

26.11.2025
Ct. No. 06
Sl. No.8
skg

C.O. No. 3952 of 2025

Sri Pratap R. Daryanani
Vs.
Smt. Bimla Devi Pun & Ors.

Mr. Tanmoy Mukherjee,
Mr. Shaunak Mondal,
Mr. Neelesh Choudhury,
Ms. Anuradha Poddar,
.....for the petitioner

Ms. Hashnuhana Chakraborty,
Mr. Vinay Kumar Purohit
...for the opposite parties

1. The petitioner has challenged the order dated 1st August, 2025 passed by the learned Judge, VI Bench, City Civil Court at Calcutta in Title Suit no.953 of 2018.
2. By the order impugned the learned court rejected the application under Order 7 Rule 10 read with Section 151 of the Code of Civil Procedure, filed by the petitioner/defendant.
3. Mr. Tanmoy Mukherjee, learned Advocate for the petitioner submits that the learned court rejected the application on being misguided by the fact that an earlier application by which the pecuniary jurisdiction of the court had been challenged, was also rejected and such order of rejection was upheld by the High Court. According to Mr. Mukherjee, the provision of

Section 7(v) of The West Bengal Court Fees Act, 1970 would be applicable for computation of the court fees. If proper computation of the court fees was done, the learned Judge 6th Bench, City Civil Court at Calcutta would not have jurisdiction to decide the same. The plaint should have been returned and proper enquiry should have been directed, for such purpose.

4. According to Mr. Mukherjee, the Division Bench of the High Court did not go into the question as to whether the suit had been properly valued or whether proper valuation of the suit would take away the pecuniary jurisdiction of the trial court. In the said proceeding the only point for decision was whether the suit should have been transferred to the commercial court or not.
5. Ms. Chakraborty, learned advocate for the plaintiff submits that the Division Bench of this High Court had clarified the position of law applicable in respect of valuation of the present suit. In the matter of *Pratap R. Daryanni v. Bimla Devi Pun* passed in *TRP (COMM) 5 of 2024*, the Division Bench observed that computation of court fees should be under Section 7(vi), of the 1970 Act, as the plaintiff did not seek declaration of their title. Paragraphs 15 and 16 of the said decision are relied quoted below:

“15. The objection as to valuation has been addressed in SAT 295 of with CAN 6443 of 2015 (Arobindo Saha &

Ors. u Nowser Ali Khan) by a Division Bench presided over by Hon'ble Justice Jyotirmoy Bhattacharyya, former Chief Justice of this court in which it has been held:

"Let us now consider this part of the submission of Mr. Bhattacharya in the light of the provision contained in Section 7(vi) (a) of West Bengal Court Fees Act, 1970 which runs as follows:-

7.(vi) for recovery of possession of immovable property- In a suit for recovery of possession of immovable property from -

(a) a trespasser, where no declaration of title to property is either prayed for or necessary for disposal of the suit- according to the amount at which the relief sought is valued in the plaint subject to the provisions of section 11."

Section 7(vi) (a) of West Bengal Court Fees Act, 1970 thus makes it clear that if possession from a trespasser is sought to be recovered on the basis of declaration of title of the plaintiff, then the plaintiff is required to value the suit on the basis of the actual market price of the suit property and he is also required to pay ad valorem court fees on the valuation of the suit property.

The said provision thus makes it clear that if the plaintiff files a suit for recovery of possession from a trespasser without seeking any declaration of his title in the property or in a case where grant of relief prayed for by the plaintiff is not dependent upon declaration of his title in the suit, then the plaintiff is not required to value the suit on the basis of the actual market price of the suit property. Under such circumstances, he can value the suit on the basis of the valuation of the relief claimed in the suit."

16. The ratio of the said decision squarely applied in this case and has been rightly decided by the Learned Trial Court”

6. However, Their lordships made an exception to the effect that, if during continuation of the suit it ever transpired that the suit property had been exclusively used for trade or commerce and a privity of contract could be established, the trial court would be entitled to transfer the suit. Admittedly, the suit is at the stage of conclusion and the trial court has not found any element of a commercial suit.
7. The learned trial judge did not find that the property was ever used for any commercial activity. The learned trial judge did not find that the dispute was commercial in nature and did not deem it necessary to transfer to the suit to the commercial court.
8. At a belated stage of the proceeding, another application was filed under Order 7 Rule 10 of the Code of Civil Procedure, for return of the plaint on the ground that the suit was undervalued and if proper valuation was made, the court could not have pecuniary jurisdiction.
9. It is urged that, once the suit is for declaration and for recovery of possession from the trespasser, the court fees should not be as per section 7(vi)(a) of The West Bengal Court Fees Act, 1970.

10. In a suit for recovery of possession of immovable property from a trespasser, where no declaration of title to the property is either prayed for or necessary disposal of the suit, the suit shall be valued according to the amount at which the reliefs sought are valued in the plaint. The decision of a co-ordinate Bench in *CO 8708 of 2019* does not apply. The facts are distinguishable. In the said case, there was a lease between the parties. The suit for eviction was filed upon expiry of the lease. Thus, it was the view of the court that whether the lessee continued as a tenant at sufferance or not, was an issue, and as such, an enquiry under Section 11 of the West Bengal Court Fees Act, 1970 was necessary. In the instant case, the plaintiffs have filed the suit for eviction of a trespasser. The framing of the suit was such that, no privity of contract ever existed between the parties and the defendant was a rank trespasser.

11. Under such circumstances the provision of Section 7(v) of The West Bengal Court Fees Act, 1970 will not apply. Rather, the decision of the Division Bench of this court in *SAT 295 of 2014 (Arobindo Saha & Ors. v. Nowser Ali Khan)* shall be applicable.

12. The order impugned is upheld. The suit shall proceed expeditiously.

13. There shall be no order as to costs.

14. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)