



2026:CHC-AS:1569

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.O. No. 4196 of 2025

Sanjoy Paul

Versus

Ayodhya Prasad and Anr.

For the Petitioner : Mr. Anirban Roy, Adv.
Mr. Debjit Basu, Adv.

For the Opposite Party No. 2 : Mr. Aniruddha Chatterjee, Sr. Adv.
Mr. Manabendra Saha Roy, Adv.
Mr. Sounak Bhattacharya, Adv.
Mr. Milan Kanti Mondal, Adv.
Mr. Anirban Saha Roy, Adv.

Heard on : 24.08.2026

Judgment on : 18.09.2026

Uploaded on : 18.09.2026

Ajay Kumar Gupta, J.:-

1. The instant application under Article 227 of the Constitution of India filed by the plaintiff/petitioner, is directed against the Order No. 3 dated 29th April, 2025 passed by the Learned Chief Judge, Presidency



Small Causes Court at Calcutta and the sequential Order No. 9 dated 11th September, 2025 passed by the Learned 3rd Judge, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 60 of 2025.

- 2.** Ejectment Suit No. 60 of 2025 is at the behest of the petitioner before the Learned Presidency Small Causes Court, Calcutta, for eviction of the opposite parties on the grounds of default, unauthorised construction, change of user and reasonable requirement. Summons in the suit were duly issued to both defendants through the Court bailiff and by Speed Post with A/D on 25th March 2025.
- 3.** The postal tracking report clearly establishes that service on defendant no. 1 was effected through his daughter-in-law "Moumita" on 26th March, 2025 and that the article sent to defendant no. 2 was delivered to the same person and, thereafter, deliberately returned by defendant no. 2 with the endorsement "addressee left without instruction."
- 4.** By Order No. 3 dated 29th April, 2025, the Learned Chief Judge, despite rejecting the application under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (in short, 'the said Act'), filed by defendant no. 1 as time-barred, erroneously directed the petitioner to take fresh steps for service upon defendant no. 2, ignoring the postal records and the presumption of due service in law. Thereafter, defendant no. 2, though residing in the same



premises, filed fresh applications under Sections 7(1) and 7(2) on 9th June, 2025 beyond the statutory period.

5. The Learned 3rd Judge, Presidency Small Causes Court, by Order No. 9 dated 11th September, 2025, allowed those applications, relying on the previous observation that service had not been effected, without calling for evidence or considering the materials on record. The petitioner, therefore, seeks supervisory interference under Article 227 of the Constitution of India to set aside the impugned portions of Order No. 3 (29th April, 2025) and the entire Order No. 9 (11th September, 2025), and to direct that the defence of the defendants stands struck out in accordance with law. Hence, this application.
6. Learned counsel appearing on behalf of the petitioner submitted that the learned Judge acted erroneously and without jurisdiction in allowing the applications under Section 7(1) and 7(2) of the said Act filed by another tenant (Defendant No.2), although previously similar applications filed by the Defendant No.1/tenant were rejected on the ground of filing beyond the statutory period as prescribed, i.e. one month from the date of service of notice.
7. It is further submitted that the learned Court failed to appreciate that once an application under Sections 7(1) and 7(2) of the said Act filed by one of the tenants stands rejected on contest in respect of one joint tenant, the same cause of action cannot be revived by filing



similar applications by another tenant on identical grounds, and belated applications amount to a gross abuse of process of the Court. Therefore, the same is liable to be set aside.

8. It was further submitted that the Trial Court ignored the settled legal position that service of summons has to be presumed under Order 5 Rule 9 of the CPC when a postal article is returned with postal endorsement “refused”, “house locked”, “not available in the house” or “shop closed” or “addressee not in station”.
9. It was finally submitted that an application filed under Section 151 of the CPC cannot be invoked to override an express statutory bar. The exercise of inherent power in contravention of the said Act constitutes an excess of jurisdiction and, if it occurred, the High Court, in its supervisory jurisdiction, can interfere with the same by setting it aside.
10. Learned Counsel has placed reliance upon the following judgments to bolster his submissions: -
 - i. ***Uma Beriwal and Ors. v. Sree Shree Iswar Annapurna Mata & Ors.***¹;
 - ii. ***Jayanti Dam and Ors. v. Aurobinda Pyne***²;
 - iii. ***Seventh Day Adventist Senior Secondary School v. Ismat Ahmed and Ors.***³;

