

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

IA No: GA/2/2024
APO/54/2023

DEBONAIR VANIJYA PVT. LTD.
Versus
ESHRAT JAHAN ALSO KNOWN AS
ISHRAT JAHAN & ANR.

-And-
IA No: GA/3/2024
APO/54/2023

DEBONAIR VANIJYA PVT. LTD.
Versus
ESHRAT JAHAN ALSO KNOWN AS
ISHRAT JAHAN & ANR.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 21st August, 2024

Mr. Surajit Nath Mitra, Sr. Adv. with
Mr. Mehaboob Rahman,
Mr. Sankarsan Sarkar &
Mr. Shayak Mitra, Adv.
.... for the appellant

Mr. Shyamal Chakraborty with
Mr. Jayanta Kr. Dhar,
Mr. Debojyoti Mondal,
Ms. Manju Jaiswal &
Ms. Anjana Das, Adv.
.... for the respondents

In compliance with our order dated 30th July, 2024, the Registrar, Original Side tried to issue a notice to the respondent no.2. According to the report of the Registrar, Original Side dated 12th August, 2024, the papers were returned by the postal authority with the remark "Item Returned Addressee cannot be located".

The premises with which we are concerned is an area of 98 sq.ft. in the north-west corner of the ground floor of premises no. 2/1, Ho Chi Minh Sarani, Kolkata – 700 071. One Rahamatullah was the tenant of the said premises. He died on 12th July, 2006. According to the appellant, the tenancy was commercial in nature. They contended even assuming the respondents to be the dependants of Rahamatullah, it came to an end on 12th July, 2011 under section 2(g) of the West Bengal Premises Tenancy Act, 1997.

The instant suit (CS/43/2020) was instituted by the appellant/plaintiff for recovery of possession of the said premises from the respondents, the widow and daughter respectively of Rahamatullah. The plaintiff also claimed mesne profit of Rs.34,69,200/- from 12th July, 2011 to 30th November, 2019 according to the details set out in the plaint. Further mesne profit was claimed from 1st December, 2019 till recovery of possession.

The appellant/plaintiff took out the application (GA/2/2021) claiming inter alia interim mesne profits or occupation charges.

On 14th March, 2023, a learned single judge of this court dismissed this application.

From that judgement and order, the instant appeal (APO/54/2023) was preferred.

This division bench partly disposed of the appeal on 5th February, 2024, agreeing on the principles of law laid down in the judgement, but having some difference of opinion in relation to the monetary claim that the appellant/plaintiff could be entitled to. It appears that this matter has been referred to a third judge by the Hon'ble the Chief Justice and is pending before that bench.

In the meantime, the appellant/plaintiff discovered that the respondents had suppressed from them as well as from the court the fact that the respondent no.1, the widow of Rahamatullah, had died on 17th June, 2023.

Hence, this application to set aside the order dated 5th February, 2024.

Mr. Shyamal Chakraborty, learned advocate, who had been appearing for the respondents, submits that neither he nor his junior was informed by his client of the death of the respondent no.1 and that they have also not kept any contact with him after the judgement and order dated 5th February, 2024 was passed. He prays before us that he be allowed to retire from the matter.

Such prayer is allowed.

Assuming that the tenancy was commercial in nature as claimed by the appellant, the respondent no.1 could be recognised as a statutory tenant latest upto 12th July, 2011 and had become a trespasser from 13th July, 2011.

Even assuming the case of the respondents at the highest that Rahamatullah's tenancy was residential in nature, then also the tenancy survived as a statutory tenancy only upto 17th June, 2023, the date of her death. Therefore, the respondent no.2 was a trespasser from 18th June, 2023.

In the above admitted facts this court is in a position to hold that any tenancy which Rahamatullah possessed had come to an end and the respondent no.2 is a trespasser and liable to be evicted from the said premises.

In those circumstances this court, in exercise of its appellate jurisdiction, need not send the matter back to the trial court. It may proceed to pass an appropriate decree itself. We declare that the appellant/plaintiff is entitled to vacant and peaceful possession of the 98 sq.ft. in the north-west corner of the ground floor of premises no.2/1, Ho Chi Minh Sarani, Kolkata – 700 071 by eviction of the respondent no.2.

The suit is decreed accordingly.

The order dated 5th February, 2024 is reviewed and set aside.

The appeal (APO/54/2023) and the connected applications (IA No.GA/2/2024) and ((IA No.GA/3/2024) are disposed of.

The claim and all questions regarding mesne profits, costs in GA/3/2024 are kept open to be decided by the trial court.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)