

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

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE MADHURESH PRASAD**

**FAT 413 of 2023
CAN 1 of 2023
M/s Rudra Collection & Anr.
Vs.
Swapan Kumar Dey**

Appearance:

For the Appellants : **Mr. Siddhartha Mitra, Adv.**

For the Respondent : **Mr. Surya Maity, Adv.**

Judgment On : **16.05.2024**

Harish Tandon, J.:

Though the application for stay was listed before us but the point urged by the Counsel for the appellant inculcated in as that the same being the pure question of law can be decided on the basis of the pleadings, evidence and the other materials forming part of the record of the Trial Court annexed to the said application and thus, we invited the Counsels to argue on the merit of the instant appeal.

The facts are more or less undisputed to the effect that the tenancy was created by the owner/landlord of the premises namely, Sunil Ranjan Das in favour of the predecessor-in-interest of the present appellant on the

basis of the tenancy agreement dated 30th October, 1973 in respect of a shop room measuring more or less 160 square feet on the ground floor of the premises No. P-244, CIT Road, Scheme VI M, PS – Phoolbagan, Kolkata – 700054 at a rental of Rs. 60/- payable according to English calendar. The tenancy agreement marked Exhibit-A in the suit would reveal that a monthly tenancy was created in favour of the predecessor-in-interest of the appellant namely, Sri Kishore Khanna in respect of a suit premises for retail shop and manufacture of cleaning/soap powder without installing any heavy machinery thereat. The terms and conditions embodied in the said tenancy agreement leaves no ambiguity in the mind that it is a non-residential tenancy. The plaintiff/respondent categorically asserted that the said Sudhir Ranjan Das, since deceased became the owner of the suit premises after separation thereof on the basis of a deed of partition dated 27.09.1962 from the other co-owner and expired on 06.11.1997. During his lifetime the said Sudhir Ranjan Das made and published his last Will dated 07.10.1988 appointing one Durgapada Dey as an executor to the said Will. The said Sunil Ranjan Das bequeathed the entire property unto and in favour of the plaintiff/respondent. The said Will was duly probated before the Court of law and upon a grant of probate, the deed of assent was executed and registered on 07.04.2010 by the executor in favour of the sole beneficiary i.e., the plaintiff/respondent. Immediately after the probate having granted to the said Will and assent to the legacy accorded by the executor, the suit for recovery of possession against the present appellant was filed before the Court of Civil Judge, Senior Division at Sealdah which was registered as Title Suit no. 12 of 2014. Initially the suit was basically founded on the assertion that the appellants are a trespassers having

illegally occupying the suit premises but subsequently an amendment was brought by inserting Paragraph 12A to the plaint to the effect that after the death of the original tenant namely, Kishore Khanna died prior to coming in force of West Bengal Premises Tenancy Act, 1997, the status of the appellant, who intermeddles with the suit property, is nothing but a trespasser upon expiry of 5 years from the date of coming in force of the said Act. The meaningful reading of the written statement filed by the appellant would reveal that a defence was taken that after the expiration of the period of the original tenancy, the daughter of the testator accepted the appellant as a tenant and continued to receive the rent upon issuance of the rent receipts.

What is sought to be contended by the appellant is that on the death of the original tenant, a new tenancy was created by the daughter of the testator which diminished the concept of inheritance or in other words the rigour of the definition of “tenant” engrafted under Section 2(g) of the West Bengal Premises Tenancy Act, 1997 is not applicable.

On the basis of the aforesaid stands taken by the parties, the suit went for trial and the respective witnesses stood firm on their respective stands taken in the pleadings. The Trial Court decreed the suit solely on the ground that the definition of a “tenant” given under Section 2(g) of the said Act makes the appellant as trespasser after expiration of 5 years period reckoned from the date of coming in force of the said Act i.e., 10th July, 2001. It is further observed that the original tenant died on 5.6.1997 prior to coming in force of the said Act and, therefore, the present appellant lost

his right as a tenant in view of the restrictions imposed in the said definition incorporated in Section 2(g) of the said Act.

