

Item No.7
05.12.2025
Court. No. 6
GB

C.O. 4020 of 2025

Sri Pankaj Kedia
Vs.
Sri Raj Kumar Saraf

*Mr. Debabrata Banerjee,
Mr. Rabindra Nath Mahato*

...for the Petitioner.

1. The revisional application arises out of an order dated May 22, 2025, passed by the learned Judge, 6th Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No.152 of 2010.
2. The petitioner is the defendant in the suit for eviction. The suit for eviction was filed on the ground that the defendant was a licensee and such licence had been terminated. At the stage of arguments of the suit, two applications were filed by the defendant/petitioner, one under Section 73 read with Section 45 of the Indian Evidence Act read with section 151 of the Code of Civil Procedure and the other under Section 45A of the Indian Evidence Act read with Section 151 of the Code of Civil Procedure. The application under Section 73 read with Section 45 of the Indian Evidence Act was filed for examination of the signature of Anil Agarwal appearing in Exhibit-11, i.e. leave and licence agreement filed by P.W.1 and on letter dated December 24, 2021, i.e., part of the Exhibit-P, with the admitted signature of Anil Agarwal.

3. The petitioner contended that Anil Agarwal had denied his signature on Exhibit-P/11. Therefore, a comparison of the signature of Anil Agarwal on those exhibits should be made by a handwriting expert with the admitted signature of Anil Agarwal.
4. The learned court held that the oral evidence of D.W.5 (Anil Agarwal) recorded by the court, would be significant as Anil Agarwal acknowledged that he knew the plaintiff, who was a tenant under him in respect of one room at Premises No.11, Nalini Seth Road, Kolkata – 700007. From the said statement of D.W.5 it was clear that the plaintiff was a tenant and the plaintiff's case regarding him being a tenant under Anil Agarwal had been duly admitted.
5. The Court was of the opinion that comparison of the signature of Anil Agarwal which appeared in Exhibit P11 and in the letter dated December 24, 2021 addressed to Raj Kumar Saraf, asking Raj Kumar Saraf/plaintiff to vacate the premises which was needed for repair and renovation was not necessary. I find that, the said letter does not have any significance insofar as the lis between the petitioner and the plaintiff is concerned. The suit is for eviction of the petitioner, filed by Raj Kumar Saraf.
6. I do not find any illegality in such observations of the learned court. The fact that the plaintiff was a licensee under Anil Agarwal was admitted by Anil Agarwal. The relationship between Anil Agarwal and the

plaintiff does not have any bearing with the defence case and as such, the court rightly rejected the prayer for comparison of the handwriting of Anil Agarwal which appears in the documents exhibited.

7. Anil Agarwal had clearly admitted that the plaintiff was a tenant under him in respect of one room in Premises No.11, Nalini Seth Road, Kolkata – 700007. Anil Agarwal also admitted that a letter had been issued to the plaintiff asking him to vacate the premises for repair and renovation. All these documents were marked as exhibits, without any objection. Thus, the decision of the court does not call for any interference.
8. The second application was filed with a prayer for appointment of either an examiner of electronic evidence or for sending the electronic evidence to the State Forensic Science Laboratory, Kolkata for examination. It was submitted that a Compact Disc containing conversation between the plaintiff, defendant and one Ramesh Kumar Kedia, the translated copy of which were marked as Exhibits- M and N, should be sent for such examination. The petitioner stated that the voice recorded in the CD had not been identified. As, there was no mechanism and technical support for scientific procedure available in the court to identify and examine the recorded voices, the opinion of examiner of the electronic evidence would be relevant.

9. The plaintiff filed a written objection to the said application and it was contended that the defendant tried to improvise his case through his father, D.W.2 who alleged about a meeting held with his son and his sister's son, Manish Gupta. The court was of the view that D.W.2 revealed about the meeting on June 27, 2010 which had allegedly taken place in the plaintiff's house along with the defendant and one Manish Gupta. D.W.2 further stated that Manish Gupta recorded the conversation held in the meeting by a digital camera which was later transferred to a CD. A translation of the contents of the CD was later obtained from one R. Islam in Hindi.
10. The court was of the view that the written statement filed by the petitioner did not mention anything about the contents of the CD. The written statement lastly amended on September 7, 2024, did not reflect any plea made by the petitioner/defendant regarding a sum of Rs.25,00,000/- having been given to the landlord as salami at the time of induction of the tenancy. The defendant's father appeared to have introduced a new case through his evidence. Although, the meeting of June 27, 2010 was mentioned, the petitioner had pleaded that he and his father had attended the meeting, when the plaintiff threatened to dispossess the petitioner if the petitioner did not enhance the rent to Rs.20,000/- per month.

11. The court was of the view that by introducing such a new case, the basis of which was not available in the written statement, the petitioner was trying to digress from the suit by leading the court to a wild path. Thus, the said prayer was not accepted and the court had taken a serious view of the fact that the applications were filed at the fag end of the suit, when arguments were in progress, only to cause delay. The court was within its power to reject such application.
12. I also do not find any illegality in the said decision of the court. Moreover, it is the plaintiff to prove his case for eviction of the petitioner. The petitioner will have to discharge the reverse burden. No one has challenged the authenticity of the said CD, thus forensic examination of the contents will not be necessary.
13. Under such circumstances, sending the CD to the forensic expert is not necessary. The corroborative value of the contents of the CD which has been translated shall be decided by the court at the final hearing, without any interference. The suit shall proceed in accordance with law.
14. Accordingly, the revisional application is disposed of.
15. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)