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

**F.A. 146 of 2005
With
F.A. 147 of 2005**

**Sambhu Nath Mitra & Anr.
Vs.
Khaitan Consultants Ltd.**

**Mr. Gopal Ghose
Ms. Shila Sarkar ... For the Appellants.**

**Mr. Dhruba Ghosh, Sr. Advocate
Mr. Mainak Bose
Mr. Gaurav Khaitan
Mr. Sachin Shukla For the Respondents.**

Mr. Dhruba Ghosh, learned senior advocate appearing for the respondents has handed over to this court a suggested order disposing of the appeals.

We have very carefully perused this draft order. It has also been examined by Mr. Gopal Ghose, learned advocate for the appellants.

On our part we endorse the said suggested order which is set out below:

“The abovementioned two appeals arise out of a common judgment and decree dated February 27, 2003 passed by the Learned City Civil Court at Calcutta disposing of two suits being TS 3099 of 1996 and TS 347 of 1997.

S.D.

Briefly the facts of the case are as follows:-

At all material times, one Prabhat Chandra De was a tenant under Emerald Co. Limited in respect of one room being Room 23 on the 3rd floor of the premises no. 1B Old Post Office Street Kolkata 700001 (hereinafter referred to as the suit premises).

By a Deed of Partnership dated May 1, 1966 a Solicitor Firm was constituted between the said Prabhat Chandra De and his son Prasanta Kumar De under the name and style of P.C. De & Co. Prabhat Chandra De died on March 19, 1978 whereupon Prasanta Kumar De by virtue of the provisions in the said Deed, became the sole proprietor of P.C. De & Co and continued as tenant in respect of the suit premises.

In terms of a registered Deed of Lease dated May 9, 1979 between the Emerald Co. Limited, the owner of the entire premises No. 1B, Old Post Office Street, Kolkata – 700 001, known as ‘Emerald House’ and Khaitan Consultants Limited (KCL), KCL became the lessee / landlord of the said entire premises, ‘Emerald House’.

After the execution of the said Deed of Lease, all the existing tenants, including Prasanta Kumar De,

attorned their tenancies in favour of KCL and started paying rent directly to KCL.

On or about May 4, 1996, the said Prasanta Kumar De surrendered the said tenancy to KCL, however KCL could only take possession of a portion of the said suit premises since the other portion thereof continued to be occupied by one Sambhunath De & Co a chartered accountant firm (which was started by Sambhunath De (the pre-deceased son of Prabhat Chandra De and husband of Sulata De) and presently being run by one Sambhunath Mitra (brother of Sulata De).

The said Sulata De thereafter filed TS No. 3099 of 1996 (Sulata De & Ors. Vs. Khaitan Consultants Ltd & Ors.) seeking a decree for declaration that she and her daughters (being the appellants herein) are tenants in common along with the other heirs of Late Prabhat Chandra De in respect of the suit premises under Khaitan Consultants Limited (i.e. KCL, the respondent no.1) and that the surrender of the tenancy of the suit premises by Prasanta Kumar De in favour of KCL is void, of no effect and not binding on the appellants.

KCL also filed a suit, being T.S. No. 347 (Khaitan Consultants Limited Vs. Sambhunath Mitra & Ors.)

seeking eviction of Sambhunath Mitra, Sulata De and others on the ground that they were trespassers.

The above two suits were disposed of by a common judgment and decree dated February 27, 2003, whereby the Learned City Civil Court Judge was pleased to dismiss the suit filed by Sulata De and decree the suit filed by KCL.

In the said judgment, the learned judge rejected the contentions raised by Sulata De and dismissed her suit, holding that the tenancy of Probhat Chandra De had been transferred to the partnership firm, P C De & Company and subsequently after his death, his son Prasant Kumar De became the sole tenant. The fact that rent had been duly paid to KCL was never disputed and as such Prasant Kumar De was entitled to surrender the tenancy. In fact, Sulata De herself had disclosed the rent receipts issued by KCL in the suit as Exhibits. The learned judge therefore held that at the surrender of tenancy by the tenant, the appellants herein became trespassers.