The Counsel for the appellant vociferously submits that initially the suit was instituted impleading one Manish Khanna as proprietor of the Appellant no. 1 when there was no existence of such person. It is arduously submitted that the original tenant died prior to coming in force of Act of 1997 containing a restriction of heritability of the tenancy right to a specified period which was conspicuously absent in the West Bengal Premises Tenancy Act, 1956 which was in vogue at the time of the death of the original tenant. He thus submits that the moment the right has vested on the basis of an Act applicable on the date of happening of a certain event, such vested right cannot be taken away by subsequent legislation. It is vehemently submitted that on the death of the original tenant, the rent was collected by the daughter of the testator by issuing the rent receipts in favour of the Appellant no. 2 which leads to an inescapable conclusion that a new tenancy was created in respect of a suit premises. It is further submitted that even if the Act of 1997 has its applicable in such situation, the definition of a “tenant” under Section 2(g) of the said Act protected the interest of a spouse of a deceased tenant till her lifetime and, therefore, the suit of recovery of possession against the present appellants is not maintainable. The Counsel for the appellant further submits that an application under Section 151 of the Code of Civil Procedure was filed, immediately after noticing that the evidence of the defendant was closed and the suit was fixed for argument, for permitting the appellant to bring the mother of the Appellant no. 2 as witness to corroborate the rent receipts

issued by the daughter of the testator which was illegally and wrongfully dismissed by the Trial Court and, therefore, such order is required to be recalled. He thus submits that upon payment and acceptance of rent by the daughter of the testator, a tenancy was created in favour of the mother of the original tenant which would prove that there is no *jural* relationship of landlord and tenant between the parties to the suit. He further submits that the Trial Court relied upon a judgment rendered in case of a recovery of possession against the licensee which has no manner of applicability in the instant case and, therefore, the impugned judgment and decree warrants interference.

Per contra, the Counsel for the respondent submits that the daughter of the testator has no right, title and interest in respect of a suit premises in view of the probate having granted by the Competent Court and, therefore, acceptance of the rent and issuance of the rent receipts does not create any right in favour of the appellant. It is further submitted that the tenancy originally stood in the name of the father of the Appellant no. 2, who admittedly died before coming in force of Act of 1997 and in view of the restrictive heritability of the tenancy right, the appellant cannot claim any tenancy right in respect of the premises and there is no illegality in treating them as trespasser. It is further submitted that the factum of the death of the original tenant was not within the knowledge of the plaintiff/respondent but the moment the same is disclosed in the written statement, an amendment was sought by incorporating Paragraph 12A in the plaint which was eventually allowed and the parties went in trial on the basis thereof. It is thus submitted that the heirs of the original tenant cannot be regarded as

a tenant after the expiration of 5 years from the date of coming in force of the 1997 Act and, therefore, the suit for recovery of possession on such ground is maintainable. He arduously submits that the definition of a “tenant” given under the Section 2(g) of the 1997 Act does not include spouse within its folds in case of a non-residential tenancy as held by a Co-ordinate Bench of this Court in ***Sri Sunil Kumar Jain & Ors. Vs. Pilani Properties Ltd. reported in (2018) 1 CHN 396*** and ***Nasima Naqi vs. Todi Tea Company Ltd. & Ors. reported in (2019) 1 CHN 348***. He thus submits that the appeal should be dismissed.

On the conspectus of the aforesaid arguments advanced before us and the facts discerned from the record, the seminal points involved in the instant appeal are whether the spouse of a deceased is regarded as a tenant during her lifetime in respect of a non-residential tenancy and whether the payment and acceptance of rent by the spouse or the appellants to the daughter of the testator creates a valid tenancy afresh when such daughter is excluded to inherit the property in the Will executed by her father and duly probated by the Competent Court.

Before we proceed to travel on the peripheral of the aforesaid points, it would be profitable and relevant to quote the definition of the “landlord” and the “tenant” engrafted under Section 2(c) and 2(g) of the West Bengal Premises Tenancy Act, 1997 which reads thus:

“2(c). “landlord” includes any person who, for the time being, is receiving, or is entitled to receive, the rent for any premises, whether on his own account or on account of, or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant.

