IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

BEFORE:
THE HON'BLE JUSTICE OM NARAYAN RAI

CO 369 OF 2026
WITH
CO 1048 OF 2026

MANAB CHOUDHURY
VS.
MIRA MULLICK

For the Petitioner	: Mr. Shounak Bhattacharya, Adv. Mr. Kaushik Banerjee, Adv. Ms. R. Sen, Adv. Mr. Rajashri Banerjee, Adv.
For the Opposite Party	: Mr. Anirban Roy, Adv. Mr. S. Sarkar, Adv. Mr. Debjit Basu, Adv.
Last Heard on	: 05.05.2026
Judgment on	: 05.05.2026

OM NARAYAN RAI, J.:-

1. Since these two applications under Article 227 of the Constitution of India assail two interlocutory orders passed in the same suit (i.e. Ejectment Suit No. 308 of 2025) instituted by the opposite party against the petitioner, therefore, the same have been heard together and are being disposed of by a common order.

2. CO 369 of 2026 is directed against an order dated January 16, 2026 passed by the learned Chief Judge, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 308 of 2025 whereby an application under Section 151

of the Code of Civil Procedure, 1908 (hereafter "the Code") filed by the petitioner has been rejected. By the said order the Learned Trial Court has also struck out the petitioner's defence by invoking the provisions of Section 7(3) of the West Bengal Premises Tenancy Act, 1997 (hereafter "the 1997 Act") upon observing that the petitioner's application under Section 7(2) of the 1997 Act was no longer maintainable as the petitioner had failed to comply with the requirements of Section 7(1) thereof.

3. CO 1048 of 2026 is directed against an order dated February 23, 2026 passed by the learned Judge, 3rd Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 308 of 2025 whereby the petitioner's written statement has been held to be *"unnecessary and redundant"* in view of the order dated January 16, 2026 whereby the petitioner's defence had been struck out.

4. The opposite party has instituted Ejectment Suit No. 308 of 2025 praying *inter alia* for recovery of *khas* possession of the suit premises upon eviction of the petitioner therefrom.

5. The factual narration in the order dated January 16, 2026 reveals that summons was served upon the petitioner on November 20, 2025. Subsequently, on December 19, 2025, the petitioner filed two applications in the said suit- one under Section 7(1) of the 1997 Act and the other under Section 7(2) thereof.

6. The application under Section 7(1) of the 1997 Act was taken up for consideration by the learned Trial Court on the same date (i.e. on December 19, 2025) and was disposed of by an order of even date permitting the petitioner *"to pay/deposit the admitted arrear of rent as prayed for,*

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 @ 10% p.a., within the time frame as prescribed under the law at his own risk without prejudice to the right and contentions of the parties in accordance with law."

7. It is the petitioner's case that upon such order being passed, the petitioner attempted to deposit the arrears of rent along with the current rent but the relevant department of the learned Trial Court did not accept the same. Accordingly, on January 08, 2026, the petitioner made another application under Section 151 of the Code praying for a direction upon the department to receive the current rent as well as the rent-arrears in terms of the order dated December 19, 2025.

8. Such application was taken up for hearing by the learned Trial Court and was rejected by an order dated January 16, 2026 while observing as follows:-

> "*In the present case, the requirement of law to deposit of admitted arrears of rent along with 10 per cent statutory interest as well as current rent has not been fulfilled by the defendant.*
>
> *At this stage, granting of permission to give liberty to the defendant only to deposit the amount in terms of Order passed vide order dated 19.12.2025 will not serve any fruitful purpose to the defendant since the outcome of the same will no way effect the ultimate fate of the proceedings.*
>
> *In this regard, the citations relied upon by the defendant does not stand in his favour.*
>
> *Therefore, upon careful scrutiny of the materials on record, it is found that since there is admitted delay on the part of defendant to comply the provisions of Section 7(1) of the West Bengal Premises Tenancy Act 1997 and considering the settled law as discussed above and in view of solemn Judgement of the Apex Court, I find that tenant/defendant has no scope to take recourse of Section 151 of C.P.C and that there is also no scope for the Court to entertain the petition u/s 151 of C.P Code filed by the*

defendant praying for permission for deposit of admitted rent as well as current rent at this stage after the period of limitation is over, since if the same is permitted, it would defeat the express provisions of statutory law."

