

01.08.2022

**ASR
11.**

**SAT 95 of 2022
With
CAN 1 of 2022
With
CAN 2 of 2022**

**Jaya Rani Prasad & Ors.
-versus-
Krishna Mukherjee & Ors.**

**Mr. Amal Krishna Saha
.....for the Appellants**

**Mr. Anyasha Das
.....for the respondents**

There is no merit in this Second Appeal.

No question of law far less a substantial question of law is raised.

Learned counsel for the appellants refers to the second proviso to Section 2(g) of the West Bengal Premises Tenancy Act, 1997.

Section 2(g) : “tenant” means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the

widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises and [in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family and were dependant on him or a person authorised by the tenant who is in possession of such premises,] but shall not include any person against whom any decree or order for eviction has been made by a court of competent jurisdiction :

Provided that the time limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises:

Provided further that the son, daughter, parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy and residential premises, shall have a right of preference for tenancy in a fresh agreement in

respect of such premises [or condition of payment of fair rent]. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.”

The second proviso gives post decreetal right to the heirs of the original tenant as described in the proviso to claim a preferential tenancy upon payment of fair rent in case the lessor wants to grant a fresh tenancy.

Learned counsel for the appellants submits that this option is being explored by the parties and that the appeal should be heard out on that point.

This is a right subsequent to the decree and has nothing to do with the decree. We find no infirmity in the impugned decree.

Considering the prayer made, we grant the appellants six months time to vacate the premises. Within this period negotiation arising out of any right arising out of the second proviso may be explored by the parties.

The appeal and the connected applications are disposed of by this order.

(I. P. Mukerji,J.)

(Subhendu Samanta,J)