

Seventh Day Adventist Senior Secondary School

v.

Ismat Ahmed and Others

(Civil Appeal No. 10649 of 2025)

13 August 2025

[J.K. Maheshwari* and Aravind Kumar, JJ.]

Issue for Consideration

Whether applications filed u/ss.7(1) and (2) of the West Bengal Premises Tenancy Act, 1997 by the tenant without deposit of rent after lapse of statutory period of thirty days, along with an application u/s.5 of the Limitation Act, rejected by Court of Small Causes as not entertainable, confirmed by the High Court is justified.

Headnotes[†]

West Bengal Premises Tenancy Act, 1997 (WBPT Act) – s.7 – When a tenant can get the benefit of protection against eviction – Limitation Act, 1963 – s.5 – General Clauses Act – Benefit of protection against eviction u/s.7, when not available:

Held: In general, the applicability of the Limitation Act, 1963 is permissible subject to limitation prescribed under the provisions of the WBPT Act – If a lesser time period or limitation has been specified for proceedings under the WBPT Act, then extension of time applying the provisions of the Limitation Act, 1963 cannot be allowed – In the present case, neither the rent as specified u/ss.7(1) and 7(2) was paid or deposited by the tenant, nor the application for determination of rent was filed within the period of 30 days as prescribed – Therefore, in the absence of fulfilment of these twin conditions, tenant cannot avail the benefit of protection against eviction as envisaged u/s.7 – Due to non-compliance of deposit and filing of an application within the prescribed period of 30 days, the consequence as specified in sub-section (3) of s.7 shall follow – The benefit of proviso w.r.t the extended time would not be available to the appellant-tenant prior to rent determination stage – The compliance as required to be done by the tenant in s.7(1)(a)(b)(c) and first part of s.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

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**Seventh Day Adventist Senior Secondary School v.
Ismat Ahmed and Others**

(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 – Appeal of the tenant fails – Order of the Small Causes Court and the High Court maintained. [Paras 21, 34-36]

West Bengal Premises Tenancy Act, 1997 – s.7 – When a tenant can get the benefit of protection against eviction – Interpretation. [Paras 12-17, 28, 29, 32, 33]

West Bengal Premises Tenancy Act, 1997 – s.40 – Limitation Act, 1963 – Applicability of the Limitation Act, 1963 *vis à-vis* WBPT Act – Discussed. [Paras 19, 21]

West Bengal Premises Tenancy Act, 1997 – ss.7(1)(a)(b)(c) and 7(2) and proviso thereto – ‘shall’; ‘may’ – Whether compliance of the provisions of ss.7(1) and 7(2) so far as it relates to payment or deposit of the rent and filing of application within the time as specified is mandatory or directory:

Held: In view of the plain reading of the provisions specified in ss.7(1)(a)(b)(c) and 7(2) and also the proviso thereto, it is clear that for the purpose of payment or deposit of the arrears of rent or rent admitted to be due within the time as specified and also for filing of the application, the word ‘shall’ has been used – However, for the purpose of extension of time, the word ‘may’ has been used indicating discretion vested with the Court – The proviso to s.7(2) can only be construed to permit extension in payment of amount so specified in order of determination passed by the Civil Judge as envisaged in the latter part of sub-section(2) of s.7 – Thus, the word ‘may’ used in the proviso of s.7(2) would only relate to extension of time, which is a discretion vested with the Civil Judge and it would not construe any other meaning – Moreover, since in sub section(3) of s.7, the consequence of non-compliance has been specified, therefore, use of the word ‘shall’ in ss.7(1)(a), 7(1)(b) and 7(2) is a mandatory compliance for the tenant, failing which, his defence against eviction shall be struck off. [Para 24]

West Bengal Premises Tenancy Act, 1997 – s.7(3) – Contingencies under – Explained. [Para 33]

Interpretation of Statutes – Principles of statutory interpretation – West Bengal Premises Tenancy Act, 1997 – s.7(1), (2) and proviso thereto – ‘shall’; ‘may’ – Definition – ‘shall’; ‘may’ used in the same Section at different places – Purport –

Supreme Court Reports

Comparison between s.7(1) and first part of sub-section (2) of s.7 – Proviso to s.7(2) – Interpretation – Words and Phrases.
[Paras 26, 28, 29]

Case Law Cited

Nasiruddin and Others v. Sita Ram Agarwal [2003] 1 SCR 634 : (2003) 2 SCC 577; *Ganesh Prasad Sah Kesari and Anr. v. Lakshmi Narayan Gupta* [1985] 3 SCR 825 : 1985 3 SCC 53; *Govindlal Chhaganlal Patel v. The Agricultural Produce Market Committee, Godhra and Others* [1976] 1 SCR 451 : 1975 2 SCC 482; *Khub Chand and Others v. State of Rajasthan and Others* [1967] 1 SCR 120 : AIR 1967 SC 1074 – relied on.

