

IA No: GA 1 of 2024
APOT No. 21 of 2024
with
CS No. 173 of 2021
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

Pradip Kumar Jain
Versus
Amalgamated Fuels Limited

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 2nd July 2024

Appearance:
Mr. Rupak Ghosh, Advocate
Mr. Debdut Mukherjee, Advocate
Mr. Vivek Basu, Advocate
Mr. Aditya Kanodia, Advocate
Ms. Shreya Trivedi, Advocate
for the appellant

Mr. Debnath Ghosh, Advocate
Mr. Avinash Kankani, Advocate
Mr. Sarosij Dasgupta, Advocate
Mr. Suman Majumder, Advocate
for the respondent

The Court: This is an appeal from an order of a learned single judge dismissing the application of the appellant/defendant under Order VII Rule 11 of the Civil Procedure Code.

The following controversies between the parties have arisen in this appeal.

The suit of the respondent/plaintiff was founded on alleged determination of a monthly lease under Section 106 of the Transfer of Property Act, 1882 and consequential claim for mesne profits from the date of such alleged determination.

According to the appellant/defendant, the tenancy was wholly covered by the Rent Act i.e. West Bengal Premises and Tenancy Act, 1997; the purported determination of the lease under section 106 was invalid; the tenancy had to be terminated by a notice under section 6 of the Rent Act.

If the tenancy was covered by the Rent Act, assuming but not admitting the determination of the lease/tenancy, the appellant/defendant would continue as a statutory tenant till the decree. Mesne profit would be payable from the date of the decree. Hence the suit was grossly overvalued and not maintainable before this court.

In support of their case the respondent/plaintiff has taken up an application under Chapter XIII A of the Original Side Rules. It is pending.

In our opinion, hearing out of the appeal on the above issues would necessarily hold up the suit for an indefinite period of time. Some decision either way should be made in the shortest possible time.

We feel that the ends of justice would be subserved if the points taken in the Order VII Rule 11 application and in this appeal were allowed to be urged in the Chapter XIII A application and decided *prima facie* by the learned judge and also allowed to be raised as issues, preliminary or general at the discretion of the learned judge trying the suit.

We order accordingly.

The time to file the affidavit-in-opposition in the Chapter XIII A application is extended till 12th July 2024. Affidavit-in-reply may be filed by 22nd July 2024.

The learned judge may be requested to hear out the Chapter XIII A application as early as possible, at his lordship's convenience.

All points are kept open before the learned single judge, at the Chapter XIII A application and trial of the suit stages.

The appeal (APOT 21 of 2024) and the connected application (IA No: GA 1 of 2024) are disposed of.

(I. P. MUKERJI, J.)

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(BISWAROOP CHOWDHURY, J.)