¹ 2026 SCC OnLine Cal 6383;

² 2013 SCC OnLine Cal 23120;

³ 2025 SCC OnLine SC 1696;



iv. Vishwabandhu v. Sri Krishna and Anr.⁴

- 11.** Learned counsel appearing on behalf of the opposite party no. 2, on the other hand, submitted that the applications filed by the opposite party no.2 were allowed correctly, with the application of a judicious mind. The court itself allowed summons to be served afresh upon the Opposite Party No.2/defendant no. 2 and, on receipt of such summons, the Opposite Party no. 2 filed applications within the stipulated time. The petitioner did not challenge the previous order dated 29.04.2025 by which the court directed that summons to be served upon the Opposite Party No. 2; therefore, the impugned orders are correct and, as such, do not require interference.
- 12.** It was further indicated that the Opposite Party No. 2 has challenged the relationship with the lawyer and another tenant. Learned counsel has placed reliance of a judgment passed in the case of **M/S Smart Enterprises vs Shree Ram Trust⁵** particularly in paragraph no. 7 to support his contention as under: -

“7. Strictly speaking, Section 7(1) of the Act does not conceive of any application being made thereunder. But a practical difficulty arises in a deposit being made in Court without anything in writing. Thus, a practice has developed whereunder an application is made under Section 7(1) of the Act, even if only to make good the default or pay the entire amount that is perceived to be due, at least for the first time. The monthly deposits may be more easily made if there is a file opened in the department of the relevant

⁴ (2021) 19 SCC 549

⁵ 2017 (4) CHN 139



Court in the name of a particular suit where at least one previous deposit has been made.”

- 13.** Having heard the learned counsels for the respective parties and having gone through the records, this Court is of the view that once the applications under sections 7(1) and 7(2) of the said Act are filed beyond the stipulated time by one of the tenants and rejected on the ground of delay, the same cannot be allowed to be subsequently filed by another tenant bypassing the statutory provision of the said Act.
- 14.** The Defendant No. 1 appeared through learned advocate and had specifically stated before the learned court that the Defendant No. 2 is the married sister of Defendant No. 1 and resides at a separate address, and he is not representing Defendant No. 2; as such, the bailiff report shows that the process was returned unserved as the defendant is out of station.
- 15.** It is revealed from the record that Defendant Nos. 1 and 2 are joint tenants as per the rent receipt. Now the question that arises before this court is whether several joint tenants can file separate applications under Sections 7(1) and 7(2) of the said Act, when facts, tenanted premises and defence are the same and identical and the previous applications filed under Sections 7(1) and 7(2) of the said Act were rejected by the trial court.
- 16.** Before deciding this issue, it is apposite to quote the relevant provision stipulated in the said Act, 1997 for the sake of convenience



and ready reference to decide the issue involved in the present case.

Section 7 of the said Act of 1997 read as follows: -

“7. When a tenant can get the benefit of protection against eviction.

(1) (a) On a [suit] [Word substituted for the word 'proceeding' by W.B. Act 12 of 2006.] 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] [Words 'or the Civil Judge' first inserted by W.B. Act 6 of 2005, then, the words within third brackets substituted for the words 'the Controller or the Civil Judge' by W.B. Act 12 of 2006.] 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] [Words substituted for the word 'proceeding' by W.B. Act 12 of 2006.] 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] [Words 'or the Civil Judge' first inserted by W.B. Act 6 of 2005, then, the words within third brackets substituted for the words 'the Controller or the Civil Judge' by W.B. Act 12 of 2006.] month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

(2) If in any [suit] [Words substituted for the word 'proceeding' by W.B. Act 12 of 2006.] 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] [Words 'or the Civil Judge' first inserted by W.B. Act 6 of 2005, then, the words within third brackets substituted for the words 'the Controller or the Civil Judge' by W.B. Act 12 of 2006.] 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] [Words 'or the Civil Judge' first inserted by W.B. Act 6 of 2005, then, the words within third brackets substituted for the words 'the Controller or the Civil Judge' by W.B. Act 12 of 2006.] 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] [Words 'or the Civil Judge' first inserted by W.B. Act 6 of 2005, then, the words within third brackets substituted for the words 'the Controller or the Civil Judge' by W.B. Act 12 of 2006.] only once and the period of such extension shall not exceed two months.

(3) If the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, [the Civil Judge] [Words substituted for the words 'the Controller' by W.B. Act 6 of 2005.] shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the [suit] [Words substituted for the word 'proceeding' by W.B. Act 12 of 2006.].