9. Subsequently, by an order dated February 23, 2026, the learned Trial Court "*rejected"* the petitioner's written statement by observing that the same had become *"unnecessary and redundant"* in view of the order dated January 16, 2026.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

10. Learned advocate appearing for the petitioner submits that the order impugned is clearly erroneous inasmuch as, the learned Trial Court has failed to appreciate that there was no admission as regards any arrear of rent.

11. Learned Counsel has taken the Court through the application under Sections 7(1) and 7(2) of the 1997 Act and asserted that the petitioner has clearly averred therein that he intended to deposit rent in respect of the suit premises *"without prejudice to his rights and contention"* and *"for better precaution"*.

12. It is next submitted that since the "*rate of and realisation of rent*" were disputed by the petitioner and he had already filed an application under Section 7(2) of the 1997 Act raising such dispute, therefore, the learned Trial Court had no jurisdiction to strike out the petitioner's defence under Section 7(3) of the 1997 Act without first adjudicating upon the said application under Section 7(2) of the 1997 Act.

13. In support of his contention, he relies on a judgment of the Hon'ble Division Bench of this Court in ***Syed Khawaja Moin & Another vs. Md. Safi Alam***[1].

14. It is further submitted that in any case and at any rate, the petitioner was absolutely within time insofar as the deposit of current rate of rent is concerned. Learned Counsel further submits that in terms of the provisions of Section 7 (1) of the 1997 Act, the current rent for a given month can be deposited within fifteenth day of the succeeding month and that being so the petitioner was absolutely within time in his attempt to deposit the rent for the month of December 2025 on January 07, 2026.

15. He next relies on a judgment of the Hon'ble Supreme Court in the case ***Pawan Kumar Agarwal vs. Parbati Chorone Roquitte***[2] to explain the context thereof. He has also placed the judgment of this Court in the case of ***Sri Parbati Chorone Roquitte vs. Sri Pawan Agarwal***[3] to demonstrate the factual background of that matter.

16. It is submitted in the said case; the tenant had made short deposits as regards the current rents and the learned Trial Court had on the tenant's application permitted him to deposit the balance amount of rent (i.e. the differential sum) for the disputed period upon holding that the tenant had no intentional laches on his part. The learned Trial Court had rejected the application under Section 7(3) of the 1997 Act filed by the landlord. Upon a challenge being thrown to the said order of the learned Trial Court by the landlord, this Court had set aside the said order and struck out the defence

[1] F.M.A. No. 800 of 2024, decided on August 26, 2025
[2] SLP Appeal (C) No. 12258 of 2024, decided on July 15, 2024
[3] CO 3357 of 2023, decided on April 18, 2024

of the tenant. The matter was carried to the Hon'ble Supreme Court and ultimately the Hon'ble Supreme Court permitted the tenant to be heard on merits in the ejectment suit filed by the landlord.

17. Learned Counsel therefore asserts that the order dated January 16, 2026 striking out the petitioner's defence which has been impugned in CO 369 of 2026 should be set aside.

18. The learned advocate appearing for the petitioner further submits that since the order dated February 23, 2026 that has been assailed in CO 1048 of 2026 is consequential in nature inasmuch as it is based on the previous order dated January 16, 2026 which demonstrably suffers from grave jurisdictional errors, therefore, the same also deserves to be set aside.

SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY:

19. Learned advocate appearing for the opposite party, submits that the petitioner's assertion that there was no admitted arrear is thoroughly misconceived. He invites the attention of the Court to the prayer made by the petitioner, in his application under Section 7(1) of the 1997 Act and submits that in the said application, the petitioner had clearly prayed for permission to deposit rent for the month of November, 2022 to November, 2025 together with statutory interest aggregating to Rs. 162800/- (arrear rent Rs. 148000/- + statutory Interest Rs. 14800/-) and current rent for the month of December, 2025 @ Rs. 4000/- per month according to English Calendar in Court to the credit of the Plaintiff.

