:

Judge

Smt. Sudipa Banerjee
J.O. Code : 01148
Judge, 3rd Bench,
Presidency Small Cause Court,
Calcutta.