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 any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises [on condition of payment of fair rent]. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.”

A prelude to the promulgation of the West Bengal Premises Tenancy Act, 1997 is required to be recapitulated in order to ascertain the intention

of the legislators prior to the promulgation of 1997 Act. West Bengal Premises Tenancy Act, 1956 was in vogue and there is no misnomer in the sense that both the Acts aimed to provide for regulation of certain incidents of tenancy of a premises in Kolkata, Howrah and other areas within the State of West Bengal. The definition of “landlord” and “tenant” under Section 2(d) and 2(h) in 1956 Act has undergone a radical change in the definition given for a landlord and a tenant under the 1997 Act. So far as the definition of a landlord given under the aforesaid two Acts are concerned, there is no ambiguity in our mind that it is expansive, and of wide import the definition engrafted under 1956 Act in relation to a landlord includes any person who is entitled to receive rent of any premises for the time being whether or not on his own account but for a special contract. The definition of a “landlord” under 1997 Act is seemingly includes any person who is receiving the rent or is entitled to receive the rent for any premises if the premises is let out to a tenant. Ordinarily, the relationship of landlord and tenant arises as a rule on conferment of right to exclusive possession of the premises conferred by one person to another either for a specified period or on yearly, quarterly or monthly basis. It is a trite law that the Court should not adopt the general or grammatical meaning of a word borrowed from the dictionary or the lexicon if the said word is defined in the Act or the statute. The court shall adopt the same meaning or definition wherever the said word or the expressions are used in the same statute and avoid the import of external aid. The tenancy has not been defined in either of the statutes as above and for the purpose of ascertaining the meaning thereof the external aid can be resorted to. The concept of tenancy derives its origin not only from the common law but under the general law prevalent in the country.

Prior to the rent control legislation the landlord who was called a lessor used to give his property or the portion thereof for use and enjoyment to another person in lieu of consideration. There is no difficulty in ascertaining the concept of tenancy in the perspective of letting out from Section 105 of Transfer of Property Act which in unequivocal terms postulates that in the event one person part with possession of a property or a portion thereof with the another person for use and enjoyment thereof in lieu of a consideration in various forms, it may be regarded as a lease. The only distinction between a lease and a tenancy is that the latter is brought within the protected umbrella against an eviction from the unscrupulous landlord. The rent control legislation is aimed to protect the incidents of tenancy and to regulate in order to avoid its precariousness as the tenant would be constantly under the threat of eviction without any grounds to exist. It is for such reasons, the rent control legislations are termed as the welfare legislation or beneficial piece of legislation. The avowed object underlying the incorporation of the rent control legislation can be reasonably construed as a protection afforded to the tenant from being evicted from the premises on mere notice of termination given by the landlord. In the backdrop of the above, it is a first and foremost duty of the Court to assign meaning of the words defined in the said Act so as to uphold the intention of the legislators and the avowed object behind the promulgation of the legislation. There is no incongruity in holding that the 1956 Act was a pro tenant Act, on the other hand, 1997 Act is promulgated to bring a equilibrium between the rights of the landlord and the tenant. Though the protection is still extended to the tenant against eviction except on the grounds enumerated in Section 6 of 1997 Act yet, the definition of a “tenant” given under Section 2(g) of the

said Act restricts the heritability to a specified period which was conspicuously absent in the definition of a tenant under 1956 Act. Though it has not been expressly argued by the appellant yet the import of the argument can be reasonably inferred to the effect that in absence of any restriction or the curtailment of right of inheritance in the tenancy under the 1956 Act, the moment the original tenant died, it creates a vested right into the heirs to step into the shoes of the said tenant as the tenancy is a heritable estate. It was so in 1956 Act but there is no fetter on the part of the legislators to restrict the inheritance of a tenancy in a subsequent legislation and, therefore, it cannot be regarded as an inviolable vested right nor the common notion prevalent in the legal parlance that once the right is vested, it cannot be divested, applied to the instant case. The support can be lent to the observation of the Co-ordinate Bench in **Sri Sushil Kumar Jain & Ors. (supra)** wherein the similar argument was discarded in the following:

