

**IN THE HIGH COURT AT CALCUTTA
EXTRAORDINARY CIVIL JURISDICTION
ORIGINAL SIDE**

**BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY**

**ALP 2 of 2023
with
ALP 3 of 2023**

**Karnani Properties Limited
Versus
Turner Morrison Limited**

For the petitioner : Mr. Sabyasachi Choudhury, Adv.
Mr. Shaunak Mukhopadhyay, Adv.
Mr. Neelesh Choudhury, Adv.
Ms. Anuradha Poddar, Adv.

For the respondent : Mr. Chayan Gupta, Adv.
Mr. Ashis Kr. Mukherjee, Adv.
Mr. Akash Munshi, Adv.
Mr. Sourabh Prosad, Adv.

Heard on : 09.12.2024.

Judgment on : 5th March, 2025.

RAJA BASU CHOWDHURY, J:

1. The aforesaid applications under Clause 13 of the letters patent have been filed, *inter alia*, praying for transfer of the suit pending before the learned Chief Judge of the Presidency Small Causes Court at Calcutta being Ejectment Suit No. 406 of 2010 (Karnani Properties Limited v. M/s. Turner Morrison Limited) and Ejectment Suit No. 407 of 2010 (Karnani

Properties Limited v. M/s. Turner Morrison Limited) to this Hon'ble Court.

2. To appreciate the scope of the aforesaid applications, it is necessary to consider the plaint case of the petitioner filed in the above two suits, including the facts leading to filing of this application. The petitioner as a plaintiff in the above ejectment suit no 406 of 2010 has filed the same for recovery of khas possession of the suit property which is a flat being flat no.8 (formerly flat no. 4A), measuring an area about 430 square feet (approx.) on the 1st floor of premises No.47, Park Street, Kolkata – 700016, within Park Street Police Station.
3. The petitioner claims to be the owner of the premises No. 47, Park Street, Kolkata – 700016. It is the petitioner's case that on the basis of the terms and conditions contained in the agreement dated 1st April, 1951, the respondent was inducted as a monthly tenant in respect of the flat bearing flat no. 4A situated on the 1st floor of premises no. 47, Park Street, Kolkata, 700016, measuring more or less 430 square feet for and at a monthly rent of Rs. 100 payable according to English calendar month. On and from January, 1960 for convenience, the tenanted premises was renumbered as flat No.8 in place and stead of flat no. 4A. Independent of the above, by a separate agreement dated 1st April, 1950 the respondent was inducted as a tenant in respect of flat No. 4 on the 1st floor of premises no. 47, Park Street, Kolkata-700016, measuring more or less 1100 square feet along with one kitchen being no. 11 on the

1st floor of premises no. 47, Park Street, Kolkata – 700016, measuring more or less 90 square feet, for a monthly rent of Rs.136.12 p. On or about 23rd December, 1959, flat no. 4 was renumbered as flat no. 7. The petitioner has since filed the above ejectment Suit no. 407 of 2010 for recovery of possession of the aforesaid flat no.7 on the 1st floor of premises no. 47, Park Street, Kolkata-700016, measuring more of less 1100 square feet along with one kitchen being no. 11 on the 1st floor of premises no. 47, Park Street, Kolkata – 700016, measuring more or less 90 square feet.

4. The petitioner's case proceeds on the premise that flat nos. 7 and 8 are adjacent to each other and are divided by a concrete partition wall and at all material times there were and still is separate entrances for egress to and ingress from flat nos. 7 and 8.
5. Some times in March 2009 the petitioner claims to have become aware with regard to structural additions and alterations carried out by the respondent in tenanted premises. This was without the consent and permission of the petitioner. Petitioner having made further enquires, had come to learn that the respondent had wrongly and illegally and in breach of the terms and conditions contained in the agreement dated 1st April, 1951 and 1st April, 1950, had sublet and parted with possession of the tenanted premises in its entirety in favour of a third party. The petitioner also came to learn that the respondent had wrongfully and illegally demolished the concrete partition wall dividing