It was categorically held that KCL had been inducted as a lessee in the premises under the Registered Deed of Lease dated May 9, 1979 and after surrender the tenancy by Prasant Kumar De was entitled to vacant

possession.

Three appeals were preferred from the said decree, namely :- (i) FA No. 147 of 2005 (Sulata De & Ors Vs. KCL), (ii) FA No. 146 of 2005 (Sambhunath Mitra & Ors Vs. KCL) and (iii) FA No. 148 of 2005 (Anil Kanti Roy Chowdhury Vs. KCL). The third appeal was dismissed as not pressed earlier.

In the appeals it was contended that KCL was not entitled to claim itself as a landlord since no 'physical possession' of any portion was given to it in 1979. It is pertinent to note that on that basis the appeals had been earlier disposed of by an order dated April 1, 2005 but the same was set aside by the Hon'ble Supreme Court of India after a contested hearing by its order dated September 2, 2015 and the appeals were remanded for fresh hearing.

Inasmuch as KCL had been inducted by a registered lease dated 9 May 1979, the question of the physical possession of the property being further handed over to KCL was not essential requirement under Section 107 of the Transfer of Property Act. Moreover, at all material times the tenancy in question was attorned in favour of Khaitan Consultants Limited by the tenant, who even paid rent to KCL. In any event, by seeking a declaration that the appellants are a tenant under

KCL, they have admitted the right of KCL.

Further, according to KCL, after the West Bengal Premises Tenancy Act 1997 came into force, the *right of a tenant is subject to* the definition of “tenant” under section 2(g) of the said Act which states that no right vests on the heirs of the deceased original tenant after 5 years of death or after 5 years from coming into effect of WBPT Act, 1997 i.e. from 10 July 2001 as has been held by this court in the decisions reported at (2012) 2 CHN 56 (Prabir Kr Jalan Vs. Laxmi Narayan Jalan) as also in the case reported in 2017 SCC Online Cal 18807 (Sushil Kumar Jain Vs. Pilani Properties). Since Prabhat Chandra De expired in 1978 therefore, Sulata and her daughters cannot claim a vested right of tenancy after repeal of WBPT Act 1956 and coming into force of the WBPT Act, 1997.

In view of the aforesaid, the decree dated February 27, 2003 stands confirmed and it is held that Khaitan Consultants Limited is entitled to recover the vacant possession of the suit premises and the appellants in FA 146 of 2005 and FA 147 of 2005 are hereby directed to vacate the suit room and handover vacant and peaceful possession thereof to the respondent no.1 by December 31, 2024.

However, in case the Appellants hand over vacant and peaceful possession of the suit premises on or before October 31, 2024, the respondent no.1 shall waive its claim to mesne profits.

It is submitted that a sum of Rs. 6 lakh is lying deposited with the Registrar General of this Hon'ble Court. The appellants will be at liberty to withdraw the said amount and in addition thereto, the respondent no.1 will handover Rs. 36 lakhs to the appellants, provided the appellants hand over vacant and peaceful possession of the suit premises to the respondent no.1 on or before October 31, 2024. Further, the respondent no.1 will be at liberty to withdraw the original bank guarantee furnished by it under order dated 10 June 2022.

In case the appellants do not comply with the aforesaid direction, as they have undertaken to do so before this Hon'ble Court, Khaitan Consultants Limited will be liberty to take steps to enforce the said undertaking and decree and to recover physical possession of the suit premises in accordance with law.

In the circumstances, FA 146 of 2005 and FA 147 of 2005 are hereby dismissed and all applications stand disposed of. There will be no order as to costs".

Hence there will be a decree in terms of the

above suggested order binding on the parties and the Registrar General, High Court. The appeals (F.A. 146 of 2005 + F.A. 147 of 2005) are hereby disposed of.

The department is directed to draw up the decree expeditiously.

(I.P. Mukerji, J.)

(Biswaroop Chowdhury, J.)

