

17.09.2025
Item No.34
Ct. No.01
Saikat

FMA/1352/2025
with
IA NO: CAN/1/2025

TARUN KR GUPTA
VS.
MINTU DAS AND ORS.

Mr. Sounak Bhattacharya, Adv.
Mr. Ratan Lal Shaw, Adv.

...For the Appellant

Mr. Ayan Banerjee, Adv.
Ms. Debasree Dhamali, Adv.
Ms. Riya Ghosh, Adv.

...For the Respondents

Mr. Ajeyo Chowdhury, Adv.

...For the Respondent Nos.2 to 9

1. The affidavit-of-service filed in Court is taken on record.
2. The order of remand passed by the learned First Appellate Court is a subject-matter of challenge in this appeal.
3. Mr. Bhattacharya, the learned advocate appearing for the appellant submits that the respondents/defendants have failed to fulfil the requirements envisaged under Order 41 Rule 17 of the Code of Civil Procedure and in absence of fulfilling such requirements and conditions the learned Appellate Court could not have admitted the said documents and remanded the matters to the learned trial court for a fresh consideration on the issue as to

whether the defendant is a trespasser or a tenant liable to be evicted under the West Bengal Premises Tenancy Act, 1997.

4. During the hearing of the appeal the respondents made an attempt to bring on record that proceedings of a previous suit in which the father of the defendant was accepted as a tenant by the erstwhile landlord and in the said proceeding rent was deposited to the Rent Controller. The plaintiff did not give any evidence to counter that fact nor did any evidence to show that such tenant later on surrendered and the tenant was evicted. The earlier proceedings along with the rent receipts which were attempted to be produced before the learned Appellate Court by way of additional evidence has led to the learned Appellate Court to remand the matter for consideration as to whether on the basis of such pleading and documents the defendant can be treated as a trespasser or a tenant liable to be evicted under section 2(g) of the said Act.
5. We agree with Mr. Bhattacharya, the learned counsel, that consequent upon such additional evidence being allowed to be adduced at the trial, there may be a requirement to amend the written statement although the learned trial court may frame an issue on the document itself as it is well-settled that issues can be framed in respect of pleadings as well as documents in the event the plaintiff is not raising any objection for

lack of pleadings in respect of the said two documents. Issue can be framed on the basis of the documents sought to be tendered at the appellate stage, otherwise direction may be passed for amendment of the written statement to introduce necessary pleadings in relation to additional evidence.

6. The learned First Appellate Court has relied upon the decision of this Court in ***Niva Ghosh & Ors vs Sri Bijoy Kumar Das & Ors.*** reported in **2023(2) ICC 447 (CAL)** and the judgment of the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary vs. Union of India***, reported in **2022 SCC Online SC 929**.
7. For the proposition that if the documents which have sought to be proved have a direct and important bearing on real controversy in the suit and the learned Appellate Court may require that additional evidence in order to enable it to pronounce judgment. The party applies for additional evidence should ordinarily be given opportunity to give further evidence to put those documents for proper adjudication.
8. We agree with the observation made by the learned Appellate Court with regard to permitting the respondent to adduce further evidence in respect of the documents relied upon before the First Appellate Court.
9. We make it clear that the learned trial court shall decide the admissibility, relevancy and evidentiary

value of the documents relied upon before the First Appellate Court and shall not influence by any observation with regard to the said documents while disposing of the suit on remand. We further make it clear that our observations are only tentative and it is for the learned trial court to take the decision on merits.

10. We request the learned trial court to expedite the process by framing additional issues and make a time frame within which the learned trial court may conclude such additional issues.
11. With the aforesaid observations, the appeal as well as the pending application are disposed of.
12. Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

[SOUMEN SEN, C.J.(ACTING)]

(APURBA SINHA RAY, J.)