

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

F.M.A. No.359 of 2025

+

CAN 1 of 2025

With

F.M.A. No.360 of 2025

+

CAN 1 of 2025

Charu Diesels LLP and Others

Vs.

M/s. E. L. Properties Private Limited and Others

For the appellants	:	Mr. Jishnu Chowdhury, Sr. Adv., Mr. Rajshree Kajaria, Mr. Satadeep Bhattacharyya, Mr. Uttam Sharma, Ms. Sreeparna Mitra, Ms. Vrinda Kedia
For the respondents	:	Mr. Suman Kr. Dutt, Sr. Adv., Mr. Aniruddha Chatterjee, Sr. Adv., Mr. Dwaipayan Basu Mallick, Mr. Arkaprava Sen, Mr. Sayantan Kar
Heard on	:	02.04.2025, 03.04.2025, 28.04.2025, 01.05.2025 and 01.05.2025
Hearing concluded on	:	01.05.2025
Judgment on	:	14.05.2025

Sabyasachi Bhattacharyya, J.:-

1. The present two appeals arise out of the grant of temporary injunction in two suits between the same parties which are being heard together in the court of first instance.
2. The issues involved in the suits are almost identical. The subject-matter of both the suits is a G+6 storied building situated at 225F, Acharya Jagadish Chandra Bose Road, Kolkata – 700 020 (earlier known as 225B and 225C, Lower Circular Road).
3. Title Suit No.1199 of 2024, from which F.M.A. No.359 of 2025 arises, pertains to premises situated on the 6th Floor of the said building, along with two car parking spaces on the ground floor, whereas Title Suit No.1200 of 2024, from which F.M.A. No.360 of 2025 arises, relates to premises on the 4th Floor of the said building, also along with two car parking spaces on the ground floor.
4. Both the suits have been filed by the respondent no.1, M/s. E.L. Properties Private Limited, for eviction of the defendant no.1/respondent no.2, the West Bengal Electronics Industry Development Corporation Limited, “WIL Division”. It may be noted that the defendant no.6 in both the suits, being proforma respondent no.3 in the appeals, is the West Bengal Electronics Industry Development Corporation Limited (for short, “WEBEL”). Although the suits have been filed against defendant no.1, the said defendant is merely a division of the defendant no.6-WEBEL. Hence, defendant no.1 is not an independent entity in itself as such, but only a division of defendant

no.6. Thus, the eviction suit is, for all practical purposes, against both defendant nos. 6 and 1. For convenience, we shall refer to the said defendants jointly as 'WEBEL'.

5. The timelines of both the suits are mostly common, with there being minor deviations in-between. The said differences are shown by a bifurcation in the timeline which we give below:

<u>Dates</u>	<u>Events</u>
January 7, 1961	A registered lease deed was executed by one Thakur Shree Shree Jagannath Jew Trust Estate (for short, "the Trust"), the original owner of the entire property, in favour of Orient Properties Private Limited (now known as 'Orient Beverages Limited'); for short, "Orient". The said lease, commencing from May 12, 1961, was for a period of 58 years, ending on May 11, 2019.
September 14, 1970	Orient executed a registered deed of sub-lease with the consent of the owner in favour of one Ram Narayan Gourisariya for a period of 47 years starting from September 1, 1970 and culminating on August 31, 2017.
May 25, 1972	A registered sub-lease was executed by R.N. Gourisariya to the plaintiff (E.L.), the respondent no.1 herein, for a period of 45

		years from February 10, 1972 till February 9, 2017.	
F.M.A. No.359 of 2025		F.M.A. No.360 of 2025	
December 1, 1981	Plaintiff-E.L. inducted Sun Enterprises as monthly tenant.	--	Andrew Yule inducted as lessee.
--	Sun Enterprises inducted WEBEL as sub-tenant.	April 1, 2004	WEBEL was inducted by plaintiff-E.L. directly as a sub-tenant by a letter of tenancy dated February 16, 2004.
December 1, 1996	WEBEL became direct tenant under plaintiff/E.L.		
February 9, 2017		The plaintiff's sub-lease expired by efflux of time.	
May 11, 2019		The head-lease (given by the owner/Trust to Orient) expired by efflux of time.	
February 6, 2020		The owner-Trust executed a registered deed of lease in favour of the appellants (defendant nos.2 to 5 in the suit) till the year 2029.	
F.M.A. No.359 of 2025		F.M.A. No.360 of 2025	
April 13, 2021	WEBEL allegedly	January 14, 2022	A registered deed

	handed over possession directly to the appellants		of sub-lease was executed by the appellants to WEBEL.
		December 7, 2022	The said sub- lease was terminated by WEBEL (sub- tenant) in favour of the appellants.
		March 11, 2023	WEBEL allegedly handed over physical possession directly to the appellants.