Debasish Paul and Another v. Amal Boral [2023] 14 SCR 511 : (2024) 2 SCC 169; *Bijay Kumar Singh and Others v. Amit Kumar Chamariya and Another* [2019] 13 SCR 1028 : (2019) 10 SCC 660 – referred to.

Books and Periodicals Cited

P. Ramanatha Aiyar, Advanced Law Lexicon Pg. 3745 (3rd Edition, 2005); P. Ramanatha Aiyar, Advanced Law Lexicon Pg. 4325 (3rd Edition, 2005); Justice G.P. Singh, Principles of Statutory Interpretation Including the General Clauses Act, 1897 with Notes, Pg. 453 (14th Edition, 2016).

List of Acts

West Bengal Premises Tenancy Act, 1997; Limitation Act, 1963; General Clauses Act.

List of Keywords

Section 7 of the West Bengal Premises Tenancy Act, 1997; Benefit of protection against eviction under the West Bengal Premises Tenancy Act, 1997; Tenant not entitled to the benefit of protection against eviction; Limitation Act, 1963; Applicability of the Limitation Act, 1963 vis à-vis West Bengal Premises Tenancy Act, 1997; Deposit of rent and filing an application; Non-compliance of deposit and filing of an application within the prescribed period of 30 days; Mandatory; Directory; Discretion of Civil Judge to grant extension of time; ‘Payment’ or ‘deposit’ of rent (disputed or undisputed); ‘shall’; ‘may’.

**Seventh Day Adventist Senior Secondary School v.
Ismat Ahmed and Others**

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10649 of 2025

From the Judgment and Order dated 20.03.2024 of the High Court
at Calcutta in CO No. 2783 of 2023

Appearances for Parties

Nidhesh Gupta, Sr. Adv. (Amicus Curiae), Ms. Japneet Kaur, Bikram Dwivedi, Manu Bhardwaj.

Advs. for the Appellant:

Uday Gupta, Sr. Adv., Hiren Dasan, Ms. Shivani M. Lal, Safdar Azam, Kripa Shankar Prasad, Ajay Sharma, Unmukt Gera, Mahendra Mali, Deepanshu Rana.

Advs. for the Respondents:

Swarnendu Chatterjee, Amit Kumar Raidani, Ms. Deepakshi Garg, Ms. Harshita Rawat.

Judgment / Order of the Supreme Court

Judgment

J.K. Maheshwari, J.

1. Leave granted.
2. Challenging the order impugned dated 20.03.2024¹ passed by High Court at Calcutta, confirming the order dated 17.07.2023² of the Small Causes Court, which rejected the application under Section 5 of the Limitation Act, 1963 filed by appellant-tenant seeking condonation of delay in filing application under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 (in short ‘WBPT Act’), the present appeal has been filed.
3. The appellant is a tenant in the suit premise being Flat No. 8, First Floor, 44, Elliot Road, Kolkata, West Bengal, and the respondents are the landlord. The relationship of landlord and the tenant is not in dispute. The admitted monthly rent of the suit premise is Rs. 1090/-.

¹ C.O. No. 2783 of 2023

² Ejectment Suit No. 133 of 2019

Supreme Court Reports

The landlord instituted the ejectment suit on 11.06.2019 on the grounds of arrears of rent, *bona-fide* need and sub-letting. On issuance of notice, summons were served upon tenant on 29.09.2022. From the next day and date, i.e., 30.09.2022 till 27.10.2022, the Courts were closed because of Durga Puja vacation in Kolkata. Thereafter, on 14.11.2022, the tenant filed the applications under Sections 7(1) and 7(2) of the WBPT Act along with application under Section 5 of the Limitation Act with the prayer to condone the delay of 17 days in filing the application under Section 7(1) of the WBPT Act.

