

**In the Court of Civil Judge (Sr. Divn.), 8th Court, Alipore,
South 24 Parganas**

Present: - Sri Somnath Kundu

J.O Code: WB01152

Civil Judge (Sr. Divn.), 8th Court, Alipore, South 24 Parganas

Ejectment Suit No. 29/2022

C.N.R No. WBSP02-001594-2022

Order dated 02.07.2025

Today is fixed for hearing of petition U/s. 7(1) and 7(2) of W.B.P.T Act and the petition U/s. 5 of the Limitation Act filed on behalf of the defendant.

Ld. Advocate for the both sides are present.

Record is taken up for hearing of the petitions.

First of all, Ld. Advocate for the plaintiff submits that Section 5 of Limitation Act is not applicable for condonation of delay for filing petition U/s. 7(1) and 7(2) of W.B.P.T Act.

Defendant/petitioner has filed the application U/s. 5 of the Limitation Act for condonation of delay by submitting therein that the delay in filing of petition U/s. 7(1) and 7(2) of W.B.P.T Act was completely unintentional.

Ld. Advocate for the defendant submits that the defendant/petitioner is an old aged person and the delay was unintentional..

Now, in **Bijay Kumar Singh and Others vs. Amit Kumar Chamariya and others (AIR 2019 Supreme Court 5461)**, The Hon'ble Supreme Court of India has been pleased to hold that deposit of rent along with application for determination of dispute as to amount of rent payable by tenant is pre-condition to avoid eviction on the ground of non payments of arrears of rent. Recourse to Section 5 of the Limitation Act cannot be taken by the tenant as it is not an application alone which is required to be filed by him but he has to deposit admitted arrears of rent as well.

Following the decision referred above, this Court is of the considered view that section 5 of the Limitation Act can not be taken into consideration for condoning delay in filing petition U/s. 7(1) and 7(2) of W.B.P.T Act.

Thus, the petition U/s. 5 of Limitation Act is disposed by way of rejection.

Now the petition U/s. 7(1) and 7(2) of W.B.P.T Act filed on 14.07.2023 are taken up for hearing.

The defendant/petitioner has filed the petition U/s. 7(1) and 7(2) of W.B.P.T Act by stating that in this suit for eviction, the petitioner was served notice with a copy of plaint on 12.05.2023. The petitioner/defendant is a monthly tenant under Krishna Prosad Potnuri, the plaintiff herein in respect of the suit property at a monthly rent of Rs. 1100/- per month. The petitioner/defendant started depositing the monthly rent before the Ld. Rent Controller at Alipore since 2017 and therefore, petitioner is not a defaulter in payment of rent and now, intends to deposit his currently monthly rent at a rate of Rs. 1100/- per month in the Court as per statutory provision. He has prayed for allowing the petitioner to deposit the current rent for the month of July, 2023 and thereafter, to deposit the rent month by month in this Court under Section 7 (1) of the W.B.P.T Act and said petitioner/defendant in his petition U/s. 7(2) of W.B.P.T Act disputed the period of default as claimed by the plaintiff with further prayer to file relevant documents. It has been prayed in the said petition that the Court would be pleased to determine whether petitioner is defaulter in payment of rent for any period and if so, what is the actual amount arrear rent and upon ascertainment of arrear amount, further prayer has been made for permission to deposit such rent amount in installment.

Plaintiff has filed two separate W/O against both the petitions U/s. 7(1) and 7(2) of W.B.P.T Act. It has been denied by the plaintiff that defendant is depositing rent before Ld. Rent Controller since 2017 and also challenged that any deposit of rent before Rent Controller, if made, shall be invalid because plaintiff never refused to accept the rent and defendant never sent the rent amount to the plaintiff by money order. So defendant is a habitual defaulter and he is not paying rent since the month of September 2000. Moreover, the application/ petition U/s. 7(1) and 7(2) of W.B.P.T Act is time barred petition and therefore, the same should not be allowed.

Ld. Advocate for defendant submits that the petitioner/defndant is an old aged person and these petitions may be allowed for ends of justice.

Ld. Advocate for plaintiff submits that the filing of application U/s. 5 Limitation Act by the defendant is itself a prove that the defendant has failed to file the application/petition U/s. 7(1) and 7(2) of W.B.P.T Act within time as stipulated under the provision of Section 7 of WBPT Act.

Section 7 of the WBPT Act, is a provision by which tenant can get the benefit of protection against eviction when a suit is instituted by the landlord on any of the ground referred in Section 6. The provision has contained that the tenant shall, subject to provision of Sub Section 2, pay to the landlord or deposit with the Civil Judge or 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 was made together with interest at the rate of 10 % per annum and such payment or deposit shall be made within one month of the service of month on the tenant.

In this present suit, defendant filed petition U/s. 7(1) and 7(2) of W.B.P.T Act on 14.07.2023 though the defendant appeared in this suit on 12.05.2023. So, it is crystal clear that petition U/s. 7(1) and 7(2) of W.B.P.T Act dated 14.07.2023 was filed not only long after service of summons upon him but also long after one month from the date of his appearance in this suit.

Moreover, in the plaint, plaintiff has claimed that defendant has not been paying rent since the month of September, 2000 and defendant in his application has stated that he has been paying rent before the Ld. Rent Controller but it is found that defendant has failed to show sufficient document in support of his contention as to payment of rent before the Ld. Rent Controller to contradict the claim of the plaintiff that he is a defaulter in respect of payment of rent since September, 2000.

Accordingly, both the petitions U/s. 7(1) and 7(2) of W.B.P.T Act filed on 14.07.2023 by the defendant is rejected.

Fix 12.08.2025 for framing of issues.

Dictated and corrected by me,

Sd/-

Civil Judge (Sr. Divn.)

8th Court, Alipore

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