

**CO 141 of 2022**

**Tarak Nath Banerjee  
Vs  
Prantosh Kumar Saha**

Mr. Prantick Ghosh  
Ms. Poulomi Saha  
Ms. Shravani Ghosh  
... for the petitioner

Mr. Tarak Nath Halder  
... for the opposite party

1. The revisional application has been preferred against an order dated 10.12.2021, passed by the learned Civil Judge (Junior Division), 1<sup>st</sup> Court, Sealdah, South 24 Parganas, in Ejectment Suit No. 62 of 2011, allowing the application under Section 7(3) of the West Bengal Premises Tenancy Act, 1997, filed by the plaintiff/opposite party.

2. Vide the order under challenge, the trial Court held as follows:-

*“.....On perusal of the record, it appears that this Court had disposed of the application under Section 7(2) of the WBPT Act, 1997 vide order dated 24.07.2014 with the observation that there are no arrears of rent. In such a situation, the contention of the plaintiff that the defendant has not paid arrears of rent does not hold good. However, as per Section 7(1)(c) of the WBPT Act, 1997, the tenant shall continue to pay to the landlord or deposit with the Civil Judge month by month by the 15<sup>th</sup> of each*

succeeding month, a sum equivalent to the rent. In the instant suit, even though the defendant did not have any arrears to pay, he was under the obligation to comply with the afore-mentioned provision. The defendant has filed Challans to show that he has been paying amount equivalent to rent but it is surprising to see that the defendant has been depositing the same before the Ld. Rent Controller and not this Court, or directly to the landlord. The law, as stated in Section 7(3) of the WBPT Act, 1997 clearly states that if the tenant fails to deposit or pay any amount referred to in sub-section (1) of Section 7, the Court shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit. It is very much evident that the defendant is not complying with the provision of Section 7(1) of the WBPT Act, 1997 and the deposit made before the Office of Rent Controller cannot be treated as valid deposits. As such, I am inclined to allow the prayer of the plaintiff.

Hence, it is

**ORDERED**

that, the application under Section 7(3) of the WBPT Act, 1997 is hereby **allowed on contest**. The defence of the defendant against delivery of possession is hereby struck out.”

3. Learned counsels for both the parties have filed their respective written notes of argument along with judgments relied upon. The opposite party has also filed an affidavit along with copies of documents stating that there is further default by the defendant/petitioner herein.

4. It is the specific case of the defendant/petitioner herein that during hearing of the present revisional application, the petitioner has filed relevant documents being the challans by way of a supplementary affidavit on 19.03.2025 to show that he has diligently deposited amount equivalent to the monthly rent with the rent controller vide serial nos. 1 to 147 of the supplementary affidavit.

5. Thereafter since September 2022 till the present time the tenant/petitioner has deposited rent with the learned court officer vide serial nos. 148 to 175 and continuing.

6. The argument of the present petitioner/tenant is that the learned Judge misunderstood the scope of Section 7(3) of the WBPT Act. There is admittedly no default on the part of the tenant, but there is irregular deposit of the amount of rent before the controller instead of learned Court/landlord.

7. It is also not the case of the plaintiff that there is any willful default at any point of time on part of tenant. The tenant respectfully submits before this Court that due to such irregular deposit of rent, defence cannot be struck off.

8. The petitioner relies upon the following judgments:-

*i) Monoj Lal Seal & Ors. vs. Octavious Tea and Industries Limited (2015) 8 SCC 640;*

**“22.** It is worth to mention here that as against the finding of the trial court that since the respondent tenant deposited the rent with the Rent Controller instead of depositing it in the Court, the respondent tenant became a defaulter as contemplated under Section 7(1) of the Act, the tenant filed the *review petition* under Section 151 CPC. The said application was rejected and the *revision petition* filed against the said order was also dismissed by the High Court. The *review petition* filed by the respondent in the High Court was dismissed by order dated 14-2-2013. The respondent then moved before this Court against the order dated 14-2-2013 by filing a special leave petition. The said special leave petition was taken up on 29-7-2013 and was dismissed [Octavious Tea and Industries Ltd. v. Manoj Lal Seal, SLP (C) No. 20181 of 2013, order dated 29-7-2013 (SC)] with the observation that it would be open to the SLP petitioner (respondent tenant herein) to raise all questions before the Court, as to whether the alleged default is bona fide. The order dated 29-7-2013 [Octavious Tea and Industries Ltd. v. Manoj Lal Seal, SLP (C) No. 20181 of 2013, order dated 29-7-2013 (SC)] passed by this Court is quoted hereinbelow:

“We see no ground to entertain these special leave petitions. The special leave petitions are dismissed.

