

ORDER SHEET

APOT/64/2025

WITH

CS/36/2021

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

SRI SRI LAKSHMI THAKURANI
VS
PROMOD KUMAR AGARWAL AND ANR

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date : 11th June, 2025.

Appearance:

Mr. Meghnath Dutta, Adv.

Mr. Lalratan Mondal, Adv.

..for the appellant

Mr. Sudip Deb, Sr. Adv.

Ms. Ipsita Ghosh, Adv.

..for the respondents

Dictated by Arijit Banerjee, J.

The Court: This appeal is directed against a judgment and order dated February 12, 2025, whereby the appellant's application for summary judgment under Chapter XIII-A of the Original Side Rules of this Court, was dismissed by a Learned Judge of this Court.

It is not in dispute that the respondents were, and they claim that they still are, tenants in respect of the suit premises. We have seen the

concerned lease deed that was executed in the year 1995. The lease was for a period of 25 years. That period expired on October 31, 2020.

The appellant filed CS/36/2021 claiming a decree for eviction of the respondents from the suit premises and other reliefs. After the respondents/defendants entered appearance in the suit, the appellant/plaintiff took out a summons for summary judgment contending that the defendants have absolutely no defence and the facts of the case disclose no triable issue. According to the plaintiff, it is an open and shut case and, therefore, a full-fledged trial is wholly unnecessary.

The Learned Judge recorded the respective contentions of the parties. The Learned Judge noted that the defendants contended that even after expiry of the lease by efflux of time, the plaintiff accepted rent from the defendants. Therefore, the defendants have become monthly tenants or at least tenants by holding over in respect of the suit premises. The Learned Judge also noted that by an order dated December 13, 2021, a Learned Judge of this Court kept the point of maintainability of the suit open. The defendants contended that if the suit is decreed summarily, that order would become infructuous.

The plaintiff, however, contended before the Learned Judge that no rent was received by the plaintiff from the defendants after expiry of the lease on October 31, 2020. The money that was transferred by the defendants, in the sum of approximately Rs.11,000/- consisted of rent for the month of July, 2020 and the differential amount of enhanced rent in terms of the 10% enhancement clause in the lease deed. The defendants, of

course, contended that the said sum of approximately Rs.11,000/- was tendered on account of rent for the period July to December, 2020.

The Learned Judge referred to various authorities cited by the parties including the decisions of the Hon'ble Supreme Court in *State Bank of Hyderabad vs. Rabo Bank* reported in (2015) 10 SCC 521; *R.N. Gosain vs. Yashpal Dhir* reported in (1992) 4 SCC 683; *IDBI Trusteeship Services Limited vs. Hubtown Limited* reported in (2017) 1 SCC 568; *Kadhir Masthan Rowther vs. Segammal* reported in XI L.W.J 197; *Chairman, State Bank of India and Another vs. M. J. James* reported in (2022)2 SCC 301 and *Prabhakar vs. Joint Director, Sericulture Department and Another* reported in (2015) 15 SCC 1, which were relied upon by the defendants. Finally, the Learned Judge came to the conclusion that the defence raised by the defendants is a fair and reasonable one and, therefore, unconditional leave should be granted to the defendants to defend the suit. Accordingly, the Learned Judge dismissed the plaintiff's application for summary judgment. Hence this appeal at the instance of the plaintiff.

We have heard Mr. Dutta, learned counsel representing the appellant at some length. We have not called upon Mr. Deb, learned Senior Counsel representing the respondents.

We have noted above the respective contentions of the parties advanced before the learned Single Judge. In our opinion, the issues raised by the defendants need to go to trial. The defence raised by the respondents cannot be said to be moonshine so as to disentitle the defendants to contest the suit.

Mr. Dutta says that some condition should be imposed on the defendants and unconditional leave ought not to be granted. We cannot agree with him. We would have imposed conditions if we had serious doubt about the defendants' good faith or genuineness of the triable issues. We cannot say that the defence is wholly improbable. We cannot say that there is no genuine triable issue. Hence, we are not inclined to impose any condition on the defendants.

We cannot lose sight of the fact that this is an intra-court appeal. The Appeal Court will not interfere even if the Learned Single Judge's order is merely erroneous in the opinion of the Appeal Court. It is only when the order is wholly erroneous or perverse that interference is called for. That is not the case here. The view taken by the Learned Single Judge is definitely a plausible and probable one.

In view of the aforesaid, we see no reason for interfering with the order under appeal, which accordingly stands dismissed.

There will be no order as to costs.

After this order is dictated, Mr. Dutta says that the defendants are enjoying the suit property without paying anything for a long time. We direct the defendants to deposit with the Registrar, Original Side, without prejudice to the rights and contentions of the parties, the rent/occupational charges at the rate last paid for the period for which the same remains unpaid, within three weeks from date. In case the same is not done, the appellant will be at liberty to mention the matter before us.

This matter shall be listed again three weeks hence only to record compliance of this order by the respondents.

The hearing of the suit is expedited. There will be an order for cross-discovery within three weeks from date; inspection forthwith thereafter. The parties will be at liberty to mention the matter for hearing before the Learned Single Judge once the suit is ready for hearing.

(ARIJIT BANERJEE, J.)

(RAI CHATTOPADHYAY, J.)

bp.