

Form No. J (1)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

Present:

The Hon'ble Justice Biswajit Basu.

C.O. 1640 OF 2020

**SUDHANSHU SAHA
VS.
RAMKRISHNA PODDAR**

+

C.O. 1641 OF 2020

**SUDHANSHU SAHA
VS.
SRIKRISHNA @ PALTON PODDAR**

+

C.O. 1642 OF 2020

**SUDHANSHU SAHA
VS.
ASHOKE PRAMANICK**

For the petitioner : Mr. Angshuman Chakraborty,
Mr. Shivaji Mitra.

For the opposite parties : Mr. Sanajit Kr. Ghosh,
Mr. I.A. Mina
Mr. Madhusudan Mukhopadhyay.

Heard on : 08.02.2021

Judgement on : 25.02.2021

Biswajit Basu, J.

1. The petitioner is the plaintiff of all the suits connected with these three revisional applications. C.O. 1640 of 2020 is arising out of Title Suit No. 72779 of 2017, C.O. 1641 of 2020 is arising out of Title Suit No.72792 of 2017 and C.O. 1642 of 2020 is arising out of Title Suit No. 72828 of 2017. The said suits are pending before the 2nd Court of learned Civil Judge (Junior Division) Serampore, District-Hooghly.

2. The revisional applications are taken up for analogous hearing and disposal since a common question arises in these matters as to whether judgment on admission under Order XII Rule 6 of the Code of Civil Procedure can be passed in the aforementioned connected suits.

3. The petitioner is seeking eviction of the defendant of the respective suits from the suit property on the ground that since five years have elapsed after the death of the original tenants the defendants have become trespassers by the operation of Section 2(g) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act' in short), as such they are liable to be evicted from the suit property.

4. The petitioner in all the three connected suits sought judgment on admission under Order XII Rule 6 of the Code of Civil Procedure (hereinafter referred to as 'the Code') contending that the defendants in paragraph 6 of their respective written statement have admitted the date of the death of the original

tenants and from the said date five years have elapsed, as such the suits may be decreed on admission.

5. The learned Trial Judge by orders impugned in the present revisional applications, all dated September 30, 2020 passed in the said suits, has refused to pass such a decree holding inter alia that it appears from the materials on record that the rival pleadings of the parties proposes grounds involving various questions of law and facts which are required to be decided on merit on the basis of evidences to be adduced by the parties during the trial.

6. The learned advocate for the petitioner submits that the defendants automatically have become trespassers in the suit property on the expiry of five years after the date of death of the original tenants by virtue of Section 2(g) of the said Act and the expiry of the said period since has been admitted by the defendants the learned Trial Judge erred in law and fact in not passing the judgments on admission in the said suits.

7. He relying on the decision of the Supreme Court in the case of **KARAM KAPAH AND OTHERS VS. LAL CHAND PUBLIC CHARITABLE TRUST AND ANOTHER** reported in **(2010) 4 SCC 753** contends that the principles behind the Order XII Rule 6 of the Code are to give the plaintiff right to a speedy judgment and in doing so a judgment on admission can be passed not only on the application of a party but also the Court, on its own motion, can pass such a judgment by inferring admission from the facts and circumstances of the case. He next places reliance on the Division Bench judgment of this Court in

the case of **SRI UTPAL ROY AND ANR. VS. RATUL KRISHNA BANERJEE AND ANR.** reported in **(2017) 1 CLJ (Cal) 253** to contend that the claim of the defendants that they have paid rent to the erstwhile landlord is of no consequence since such payment neither create a tenancy nor can stop the landlord to contend that the tenancy ceased to exist by the operation of Section 2(g) of the said Act. He lastly submits that acceptance of rent after the expiry of the period of said five years by the erstwhile landlord would not alter the position and in support of his such contention places reliance on the Division Bench decision on this Court in the case of **SRI LALAN PRASHAD VS. SRI PARIMAL CHANDRA DAS** reported in **(2017) 3 WBLR (Cal) 107**.