4. In the application filed under Section 7(1) of the WBPT Act, prayer was made to deposit the 'current rent' for the month of November 2022 at the rate of Rs. 1090/- per month and to pass such order as the Court may deem fit. Similarly, application under Section 7(2) of the WBPT Act, was filed seeking determination of default period, if any, and to refund the excess amount paid and to pass such order as may deem fit.
5. Learned Small Causes Court by the impugned order rejected the application under Section 5 of the Limitation Act, *inter-alia*, observing that the period to file an application as specified under Section 7(1) of the WBPT Act is thirty days, which cannot be extended by aid of Section 5 of the Limitation Act. Aggrieved by the said order, the tenant preferred the revision before the High Court, which was dismissed maintaining the order of the learned Small Causes Court with certain observations qua applicability of Sections 7(1) and (2) of the WBPT Act. Hence, this appeal.
6. Mr. Uday Gupta, learned senior counsel for the appellant-tenant has strenuously urged that the tenant was lawfully inducted by the respondents and has regularly paid the rent by cheque to the son-in-law of the landlord (respondent no. 1), details of which have been specified in the application preferred under Section 7(1) and 7(2) of WBPT Act. It is urged that as per the details of the cheque amount, a total sum of Rs. 2,80,500/- has been paid and as per the averments made in the plaint, the rent due is from March 2017, which comes to sixty eight months till date of filing of applications under Section 7(1) and 7(2). As such the payment made is more than the rent amount due, therefore, refund of the said amount was sought for. It is urged that when amount of rent is paid in excess, the applications under Section 7(1) and (2) of WBPT Act ought to

**Seventh Day Adventist Senior Secondary School v.
Ismat Ahmed and Others**

be considered on merits along with the application for condonation of delay filed under Section 5 of Limitation Act, 1963 by the tenant.

7. Learned senior counsel extensively referring Sections 7(1), 7(2), 7(3) and 7(4) of the WBPT Act, contended that proviso appended to Section 7(2) would apply to Section 7(1) also, therefore, if there is any delay in filing of the application under Section 7(1) and (2), the same may be condoned at least once up to two months. In support of the said contention, reliance has been placed on the judgment in the case of ***Debasish Paul and Another vs. Amal Bora***³, in particular paragraph 17, and also urged that judgment in ***Bijay Kumar Singh and Others vs. Amit Kumar Chamariya and Another***⁴, does not deal with the issue as involved in the present case as relied upon by the High Court in the order impugned. In view of the foregoing, it is submitted that by, condoning the delay, learned Small Causes Court may be directed to consider the applications filed under Sections 7(1) and (2) of the WBPT Act on its own merit.
8. *Per contra*, Mr. Swarnendu Chatterjee, learned counsel representing respondents—landlord has vehemently contended that applications under Sections 7(1) and (2) of the WBPT Act have not been filed within the prescribed statutory period of thirty days from the date of receipt of summons, therefore, learned Small Causes Court was right in rejecting the application filed under Section 5 of Limitation Act, 1963, which is affirmed by the High Court. Learned counsel placed reliance on the judgment of ***Bijay Kumar*** (supra) to support that unless the deposit of the admitted amount of rent has been made, the application under Section 7(1) and (2) of the WBPT Act ought not to be entertained.
9. Mr. Nidhesh Gupta, learned senior counsel has appeared as amicus curiae pursuant to our order dated 19.02.2025 and has ably assisted the Court by placing his erudite submissions for consideration. His propositions are twofold. **Firstly**, he has submitted that, proviso to Section 7(2) of the WBPT Act applies to sub-section (1) of Section 7 also. Referring relevant provisions and emphasising the word ‘amount of rent’, ‘payment’ and ‘deposit’ as referred at various places in Section 7(1), 7(2) and 7(3) along with specification of time for such

3 (2024) 2 SCC 169

4 (2019) 10 SCC 660

Supreme Court Reports

payment and deposit after determination, he submitted that the proviso deals with extension of ‘time’ as prescribed for ‘pay’ and ‘deposit’ in Sections 7(1) and (2) both. In case the first proposition does not find favour, then the **second** proposition may be considered, i.e., since the proviso is textually located at the end of sub-section (2) of Section 7 and *per se* does not refer to sub-section (1), but only refers to time specified therein, it must be confined in its operation to latter part of sub-section (2) of Section 7 alone.