20. It is further submitted that on such petition, the learned Trial Court permitted the petitioner to pay or deposit the admitted arrear of rent as prayed for.

21. He relies on a judgment of the Hon'ble Supreme Court in the case of ***Seventh Day Adventist Senior Secondary School vs. Ismat Ahmed & Others***[4] and submits that the petitioner's application under Section 7(2) of the 1997 Act could be entertained only if the petitioner had satisfied the mandatory requirements of Section 7(1) of the 1997 Act.

ANALYSIS & DECISION:

22. Having heard the learned advocates appearing for the respective parties and considered the material on record, this Court is unable to accept the petitioner's contention that his case did not (does not) involve admitted arrears. The reasons therefor are as follows:-

a. While it is true that the petitioner has mentioned in his application under Section 7(1) of the 1997 Act that he intends to deposit rent in respect of the tenancy *"without prejudice to his rights and contentions and for better precaution",* yet the same cannot be read in isolation of the other averments in the said application. There is no averment in the said application that the petitioner is not a defaulter at all or that there is no arrear of rent payable by the petitioner at all. In fact, in paragraph 6 of the said application, the petitioner has stated thus:-

> *".....The Defendant on good faith continued to pay such rent @ Rs. 4000/- p.m. to the Plaintiff till the month of April, 2025 in the Dairy maintained by the Plaintiff, after which the Plaintiff refused to accept rent."*

b. There is nothing in the pleadings to indicate that anything was paid subsequent to April, 2025. In such a situation, it could not have been the case of the defendant/petitioner that there was no arrear of rent at all. Of course, there could be a dispute as regards the quantum of arrears.

[4] 2025 SCC OnLine 1696

c. Looked at from that perspective, the expression, *"without prejudice to his rights and contentions and for better precaution"* may at best only qualify the aspect that the deposit that the petitioner intended to make was not final and would be subject to the determination under Section 7(2) of the 1997 Act but then once there is any arrear of rent and such arrear is admitted (whether expressly or impliedly) then even if a dispute as regards the rate of rent and the amount of rent arrears is raised, the determination thereof under Section 7(2) of the 1997 Act would be done only if the mandatory conditions mentioned in Section 7(1) of the 1997 Act are complied with.

d. The order dated December 19, 2025 passed by the learned Trial Court on the petitioner's application and the petitioner's acceptance thereof, taken cumulatively, lead to the solitary conclusion that the petitioner's case was one of admitted arrears. To be specific, the said order records as follows:-

> *"By the instant petition defendant has prayed for permission to deposit the current rent commencing from the month of December, 2025 as well as admitted arrear of rent on the grounds stated therein."*

e. By the order dated December 19, 2025, the learned Trial Court permitted the defendant/tenant *"to pay/deposit the admitted arrear of rent as prayed for"*. The said order has been accepted by the petitioner. No challenge was ever thrown or has been thrown to such order. In fact even in the application under Section 151 of the Code, filed by the petitioner before the learned Trial Court, there is no indication that the petitioner had never admitted that there was any arrear of rent. In the said application the petitioner has prayed for as follows as:-

"Under the aforesaid circumstances, it is humbly prayed before Your Honour to direct the department to receive the current and arrear rent pursuant to the order dated 19.12.2025 and/or to pass other order or orders as Your Honour may deem fit and proper."

f. That apart and most significantly, in paragraph 3 of the application under Article 227 of the Constitution of India being CO 369 of 2026 (which is being presently decided along with CO 1048 of 2026), the petitioner has averred as follows:-

"3. Your petitioner states that accordingly your petitioner approached the concerned department of Small Causes Court at Calcutta to deposit the current monthly rents and the admitted arrear rents as per the order dated December 19, 2025, but unfortunately the concerned department refused to accept the same stating the same is time barred....."

(Emphasis supplied)

23. This Court is therefore unable to accept that there was no admitted arrear at all that was required to be deposited in terms of Section 7(1) of the 1997 Act by the petitioner. Once it is concluded that there was an admitted arrear, then it would become incumbent on the tenant to deposit the same in terms of the mandate of Section 7(1) of the 1997 Act. The said provision neither admits any exception nor permits any extension.

