

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 1501 of 2025

M/s. Vijay Shree Commercial Pvt. Ltd.

Vs.

Sri Prakash Chandra Jalan & Ors.

For the Petitioner	: Mr. Siddhartha Banerjee, Ms. Soni Ojha Ms. Sambrita B. Chatterjee advocates
For the Opposite Parties	: Mr. Mahendra Prasad Gupta Ms. Shebatee Datta Ms. Moumita Dhar Ms. Madhumita Debnath Ms. Poulami Roy advocates
Reserved on	: 06.05.2025
Judgment on	: 04.07.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated 17.02.2025 passed by the learned Civil Judge, Junior Division, Second Court at Howrah in Title Suit No. 186 of 2019.
2. By the order impugned the application under Order VII Rule 11 of the Code of Civil Procedure filed by the petitioner herein stood rejected.
3. Mr. Banerjee, learned Advocate appearing for the petitioner submitted that the instant suit proceeds on the basis that the suit property was let out to the defendant company by a registered deed of lease for a period of 21 years. The said lease stood expired by efflux of time and the instant suit has been filed after a lapse of more than 24 years from the date of expiry of lease. Mr. Banerjee contended that the period of limitation for filing the said suit would be governed by Article 67 of the Limitation Act which prescribes a period of limitation of 12 years from the date of determination of tenancy. He further submitted that the allegation in the plaint that on 25.03.2019 the defendant

company through its employees, men and masons were trying to change the nature and character of the suit property was made only to create an illusion of the cause of action. Mr. Banerjee contended that it would appear from the statements made in the plaint that the suit is barred by law and the question of limitation in the case on hand is not a mixed question of law and fact as the date of determination of the tenancy and the filing of the suit are not in dispute.

4. Mr. Gupta learned advocate appearing for the opposite party seriously disputed the contentions raised by Mr. Banerjee. He contended that the cause of action for filing the instant suit arose on and from 25.03.2019 and, therefore, the instant suit cannot be said to be ex facie barred by limitation. He contended that since it has been asserted in the plaint that the suit was filed immediately after getting knowledge about the fact that the defendants were trying to change the nature and character of the suit property, the issue as to whether the suit is barred by limitation is a triable issue and for such reason the plaint cannot be rejected at the threshold in exercise of the power under Order VII Rule 11(d) of the Code of Civil Procedure. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Chhotanben and another vs. Kiritbhai Jalkrushnabhai Thakkar and others** reported at **(2018) 6 SCC 422**. Mr. Gupta contended that in terms of Section 108(q) of the Transfer of Property Act a lessee continues to be liable to the lessor till possession has been actually restored to the lessor. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Nand Ram (Dead) through legal representatives and others vs. Jagdish Prasad (Dead) through legal representatives** reported at **(2020) 9 SCC 393**.
5. Heard the learned advocates for the parties and perused the materials placed.
6. The opposite party herein filed Title Suit No. 186 of 2019 praying for a decree of recovery of possession, damages and for permanent injunction. It has been stated in the plaint that the father of the plaintiffs namely Basant Lal Jalan since deceased, inducted the defendant company into the suit property by virtue of a registered deed of lease dated 02.03.1974. The said lease deed for a period of 21 years commencing on and from 01.03.1974 and expired on last day of November, 1995. Basant Lal Jalan died on November 13, 1988 and the plaintiffs claimed to have inherited the suit property left by their father by survivorship. It has been specifically stated in the plaint that during the lifetime of Basant Lal Jalan the defendant failed to make payment of rent and even after the demise of Basant Lal Jalan defendant did not pay any rent to the plaintiff. It came to the knowledge of the plaintiff

that on 25.03.2019 the defendant company through its employees, men and masons were trying to change the nature and character of the suit property. The petitioners lodged a complaint with the local police station and thereafter filed the instant suit for recovery of possession of the defendant company.

