

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

**RVW 263 of 2023
in
SA 246 of 2010
IA No. CAN 7 of 2023
IA No. CAN 8 of 2023**

**Sri Sanjib Muhury
Vs.
Kumari Swapna Dey and ors.**

For the applicant : Mr. Kallol Guha Thakurata

For the Opposite parties : Mr. Arup Kumar Mondal

Heard on : 15.05.2025

Order on : 12.06.2025

Dr. Ajoy Kumar Mukherjee, J.

1. This review application has been preferred by the petitioner in connection with judgment passed in second appeal by this court in SA 246 of 2010 on 26th September, 2023. Without going to the details of the pleading of the parties it would be suffice to mention that the

respondent/plaintiff filed suit for eviction of premises tenant being T.S. No. 64 of 2005 before the trial court on the ground of default, reasonable requirement and for building and re building. Before filing the suit the plaintiff/landlord served eviction notice upon the defendant/tenant on 11/12-2-2000, determining the tenancy on the expiry of the month of March, 2000. It is alleged in the plaint that the defendant received the said notice on 16.10.1999 and on 16.02.2000 but the defendant did not comply the terms of the notice, which compelled the plaintiff to file the suit. It also appears from the said notices dated 12.10.1999 and 11.02.2000, which are marked exhibit 1 and 1/A that in the said notice nowhere it has been mentioned that it was a notice under section 106 of the Transfer of property Act (in short T.P. Act). However, learned Trial court while passed the decree of eviction in favour of plaintiff by the judgment dated 27th February, 2006 discussed issue no.6 namely whether the defendant is a defaulter in payment of rent or not answered the said issue in the following manner.

“with regard to this issue of defaulter in payment of rent, the defendant in the written statement as well as in his evidence admits that he did not pay rent on and from June, 1999. The defendants file some rent control challans (exhibit-B series) to show that he has deposited the rent before the rent controller. But I find that the suit property is situated in the area where there is no municipality for which the tenancy may be governed by the WBPT Act. On the contrary, it is a panchayat area and TP Act (section 106) is applicable here. Therefore, I find no reason to consider those challans at all. Accordingly I hold the view that the defendant is defaulter in payment of rent from the month of June, 1999 to November, 1999 at the rate of rent of Rs. 70 per month payable according to English calendar month. Hence this issue is decided in the positive and in favour of the plaintiffs”.

2. Aforesaid observation of the trial court makes it clear that he held that the defendant/tenant is defaulter in payment of rent, admittedly without considering rent control challans filed by the tenant and which are marked exhibit B series, as the mind set of the trial court at the time of

passing the impugned judgment was that the suit premises situates within panchayat area and for which court below found no reason to consider those challans at all. He also did not find it necessary to frame issue or to decide the question of fact as to whether suit premises is required for plaintiffs use and occupation or for build or rebuilding, for the same course.

3. As I have already stated that in the eviction notice sent by plaintiff/land lord nowhere it has been mentioned that it was a notice under section 106 of the T.P. Act but the trial court overlooked the fact that the Government of West Bengal by it's notification no. 245 L. R. dated 12th May, 1989 had extended the operation of the West Bengal premises tenancy Act, 1956 (West Bengal Act XII of 1956) (in short WBPT Act, 1956) in the area comprised in Mouza Pandua, JL 106, sit no. 1 and 2 , Block-Pandua Gram Panchayet under P.S. Pandua in the District Hooghly and boundary of area has been specifically mentioned in the said notification.

4. In the impugned judgment this court has already been observed that section 1(2) of the West Bengal Premises Tenancy Act, 1997(Act XXXVII of 1997) (in short WBPT Act, 1997) provides that the Act shall come into force on such date as the State Government by the notification appoint and it is not in dispute that the West Bengal premises Tenancy Act 1997 came into force vide notification no. 3052-L dated 9th July, 2001 published in the Kolkata gazette on 9th July, 2001. In the above context when the instant suit for eviction which was instituted on 3rd April, 2000, the aforesaid Act of 1997 did not come into force and the West Bengal Premises Tenancy Act got repealed under section 45 of the Act of 1997, only when the New Act of 1997 came into force on and from 9th July, 2001.