“13. Though the present matter primarily hinges on the quantum of rent paid for the residential tenancy by the appellants herein or their predecessor-in-interest, the appellants insist that since the death of father K.C. Jain, the original tenant, in the year 2000 was anterior to the 1997 Act coming into effect on July 10, 2001, a right vested in the joint tenants under the 1956 Act which could not have been taken away by the 1997 Act. Such contention amounts to suggesting that when a rent control legislation creates or confers a right, it cannot be curtailed by a subsequent legislation. Such contention is exceptionable and cannot be countenanced. In a sense, the contention amounts to this : that if the original tenant died prior to the 1997 Act coming into force, the heirs of the original tenant who were covered by the definition of “tenant” in Section 2(h) of the 1956 Act would have to be regarded as original tenants within the meaning of the expression in Section 2(g) of the 1997 Act. Clearly, such an interpretation is impermissible and absurd.”

It leads to another interesting facet of the landlord defined under Section 2 (c) of the said Act by the use of the expression “any person who, for the time being, is receiving ---- the rent for any premises”, for the purpose of determining whether the rent collected by the daughter from the spouse of the deceased tenant. The legislators having used the word “or” in between “is receiving” and “is entitled to receive” has to be interpreted in harmonious way to bring any person within the ambit of definition of “landlord”. Though the expression “is receiving” is incorporated in the definition of a “landlord” in 1997 which was conspicuously absent in the definition of a “landlord” given in 1956 Act, it is to be seen whether a person having no semblance of right in respect of a premises can be regarded as a landlord. It is no gainsaying that the disjunctive words used in the statute conveys two different incidents and the existence of either of such incidents would satisfy such definition. It would not be preposterous to suggest that while interpreting the words or the expressions used in the statute, the foremost duty cast upon the Court is to harmonize the language used therein to avoid the absurdity and/or unworkability thereof. The Court must adopt interpretative tools to make the provision workable and not to render it otiose and/or redundant. It seems that the expression “is receiving” the rent for any premises is further qualified by the notion that such acceptance of the rent is either on his own account or an account of or on behalf of or for the benefit of any other person who would so receive the rent or be entitled to receive the rent if the premises is let out to a tenant. The expression “entitle” cannot be segregated even by the incorporation of the expression “is receiving” as it would invite an anomalous situation. The said word “entitle” pre-supposes some legal right in person for the time

being to receive the rent which cannot have any other reference except only to a person entitled to receive the same on the basis of his right to property. Generally, the word “landlord” implied the relationship with the tenant and the power is extended to any person claiming title consistent with the possession of the tenant. There may be a forensic battle between the definition of a “landlord” given under 1956 Act and 1997 Act but in order to give a purposeful meaning to it, the expression “is receiving rent” cannot be expanded to include a person having no title or a possession in respect of a property and for such reason the word “entitle” assumes great significance. Any other interpretation will bring the chaotic situation for example, the tenant continued to pay rent or tender the same to a person having no semblance of right, title or possession in respect of the premises would deny the claim of the landlord who possesses the aforesaid right. It would be more so, when a tenant is induced by a person in respect of a premises and surreptitiously stopped paying the rent to such landlord and tendered the rent to a person having no such right creating a bindle in the right of the rightful landlord to claim the *jural* relationship of landlord and tenant.

The point can be seen from another angle. The tenancy is created by a person in favour of another by parting with the exclusive possession and permitting the another person to use and enjoy the premises for a consideration which is called rent. Any person having a right to divest and confer such right is regarded as the landlord and the entitlement to receive rent is inherent and inbuilt in such right. Payment of rent to a person having no such right cannot constitute a *jural* relationship of landlord and tenant nor deprive a rightful person to receive rent from the tenant. Any

other interpretation given to the landlord shall be opposed to the legislative intent which the Court should avoid.