6. Learned senior counsel for the appellants submits that no *prima facie* case was made out by the plaintiffs/respondent no.1 for grant of injunction by the impugned order, thereby restraining the defendant nos.2 to 5/appellants from dealing with and/or disposing of or creating third party interest in respect of the suit properties.
7. While elaborating on such point, it is submitted that the head-lease executed in favour of Orient, which was the genesis of the entire hierarchy of leases, itself expired on May 11, 2019 by efflux of time. Therefore, the first-degree lessee, namely Orient, and all those who claimed rights under it were rendered trespassers in respect of the suit premises.

8. Secondly, the sub-lease executed in favour of the plaintiff/respondent no.1 also expired independently on February 9, 2017, thus rendering the plaintiff a trespasser in any event.
9. By citing *Kewal Chand Mimani (D) by LRS. v. S.K. Sen and others*, reported at (2001) 6 SCC 512, learned senior counsel appearing for the appellants argues that the plaintiff, being a trespasser, cannot claim possession of the suit premises, particularly against the lawful owner/lessee.
10. It is next argued that the plaintiff, despite being aware that the defendant no.1-WEBEL had handed back possession to the appellants, no relief of declaration challenging the said restoration of possession has been sought in the suit. Moreover, recovery of possession has not been sought from the appellants but from WEBEL. Thus, the suit is not maintainable as framed.
11. Two other suits, bearing Title Suit No.606 of 2023 and Title Suit No.616 of 2023 (cursorily referred to in pleadings) have been filed by the appellants against the plaintiffs/respondent no.1, which are regarding other properties and have nothing to do with the present suit.
12. Learned senior counsel appearing for the appellants next contends that Section 116 of the Indian Evidence Act (corresponding to Section 122 of the Bharatiya Sakshya Adhiniyam, 2023) does not apply, as the sub-tenant WEBEL is not precluded from challenging subsequent cessation of title/right of its lessor, being the plaintiff/respondent no.1. Moreover, such estoppel would not apply when a person with

paramount title evicts the sub-tenant or when the tenant (plaintiff) loses title which it had at the commencement of the tenancy.

13. It is next argued that the suit is incompetent in the absence of the Trust, the owner of the property, as a party. Moreover, since the principal relief of eviction cannot be granted, as possession is now with the appellants and not with the defendant no.1-WEBEL, the consequential reliefs of injunction, and temporary injunction in aid thereof, cannot also be granted.
14. Learned senior counsel for the appellants relies on *Prakashwati Chopra v. Sibaji Mitra*, reported at (2007) 1 Cal LJ 47 for the proposition that the provisions of the Transfer of Property Act, 1882, and not the West Bengal Premises Tenancy Act, 1997, are applicable to the instant *lis*.
15. Learned senior counsel appearing for the plaintiff/respondent no.1 argues that WEBEL, the tenant under the plaintiff, is precluded by estoppel under Section 116 of the Indian Evidence Act from challenging the right, title and interest of the plaintiff in respect of the suit property.
16. Furthermore, under Section 108(q) of the Transfer of Property Act, 1882, upon determination of its lease, WEBEL could only hand over physical possession of the property to its lessor, the plaintiff, and not to the appellants. In such context, learned senior counsel seeks to rely on *Nurul Huda and others v. Smt. Hira Basu and others*, reported at 1985 SCC OnLine Cal 52.

17. It is next argued that the Trust/head lessor has not sought eviction and the lease granted in favour of the plaintiff by the said head lessor/owner (Trust) is subject to the possessory right of the plaintiff. Thus, the plaintiff cannot be termed as a tenant at sufferance. The lease granted to the appellants does not extend to possession and only grants symbolic possession to the appellants, with no specific right being conferred to sue for eviction.
18. Learned senior counsel appearing for the plaintiff/respondent no. 1 next argues that possession of the suit property has not been handed over to the appellants. At least, the said issue is a triable and contentious issue, which makes out a *prima facie* case and entitles the plaintiff to get an injunction at this stage.
19. It is argued that at the stage of hearing of the injunction application, the question of expiry of the lease granted in favour of the plaintiff cannot be entered into. Moreover, the possession of the plaintiff is admitted in the lease deed granted to the appellants, which was on 'as is where is' basis.
20. The owner/Trust, it is argued, is not a proper or a necessary party as the lease deed executed by it is not under challenge.
21. It is argued that the proposition laid down in *Prakashwati Chopra v. Sibaji Mitra*, reported at (2007) 1 Cal LJ 47, is not applicable herein since the said judgment dealt with lease deeds executed after coming into force of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as "the 1997 Act"), whereas the registered deed of lease

executed in favour of the plaintiff in the present case was of May 25, 1972, much before the enactment of the said statute.