8. The learned advocate for the opposite party in all the matters on the other hand placing reliance on the decision of the Hon'ble Supreme Court in the case of **UNION OF INDIA VS. IBRAHIM UDDIN AND ANR.** reported in **(2012) 8 SCC 148** argues that unless there is clear and unambiguous admission which is a relevant piece of evidence the provision of Order XII Rule 6 of the Code does not attract to pass a judgment on admission. He submits that from paragraph 6 of the written statement no admission can be gathered on the basis of which it can be held that the defendants are trespasses in the suit property, on the contrary, in the said paragraph the defendants have claimed that after the death of original tenant the erstwhile owner of the suit property treated the defendants as the tenants under him by accepting rent. Therefore, according to him, in absence of any clear, unambiguous admission the learned Trial Judge has rightly refused the prayer of the plaintiff. He places

reliance on the decision of the Hon'ble Supreme Court in the case of **S.M ASIF VS. VIRENDER KUMAR BAJAJ** reported in **(2015) 9 SCC 287** to contend that the power under Order XII Rule 6 of the Code is discretionary and cannot be claimed as a matter of right.

9. The learned advocate for the petitioner in reply to the aforesaid submission of the learned advocate for the opposite party submits that by virtue of second proviso appended to Section 2(g) of the said Act to create a fresh tenancy after the death of the original tenant a fresh written agreement is required for the heirs of the original tenant to continue as tenants in the said suit property but the defendants of the said suits, having failed to produce any such agreement, cannot claim creation of a new tenancy.

Heard learned advocate for the parties, perused the materials on record.

10. It is a settled position of law that that the principles behind Order XII Rule 6 of the Code are to give the plaintiff a right to speedy judgement as held by the Hon'ble Supreme Court in the case reported in **(2010) 4 SCC 753 (supra)** but it is an equally settled position of law that a judgment on admission under the said provision of the Code requires that such admission must be clear and unambiguous and whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case.

11. The plaintiff is trying to collect relevant admission from Paragraph 6 of the written statements of the connected suits. Let me now scrutinise the said paragraph of the said written statements to find out whether there is such clear and unambiguous admission of the defendants to attract the said provision of the Code for a judgment on admission.

12. The said paragraph 6 of the written statement filed in Title Suit No. 72779 of 2017 (Sudhangshu Saha vs. Ramkrishna Poddar) and in the Title Suit No. 72792 of 2017 (Sudhangshu Saha vs. Srikrishna @ Palton Poddar) are identical as such one of them is quoted below:-

“6. That the facts remain, that when the father of the defendant Joydeb Poddar used to posses the suit schedule property by running a Grocery shop and after the death of Joydeb Poddar in the year 1998 the present defendant became the tenant of the suit schedule property and accordingly the present defendant paid the rent to the legal heirs of Shyam Kishore Saha Roy upon the month of Falgoon 1423 B.S. but due to co-ordial relation the erstwhile landowners did not grant any rent receipt in favour of the defendant and thereafter the legal heirs of Shyam Kishore Saha Roy sent the letter of attornment, admitting the defendant as premises tenant in the schedule property and also requested to became direct tenant under the plaintiff, which was replied by the lawyer’s letter dated 18.04.2017 on behalf of the defendant by stating his intention to pay the rent to the plaintiff on rent receipt, but the plaintiff without complying the requirements of the aforesaid reply letter of the defendant, filed this instant suit by stating some false allegation and it is to be mentioned here that after the death of Joydeb Poddar, the answering defendant became the direct tenant of erstwhile landowners of the suit schedule property then the provision of W.B.P.T. Act, 1997 will not attract in the present Scenario of the case and for

which the defendant having appeared in this suit filed an application under Section 7(1) of W.B.P.T. Act for depositing admitted arrear rent along with the interest thereon and also filed another application under Section 7(2) of W.B.P.T. Act for determination of period of default, if any.”

