

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM ORDER PASSED IN ITS
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

**APO/32/ 2025
With CS/14/2021**

**AMALGAMATED FUELS LIMITED
Versus
HELEN ALEXINA RODGERS MARTIN AND ORS.**

Present :

The Hon'ble Justice Debangsu Basak

-And-

The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant : *Mr. Avinash Kankani, Adv.*
Mr. Suman Majumder, Adv.
Mr. Aurin Chakraborty, Adv.
Ms. Shree Chatterjee, Adv.

For the Respondent : *Mr. Subhasish Sengupta, Adv.*
Ms. Abhipriya Sarkar, Adv.

HEARD ON : 06.11.2025
DELIVERED ON : 06.11.2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the plaintiff and directed against the judgment and order dated March 6, 2025 passed in IA No.GA/4/2021, CS/14/2021.
2. Learned advocate appearing for the appellant submits that, the defendant in the suit, without filing a written statement, applied

under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the plaint. Such application of the defendant was dismissed by the judgment and order dated April 9, 2021. He submits that, in the application for rejection of the plaint, the defendant acknowledged that, the original tenant expired on May 31, 2016. He submits that, after a period of five years from the date of death of the original tenant, the appellant applied for a decree of eviction of the defendant on the basis of admission made by the defendant.

- 3.** Learned advocate appearing for the appellant in support of his contention that the original tenant expired on May 31, 2016 draws the attention of the Court to the averments made by the defendant. He also relies upon Order XIV Rule 1 of the Code of Civil Procedure, 1908 and submits that the appellant is entitled to a decree for eviction on the basis of such admission. He submits that, the defendant does not possess any defence as against the decree for eviction in view of the provisions of the West Bengal Premises Tenancy Act, 1997. Possession of an heir and legal representative of a deceased tenant is protected for a period of five years from the date of death of the original tenant. In the facts and circumstances of the present case since the original tenant expired on May 31, 2016, the defendant cannot possess the property in

question as a tenant after expiry of five years from the date of death of the original tenant. Therefore, the appellant is entitled to a decree for eviction on the basis of such admission.

4. Learned advocate appearing for the appellant relies upon **2025 SCC Online SC 751 (Rajiv Ghosh vs. Satya Naryan Jaiswal)** for the proposition that the appellant is entitled to a decree of eviction on the expiry of five years from the date of death of the original tenant. He relies upon **(1992) 1 SCC 731 (Sujir Keshav Nayak vs. Sujir Ganesh Nayak)** on the proposition of valuation and, in particular, consequence of over valuation and under-valuation of a suit.
5. Drawing the attention of the Court to the judgment and order dated April 9, 2021 by which the application for rejection of plaint was dismissed as also the order of the Appeal Court dated August 18, 2021 with regard thereto he submits that, the Division Bench did not frame any issue with regard to the pecuniary jurisdiction of the Court to entertain the present suit since no written statement was filed on that material point of time. According to him, the order of the Division Bench should not be construed to mean that the Division Bench framed an issue with regard to pecuniary jurisdiction of the High Court.
6. The defendant is represented.

7. By the impugned judgment and order the learned Single Judge disposed of an application for judgment on admission filed at the behest of the appellant. Foundational basis of the application for judgment on admission filed by the appellant, as the plaintiff, is the statement of the defendant that the original tenant expired on May 31, 2016 and that a period of five years expired from the date of death of the original tenant therefore, denuding the defendant of the protection under the West Bengal Premises Tenancy Act, 1997.
8. The application for judgment on admission was filed subsequent to the disposal of the application for rejection of the plaint. Application for rejection of the plaint filed by the defendant was disposed of by the judgment and order dated April 9, 2021. Learned Single Judge held that the Court possessed jurisdiction to hear and decide the issue. Appeal preferred against such judgment and order dated April 9, 2021 was disposed of by an order dated August 18, 2021.
9. Relevant portion of the Appeal Court's order in its order dated August 18, 2021 is as follows:

“... Whether the suit was to be valued on the market value of the property or on the value based on rent ?

To decide this issue, in our opinion, an extensive inquiry has to be made by the court. Such inquiry would be both factual and legal.

This is not a case which can be decided on a bare reading of the plaint.

This very defence of the first defendant has to stand to trial. The learned single judge before whom the trial will take place may be requested to frame the issue as to whether this court has pecuniary jurisdiction to entertain, try and determine the suit as a preliminary issue before deciding the other issues.

Time for the first defendant to file the written statement is extended till 20th September, 2021.”

- 10.** Defendant filed written statement in terms of the direction contained in the order dated August 18, 2021 passed by the Appeal Court. In its written statement the defendant pleaded lack of pecuniary jurisdiction of this Hon’ble Court to try, receive, entertain and adjudicate the instant suit.
- 11.** In view of the categorical direction of the Appeal Court as contained in the order dated August 18, 2021, we are unable to return a finding that the issue as to pecuniary jurisdiction was not directed to be decided at the trial of the suit between the parties. Significantly, the defendant, as noted above, took a point of lack of pecuniary jurisdiction of the Court in the written statement allowed to be filed by the Division Bench. Consequently, the issue as to lack of pecuniary jurisdiction became germane between the parties. Till such time such issue is finally decided, we should refrain

ourselves from passing a final decree in the manner and matter as prayed for by the appellant.

12. *Rajiv Ghosh (supra)* concerned a suit for eviction on the basis of the death of the original tenant and expiry of a period in excess of five years therefrom. In the facts and circumstances of that case Supreme Court found that the plaintiff was entitled to a decree for eviction on the basis the expiry of five years from the date of death of the original tenant.

13. *Sujir Keshav Nayak (supra)* concerned valuation of suit. In such context, Supreme Court held that a plaintiff may over-value or undervalue a suit for the purpose of avoiding a Court of a particular grade. It noted that in a case where a suit is over-valued, the plaint may be returned under Order VII Rule 11 of the Code of Civil Procedure for presentation in the proper Court. In the event the suit is under-valued, then since undervaluation goes to the root of maintainability of the suit, a defendant is entitled to raise an objection irrespective of the nature of the suit.

14. As noted above, in the facts and circumstances of the present case, the issue as to pecuniary jurisdiction is yet to be decided finally between the parties.

15. In such circumstances, we find no merit in the present appeal.

- 16.** APO/32/2025 along with connected application, if any, is dismissed without any order as costs.

(DEBANGSU BASAK, J.)

- 17.** I agree.

(MD. SHABBAR RASHIDI, J.)

A/s.