(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] [Words substituted for the words 'the Controller' by W.B. Act 6 of 2005.], 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.”

- 17.** On perusal of the aforesaid provision, it is clear that a tenant can get benefit of protection against eviction filed on the ground of default in payment of rent by the tenant. subject to the provisions of this section, the tenant shall 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 up to the end of the month previous to that in which the payment is made together with interest with interest @ 10 % per annum and same shall be deposited 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 appearance.
- 18.** The term ‘tenant’ in the section refers to tenant/joint tenant as both deposit a combined rent for the tenanted premises. Consequently, once the applications under Sections 7(1) and 7(2) of the said Act, 1997 filed by the tenant were rejected, a second or separate application filed by another tenant cannot be allowed. The Trial Court committed a gross error in allowing the subsequent applications; counting the date of receiving summons by defendant no. 2 cannot and does not arise at all.



- 19.** Once an eviction summons is served on a tenant, the statutory 30-day period for depositing arrears of rent along with applicable interest is mandatory and cannot be extended by invoking Section 5 of the Limitation Act or inherent powers conferred under Section 151 of the CPC. The provisions of Sections 7(1) and 7(2) are mandatory and binding on all the defendants/tenants in an eviction suit.
- 20.** There is a specific bar to entertain several applications filed under Sections 7(1) and 7(2) of the said Act due to the statutory period stipulated in the said Act by the different tenants; since when the suit is filed for eviction of the tenant(s), the obligation to deposit arrears and seek determination of dispute under Section 7 is a unified defence available to the defendants sued as tenant(s) or legal heirs/representatives. Therefore, the defence available to the remaining co-tenants/defendants would equally stand affected, since the obligation under Section 7 is a unified defence, wherein non-compliance by one cannot be dissociated from the liability of the others. In that case, an order may be passed for striking out the defence in view of the non-compliance with the requirement under Section 7(1) of the Act. The Trial Court already indicated the same, observing “Therefore, provisions of Section 7(3) of the W.B.P.T Act shall be operative” in its first order.



- 21.** This Court concurs with the observation of the Learned Court below while passing Order No. 3 dated 29th April, 2025, whereby, relying on a decision of a Co-ordinate Bench of this Court in the case of **Arsala Khan v. Land & Bricks & Entertainment Ltd.**⁶ it was observed that Section 7 of the said Act of 1997 does not allow the tenant to take recourse to the Limitation Act to deposit the arrear rent beyond the stipulated period.
- 22.** This Court further concurs with the reliance on the decision of the Hon'ble Supreme Court in the case of **Bijay Kumar Singh v. Amit Kumar Chamariya**⁷ wherein it was held that simultaneous deposit of admitted rent with an application for determination is a pre-condition; the Limitation Act cannot aid a belated deposit. Impact: Provided the direct ratio that the Court re-applied. The decision in the case of **Debasish Paul v. Amal Borai**⁸ further reaffirms **Bijay Kumar (Supra)**; and clarified that if the WBPT Act prescribes a shorter limitation, Section 5 of the Limitation Act cannot enlarge it.
- 23.** However, in Order No. 9 dated 11th September, 2025, the learned Trial Court exceeded its jurisdiction by bypassing the mandatory provisions of the Act in allowing the application under Section 7 filed by defendant no. 2, another tenant, after one such application had

⁶ (2022) 3 Indian Civil Cases 37 (Cal)

⁷ (2019) 10 SCC 660

⁸ (2024) 2 SCC 169



already been rejected. The same is tantamount to gross perversity and palpable illegality and is, as such, liable to be set aside.

24. Accordingly, **C.O. No. 4196 of 2025** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.

25. Order No. 3 dated 29th April, 2025 passed by the Learned Chief Judge, Presidency Small Causes Court at Calcutta and sequential Order No. 9 dated 11th September, 2025 passed by the Learned 3rd Judge, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 60 of 2025 are set aside save and accept the portion of directing serving of notice to the defendant no.2 afresh, so that Defendant No. 2 may also contest the case in accordance with law, if so advised.

26. Let a copy of this Judgment be sent to the Learned Court below for information.

27. Interim order, if any, stands vacated.

28. All parties will act on the server copies of this Judgment duly downloaded from the official *website* of this Hon'ble High Court.

29. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal and necessary formalities.

(Ajay Kumar Gupta, J.)

(P.A.)