Reverting to the facts of the instant case admittedly the Sunil Ranjan Das inducted the father of the appellant no. 2 as a tenant in respect of the suit premises on the basis of the tenancy agreement dated 30th October, 1973. The Sunil Ranjan Das, the original owner made and published his last Will which was duly probated whereby and whereunder the entire property which comprised of the suit premises was bequeathed to the plaintiff/respondent. The testator deprived the daughter to inherit his estate and therefore, the acceptance of rent by the daughter cannot be said to be a valid tender of rent as she has no semblance of right, title and interest in respect of the estate of her father. The execution and registration of deed of assent perfected the title of a legatee under the said Will which in fact, has been done in the instant case. There is no iota piece of evidence forthcoming in the instant case that the said daughter either filed caveat and raised objection to the grant of probate nor any attempt to the revoke said grant of probate is resorted to. In such view of the facts and the definition of a “landlord” having given in the 1997 Act the plaintiff/respondent is regarded as a landlord and entitled to receive the rent in respect of a suit premises. There is another fallacy in the stand of the appellant which can be reasonably seen from the pleadings as well as the evidence adduced by the respective parties. The appellant pleaded in the written statement as well as the additional written statement that after the death of the original tenant the rent receipt was issued in the name of the son and the document which is produced before the Court indicates that

the rent receipt was issued in the name of the spouse of the deceased tenant who is admittedly alive. The stand is sought to be prevaricated at the stage of an argument though the evidence adduced by the witness of the defendant speaks otherwise. We thus hold that the payment of rent to the daughter of the testator who had no semblance of right, title and interest in respect of the estate of the deceased does not create any new tenancy in respect of the suit premises.

As indicated above, the definition of a tenant in 1997 restricts the heritability of the tenancy into the heirs of the deceased for a specified time. The bare look of the definition of a “tenant” under Section 2 (g) of 1997 Act speaks volume on the restrictions imposed on inheritance of the tenancy right for a period of the 5 years from the date of death of the original tenant or from the date coming in force of the said Act. The intension is laudable to the effect that in the event, the tenant dies after 1997 Act coming to the force, the period of 5 years is restricted to the class or classes of persons enumerated therein with an avowed object to give a succour in finding out an alternative place. The question thus boils down, as involved in the instant case, is whether the period of 5 years enshrined in Section 2(g) of the Act applies to a non-residential tenancy as well. Though the enabling provision under Section 2(g) of the Act imbibed within itself both the residential and non-residential tenancies but whether such period of 5 years can be applied to a non-residential tenancies is a question to be considered and gone into in the instant case. Two provisos have been inserted in Section 2(g) of the said Act wherein the first proviso excludes the operation of the enabling provision so far as it relates to a cap of 5 years to the spouse

with the rider that such a spouse must ordinarily live with the tenant up to his death as a member of the family and dependent upon him and does not own or occupy any residential premises. The second proviso conferred a preferential right upon a specified classes of person with the rider as above for creating of tenancy upon execution of a fresh agreement on payment of fair rent. It further extends his operation to a premises let out for non-residential purpose *mutatis mutandis* to the premises let out for residential purpose. The dichotomy between the aforesaid two provisos was considered by a Co-ordinate Bench of this Court in **Nasima Naqi (supra)** and by an authoritative pronouncement, it is held that the first proviso which lifted the cap of 5 years in relation to a spouse is applicable to a residential tenancy and a non-residential tenancy has been kept outside the purview thereof in the following:

“17. In the light of what is apparent on a plain reading of the provision insofar as it is applicable in the present case, the appellant’s contention that the spouse of the deceased original tenant enjoys a special right does not hold. That is because the first proviso would not apply to any premises let out for non-residential purpose and, more importantly, the spouse of an original tenant has been conferred no right under the second proviso which applies to premises let out for non-residential purpose.

