

22.07.2026
Court No.2
Item No.61
sudipta

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**CO 3312 of 2023
With
CAN 1 of 2024**

**Sankar Dutta & Anr.
Vs.
Mallika Mukherjee & Ors.**

Mr. Arjun Samanta

...for the petitioners

Mr. Samir Kumar Som

Mr. Abhijit Roy

Mr. Subham Khan

...for the opposite parties

1. Present petition has been filed challenging the order no. 40 dated 11th April, 2023 and order no. 45 dated 24th August, 2023 in Ejectment Suit No. 357 of 2018.

2. Learned counsel for the petitioners submits that vide order dated 11th April, 2023, learned Trial Court granted extension of time for deposit of rent for the month of *Falgun*, 1429 BS on an application being filed by the defendant / opposite party in total violation of law. Learned counsel submits that learned Trial Court under the statute has no discretion to extend the time for deposit of the rent.

3. Learned counsel for the petitioners has further submitted that vide order dated 24th August, 2023, learned Trial Court has rejected the application under

Section 7(3) of the West Bengal Premises Tenancy Act, 1997 filed by the petitioner / plaintiff illegally and the same is liable to be set aside being patently erroneous and contrary to the law. Learned counsel for the petitioners submits that though the order under Section 7(2) of the WBPT Act passed on 16th August, 2019, has been complied with, however, there has been default in deposit of rent month to month as prescribed under Section 7(1)(c) of the WBPT Act.

4. Learned counsel for the opposite parties / defendant submits that the learned Trial Court has passed a reasonable order after taking into account the contentions of the parties and there is no ground to interfere in the same. Learned counsel for the opposite parties submits that there is a dispute of relationship between the landlord and the tenant as being noted by the learned Trial Court in order no. 11 dated 16th August, 2019. Learned counsel, therefore, submits that it was imperative for the learned Trial Court to frame a preliminary issue regarding the relationship of landlord and tenant before passing order under Section 7(3) of the WBPT Act. Learned counsel submits that unless and until there is an established relationship of landlord and tenant, the order under Section 7(3) of the WBPT Act could not have been passed. In respect of his contention, learned counsel has relied upon a decision of **Sri Manik Lal Sett & Anr. Vs. Smt. Hira Basu @**

Surali Basu & Ors. reported in **2008 (2) CLJ (Cal).**

Learned counsel for the defendant / opposite parties has relied upon a decision of the Co-ordinate Bench of this Court in **C.O. 858 of 2024 (Smt. Malati Sarkar & Anr. Vs. Ashok Ghosh & Ors.)**. Learned counsel, therefore, submits that present petition is liable to be dismissed.

5. Section 7 of the West Bengal Premises Tenancy Act, 1997 is set out hereinbelow:

“7. When a tenant can get the benefit of protection against eviction.”-(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. (2) 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 determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination 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, within

one month of the date of such order, pay to the landlord the amount so specified in the order:

Provided that having regard to the circumstances of the case an extension of time may be granted by the Civil Judge only once and the period of such extension shall not exceed two months.

(3) If any tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified herein or within such extended time as may be granted, the Civil Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.

(4) If the tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant, shall be made by the Civil Judge, but he may allow such cost as he may deem fit to the landlord:

Provided that the tenant shall not be entitled to any relief under this sub-section if, having obtained such relief once in respect of the premises, he again makes default in payment of rent for four months within a period of twelve months or for three successive rental periods where rent is not payable monthly.”

6. Bare perusal of Section 7(1) of the said Act makes it clear that upon filing a petition for eviction on any of the ground as mentioned in Section 6, the defendant / tenant shall either pay to the landlord or deposit with the Court all arrears of the admitted rent upto the last month in which the payment is made within one month of the service of summons as provided in Section 7(1)(b) of the said Act. However, this provision is subject to Section 7(2) of the said Act, where if there is any dispute regarding the rate of rent, the tenant shall move an application for determination of rent payable and the Court within the stipulated period make an order directing deposit of the rent within one month of the date of such order. Section 7(2) of the said Act has also

proviso, which confers discretion to the Court to grant an extension for once for a period not beyond two months.