10. After having heard the learned counsel for both the parties, submissions of learned amicus, and on perusal of the facts and material placed before us in the present case, the moot question that falls for our consideration is '*whether applications filed under Sections 7(1) and (2) of the WBPT Act by the tenant without deposit of rent after lapse of statutory period of thirty days, along with an application under Section 5 of the Limitation Act, rejected by Court of Small Causes as not entertainable, confirmed by the High Court is justified?*'
11. For appreciating the question as posed in detail, the provisions of Section 7 of the WBPT Act which are relevant for determination of the same are required to be noted and examined and therefore, we reproduce them 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*

**Seventh Day Adventist Senior Secondary School v.
Ismat Ahmed and Others**

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 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 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

Supreme Court Reports

payment of rent for four months within a period of twelve months or for three successive rental periods where rent is not payable monthly.

12. Bare reading of the aforesaid provisions makes it clear that as per sub section (1) of Section 7, in a suit for eviction filed by the landlord on any grounds as specified in Section 6 of the WBPT Act, the tenant shall, subject to provisions of sub-section (2), pay to the landlord or deposit in the Court, all arrears of rent calculated at the rate at which it was last paid together with interest at the rate of ten per cent per annum. As mandated by Section 7(1)(b), the said payment or deposit shall be made within one month from the date of service of the summons on tenant or from the date of appearance in case the tenant appears without service of summons. The said two provisions apply in a case where arrears of rent are admitted. Thereafter, Section 7(1)(c) puts a further condition that after the admitted arrears are paid, the tenant shall continue to pay or deposit with the landlord or Civil Judge, as the case may be, a monthly sum of rent at that rate on or before fifteenth day of consecutive month.
13. As per sub-section (2), if there is a dispute as to the amount of rent payable by the tenant, he is required to deposit the admitted amount due from him in the Court within the time as specified [one month as per Section 7(1)(b)] ‘together’ with an application for determination of the rent payable. It is emphasised that deposit of rent shall not be accepted unless the said prayer is accompanied with an application for determination of the rent. Meaning thereby, to seek protection against eviction, the tenant is required to deposit the admitted amount of rent within the time as specified, i.e., within one month from the date of summons served or where tenant appears in the suit without the summons being served upon him, along with an application for determination of the rent so payable. As such, in case where there is no dispute as to arrears of rent, it ought to be paid within a month and, in case it is in dispute, even then, tenant would be required to deposit within the same time coupled with an application as discussed above.
14. To supplement the aforesaid, word ‘together’ used in Section 7(2) preceding ‘with an application for determination of the rent payable’ emphasises that the deposit of admitted amount of rent within a

**Seventh Day Adventist Senior Secondary School v.
Ismat Ahmed and Others**

period of thirty days as specified must accompany the application for determination of rent payable. At this stage, we can profitably refer to '*P. Ramanatha Aiyar's Advanced Law Lexicon*'⁵ to understand the meaning of 'together'. According to the same, 'together' means "*in company*" or "*conjointly*" or "*simultaneously*". Accordingly, on contextual application of the word 'together', it is clear that the application for determination of rent must be filed within the same period which is provided for 'deposit' or 'pay', i.e., thirty days.

15. On receiving such application, the Court having regard to the rate of rent last paid and period of which default has been made by the tenant shall make an order on such application not later than one year and thereupon the tenant shall within the period of one month of the date of such order, pay to the landlord the amount so specified in the order. That is to say, the determination of the rent on the parameters as specified in the latter part of sub-section (2) and on such determination within one month of the date of the order, the amount as specified in the order is to be paid. The proviso thereto deals with the extension of time, which can only be once and not beyond period of two months.
16. Having perused Section 7 of WBPT Act, it is apparent that sub-section (1) is subject to sub-section (2). Further, sub-section (3) specifies consequences of non-compliance of sub-sections (1) and (2) by the tenant, leading to striking out of defence against delivery of possession and the Court shall proceed with the hearing of the suit. Sub-section (4) of Section 7 of WBPT Act makes it clear that in a proceeding of eviction, no order for delivery of possession of the premises to the landlord shall be passed by the Court on the ground of default of payment if the tenant deposits the rent under sub-sections (1) or (2), but the Court may allow such cost to the landlord as deemed fit. As per proviso, it is clear that if tenant was allowed the relief as indicated hereinabove, but later he makes default in payment of rent for four months within one year or in case three successive rental periods, where the rent is not payable monthly, the relief of protection against eviction available under sub-section (4) cannot be allowed granting benefit of protection against eviction to the tenant.