5. Therefore, though the trial courts observation in connection with issue no.4 that both the notices are legal valid and sufficient in the eye of law and was duly served upon the defendant, as the defendant had given reply to such notice of eviction, is justified and does not call for interference but the decree of eviction passed by the trial court without going through the challans filed by the defendants and thereby holding him defaulter in payment of rent, is perverse and calls for interference because section 13 of the WBPT Act starts with a *non obstanti* clause and clearly states that no decree of eviction for recovery of possession could be made except one or more grounds mentioned in section 13 is proved. In fact heading of the said section is “protection of tenant against eviction”. Therefore one or more grounds mentioned in section 13 have to be proved by the landlord and only on proof of any such ground, the tenant will lose protection against eviction. Existence of one or more grounds as stated in section 13(1) is mandatory for a decree of eviction. Even a compromise decree must contain materials to indicate that the decree is passed on any of the grounds mentioned in statute, otherwise decree will be of nullity.

6. It further appears when appeal was preferred against the aforesaid judgment the first appellate court also did not consider the grounds of eviction mentioned in the plaint but affirmed the judgment of the trial court observing that notice under section 106 given by the plaintiff respondent to the defendant/appellant is sufficient compliance for getting decree of eviction and as such judgment passed by the trial court does not call for interference. The first appellate court was of the view that the West Bengal Premises Tenancy Act 1997 was assented by the President of India vide

notification no. 2683-L dated 28.12.1998 and as such court below is of the view that with the assent of President of India, the West Bengal Premises Tenancy Act 1956 got repealed with effect from 28.12.1998. Thus court below held when the suit was filed in the year 2000, the WBPT Act, 1956 was not in existence and as such the notification no. 245 LR dated 12th May, 1989 in connection with the WBPT Act 1956 by which operation of the said Act of 1956 was extended to that area, where the suit premises situates came to an end, with the assent given by the president of India on 28.12.1998 and as such the trial court was justified in holding that plaintiff is not required to prove the grounds of eviction mentioned in the plaint, since the tenancy is not governed either by the Act of 1956 or by the Act of 1997 and thereby service of notice under section 106 of T.P. Act is sufficient to pass decree of eviction against the defendant/tenant though notice of eviction nowhere states that it was notice under section 106 of TP Act.

7. Such observation of the first appellate court is also perverse as discussed in the impugned judgment passed by this Court, on 26.09.2023 where this court has made clear observation that the court below was erred in law in observing that WBPT Act, 1956 got repealed when the new Act i.e. WBPT Act 1997 was assented by the president of India vide notification no. 2683-L dated 28.12.1998, overlooking the fact that section 1(2) of the New Act of 1997 has specifically declared that the said act will come into force on the date when the government notification will be made in the gazette and not from the date when the president has given assent to such Act.

8. To sum up the aforesaid discussion, it needs to be pointed out that though the trial court was justified in observing that the notice to quit was

legal valid and duly served upon the defendant but his observation that the defendant is defaulter in payment of rent and plaintiff thereby entitled to get decree of eviction, without considering the challans filed by the defendants is perverse, since it was passed with a wrong mind set that the plaintiffs' suit is not governed by the WBPT Act 1956 but under the provision of T.P. Act.

9. By the impugned judgment passed by this court on 26.09.2023 though the second appeal was dismissed as a whole after setting aside the judgment passed by both the trial court and the first appellate court, but I find that since the notice of eviction is legal valid and duly served upon the defendant/tenant, this is a fit case to remand because it is clear that the trial court has omitted/failed to determine the question of fact as well as question of law as to whether plaintiff has succeeded in proving any of the grounds mentioned in section 13(1) of WBPT Act, 1956 or not.

10. Therefore, the portion of order dated 26th September, 2023 by which this court set aside the judgment and decree passed by trial court and first appellat court and dismissed the appeal as a whole, is hereby recalled. The second appeal is kept pending before this court. Since on the basis of plaintiff's pleading and defendant's denial as per written statement, trial court either failed to decide properly or did not decide at all, the grounds of eviction mentioned in the plaint, I find that this is a fit case for remand under order XLI, Rule 25 of the code of Civil Procedure and for that following issues are being framed:-

- (i) Whether defendant is a defaulter in payment of rent?

- (ii) Whether the suit premises is reasonably required for plaintiffs personal use and occupation?
- (iii) Whether the suit premises is required by plaintiff for the purpose of building or rebuilding or for making thereto substantial addition or alteration and such building or rebuilding or addition or alteration cannot be carried out without the premises being vacated.

11. The entire case record is remitted to the trial court for trial to take additional evidence and thereafter to record his findings on the above-mentioned three issues and to return such evidence to this High Court together with his findings recorded thereon and the reason therefor in compliance with Rule 25, preferably within a period of six months from this date and after receipt of such evidence and finding from trial court, this High Court will hear the whole appeal on merit and will pass final judgment

12. RVW 263 of 2023 in connection with **SA 246 of 2010** thus stands disposed of. Department is directed to send the trial court record at once to the court from which it was called for.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)