- 22.** Since the quantum of rent payable for the premises comes within the purview of the 1997 Act, the plaintiff is entitled to protection as a monthly tenant under the 1997 Act.
- 23.** By relying on *Vashu Deo v. Balkishan*, reported at (2002) 2 SCC 50, learned senior counsel for the respondent no.1 submits that even a trespasser cannot be evicted without due process of law and is also entitled to injunction if shown to be in possession.
- 24.** It is argued that the appellants only acquired symbolic possession and that it will be evident from the series of communications between WEBEL and the appellants that those were collusively issued and are back-dated. It is argued that from the data obtained from the official website of the Ministry of Corporate Affairs, it would be seen that the registered office of WEBEL is still shown to be the suit properties. Even advertisements would show that WEBEL is continuing at the suit premises. The notice of eviction issued on March 9, 2023 was delivered to WEBEL at the suit property. Thus, it is WEBEL which is in possession of the same.
- 25.** Upon hearing learned counsel for the parties, we deal with the several aspects of the matter as follows:

Whether WEBEL is bound by estoppel from disputing the title of the plaintiff/respondent no.1

- 26.** Section 116 of the Indian Evidence Act, 1872 (and the corresponding Section 122 of the Bharatiya Sakshya Adhiniyam, 2023) provides that no tenant of immovable property or person claiming through such tenant shall, during continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property.
- 27.** Two key phrases stand out in the above provisions – “during continuance of the tenancy” and “at the beginning of the tenancy”. Thus, the operation of the principle of landlord-tenant estoppel, as embodied in the aforementioned provisions, has two important restrictions.
- 28.** The first of the restrictions is that such estoppel operates only during continuance of the tenancy. In the present case, however, the registered sub-lease executed in favour of the plaintiff expired by efflux of time on February 9, 2017; even the head lease given to Orient, which was the genesis of the entire hierarchy of further sub-leases, expired on May 11, 2019 - both before the grant of the lease in favour of the appellants and before the institution of the suit. Under Section 111 of the Transfer of Property Act, several modes of determination of lease have been prescribed. Clause (a) of the said Section provides for determination of lease by efflux of the time limited thereby. Unlike the legal fiction of statutory tenancies under the State Rent Control Laws, a

lease granted under the Transfer of Property Act determines on the moment of its expiry, even without any further decree being passed. Thus, as on the date of filing of the suit, the plaintiff itself did not have authority to grant a lease to WEBEL. It is trite law that one cannot confer better title than one has and, as such, the lease in favour of WEBEL stood automatically terminated on the termination of the lease of its lessor, the plaintiff, by efflux of time of the lease granted to the plaintiff.

- 29.** Hence, one of the necessary criteria of Section 116 of the Evidence Act, 1872 (and the corresponding Section 122 of the Bharatiya Sakshya Adhiniyam, 2023), that is, “during continuance of the tenancy” is not applicable here.
- 30.** Secondly, the said provision merely precludes the tenant from denying the title of the landlord “at the beginning of the tenancy”. Subsequent loss of title of the landlord can very well be asserted by the tenant, to which there is no bar under the aforementioned provisions. In the present case, although the plaintiff had right to grant a lease in the suit property at the inception of the grant of tenancy to WEBEL, the same expired subsequently by efflux of time, both with regard to the lease of the plaintiff itself as well as the head lease. Thus, the second restriction of Section 116 of the Evidence Act, 1872 (and the corresponding Section 122 of the Bharatiya Sakshya Adhiniyam, 2023) is also not applicable.

