

Sl.58
16.09.2025
Court No.6
BP

C.O. 3430 of 2025

Bireswar Dutt Estates Private Limited
-versus-
Sujoy Kumar Das

Ms. Sreyanshi Majumdar
... for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated July 23, 2025 passed by the learned Judge, 3rd Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 44 of 2023.

By the order impugned the application under Order 12 Rule 6 of the Code of Civil Procedure stood rejected.

The learned advocate appearing for the petitioner submits that one of the grounds on which the suit for eviction was filed is that the opposite party herein has acquired a property within one kilometer from the suit property. She submits that in the plaint the petitioner has specifically given the particulars of the registered deed by virtue of which the opposite party has acquired title in the said property. She further submits that such fact has not been denied by the opposite party in the written statement which entitles to the petitioner who have a judgement on admission under the provisions of Order 12 Rule 6 of the Code of Civil Procedure.

The learned advocate appearing for the petitioner places reliance upon the judgement and order passed by the Hon'ble Supreme Court on 7th April, 2025 in the case of Rajib Ghosh Vs. Satya Narayan Jaiswal in Special leave Petition (Civil) No. 9975 of 2025 in support of his contention that the judgement on admission ought to have been passed in the case on hand. In paragraph 31 of the said reports the Hon'ble Supreme Court has specifically observed that to make order or to pronounce judgement on admission is at the discretion of the court as in Rule 6 the word "may" and not "shall" has been used.

The Hon'ble Supreme Court after considering the provisions of Order 12 Rule 6, Order 8 Rule 5 and proviso to Section 58 of the Evidence Act held that it is manifest that the court is not bound to grant relief to the plaintiff only on the basis of admission of the defendant. The said decision cannot come to the aid of the petitioner in the case on hand.

The learned advocate appearing for the petitioner places reliance upon a decision of the Hon'ble Supreme Court in the case of Lohia Properties Private Limited, Tinsukia, Dibrugarh, Assam Vs. Atmaram Kumar reported at (1993) 4 SCC 6. In Lohia Properties Private Limited (supra), a judgment on admission under Order 12 Rule 6 of the Code of Civil Procedure was not passed. In the said written statement, a plea was taken that

ejectment notice was not in accordance with law and it was not stated that notice was not served. Service of ejectment notice was duly proved by producing the ejectment notice, posted receipt and the acknowledgment receipt which were marked as exhibits. The said decision being distinguishable on fact cannot come to the aid of the petitioner in the case on hand.

After going through the averments made in the plaint this Court finds that in paragraphs 8, 9, 10 and 11 the petitioner has specifically stated that the defendant/opposite party herein has acquired a property within one kilometer of the suit property. The said property has been mutated in the name of the opposite party in the records of the Kolkata Municipal Corporation. In paragraph 6 of the written statement the defendant/opposite party herein has denied each and every allegation made in the plaint. In paragraphs 11 and 12 of the written statement the defendant/opposite party has put the plaintiff to prove the facts stated in paragraphs 8, 9, 10 and 11 strictly. Order 8 Rule 5 of the Code of Civil Procedure states that every allegation of fact in the plaint if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant shall be taken to be admitted except as against the person under disability. Proviso thereto states that the court

may in its discretion require any fact so admitted to be proved otherwise than by such admission.

A bare reading of the said provision makes it clear that even if there is any admission on the part of a party in the pleadings, the court can in its discretion require such party to prove such fact.

In the case on hand the learned trial judge has specifically observed that nowhere in the written statement the defendant has made a clear admission of the purchase of the property and the plaintiff was put to strict prove of the same. The learned trial judge in exercise of his discretion thought fit not to pass a judgement on admission merely on the basis of the statements made in paragraphs 10 and 11 of the said written statement. The learned trial judge has assigned cogent reasons for rejecting such application.

This Court is not inclined to interfere with the order impugned.

Accordingly, C.O. 3430 of 2025 stands dismissed.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)