7. It is also pertinent to mention here that Section 7(1)(c) of the said Act provides that if there is an order under Section 7(1) of the said Act or there is an admitted rent / last paid rent, the tenant shall continue to pay the landlord or deposit with the Court month by month by the 15th of each succeeding month.

8. Section 7(3) of the said Act is a provision which provides that if the tenant fails to deposit in terms of Section 7(1) or Section 7(2), the Court shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit. However, under Section 7(4) of the said Act, if such deposit has been made, no order for the eviction shall be made on the ground of default in payment of rent. In the present case admittedly the order under Section 7(2) of the WBPT Act dated 16th August, 2019 has been complied with. There is only default in regard to deposit of rent month by month as provided under Section 7(1)(c). Admittedly, there is a default on the part of the tenant for deposit of rent for the month of *Falgun*, 1429 BS. The tenant had moved an application in this regard. Learned Trial Court vide order dated 11th April, 2023 taking into account the circumstances in which such

default had taken place allowed to deposit the rent. It is pertinent to mention that the court specifically directed that such deposit shall be at the risk of the tenant and without prejudice to the rights and contents of the plaintiff and without hampering any right of the plaintiff / landlord.

9. Learned Trial Court vide impugned order dated 24th August, 2023 while dealing with such a delay, inter alia, held that there was no negligence on the part of the tenant nor there was any intention not to comply with the order of the Court. Learned Trial Court, inter alia, was of the opinion that it would be harsh to strike out the defence as the delay in deposit was unintentional.

10. The question, therefore, is that whether there is any discretion with the Court to condone the delay even if there was no negligence on the party of the tenant for the delay. Before proceeding further, it is also relevant to deal with the contention of learned counsel for the defendant wherein it has been argued vehemently that the learned Trial Court should have framed preliminary issue in respect of the relationship of landlord and tenant.

11. This Court considers that such a submission is to be noted only to be rejected. The bare perusal of order dated 16th August, 2019 makes it clear that the learned Trial court while passing the order under Section 7(2) of

the WBPT Act, inter alia, held that the defendants / opposite parties are the tenant under the plaintiff / petitioner. This finding has never been challenged by the defendant / opposite party and thus, the same has attained finality. The defendant / opposite party cannot be allowed to blow hot and cold or to take contradictory pleas only to frustrate the law.

12. Regarding the discretion of the Court for extension of time, the Co-ordinate Bench of this Court in **C.O. 3360 of 2019 (Sri Om Prakash Agarwal & Anr. Vs. Sri Bijay Singh Dugar & Ors.)** , inter alia, held as under:

“15. Since section 7 of the Act provides for a complete mechanism avoiding the eviction on the ground of arrear of rent and also deposit of current rent and legislature had not given any relaxation for extension of period prescribed under section 7 (1), section 5 of the limitation has got no application for making a prayer for condonation of delay. Now the question raised by the tenant/defendant that the said application has not been made under section 5 of the Limitation Act nor under section 40 of the Act of 1997 but he has made the said application under section 151 of the code of Civil Procedure. In this context law is specific which says, the inherent power of a court will not be exercised if it's exercise is inconsistent with or comes into conflict with any of the powers expressly or by necessary implication conferred by the other provisions of law. When, there are express provisions covering aforesaid particular topic, that give rise to a necessary implication that no power shall be exercised under section 151 of the code in respect of the said topic, otherwise than in the manner prescribed by the said provision. In view of above since section 5 has got no application in the present context for condonation of delay, section 151 of the code cannot come to its rescue, in order to extend the outer time limit for deposit of rent before the court under section 7(1)(c) of the Act of 1997.

16. In view of above application filed under section 151 of the code of Civil Procedure by the

tenant/defendant seeking condonation of delay in making deposit of the monthly rent before the court below is misconceived. Accordingly the order impugned i.e. order no. 47 dated 13th August 2019 passed by learned 3rd Bench Small Causes Court Calcutta in Ejectment Suit No. 6752 of 2014 is hereby set aside.”

