

AD- 33
Ct No.16
22.04.2025
(SSS)

SAT 189 of 2023
With
CAN 1 of 2023

Manoj Kumar Shaw
Vs.
Banka Shah and Ors.

Mr. R. N. Mahata,
Mr. Dilip Kumar Sadhu
.....For the Appellant.

1. Leave is granted to the learned Advocate-on-record for the appellant to carry out the necessary amendment to the caption of the Memorandum of appeal by describing the same to be a memorandum of appeal “from appellate decree” instead of “from original decree”.
2. The present second appeal has been preferred by the tenant/defendant/appellant against a judgment of affirmance, whereby both the courts below granted a decree of eviction against the appellant on the ground of default in payment of rent under the West Bengal Premises Tenancy Act, 1997. The defence of the appellant was struck out in the suit under Section 7(3) of the said Act in view of non-compliance of the provisions of Sections 7(1) and 7(2) of the said Act.

3. Learned Counsel appearing for the appellant argues that both the courts below erred in law in construing the service of the eviction notice on the appellant to be good service, despite the envelope in which the notice was sent having been returned with the postal endorsement “not claimed”.

4. However, it is well-settled that if an attempt is made to serve a notice on a person and the noticee, despite being intimated, does not claim the said service, the same tantamounts to good service in the eye of law. As such, we do not find any irregularity or illegality in the courts below coming to the conclusion that the service of notice for eviction, which is a *sine qua non* for instituting a suit for eviction under the 1997 Act, was properly effected in the eye of law. In such view of the matter, we do not find any substantial question of law involved.

5. Accordingly, SAT 189 of 2023 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. Consequentially, CAN 1 of 2023 is also dismissed.

6. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)