flat no.7 and flat no.8, and having converted the two flats into one flat, had wrongly renumbered the two flats as flat no.9A. It is in the facts noted hereinabove, the petitioner had issued two several notices both dated 30th April, 2009, to the respondent duly determining the tenancy of the respondent in respect of the tenanted premises concerning the above two agreements after expiry of the month of June 2009. Despite determination of the tenancy and despite expiry of the period of the month of June 2009, the respondent having failed and neglected and having refused to quit, vacate and deliver peaceful and vacant possession of the tenanted premises, the above suits were filed praying for a decree for recovery of peaceful, vacant and khas possession as also for an enquiry into the damages against the respondent. The respondent has been contesting the suits by filing written statement. The petitioner claims that despite there being no dispute as regards the ownership and the tenancy agreement, the respondent has denied, not only the petitioner's ownership but also the terms and conditions of the agreement dated 1st April, 1951 and 1st April, 1950 whereunder, the respondent was inducted to the flats as a tenant in respect of the suit property. It is the petitioner's case that subsequently the petitioner came to learn that the respondent had filed a separate suit before this Hon'ble Court which has been registered as Civil Suit No. 93 of 2015 against eleven several defendants, *inter alia*, praying therein for a decree for recovery of vacant and khas possession of the flat being flat nos. 7 and 8

wrongfully renumbered as flat no. 9A along with one kitchen being no.11 at premise no. 47, Park Street, Kolkata – 700016 as also praying for a decree for mesne profit.

6. Mr. Choudhury, learned senior advocate appearing in support of the aforesaid application, by drawing attention of this Court to the plaint filed in C.S. No. 93 of 2015 would submit that from the aforesaid plaint it would transpire that a prior suit instituted by the respondent being C.S. No. 906 of 1980 against one Prakash Bakshi which was disposed of by a judgment and decree dated 25th February, 1985 in favour of the respondent, who is the plaintiff in the said suit. In terms of the aforesaid judgment and decree, the defendant in the said suit was directed to quit, and deliver up vacant and peaceful possession of the aforesaid two adjoining flats together with all amenities, furniture and fixtures and were also restrained by way of a permanent injunction from dealing with and/or disposing of and/or transferring and/or assigning and/or encumbering the flats together with amenities in any manner whatsoever. When the respondent as plaintiff in the said suit had put the said decree into execution, and in terms of an order passed by the learned Master, a representative of the Sheriff's office along with the representative of the respondent had visited the suit premises, a notice was served on the son of the defendant in the said suit, who was found residing in the flats asking him to deliver vacant possession within four days from the receipt of such notice. A report was also prepared by the

representative of the Sheriff on 19th December, 1986 to that effect. On 23rd December, 1986, the representative of the Sheriff along with the representative of the respondent again visited the premises to take possession but it was found that the flats were locked. According to the respondent as the order did not provide for breaking open of the locks, possession could not be handed over. A report to that effect dated 5th January, 1987 was also prepared. On 15th January, 1987 an order was passed directing Officer-in-Charge, Park Street Police Station to assist the decree-holder at the time of execution of the decree for handing over peaceful and vacant possession of the flat to the respondent. On the basis thereof, on 19th May, 1987 possession of one flat being Flat No. 7 was handed over to the respondent by the Officer-in-Charge by the Office of the Sheriff and a certificate to that effect was issued by the Sheriff on 2nd June, 1987., though flat no.8 and one kitchen no.11 could not be handed over. The plaint case of the respondent further proceeding on the premise that when the representative of the respondent went to Flat No.8, it was found that the original Flat No. 8 was double locked and marked as 9A and illegally occupied by a third party. Although an execution application was filed, in the said execution application a General Application being No. GA No. 1507 of 1997 was filed and by an order dated 24th February, 2015 a Coordinate Bench of this Hon'ble Court had dismissed the execution application as not maintainable by recording that the order of dismissal shall not prevent the respondent

from taking appropriate steps in accordance with law for recovery of possession and the time spent in prosecuting the proceeding shall be excluded, provided steps are taken within a period of six weeks. The above suit (hereinafter referred to as the “second suit”) appears to have been filed within a period of six weeks therefrom.