13. It is also advantageous to refer to the decision in the case of **Seventh Day Adventist Senior Secondary School Vs. Ismat Ahmed & Ors.** reported in **2025 SCC OnLine SC 1696** wherein the Apex Court, inter alia, held as under:

“**32.** In the said context, if we see the intent of legislature as discussed and relying upon two cases of three-Judge Bench of this Court, we intend to explain that Section 7 of the WBPT Act prescribes when a tenant can get the benefit of protection against eviction. The opening word of sub-section (1) i.e., ‘on a suit being instituted by the landlord for eviction’ makes it clear that in case the tenant defaults in payment of rent and the suit is brought as specified in the WBPT Act, then on deposit/payment of admitted rent, an opportunity ought to be provided to get the benefit of protection against eviction. Therefore, for availing such benefit, some pre-requisites are there, which is of deposit of the rent, either disputed or undisputed as admitted, within the specified time. In case, the rent is disputed, the tenant has to mandatorily file an application, by virtue of word ‘shall’ used to such extent either in Section 7(1)(a)(b)(c) or first part of Section 7(2). However, in the latter part of Section 7(2), which is for payment of amount on determination by the Civil Judge within the time as specified after compliance of the pre-deposit and on filing an application for determination within the specified time, such payment has to be made by the tenant within one month of date of order passed by Civil Judge. The proviso refers to extension of time with an intent to grant one more opportunity to the tenant after determination of rent for deposit.

33. At this juncture, we also deem it relevant to refer sub-section (3) of Section 7, wherein it is specified that if tenant fails to deposit or pay any amount referred in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted by the Court, his defence against delivery of possession

shall be struck out. So it deals with the following contingencies; first is of Section 7(1)(a)(b)(c), second is of former part of Section 7(2) and third is of latter part of Section 7(2) and in default of either of the situations, the Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit specifying the consequences of failure to do any of the three situations. While using the word extended time in sub-section (3), the word shall has been used, therefore, this would also be referable to the provision which leads to the conclusion that in case the tenant fails to deposit the determined amount within the time specified or within the extended time. In that contingency the order of striking out of defence be passed and suit be proceeded for hearing. As explained from above discussion, we are constrained to say that the arguments as advanced by the learned counsel for the appellant relying upon the paragraphs 17, 18 and 19 of the judgment in *Debasish Paul* (supra) are not germane, hence repelled.

35. As concluded above, the applicability of Limitation Act is subject to provisions of the WBPT Act. Meaning thereby, if the time limit has been prescribed to do some act it cannot be extended by aid of proviso of sub-section (2) of Section 7. As such, the inescapable conclusion in the facts and the law as discussed hereinabove, is that the compliance as required to be done by the tenant in Section 7(1)(a)(b)(c) and first part of Section 7(2) regarding deposit of rent and filing an application within the same time is mandatory. In default, they cannot avail the benefit of the proviso of sub-section (2) which only relates to the payment of determined amount of rent and whereby the Civil Judge may exercise the discretion to grant extension of time."

14. The bare perusal of the law as discussed above, makes it clear that the legislature in its wisdom has granted no discretion to the Trial Court to grant any extension of time except for in the circumstances as provided in part 2 of Section 7 sub-Section (2) of the WBPT Act, for which a proviso has been added. Except for this, the legislature has not given any discretion for extension of time whatsoever for any reason. This intention of the legislature has been categorically

reaffirmed by the Apex Court in **Seventh Day Adventist Senior Secondary School** (supra). The intention or the conduct of the tenant is not a relevant factor at all.

15. In view of the discussions made hereinabove, the Court is of the view that the learned Trial Court vide impugned order dated 11th August, 2023 had fallen into a patent error by granting extension of time and further by rejecting the application under Section 7(3) of the WBPT Act taking into account the conduct and intention of the opposite party for condoning the delay.

16. Thus, the impugned order is liable to be set aside.

17. In view of the discussions made hereinabove, since there is an admitted default on the part of the opposite parties / defendants, the defence stands struck off.

18. Accordingly, the petition is allowed. Connected application to this revision petition, if any, stands disposed of.

19. All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)