Supreme Court Reports

17. In view of the foregoing, while bringing the said Section, the legislative intent was to provide protection to the tenant against eviction, subject to compliance of deposit of arrears of rent if there is no dispute as to amount of rent, within one month from the date of service of summons, along with interest at the rate of ten per cent per annum. The tenant is further required to deposit the regular rent as prescribed in Section 7(1)(c). In case, there is a dispute of the amount of rent payable, the tenant is required to deposit the amount due as admitted by him within thirty days and file an application conjointly for determination of rent within the same period. The said application may possibly be entertained and decided by the Court thereafter only. This Court in the case of **Bijay Kumar** (supra) had an occasion to consider the scope of Section 7(2) of the WBPT Act wherein the tenant had not deposited or paid the admitted rent while moving an application seeking determination of rent. Trial Court while allowing such application granted time to pay the admitted rent, but High Court set-aside the order of the Trial Court. While confirming the order of the High Court on the issue of deposit of rent admitted by tenant under Section 7(2) on the application for determination of rent, this Court observed as under –

“21. ...the deposit of rent along with an application for determination of dispute is a precondition to avoid eviction on the ground of non-payment of arrears of rent. In view thereof, tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not an application alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.”

18. Thus, in case of disputed rent, this Court was of the view that to avail the benefit of protection against eviction under the WBPT Act, the tenant has to do the following to avoid eviction, first, to deposit rent admitted by him to be due; second, an application for determination of rent payable be filed along with. The tenant had neither deposited, nor paid the admitted rent and had only filed the application for determination of rent belatedly along with an application under Section 5 of the Limitation Act, 1963.
19. On perusal of provisions of the WBPT Act, it appears that Section 40 prescribes the applicability of the Limitation Act, 1963 in proceedings and appeals. ‘Proceedings’ as defined in ‘P. Ramanatha Aiyar’s

**Seventh Day Adventist Senior Secondary School v.
Ismat Ahmed and Others**

*Advanced Law Lexicon*⁶ includes ‘any suit, appeal or application’. Since the said provision is relevant, it is reproduced for ready reference as under:-

“40. Application of the Limitation Act, 1963 to proceedings and appeals.

Subject to the provisions of this Act relating to limitation, the provisions of the Limitation Act, 1963, shall apply to proceedings and appeals under this Act.”

Upon reading of the aforesaid, it is clear that the provisions of the Limitation Act, 1963, would apply to the proceedings and appeals subject to the provisions of the WBPT Act relating to limitation. Thus, the applicability of the Limitation Act, 1963 vis-à-vis WBPT Act is not in general, but subject to the provisions of the limitation specified in the WBPT Act itself.

20. In the said context, this Court in ***Debasish Paul*** (supra) referred to the judgment in ***Bijay Kumar*** (supra) and in paragraph 16, while examining the applicability of Section 5 application under Limitation Act, 1963, observed as under:-

“16. We have no doubt over the proposition that though generally the Limitation Act is applicable to the provisions of the said Act in view of Section 40 of the said Act, if there is a lesser time period specified as limitation in the said Act, then the provisions of the Limitation Act cannot be used to expand the same. It is in this context that in Nasiruddin case [Nasiruddin v. Sita Ram Agarwal, (2003) 2 SCC 577], it has been mentioned that the real intention of the legislation must be gathered from the language used. Thus, the reasoning in Bijay Kumar Singh case [Bijay Kumar Singh v. Amit Kumar Chamariya, (2019) 10 SCC 660 : (2020) 1 SCC (Civ) 24] cannot be doubted more so as the requirement is for a tenant to file an application, but he has to deposit the admitted arrears of rent as well, which has certainly not been done.”