However, we leave it open to the petitioner to raise all questions before the court below where the trial is pending including the default alleged against him so as to consider whether the same can be treated as bona fide in order to satisfy the condition laid down under Section 7 of the West Bengal Premises Tenancy Act, 1997.”

**23.** As discussed above, the instant appeal by special leave is against the orders dated 19-1-2012 and 21-2-2012 passed by the trial court rejecting the *review petition* filed by the appellant landlords holding that the respondent tenant has complied with the order passed on the application under Section 7(2) of the Act.

**24.** In the background of all these facts and the sequence of the orders passed by Small Cause Court up to this Court, we have carefully analysed the decisions of this Court referred by the learned counsel appearing for the parties.

**25.** Indisputably, the Rent Control Acts have been enacted in different States with the object to protect the tenants from illegal eviction without obtaining the decree or order

from a competent court on one or more grounds provided in those Acts. At the same time, it is well settled that the benefits conferred on the tenants through those Rent Control Acts can be enjoyed only after strict compliance with the statutory provisions.

**26.** Mr Rao, learned Senior Counsel appearing for the appellants, mainly contended that Section 7(1) of the 1997 Act shall have to be strictly complied with by the tenant by depositing entire rent as contemplated in the said provision within a fixed time. But in the instant case, there is no dispute that the respondent tenant deposited the rent as required under Section 7(1) of the Act with the Rent Controller instead of depositing the same with the Civil Judge. The deposit of such rent by the tenant with the Rent Controller instead of the Civil Judge as per the amendments which came into effect on 1-6-2006 was either deliberate or a bona fide mistake. This may be the reason, this Court in the earlier special leave petition made an observation that the respondent tenant may satisfy the court that such deposit was bona fide.

**27.** We have given our anxious consideration to the matter and the order [ Civil Order No. 914 of 2012, order dated 27-3-2014 (Cal)] impugned passed by the High Court holding that the orders dated 19-1-2012 and 21-2-2012 passed by the Small Cause Court need no interference. We are also of the same opinion that having regard to the order passed by this Court by giving liberty to the tenant to satisfy that such deposit with the Rent Controller instead of the Civil Judge was bona fide, the impugned order [ Civil Order No. 914 of 2012, order dated 27-3-2014 (Cal)] passed by the High Court is thus fully justified.

**28.** For the reasons aforesaid, we do not find any merit in this appeal which is accordingly dismissed.”

**ii) *Madhabi Mukherjee vs. Dipali Mitra 2012 SCC***

**OnLine Cal 6964.**

**“18.** Mr. Dey, learned advocate appearing for the plaintiff/ opposite party has rightly pointed out that under the scheme of the present Act, there is no provision under which such invalid deposits with the controller can be regularised.

**19.** In my view, he is absolutely correct in his submission that those invalid deposits cannot be regularised even by correction of challans. As such, this Court holds that regularization of

*such invalid deposit is not possible under the scheme of the present Act.*

**20.** *Having regard to the fact that the deposits for the period from June 2006 to August 2007 are invalid, the tenant is now required either to pay the rent for the said period directly to the landlord or to deposit such arrear rent with the Court.”*

9. On the other hand, the learned counsel for the opposite party submits that in the instant case, after institution of the present suit, the defendant/petitioner herein deposited the rent with the rent controller which are all invalid deposits as those deposits were not made in conformity with the provision contained in Sub-section 1 of Section 7 of the West Bengal Premises Tenancy Act, 1997. Initially, there were three options available to the tenant for deposit of rent. One of such options was to pay the rent to the landlord directly, the other option was to deposit the rent with the controller and the other option was to deposit the rent with the Court.

10. Subsequently in 2006, the provision of Section 7(1)(a) was amended and the forum of deposit of such rent with the controller was deleted. The said amendment of 2006 came into effect on June 1, 2006, since when as per amended provision of the said Act two forums were available to the tenants for deposit of rent in connection with pending eviction suit. One of such options was to pay the rent directly to the landlord and the other

option was to deposit the rent with the Court in connection with pending suit.

11. In the instant case suit was filed in June, 2011. Since then the petitioner herein is required to pay the rent to the landlord directly or to deposit such rent with the Court as per Section 7 of the West Bengal Premises Tenancy Act, 1997. There is no provision for deposit of rent before the Rent Controller. So the deposit made before the Rent Controller are all invalid deposits.