24. As regards the petitioner's assertion that his defence could not have been struck out prior to the determination of his application under Section 7(2) of the 1997 Act, the same too lacks appeal.

25. In the case at hand the landlord-tenant relationship has not been disputed at all in the application filed by the petitioner under Section 7(2) of the 1997 Act. As already indicated hereinabove, whether it is the rate of rent, the amount due, or both that are disputed, whatever amount the tenant believes

to be due constitutes the admitted rent and must be deposited within the time mentioned in Section 7(1) to avert striking out of defence. The tenant cannot simply refuse to pay anything; they must deposit the rent at the rate they believe to be true, which stands admitted by implication. If a tenant even impliedly admits that rent is due, but disputes the rate and the amount, then also the tenant has to deposit the rent which stands impliedly admitted for a given period at the rate the tenant believes to be true.

26. Since the mandatory requirements of Section 7(1) of the 1997 Act had not been complied with in the instant case, the petitioner's application under Section 7(2) had in a sense become a non-starter. If the mandatory conditions of Section 7(1) of the 1997 Act are not fulfilled then the provisions of Section 7(3) would immediately take effect.

27. In ***Seventh Day Adventist Senior Secondary School*** (supra), the Hon'ble Supreme Court has categorically held that an application under Section 7(2) of the 1997 Act can possibly be entertained only upon the conditions mentioned in Section 7(1) of the 1997 Act being fulfilled. In such context, the following paragraphs of the said judgment may be noted:-

> *"**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."

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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."*

(Emphasis supplied)

28. Insofar as the judgment of the Hon'ble Division Bench of this Court in the case of ***Syed Khawaja Moin & Another*** (supra) is concerned, the same cannot come to the rescue of the petitioner inasmuch as the said judgment was rendered in a case where there was a dispute as regards the landlord tenant relationship itself, which is clearly not the case here. If a dispute as

regards the relationship of landlord and tenant is raised, such dispute goes to the root of the matter and in such cases, a person would neither be required to deposit any rent nor to file any application under Section 7(1) of the 1997 Act. The 1997 Act governs landlords and tenants and would obviously not take within its fold matters beyond the pail of landlord- tenant relationship. Paragraphs 40 ad 41 of the said judgment deserve notice in such context:-

> *"**40.** On such score, which was the very basis of the Division Bench judgment, the language of Sections 17 of the earlier statute and that of Section 7 of the current statute do not differ, since both use the expression "tenant" and not "defendant". If a defendant takes a stand, under either the 1956 Act or the 1997 Act, that he is not a "tenant" at all under the plaintiff, it is open to him to take the risk of not filing even an application under Section 7(2) of the 1997 Act or Section 17(2) of the 1956 Act, but simply raise the dispute as to landlord-tenant relationship. In such case, both as per Synthetic Plywood Industries (P) Ltd. (supra) and M/s. Calcutta Bonemiles & Fertilisers (P) Ltd. (supra), it would be the incumbent obligation of the court, before striking out the defence, to decide the landlord-tenant relationship prior to such striking out of defence. It has to be kept in mind that although the 1997 Act would govern the inter se relationship between the Thika tenant and the Bharatia, there is a qualitative difference between a "landlord" and "tenant" under the 1997 Act and a "Thika tenant" and a "Bharatia" under the 2001 Act, since in the two cases, the forum deciding the eviction suit would be different.*
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> ***41.** Section 7(3) of the 1997 Act also uses the language "tenant", on whose failure to comply with sub-sections (1) or (2) of Section 7, the rigour of Section 7(3) would follow and the defence against delivery of possession would be struck out. However, if the defendant takes a stand that he is not a "tenant" under the 1997 Act at all and such objection is upheld by the court, the penalty of striking out of the defence would not follow as well. This makes it mandatory for the court, even at the stage of passing an order under Section 7(3), to decide the issue of landlord tenant relationship prior to striking out the defence of the defendant. Such aspect neither fell for consideration nor was decided by the Supreme Court in the judgment of Seventh Day Adventist Senior Secondary School (supra)."*

29. Insofar as the decision of the Hon'ble Supreme Court in the case of ***Pawan Kumar Agarwal*** (supra) is concerned, the said judgment was rendered in the peculiar facts of the case which are absolutely different from the facts of this case.