Supreme Court Reports

21. In view of the foregoing, it can safely be concluded that in general, the applicability of the Limitation Act, 1963 is permissible subject to limitation prescribed under the provisions of the WBPT Act. In this sense, this Court was right in observing that if a lesser time period or limitation has been specified for proceedings under the WBPT Act, then extension of time applying the provisions of the Limitation Act, 1963 cannot be allowed. Be that as it may, in the present case, neither the rent as specified under Sections 7(1) and 7(2) has been paid or deposited by the tenant, nor the application for determination of rent has been filed within the period of thirty days as prescribed. Therefore, in the absence of fulfilment of these twin conditions, tenant cannot avail the benefit of protection against eviction as envisaged under Section 7 of WBPT Act.
22. Now reverting on the ancillary issue, whether compliance of the provisions of Sections 7(1) and 7(2) so far as it relates to payment or deposit of the rent and filing of application within the time as specified is mandatory or directory? In order to understand whether such compliance is mandatory or directory, it is essential to look into the language as used in those provisions. After perusal of Section 7(1)(a), it is clear that on institution of a suit, it is incumbent on the tenant to deposit the rent, therefore, the word '*tenant shall*' has been used with 'pay to landlord or deposit'. Even in Section 7(1)(b), it is provided that such payment or deposit '*shall*' be within one month of the service of summons or within one month from the date of appearance. Further, in Section 7(1)(c) it is provided that after the payment or deposit has been made by the tenant in terms of Section 7(1)(a), the tenant '*shall*' continue to do the same by 15th of each succeeding month.
23. Similarly, in Section 7(2) which deals with the situation of disputed rent, the tenant within the time specified in that Section i.e., 7(1)(b), '*shall*' deposit the amount admitted by him to be due along with application for determination of rent. The proviso appended therein relates to extension of time only once and upto a maximum period of two months. The proviso reads as '...an extension of time *may* be granted...'.
24. In view of the plain reading of the provisions specified in Sections 7(1)(a)(b)(c) and 7(2) and also the proviso thereto, it is clear that for the purpose of payment or deposit of the arrears of rent or rent

**Seventh Day Adventist Senior Secondary School v.
Ismat Ahmed and Others**

admitted to be due within the time as specified and also for filing of the application, the word ‘shall’ has been used. However, for the purpose of extension of time, the word ‘may’ has been used indicating discretion vested with the Court.

25. In this regard, guidance may be taken from three-Judge Bench judgment in the case of '**Nasiruddin and Others Vs. Sita Ram Agarwal**'⁷ wherein this Court, *inter-alia*, interpreted the mandatory or directory nature of expressions ‘shall’ and ‘may’ used in Section 13(4) of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (in short ‘1950 Act’) in the framework of rent deposit obligations qua determination of provisional rent. How and for what purpose the word shall has been used in this regard in Section 13(4) of 1950 Act is referred which reads as thus:

“13. (4) The tenant shall deposit in court or pay to the landlord the amount determined by the court under sub-section (3) within fifteen days from the date of such determination, or within such further time, not exceeding three months, as may be extended by the court. The tenant shall also continue to deposit in court or pay to the landlord, month by month, the monthly rent subsequent to the period up to which determination has been made, by the fifteenth of each succeeding month or within such further time not exceeding fifteen days, as may be extended by the court, at the monthly rate at which the rent was determined by the court under sub-section (3).”

While interpreting the said provisions some paragraphs of the judgment which are relevant for our purposes are reproduced as under:-

“37. The court’s jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which

Supreme Court Reports

is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression “shall or may” is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

38. *Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified. In Sutherland’s Statutory Construction, 3rd Edn., Vol. 3, at p. 107 it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision.”*

In the context of the said case, the word ‘shall’ used in Section 13(4) for deposit was treated as mandatory because of the consequence of non-compliance was provided in Section 13(5), i.e., striking out the defence against eviction. Moreover, the word ‘may’ has been used in the context of power of the Court in extending the already prescribed time period of fifteen days in depositing the determined rent.