- 31.** The plaintiff/respondent no.1 has cited *Vashu Deo (supra)* in respect of Section 116 of the Evidence Act. However, such reliance is misplaced. The premise of the said judgment was the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, under which a statutory tenancy was created and unless a decree of eviction is passed against such a tenant, it cannot be said that the tenancy has been terminated. Unlike the said case, a lease under the Transfer of Property Act, on its expiry by efflux of time or otherwise as contemplated under Section 111 of the Transfer of Property Act, automatically determines.
- 32.** In fact, in paragraph no.7 of *Vashu Deo (supra)* itself, while examining the meaning of “eviction by title paramount”, the Supreme Court considered *Krishna Prasad Singh v. Adyanath Ghatak*, reported at *ILR (1943) 22 Pat 513*, where it was held that, to constitute eviction by title paramount, no physical dispossession is necessary. If the true owner is armed with a legal process for eviction which cannot be lawfully resisted, even though the tenant is not put out of possession, the threat to put him out of possession followed by attornment amounts in law to eviction. An exception to the requirement of actual physical dispossession was also carved out in paragraph no.9 of the said judgment where it was considered whether the landlord’s tenancy had not come to an end “by operation of law”.
- 33.** In paragraph no.10 of *Vashu Deo (supra)*, the Supreme Court held, inter alia, that the paramount title holder must be armed with such legal process of eviction as cannot be lawfully resisted. Since the said case

was governed by the Rent Control law, where a tenancy can be terminated only by a valid decree of a court, it was held that mere threat of eviction would not suffice. However, by dint of the exceptions carved out in paragraph nos. 7 and 10 of the said judgment, as discussed above, to constitute eviction by title paramount, no physical dispossession is necessary if the true owner or paramount title holder is armed with a legal process of eviction which cannot be lawfully resisted.

- 34.** In the present case, the lease executed by the owner/trust in favour of the appellants was after the expiry of the entire gamut of leases and sub-leases granted under the head lease by efflux of time. Thus, on the date when the appellants acquired title/right as lessors, it was the paramount title holder which had conferred such right in favour of the appellants within the contemplation of Section 109 of the Transfer of Property Act. Hence, the appellants stepped into the shoes of the paramount title holder insofar as the occupants of the suit premises were concerned.
- 35.** On the other hand, upon the expiry of the head lease as well as the sub-leases created under it by efflux of time, all the said leases and sub-leases stood determined by operation of Section 111(a) of the Transfer of Property Act.
- 36.** Thus, it was a typical case where the appellants were armed with a legal process for eviction which could not be lawfully resisted. To constitute eviction by title paramount, as held in *Vashu Deo (supra)*, no

physical dispossession is necessary if the paramount title-holder is armed by a legal right to dispossess [here, under Section 111 (a) of the Transfer of Property Act]. Thus, on the expiry of the head lease and the lease granted in favour of the plaintiff, the sub-lease between the plaintiff and WEBEL also stood determined and head lessor/owner, through the appellants/lessors, were armed with the legal right to dispossess the plaintiff as well WEBEL. As such, WEBEL was not barred under Section 116 of the Evidence Act, 1872 (and the corresponding Section 122 of the Bharatiya Sakshya Adhiniyam, 2023) from disputing the title of the plaintiff on the relevant date.

Whether WEBEL was duty-bound under Section 108(q) of the Transfer of Property Act to hand over possession only to its lessor, the plaintiff

37. Section 109 of the Transfer of Property Act provides that if the lessor transfers the property leased or any part thereof or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights of the lessor as to the property or part transferred so long as he is the owner of it. In the present case, the head lessor transferred the property by way of a lease to the appellants, thus, conferring all the rights of the head lessee vis-à-vis the property to the appellants.

38. Hence, by applying the principle of paramount title holder, the appellants are fully entitled to exercise all powers which could be asserted by the head lessor as against the occupants of the suit premises. Since, on the expiry of the lease in favour of the plaintiff as well as the expiry of the head lease from which all the subsequent sub-lease rights emanated, the plaintiff's lease stood determined and the plaintiff was rendered a tenant at sufferance, who can be equated to a trespasser. On the other hand, the transferees/appellants, by operation of Section 109 of the Transfer of Property Act, acquired all the rights of the head lessor to seek eviction of occupants of the property on the determination of the head lease and all sub-leases by operation of Section 111(a) of the Transfer of Property Act. Thus, on the date of handing over of possession by WEBEL to the appellants, even taking into consideration of Section 108(q) of the Transfer of Property Act, it were the appellants to whom WEBEL could have validly handed over such possession and not the plaintiff, who was rendered a trespasser in the meantime.

