

AD -156
Ct No.16
03.02.2026
(SSS)

SAT 23 of 2026

With

CAN 1 of 2026

Ruhi Agarwalla alias Chandgothia
Vs.
Santosh Agarwal

Mr. Asif Hussain,
Ms. Jyoti Singh
....For the appellant.

Mr. Abhijit Ray,
Mr. Santu Nandy
.....For the respondent.

1. The present second appeal has been preferred against a judgment of affirmance, whereby both the Courts below granted a decree of eviction against the defendant/appellant on the ground of change of user of the tenanted property.
2. Learned counsel for the appellant submits that the Courts below failed to advert to the fact that the service of the notice to quit under Section 6(4) of the West Bengal Premises Tenancy Act, 1997 was not properly proved. It is argued that admittedly, the postal service of such notice returned with the endorsement "addressee

moved”, which was erroneously treated to be good service, in the absence of any further proof of service.

3. Secondly, it is argued that the plaintiff/respondent, in his individual capacity, was not entitled to maintain the suit for eviction, since the tenancy was initially granted by the Hindu Undivided Family (HUF) of the plaintiff's father.

4. Although such point was raised in an application challenging the maintainability of the suit filed by the defendant/appellant, the Courts below did not advert to the same. It is argued that in view of the question of maintainability having been specifically raised, the Courts below had a duty cast upon them to consider the same even before granting a decree of eviction.

5. However, learned counsel, in his usual fairness, submits that since no written statement, nor any application either under Section 7(1) or 7(2) of the 1997 Act, were filed by the defendant in the suit, there was no pleading of the defendant on record, apart from the application challenging the maintainability of the suit.

6. Upon hearing learned counsel for the appellant and perusal of the judgments of both the Courts below, we do not find any substantial question of law involved.

7. In view of no application under Section 7(1) and/or 7(2) having been filed at all, the rigour of Section 7(3) of the 1997 Act automatically came into effect, thereby precluding the defendant/appellant from relying on any defence.

8. That apart, in the present case, no written statement was filed at all. As such, there was no scope of the defendant/appellant raising any dispute of any nature, including the dispute as to the title the plaintiff and/or landlord-tenant relationship between the parties.

9. That apart, both the Courts below took a plausible view on the materials on record by construing the service of the notice to quit to be proper, since it was sent to the proper address.

10. Such presumption of valid service is sanctioned by law and is one of the possible views. It is well-settled that in a second appeal, the Court does not interfere with concurrent findings of fact or replace/substitute its own views for that of the Trial Court as well as the first appellate Court.

11. In such view of the matter, we do not find any scope of admitting the present appeal.

12. Accordingly, SAT 23 of 2026 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

13. Consequentially, CAN 1 of 2026 is also dismissed. There will be no order as to costs.

14. The parties shall act on the server copy of this order, duly downloaded from the official website of this Court.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)