26. In addition, as per ‘P. Ramanatha Aiyar’s Advanced Law Lexicon⁸, the word ‘shall’ is defined as “in common parlance, a term which, it

**Seventh Day Adventist Senior Secondary School v.
Ismat Ahmed and Others**

is said, has always a compulsory meaning, and in its common and ordinary usage, unless accompanied by qualifying words which show a contrary intent, always refers to the future; but it may be used in a sense of ‘must’ of which it is a synonym.”. Therefore, the said word used in statute is generally mandatory. Similarly, ‘may’ is defined as “*In general, May is an auxiliary verb qualifying the meaning of another verb by expressing the ability, contingency, possibility, or probability..... As used in statute, in its ordinary sense the word is permissive and not mandatory, merely importing permission, ability, possibility, or contingency.*” Simultaneously, in ‘Principles of Statutory Interpretation’⁹, revised by Justice A.K. Patnaik, it is specifically said that use of word ‘shall’ with respect to one matter and use of word ‘may’ with respect to another matter in the same section of statute shall normally lead to the conclusion that the word ‘shall’ imposes an obligation, whereas the word ‘may’ confers a discretionary power. In this regard, guidance can be taken from the judgment of this Court in the case of **Ganesh Prasad Sah Kesari and Anr. Vs. Lakshmi Narayan Gupta**¹⁰.

27. In the case of **Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others**¹¹, three-Judge Bench of this Court while interpreting the words ‘shall’ and ‘may’ as referred in the *Crawford on Statutory Construction (Ed. 1940, Article 261 p.516)*, set out the following passage from an American case approvingly:

“The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.”

As such, the governing factor is the meaning and intent of the Legislature, which cannot merely be gathered from the words used

⁹ Justice G.P. Singh, *Principles of Statutory Interpretation Including the General Clauses Act, 1897 with Notes*, Pg. 453 (14th Edition, 2016)

¹⁰ (1985) 3 SCC 53

¹¹ (1975) 2 SCC 482

Supreme Court Reports

in statute, but are based on variety of other circumstances and considerations. In the judgment of '***Khub Chand and Others Vs. State of Rajasthan and Others***'¹², this Court observed as under: -

....The term "shall" in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations."

28. Hence, taking clue from the above referred judgments and principles of the statutory interpretation, the intent of WBPT Act and the circumstances wherein, the words 'shall' and 'may' have been used in the same Section at different places, is required to be adverted. As referred above in paragraphs 22, 23 and 24, it is apparent that whenever the words 'payment' or 'deposit' of rent (disputed or undisputed) have been used, the tenant has been cast with an obligation to deposit such rent within the specified time by using the word 'shall' therein. In case of disputed rent, the tenant is also required to file an application along with such deposit. The legislative intent behind using the word 'shall' is to ensure that in case the tenant who is in occupation of premises defaults in payment of rent due to some inadvertence or fault, on ground of which the eviction is sought by the landlord, then on service of the summons, to prevent his defence from getting struck-off, the tenant must comply with the twin pre-requisites. Section 7(1) provides that the tenant shall pay to landlord or deposit all arrears of rent, while the textual setup of first part of sub-section (2) of Section 7 is that the tenant shall within the time specified, 'pay' or 'deposit' the amount of rent as admitted as due by him. Indeed, it is true that in the latter part of sub-section (2) of Section 7, the word 'shall' has again been used in the context of deciding the application for determination of the rent, stating therein

**Seventh Day Adventist Senior Secondary School v.
Ismat Ahmed and Others**

that '*tenant shall within one month of the date of such order, pay to the landlord the amount so specified in the order*'. Therefore, in the latter part, the word 'tenant shall' would be referable for payment of the amount to the landlord so specified in the order, and in the said interpretive context, the extension of time is based on the discretion of the Civil Judge only once, which may not exceed beyond two months. Thus, the proviso appended therein would apply only to a case where the amount specified in the order after determination was not paid within the period as specified therein. Consequently, by virtue of the proviso, in the latter part, the word 'shall' would intend only to the time period prescribed in the order, and it would not include the time period for initial period as specified under Section 7(1)(a) and (b) and the former part of Section 7(2).

29. In addition, Section 7(1) and first part of sub-section (2) of Section 7 are comparable, both requiring deposit/pay admitted/undisputed amount of rent. However, Section 7(2) casts an additional obligation on the tenant to file an application for determination for rent along with such deposit within the specified time frame. The Legislature in its wisdom did not provide for any extension of time for payment or deposit under Section 7(1), making it clear that no such extension was intended in the corresponding part in Section 7(2). Since the deposit and application are to be made together by the tenant mandatorily within a specific time, in our considered view, extension of time as given in proviso to Section 7(2) is not applicable to either. Therefore, the proviso can only be construed to permit extension in payment of amount so specified in order of determination passed by the Civil Judge as envisaged in the latter part of sub-section (2) of Section 7. Stated differently, the word 'may' used in the proviso of Section 7(2) would only relate to extension of time, which is a discretion vested with the Civil Judge and it would not construe any other meaning. Moreover, it can be said that since in sub-section (3) of Section 7, the consequence of non-compliance has been specified, therefore, use of the word 'shall' in Sections 7(1)(a), 7(1)(b) and 7(2) is a mandatory compliance for the tenant, failing which, his defence against eviction shall be struck off.
30. In the case of ***Debasish Paul (supra)***, the suit was filed for eviction by landlord. On entering appearance, applications under Sections 7(1) and 7(2) of the WBPT Act were filed with a delay of 10 months