30. Furthermore, while the Hon'ble Supreme Court can pass appropriate orders under Article 142 of the Constitution of India to do complete justice based on the peculiar facts or the special facts of a case, such authority is not available to this Court. In such context, the following observations of the Hon'ble Supreme Court in the case of ***State of Punjab & Others vs. Surinder Kumar & Others***[5] deserve notice:-

> "***6.*** *A decision is available as a precedent only if it decides a question of law. The respondents are, therefore, not entitled to rely upon an order of this Court which directs a temporary employee to be regularised in his service without assigning reasons. It has to be presumed that for special grounds which must have been available to the temporary employees in those cases, they were entitled to the relief granted. Merely because grounds are not mentioned in a judgment of this Court, it cannot be understood to have been passed without an adequate legal basis therefor. On the question of the requirement to assign reasons for an order, a distinction has to be kept in mind between a court whose judgment is not subject to further appeal and other courts. One of the main reasons for disclosing and discussing the grounds in support of a judgment is to enable a higher court to examine the same in case of a challenge. It is, of course, desirable to assign reasons for every order or judgment, but the requirement is not imperative in the case of this Court. It is, therefore, futile to suggest that if this Court has issued an order which apparently seems to be similar to the impugned order, the High Court can also do so. There is still another reason why the High Court cannot be equated with this Court. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter pending before it", which authority the High Court does not enjoy. The jurisdiction of the High Court, while dealing with a writ petition, is circumscribed by the limitations discussed and declared by the judicial*

[5] (1992) 1 SCC 489

decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge."

(Emphasis supplied)

31. Since the petitioner's defence was liable to be struck out due to non-deposit of the admitted arrears as already indicated hereinabove, therefore, any direction/permission to deposit the current rent, merely because the current rent was attempted to be deposited within time would not have saved the petitioner's defence in any case. In such view of the matter, this Court does not find any error in the conclusion reached by the learned Trial Court on the aspect of current rent as well.

32. It is noticed from the recording of facts in the order impugned dated January 16, 2026 that the petitioner was served with summons on November 20, 2025 yet, he entered appearance only on December 19, 2025. In terms of the provisions of Section 7(1) of the 1997 Act the petitioner was required to deposit the admitted arrears with interest within or by December 20, 2025 yet, the petitioner approached the relevant department for making such deposit only on January 07, 2026.

33. For all the reasons aforesaid, the learned Trial Court cannot be said to have either assumed jurisdiction which it did not have or to have failed to exercise jurisdiction which it had, or having exercised its jurisdiction in a perverse manner while passing the order dated January 16, 2026 thereby rejecting the petitioner's application under Section 7(2) of the 1997 Act and invoking the provisions of Section 7(3) of the 1997 Act.

34. Once the defence of a defendant-tenant is struck out under Section 7(3) of the 1997 Act, the right of such tenant to file written statement would stand

forfeited and in such view of the matter, the order dated February 23, 2026 by which the written statement that had been filed by the petitioner has been rejected upon holding the same to be *"unnecessary and redundant"* also cannot be said to suffer from any jurisdictional error.

35. For the aforesaid reasons, no interference is called for with any of the orders impugned.

36. As submitted by the learned advocate appearing for the opposite party it is recorded that in terms of the law laid down by the Hon'ble Supreme Court in the case of ***Modula India vs. Kamakshya Singh Deo***[6] notwithstanding the striking out of the petitioner's defence, the petitioner shall have the right to cross-examine the plaintiff's witness.

37. With the above observations, CO 369 of 2026 and CO 1048 of 2026 stand **dismissed**.

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

(Om Narayan Rai, J.)

D/L
Sl- 07 & 13
Samar, AR (Crt.)

[6] AIR 1989 SC 162