Whether the plaintiff was a “lessee” under the Transfer of Property Act, 1882 or a “tenant” under the West Bengal Premises Tenancy Act, 1997

39. Admittedly, the lease in favour of the plaintiff was created by a registered deed of lease on May 25, 1972. As held in *Prakashwati*

Chopra (supra) by a co-ordinate Bench of this Court, in those cases where the lease expired by efflux of time but the lessee is continuing in possession, the lessee would not come within the purview of the definition of “tenant” under Section 2(g) of the 1997 Act. The Division Bench, in the said judgment, *inter alia* framed the said question and answered the same as above. While doing so, the effect of Section 3 of the West Bengal Premises Tenancy Act, 1956 was considered, in terms of which the said Act would not be applicable in case of leases entered into on or after December 1, 1948 and was for a period of more than 21 years. Admittedly, in the present case, the sub-lease in favour of the plaintiff was created on May 25, 1972 for a period of 45 years. At that point of time, the 1956 Act was operative and thus, the said Act was not applicable in terms of Section 3 of the same to the lease held by the plaintiff. By default, the Transfer of Property Act governed the said lease at its point of inception.

- 40.** Once a lease commences under the Transfer of Property Act, it cannot automatically change its character and partake the nature of a tenancy under the Rent Control Act, merely because such Rent Control came into force, unless specifically provided therein.
- 41.** In *Prakashwati Chopra (supra)*, the co-ordinate Bench of this Court took into consideration Section 3 of the 1997 Act as well and held that it was worth noticing that under the said Section, a registered lease executed after the 1997 Act came into operation was specifically excluded from the purview of the Act of 1997. However, not stopping

there, it further held that mere terminability of lease was no longer the criterion and even in the case of pre-1997 Act registered leases one has to show that the lease was terminated prematurely and only then it would come within the mischief of the 1997 Act. It was held that such a lease would not come within the mischief of the 1997 Act after the lease had been allowed to have a run of its normal life and expired by efflux of time, which is precisely the case here. Hence, *Prakashwati Chopra (supra)* applies both to pre- and post-1997 Act registered leases, which are excluded from the purview of the 1997 Act.

- 42.** The Division Bench elaborately discussed the objects of the 1997 Act, which is *inter alia* to balance the interests of both the landlords and the tenants and also to stimulate future construction to meet the growing demands for housing. The Court held that the Legislature intended to create an environment which stimulates future construction and with this end in view the applicability of the Act to post-registration registered leases was abolished altogether. While holding so, the Court also came to a similar finding regarding pre-1997 Act leases, subject to the rider that the pre-1997 Act registered lease was allowed to run its full tenure and not determined earlier.
- 43.** The Division Bench further observed in the context that the Legislature had rationalised the old Act of 1956 in that mere terminability is no longer material and actual termination before expiry of lease was what was material.

- 44.** In any event, since accrued rights under the Transfer of Property Act had been created in respect of the lease of 1972 executed in favour of the plaintiff between the plaintiffs' lessor and the plaintiff and all incidents of lease under Section 108 of the Transfer of Property Act, 1882 became operative between them, after having acted on the same and having permitted to have a full run of the lease and being rendered trespassers after its expiry, the plaintiff cannot now resile and seek to take advantage of the cloak of protection offered by the Rent Control Law, that is, the 1997 Act. Thus, the lease in favour of the plaintiff, which has since expired by efflux of time, was governed under the Transfer of Property Act and not the 1997 Act.

Whether the plaintiff, even if a trespasser, has a right to get injunction

- 45.** In *Kewal Chand Mimani (supra)*, it was reiterated that a person whose lease has expired is still entitled to maintain possessory title so long as and until he is evicted by due process of law. However, it was observed that the said proposition was not applicable in the factual aspects of the case. The lessee had lost its possessory right and the same stood shifted on the State. It was held in the said context that once the possessory right is transferred or shifted from the lessee and the lease deed stands terminated during this temporary interregnum when the lessee is deprived of its possession, question of putting back the lessee

to the possession after the expiry of the lease in accordance with the provisions of law does not and cannot arise.