18. It is not necessary to try to comprehend the need for the distinction between the spouse of an original tenant in respect of premises let out for residential purpose and the spouse of an original tenant in respect of premises let out for non-residential purpose; and it is best to accept the legislative command for what it unambiguously provides for on a plain reading thereof. Thus, the spouse of an original tenant, which original tenant enjoyed protection under the Act of 1997, will continue to enjoy the protection under the statute in respect of residential premises, irrespective of

the number of years that may have passed after the death of the original tenant, as long as such spouse was ordinarily living with the original tenant till the original tenant's death as a member of the original tenant's family, such spouse was dependent on the original tenant and such spouse does not own or occupy any residential premises. On the other hand, it is only the children or the parents or the widow of predeceased sons of the original tenant who are given limited rights in respect of non-residential premises under the second proviso to Section 2(g) of the Act, subject to such persons fulfilling the same criteria : that they were ordinarily residing with the original tenant till the death of the original tenant as members of the family of the original tenant, that they were dependent on the original tenant and that they do not own or occupy any non-residential premises. For good or bad, the spouse of a deceased original tenant is not accorded such right under the second proviso.

19. It may be observed that this may be a colossal case of casus omissus. In the context of premises let out for residential purpose, both the provisos to Section 2(g) of the Act apply. Since the first proviso exclusively deals with the continuing rights of the spouse of an original tenant in respect of premises let out for residential purpose, subject to the conditions stipulated therein, the lesser rights conferred by the second proviso to the other heirs of an original tenant would be inapplicable in the case of the spouse. However, in the last sentence of the second proviso to Section 2(g) of the Act clearly specifying that it would be such proviso that would apply mutatis mutandis to premises let out for non-residential purpose, the operation of the first proviso is barred in respect of premises let out for non-residential purpose : thus, the case of the spouse may have been overlooked by the legislature in respect of premises let out for non-residential purpose. But such a huge omission is not corrected by judicial engineering of a statutory provision. If it is a mistake, it has to be left at that till such time that such perceived error is corrected by the legislature.

20. Classically, and particularly in respect of any beneficial legislation such as a rent control legislation, the court may be liberal in going by the intention of the statute to override the defects of its wording in a particular provision; but the court's authority to do so is restricted by recognised canons of interpretation. It is possible that in this case since the spouse of a deceased original tenant could not have been included in the second proviso to section 2 (g) of the Act in respect of premises let out for residential purpose, while making the second proviso applicable, *mutatis mutandis*, to premises let out for non-residential purpose, the State legislature may have overlooked that the case of the spouse in respect of premises let out for non-residential purpose was not included. This is why, the entire provision has been described earlier to be confusing and convoluted. There is also a legal principle as old as the hills that when out of more than one, the statute mentions only one, it necessarily implies that the others are excluded for that purpose. The Latin maxim is *expressio unius est exclusion alterius*, literally meaning, whatever has not been included has by implication been excluded. In the spouse of an original tenant being included in the substantive body of the provision and such spouse being excluded from the second proviso, the interpretation has per force to be that the spouse has not been conferred the right recognised in the second proviso. Further, in the use of the word "This" in the last sentence of the second proviso to Section 2 (g) of the Act, there is a clear intention to exclude the operation of the first proviso in respect of premises let out for non-residential purpose. In such circumstances, to introduce the case of the spouse in the second proviso in respect of premises let out for non-residential purpose would amount to judicial legislation, which is impermissible. For, if judges had the authority to expound on what was perceived to be the intention of the legislature without restricting themselves to the clear words of the statute, the judiciary may usurp the law-making function.

The judgment rendered by the Co-ordinate Bench binds another Co-ordinate Bench and any dissent is sought to be made, the proper course is referred to the matter to the Chief Justice for constituting the Larger Bench. We do not find any disagreement on the proposition of law lay down by the Co-ordinate Bench in ***Nasima Naqi (supra)*** that the spouse is not immuned from the Cap of 5 years on the death of original tenant in respect of non-residential tenancy. We thus find that the suit for recovery of possession in such form and manner after coming in force of the said Act is maintainable. In view of the discussion made hereinabove, the instant appeal sans merit and is hereby dismissed. The judgment and decree of the Trial Court is hereby affirmed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with the requisites formalities.

(Harish Tandon, J.)

I agree.

(Madhuresh Prasad, J.)