Supreme Court Reports

without any application under Section 5 of the Limitation Act. The trial Court rejected the said applications because they were not filed within the statutory time. In revision, the High Court set-aside the order of the trial Court and granted liberty to the tenant for filing applications along with application under Section 5 of the Limitation Act, 1963, explaining the sufficient cause. When the matter reached this Court in appeal, this Court had specifically opined that if lessor time period has been specified for limitation in the WBPT Act, then the provisions of the Limitation Act, 1963 cannot be used to extend the same and set-aside the order of High Court while sustaining the order of the trial Court.

31. Learned counsel appearing on behalf of the appellant made a strenuous attempt relying upon the observations made in paragraphs 17, 18 and 19 of the judgment rendered in ***Debasish Paul*** (*supra*), wherein the Court has referred to the judgment of ***Bijay Kumar*** (*supra*). In this regard, paragraphs 17, 18 and 19 are relevant and are reproduced below as thus:-

“17. We are of the view that a combined reading of the two statutes would suggest that while the Limitation Act may be generally applicable to the proceedings under the Tenancy Act, the restricted proviso under Section 7 of the said Act, providing a time period beyond which no extension can be granted, has to be applicable. The proviso is after sub-section (2) of Section 7 but sub-section (2) of Section 7 in turn refers to sub-section (1) implying the application of the proviso to sub-section (1) too.

18. There is also a larger context in this behalf as the Tenancy Acts provide for certain protections to the tenants beyond the contractual rights. Thus, the provisions must be strictly adhered to. The proceedings initiated on account of non-payment of rent have to be dealt with in that manner as a tenant cannot occupy the premises and then not pay for it. This is so even if there is a dispute about the rent. The tenant is, thus, required to deposit all arrears of rent where there is no dispute on the admitted amount of rent and even in case of a dispute. The needful has to be done within the time stipulated and actually should accompany the application filed under sub- sections (1) & (2) of

**Seventh Day Adventist Senior Secondary School v.
Ismat Ahmed and Others**

Section 7 of the said Act. The proviso only gives liberty to extend the time once by period not exceeding two months.

19. *The respondent neither paid the rent, nor deposited the rent by moving the application nor deposited it within the extended time as stipulated in the proviso. The mere allegation of absence of correct legal advice cannot come to the aid of the respondent as, if such a plea was to be accepted it would give a complete licence to a tenant to occupy premises without payment of rent and then claim that he was not correctly advised. If the tenant engages an advocate and abides by his advice, then the legal consequences of not doing what is required to be done, must flow.”*

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

Supreme Court Reports

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.

34. After perusal of the facts of the case at hand, the summons were served on appellant on 29.09.2022. From the next date, i.e., 30.09.2022 to 27.10.2022, Durga Puja vacation in Kolkata started. As per the provisions of the General Clauses Act, limitation period of thirty days would start from the date of receiving of the summons and it would complete on 28.10.2022, prior to completion of Durga Puja vacation. Therefore, the rent was required to be deposited within thirty days along with an application immediately on reopening of Courts, but application was filed with a delay of 17 days on 14.11.2022. Therefore, due to non-compliance of deposit and filing of an application within the prescribed period of 30 days, the consequence as specified in sub-section (3) of Section 7 shall follow. The benefit of proviso with respect to the extended time would not be available to the appellant prior to rent determination stage.
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)

**Seventh Day Adventist Senior Secondary School v.
Ismat Ahmed and Others**

(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.

36. Accordingly, and in view of the above discussions, the present appeal of the tenant fails and is dismissed while maintaining the order passed by the learned Small Causes Court and the High Court in above terms. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal dismissed.

[†]*Headnotes prepared by:* Divya Pandey