12. The opposite party relies upon the judgment in ***Madhabi Mukherjee (supra)*** wherein the Court held as follows:-

*“19. In my view, he is absolutely correct in his submission that those invalid deposits cannot be regularized even by correction of challans. As such, this Court holds that regularization of such invalid deposit is not possible under the scheme of the present Act.”*

13. But the Court in spite of such observation held in favour of the tenant on the finding as follows:-

*“20. Having regard to the fact that the deposits for the period from June 2006 to August 2007 are invalid, the tenant is now required either to pay the rent for the said period directly to the landlord or to deposit such arrear rent with the Court.”*

14. Three other paragraphs of the said judgment being relevant are as follows:-

***“4. Admittedly, the tenant deposited the rent regularly with the rent controller upto***

August 2007 without following the mandate of the said amended provision of law. Thus, the deposit of rent with the rent controller for the period from June 2006 to August 2007 became invalid, as those deposits were not made in conformity with the amended provision of the said Act. In fact that was the reason for which the defence of the tenant against eviction was struck out by the learned Trial Judge on the application filed by the landlord under section 7(3) of the said Act.

**6.** But fact remains that the tenant deposited the rent for the said period regularly with the rent controller.

**7.** Thus, this is the case where this Court finds that the default which the tenant committed in depositing rent for the said period is really a default in technical sense and not a default in real sense, as it is really a case of irregular deposit and not a case of non-deposit of rent. As such this Court by following the decision of the Hon'ble Supreme Court in the case of *B.P. Khemka Pvt. Ltd. v. Birendra Kumar Bhowmick* reported in (1987) 2 SCC 407 : AIR 1987 SC 1010 holds that striking out of the defence of the tenant against the eviction for such technical defaults, was not justified.”

15. The opposite party has also relied upon the judgment of a Coordinate Bench of this Court passed in CO 3839 of 2018 and CO 3969 of 2018 decided on 05.12.2018. It is submitted by the learned counsel for the opposite party that the judgment in ***Madhabi Mukherjee (supra)*** was considered while deciding the said issue.

16. It appears that at paragraph 13 the Court held that the facts and circumstances of the said case was not similar to the judgments relied upon. As such, paragraph 13 being relevant as follows:-

“13. By the impugned order being No. 16 dated 25<sup>th</sup> January, 2008 passed by the

learned Judge 5<sup>th</sup> Bench Presidency Small Cause Court at Calcutta in Ejectment Suit No. 299 of 2005 the defendant's four applications were rejected."

17. The judgment in ***Kaluram Sarda Grandsons & Ors. vs. Mayadevi Gupta in C.O. 3839 of 2018 decided on 05.12.2018***, this Court finds that the facts and circumstances of the case is not similar to the facts and circumstances in the present case and, as such, this Court finds that admittedly, the petitioner had deposited rent erroneously with the Rent Controller.

18. As per the provision of law he was supposed to deposit either with the Court or with the landlord. It thus appears that there is no *prima facie* default on the part of the petitioner as payment has been made but before a wrong forum and, as such, relying upon the judgments in ***Monoj Lal Seal (supra)*** and ***Madhabi Mukherjee (supra)***, this Court on setting aside the impugned order dated 10.12.2021, passed by the learned Civil Judge (Junior Division), 1<sup>st</sup> Court, Sealdah, South 24 Parganas, in Ejectment Suit No. 62 of 2011, directs the trial Court to calculate any outstanding arrear rent to be paid by the respondent/defendant and if found so, shall direct the payment of the same as per the provision of law.

19. While passing such an order, the trial Court shall take into consideration the amount already deposited with the Rent Controller by the

petitioner herein and the balance amount be directed to be paid as per the provision of law, in view of the fact that the deposit made by the petitioner herein is actually a default in technical sense and not a default in real sense as it is a case of irregular deposit and not a non-deposit of rent

***Madhabi Mukherjee (surpa).***

20. It is further directed that the trial Court shall hear the application under Section 7(3) of the WBPT Act afresh on considering the rent deposited with the Rent Controller as a mere irregularity and not an illegality and pass an order in respect of the said application on hearing the parties within 30 days from the date of communication of this order.

21. **CO 141 of 2022 is disposed of.**

22. There will be no order as to costs.

23. Connected application, if any, stands disposed of.

24. Interim order, if any, stands vacated.

25. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Shampa Dutt (Paul), J.)**