

21.08.2023  
Sl. No.17(DL)  
srm

**C.O. No. 994 of 2023**

**M/s. Akarshan Projects Private Limited**

**Versus**

**Sri Rajendra Kumar Poddar**

Mr. Saptangsu Basu,  
Mr. Sourav Roy,  
Ms. Mrinalini Majumdar

...for the Petitioner.

The revisional application is directed against an order dated February 9, 2023 passed by the learned Civil Judge (Junior Division), 5<sup>th</sup> Court at Howrah, in Title Suit No.931 of 2020. By an application under Section 151 of the Code of Civil Procedure, the petitioner invited the court below to invoke inherent power to direct the defendant to produce Parameshwari Devi Lohia, the original tenant, on the basis of the pleadings in paragraph 12 of the written statement.

According to Mr. Basu, learned Senior Advocate appearing on behalf of the petitioner, the original tenant was dead. The persons in occupation were the heirs of the original tenant who did not have any right to remain in the premises after expiry of five years and decree of eviction should be passed under the provisions of Section 2(g) of the West Bengal Premises Tenancy Act, 1997. According to Mr. Basu, if the learned court below called for production of Parameshwari

Devi Lohia, the entire issue would stand at rest. Mr. Basu invited the Court to the pleadings in support of his contention.

This Court is of the view that the learned court rightly held that the controversy as to whether the Parameshwari Devi Lohia was alive or not was an issue to be decided and the factum of her death would only be evaluated upon evidence. It was for the plaintiff to prove that the original tenant had died and the persons in occupation were not protected in terms of Section 2(g) of the West Bengal Premises Tenancy Act.

Under such circumstances, the Court did not rule out the contention of Mr. Basu, but directed that it was a matter of evidence to be adduced by the parties. The plaintiff would have to prove the death of the original tenant first.

This Court does not find any reason to interfere with the order impugned. However, in the special facts and circumstances, this Court is of the view that as pleadings are over, the learned court shall take expeditious steps so that the suit may be disposed of within a period of six months from the next date fixed.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**