7. Mr. Choudhury, learned advocate appearing on behalf of the petitioner would submit that having regard to the facts pleaded in the second suit, the petitioner would be required to examine the Sheriff. Ordinarily, it would be much easier to have the records of this Court produced by the Sheriff before this Court than to have the same brought to another Court. This apart, considering the disclosure made in the plaint filed by the respondent in C.S. no. 93 of 2015 it would no longer be necessary for the petitioner to prove either the landlord-tenant relationship between the petitioner and the respondent, or to prove its ownership in respect of the suit property having regard to the admission made in the plaint filed by the respondent in the second suit. According to Mr. Choudhury, the balance of convenience is in favour of the petitioner’s suit being transferred before this Court since there would be very little evidence for this Court to go into. The same would not only minimize time and effort of the petitioner but also of the Court as such the issues as regards the landlord-tenant relationship and the ownership of the petitioner over and in respect of the suit property has become redundant. In support of the aforesaid contention, he placed reliance on the judgment delivered in the

case of ***Kalidas Roy & Ors. v. University of Calcutta and Ors.***, reported in **1951 SCC OnLine Cal 170**. By relying on test no. 2 appearing at paragraph 12 of the aforesaid judgment, he would submit that the present case satisfies the objective test for transfer. Having regard thereto, it is submitted that it is a fit case in which the order of transfer should be passed.

8. Mr. Gupta learned advocate representing the respondent, on the other hand, would submit that cause of action for both the suits are different. Simply because the suit property in both the suits are common, the same does not and cannot form a ground for transfer of the petitioner's suit to this Hon'ble Court by invoking the extraordinary jurisdiction under Clause 13 of Letters Patent. According to Mr. Gupta, it is not the case of the petitioner that a decision in one of the suits will have the effect of rendering the other suit infructuous. According to him, it is unlikely that there would be a conflict of judicial opinion, unless both the suits are heard together. He would submit that no complex question of law is involved and the issue involved in the suit can be conveniently dealt with by the learned Presidency Small Causes Court. Having regard thereto and no case for transfer having been made out, the instant application deserves to be rejected. According to him, the judgment delivered in the case of ***Kalidas Roy (supra)*** lays down not only objective but subjective tests, the petitioner does not satisfy any of the tests as provided in the said judgement.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record. I have scrutinised not only the plaint filed in the above suits but also the plaint filed in suit no. 93 of 2015 filed by the respondent. I have also considered the judgment and decree delivered in the suit no. 906 of 1980 and the Sheriff's report dated 19th December, 1986 including the certificate issued by the Sheriff's office on 15th June, 1987. I find that Mr. Gupta has claimed that since, the decision in the suits filed by the petitioner will not have an impact on the suit filed by the respondent and since it is highly unlikely that there would be conflict of judicial opinion if both the suits are tried separately, no order for transfer may be necessary. However, having regard to the objective and subjective tests laid down in the judgment delivered by this Court in the Case of **Kalidas Roy** (*supra*), and having regard to the disclosure made in the plaint filed by the respondent in C.S. No. 93 of 2015, as rightly pointed out by Mr. Choudhury, learned senior advocate, it may be easier for the petitioner as plaintiff in the above noted ejectment Suits No. 406 and 407 both of 2010 to prove and establish their case having regard to the statements made in the plaint in suit no. 93 of 2015 and would save the time of the Court. As to whether such statements constitute admission, is entirely premature at this stage to comment on. However, considering the petitioner's claim it would be equally premature at this stage to reject the same. Having regard thereto, it can be said that there might be very little disputed issues which would

be required to be gone into though the same would be for the learned judge to consider. However as rightly pointed out by Mr. Choudhury, it would be far more convenient to examine the Sheriff before this Court than before any other court. The balance of convenience also requires consideration. The respondent has already filed two several suits in respect of the suit property before this Court. The second suit is pending adjudication before this Court. The respondent is also contesting the two suits filed by the petitioner before the learned Presidency Small Causes Court at Calcutta. It is thus unlikely that the respondent would be inconvenienced if the suits filed by the petitioner now pending before the learned Presidency Small Causes Court at Calcutta are transferred to this Court. Thus, considering the objective tests and the balance of convenience, I am of the view that ejectment suit no. 406 of 2010 and 407 of 2010 now pending before the learned Presidency Small Causes Court, Calcutta should be withdrawn and be transferred to this Court for interest of justice by virtue of powers conferred under Clause 13 of the Letters Patent. Once, the records arrived before this Court, the department shall treat the ejectment suits no. 406 and 407 both of 2010, as extraordinary suits and renumber the same, whereupon the transferred suits as well as the second suit filed by the respondent being CS no. 93 of 2015 now pending before this Court shall be heard analogously.

10. With the above observations and directions, the applications are disposed of.
11. There shall be no order as to costs.
12. Urgent Photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)