7. Article 67 of the Limitation Act, 1963 states that the period of limitation of a suit by a landlord to recover possession from a tenant is 12 years and the said period shall begin to run when the tenancy is determined.
8. Section 111 of the Transfer of Property Act speaks of the mode of determination of a lease of immovable property. Under Clause (a) of Section 111 of the Transfer of Property Act lease of immovable property is determined by efflux of time limited thereby. Thus, a tenancy for a fixed period is determined on the expiry of the terms so granted and the period of limitation for filing a suit by the landlord for ejectment against the tenant commences from the date when the term expires.
9. After reading the plaint as a whole this Court finds that the opposite party herein has prayed for recovery of possession of the suit property on multiple and distinct causes of action. The opposite party claims to be the owner of the suit property and that the defendant company has no right to remain in the possession. The opposite party also sought to make out a case that the lessee has committed breach of express terms and conditions of the lease by not paying rent to the lessor.
10. Mr. Banerjee would contend that the instant suit is at the instance of the landlord for ejectment of a tenant and, therefore, the suit is barred by limitation in view of Article 67 of the Limitation Act.
11. The question that arises for consideration is whether the instant suit for recovery of possession at the instance of a owner of an immovable property can be said to be barred by limitation by applying the provisions laid down under Article 67 of the Limitation Act.
12. A person entitled to possession of specific immovable property based on title by ownership or a possessory title may recover possession of such property by filing a suit under the Code of Civil Procedure. In view of Section 5 of the Specific Relief Act, in order to succeed in a suit under Section 5 of the Specific Relief Act, the plaintiff has to show that he is a person entitled to get possession.
13. Article 65 of the Limitation Act deals with period of limitation of a suit for possession of immovable property or any interest therein based on title. The period of limitation of a suit of such nature is 12 years and the time from

which such period shall run is when the possession of the defendant becomes adverse to the plaintiff.

14. Article 65 of the Limitation Act, therefore, applies only to suits for possession of immovable property or any interest based on title. In such a suit falling under Article 65 of the Limitation Act, the initial onus lies upon the plaintiff to establish his title and unless the defendant establishes loss of plaintiff's title by virtue of adverse possession for more than the statutory period, such a suit cannot be said to be barred by limitation under Article 65 of the Limitation Act.
15. In **Nand Ram** (supra), the Hon'ble Supreme Court took note of its own decision in the case of **Sevoke Properties Ltd. Vs. W.B. State Electricity Distribution Co. Ltd.** reported at **(2020) 11 SCC 782**. The respondent in **Sevoke Properties Ltd.** (supra) continued in possession after expiry of the lease period. The argument of the defendant that he was a tenant by holding over was not accepted and it was held that the possession of the respondent was that of a tenant at sufferance. In para 32 of **Nand Ram** (supra) it was observed that in view thereof, as owners, the appellants were entitled to possession of the land in terms of Article 65 of the Limitation Act as the possession of the respondent was that of a tenant at sufferance.
16. In the plaint of the case on hand, it has been specifically stated that the lease stood expired by efflux of time and the status of the defendant is nothing but a status of a tenant at sufferance.
17. The effect of the observation made in paragraph 32 of **Nand Ram** (supra) is that the owner is entitled to possession of land by evicting the tenant at sufferance in terms of Article 65 of the Limitation Act.
18. As observed hereinbefore, the instant suit has been filed on multiple and distinct causes of action. A plaint of such a suit cannot be rejected only on the ground that one of such causes of action may be said to be barred in view of Article 67 of Limitation Act.
19. In **Chhotanben** (supra) the Hon'ble Supreme Court has held that while deciding an application under Order VII Rule 11(d) of the Code of Civil Procedure, the Court has to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendant or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d) and only the averments in the plaint are germane.
20. It is well settled that while considering an application under Order VII Rule 11 of the Code of Civil Procedure, Court has to confine itself only to averments made in the plaint.

21. In **Nand Ram** (supra), the respondent therein continued to be in possession vide registered lease deed and the respondent admitted the ownership of the appellants before the Reference Court. However, in the proceedings out of which the matter travelled to the Hon'ble Supreme Court, the respondent denied his status as that of a tenant but claimed title in himself. The respondent claimed adverse possession and claimed possession as owner against a person, who has inducted him as a tenant.
22. On such facts, the Hon'ble Supreme Court held that the suit would fall under Article 67 of the Limitation Act.
23. The order passed on an application under Order 7 Rule 11 of the Code has been assailed in this Civil Revision Application. Whether Article 65 or 67 of the Limitation Act shall govern the instant suit cannot be decided at this stage in view of the aforesaid discussion.
24. As to whether the period of limitation prescribed under Article 65 or 67 of the Limitation Act would apply to the case on hand and what should be starting point of the period of limitation is a triable issue.
25. To the mind of this Court, the issue of limitation in case on hand, cannot be said to be a pure question of law but the same is a mixed question of law and fact as rightly held by the learned Trial Judge.
26. Which one of the articles of limitation from amongst Article 65 or 67 or any other article of the Limitation Act will apply to the facts may have to be considered at the appropriate stage and this is not a fit case for rejection of plaint at the threshold in exercise of powers under Order VII Rule 11 of the Code of Civil Procedure.
27. The learned Trial Judge was right in holding that it will not be appropriate to decide at this stage as to which provision of the Limitation Act will be applicable in the instant suit.
28. For all the reasons as aforesaid this Court is not inclined to interfere with the impugned order. Accordingly, CO 1501 of 2025 stands dismissed. There shall be no order as to costs.
29. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)