- 46.** In the present case as well, the plaintiff was not in actual physical possession in respect of the suit properties when WEBEL, its sub-tenant, which was in physical possession, had handed over the possession to the appellants. The lease of the plaintiff had already expired at that point of time. Thus, on the strength of mere possessory right, the plaintiff could not have filed the suit for eviction, because of the simple reason that it did not have such possession. Before the filing of the suit and at the point of time when the lease deed was granted in favour of the appellants and even at the time when WEBEL surrendered possession in favour of the appellants, the plaintiff had ceased to be a lessee by expiry of its lease by efflux of time and was a mere trespasser at best in respect of the suit property. Moreover, since physical possession was admittedly with WEBEL, its sub-tenant, the plaintiff also did not have possessory right on the date when its lease expired. Thus, the plaintiff was not even a trespasser at that juncture, being not in possession of the suit property, and thus, could not have asserted its possessory rights. Hence, on the date of the filing of the suit, it was not maintainable at the behest of the plaintiff, since the plaintiff was neither a lessee nor an occupant having possessory right of the suit premises.
- 47.** Even if we assume, for the sake of discussion, that WEBEL was in physical possession of the suit property when the suits were filed by the

plaintiff, as on the said date, the plaintiff/respondent no.1 did not have the *locus standi* to file the suit, being not a lessee any longer due to determination of his lease under Section 111(a) of the Transfer of Property Act and also not being in physical possession of the property, thus, not having the benefit of possessory title on the strength of actual physical possession.

- 48.** Hence, the plaintiff could not seek injunction on the said date, either as a lessee or as a trespasser, being not in physical possession of the property.
- 49.** Moreover, the right of a trespasser to get an injunction from being evicted without due process of law, even if maintainable against the rest of the world, cannot be asserted against a true owner of the property or a paramount title holder claiming title under the true owner.
- 50.** In any event, the mere continuance of the address of one of the offices of WEBEL at the suit premises on the official website of the concerned Ministry is not, *per se*, proof of its continuing possession, since WEBEL itself has handed over the property which is evidenced by the documents relied on by the appellants. Since WEBEL itself takes a stand that it had handed over physical possession to the appellants, the continuance of the display of one of its registered offices at the suit property in any website or elsewhere is immaterial.
- 51.** It is for WEBEL and/or the concerned authorities to take steps for removal of the said office address from their website and inaction on

the part of such authorities or WEBEL on such count cannot automatically translate into continuing physical possession of WEBEL.

52. That apart, the suit premises is only one of the offices, and not the only registered office of the WEBEL, since before handing over possession. Thus, the suit property was never the sole address of WEBEL, to show unerringly that it was still in occupation.

53. In view of the above discussions, there is no scope of the plaintiff asserting any right in the property and/or claiming injunction, either as a trespasser or otherwise.

54. In view of the above, we come to the following *prima facie* conclusions:

- (i) The plaintiff, not being in actual physical possession of the suit property, nor anymore a lessee in view of the determination of its lease and the head lease by expiry of time, does not have the *locus standi* to maintain the suit for possession and/or seek any consequential relief in support of the principal relief of eviction.
- (ii) WEBEL acted within the purview of law in handing over possession to the appellants, if it actually did so.
- (iii) WEBEL is not barred by estoppel from disputing subsequent loss of title of the plaintiff, despite the plaintiff having right as a lessee in the suit properties at the inception of grant of lease to WEBEL.
- (iv) Accordingly, the plaintiff has failed to make out a *prima facie* case for grant of injunction.
- (v) Since the plaintiff is not in physical possession of the suit premises; rather, the appellants claim physical possession on the

basis of *prima facie* valid documents, and the plaintiff seeks eviction of its erstwhile lessee despite its own lease having been determined by efflux of time, the balance of convenience and inconvenience lies against the grant of injunction.

(vi) No case of urgency or irreparable injury has, in any event, been made out.

55. In view of the above findings, we arrive at the conclusion that the court of first instance erred in law and misdirected itself in granting injunction against the appellants at the instance of respondent no. 1 without adverting to all the relevant legal and factual aspects of the matter.

56. Accordingly, F.M.A. No.359 of 2025 and F.M.A. No.360 of 2025 are allowed on contest, thereby setting aside the orders dated January 22, 2025 passed by the learned Civil Judge (Senior Division), Second Court at Alipore, District – South 24 Parganas, in Title Suit No.1199 of 2024 and Title Suit No.1200 of 2024 respectively.

57. It is made clear that the above findings are all tentative in nature and shall not be considered to be binding by the learned Trial Judge while deciding the respective suits.

58. There will be no order as to costs.

59. Accordingly, CAN 1 of 2025 in connection with F.M.A. No.359 of 2025 and CAN 1 of 2025 in connection with F.M.A. No.360 of 2025 are hereby disposed of.

- 60.** Urgent certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

Later

After the above judgment is passed, learned counsel appearing for the respondents prays for a stay of operation of the same.

However, we are of the opinion that in the event such stay is granted, the injunction order would revive, thereby having the effect of nullifying the above judgment.

Accordingly, we refuse such prayer for stay.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)