13. The paragraph 6 of the written statement filed in Title Suit No. 72828 of 2017 (Sudhangshu Saha vs. Ashoke Pramanick) is little bit different which is also quoted below:-

“6. That the facts remain, when the father of the defendant Madhusudan Pramanik used to posses the suit schedule property by using the same as a Saloon and when the month of July, 1994 the father of the defendant died then this answering defendant became the direct tenant under the earst-while owners since the month of August, 1994 and using the suit schedule shop room by running T.V. Servicing Centre and now it is also using a Mobile Re-charge centre and accordingly this defendant used to pay rent to the legal heirs of Shyam Kishore Saha Roy upto the month of Falgoon, 1423 B.S. in hand, but due to co-ordial relation the legal heirs never granted any rent receipt to the defendant and for that reason when the legal heirs of Shyam Kishore Saha Roy sent a letter of attornment admitting the defendants as a monthly premises tenant and also requested to became a direct tenant under the plaintiff, which was replied by the Lawyer’s letter dated 18.04.2017 by stating the intention to pay the rent to the plaintiff on rent receipt but the plaintiff without complying the requirement of reply letter of the defendant filed this instant case, by stating some false allegation and it is to be mentioned here that the Madhu Sudan Pramanik died in the year 1994, which is long before the enactment of W.B.P.T. Act, 1997 as stated by the plaintiff and the defendant having appeared in this suit also filed application under Section 7(1) of the W.B.P.T. Act, for depositing the admitted arrear rent along with the interest thereon and also filed another application under Section 7(2) of the W.B.P.T. Act for determination of period of default, if any.”

14. In terms of Section 2(g) of the said Act which defines tenant, the following persons i.e. the spouse, son, daughter, parent and widow of the predeceased son who were ordinarily living with the deceased tenant up to the date of his death as the members of his family and were dependant on him and who do not own or occupy any residential premises are entitled to enjoy the said tenancy for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of the said Act, whichever is later, and in respect of premises let out for non-residential purposes the aforementioned heirs of the deceased tenant including a person authorised by the deceased tenant who is in possession of such premises shall be entitled to enjoy such tenancy for the said period. However, the first proviso thereof excludes applicability of the said period of five years for the spouse of the deceased tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependant on him and who does not own or occupy any residential premises.

15. The plaintiff is the transferee owner of the suit property. It appears from the above quoted paragraph 6 of the written statements that the defendants although are disclosing the date of death of the original tenants but they are claiming that after the death of the original tenant the erstwhile landlord accepted rent treating them as tenants under him but he did not issue rent receipts as he had a cordial relationship with the defendants. Therefore, a case

of creation of a fresh tenancy after the death of the original tenants has been sought to be made out in the above quoted paragraph 6 of the said written statements. Whether such new tenancies were created by the erstwhile owner of the suit property is required to be investigated in course of the trial of the suit on the basis of evidences to be adduced by the parties. In view of such a defence being taken by the defendants, the plaintiff cannot succeed in establishing the status of the defendants as trespassers in the suit property merely on the proof of expiry of five years after the death of original tenants by taking recourse of Section 2(g) of the said Act.

16. The second proviso appended to Section 2(g) of the said Act does not restrict creation of new tenancy only by written agreement as suggested by the learned advocate for the petitioner; the said proviso speaks about the preferential right of the heirs of the deceased tenant to succeed in case of creation of new tenancy, therefore the argument of the learned advocate for the petitioner, on this score, also fails.

17. The Division Bench decision of this Court in the case reported in **(2017) 3 WBLR (Cal) 107 (supra)** relied on by the learned advocate for the petitioner has no manner of application in the facts and circumstances of the present case inasmuch as in the said decision payment and acceptance of rent by the parties during the pendency of the suit has been held to be of no consequence but in the present case the situation is otherwise, the defendants are claiming to be the tenants of the suit property on the payment of rent to the erstwhile

owner of the suit property after the death of the original tenant. The other decision of the Division Bench of this Court in the case reported in **(2017) 1 CLJ (Cal) 253 (supra)** relied on by the learned advocate for the petitioner is no pointer to the issue involved in these revisional applications.

The orders impugned in these revisional applications, for the aforesaid reasons, do not call for any interference.

C.O. 1640 of 2020, C.O. 1641 of 2020 and C.O. 1642 of 2020 are dismissed. No order as to costs.

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

(BISWAJIT BASU, J.)