

CO. 563 of 2026

10.03.26
D/L
Sl-42
Ct. 06
(Samar)

Suprotim Sur
v.
Gopal Sen & Anr.

Mr. Souradipta Banerjee,
Ms. Fatima Hassan,

....for the Petitioner.

Mr. Shubham Gupta,
Mr. Anirban Ghosh,
Mr. Raunak Shaw,
Mr. Md. Ayaan,
Mr. Rajsekhar Bal Bakshi,

.... for the respondent.

1. This revisional application is directed against an order dated August 25, 2025 passed by the learned Judge (6th Bench) Presidency Small Causes Court, Calcutta in Ejectment Suit No. 57 of 2024.
2. By the order impugned the petitioner's application for taking the case off the ex-parte board together with an application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 have been disposed of by taking the suit off the ex parte board but at the same time striking out the petitioner's defence by invoking the provisions of Section 7(3) of the West Bengal Premises Tenancy Act, 1997.
3. The suit is one for eviction of the petitioner from a room (godown) at the ground floor of premises no. 128/2C, Raja Ram Mohan Sarani, P.S. Muchipara, Kolkata – 700009 at a monthly rent of Rs.400/- per month. It is the petitioner's case that the petitioner

was not served with summons of the suit and that the petitioner came to know about the pendency of the suit only on May 27, 2025 upon the petitioner being threatened by the opposite party/plaintiff that the petitioner would be evicted from the suit premises. The petitioner asserts that as the learned Court was closed due to summer vacation, it was only on June 09, 2025 that the petitioner could meet his learned advocate, upon re-opening of the court after the summer vacations. The petitioner's case is that it was only thereafter that the petitioner applied for information and learnt that a suit for the petitioner's eviction had been instituted before the learned Trial Court.

4. It was under such circumstances, that the petitioner filed applications under Section 7(1) and 7(2) of the said Act, 1997 as well as an application for taking the suit off the ex-parte board, which have been rejected by the order impugned and the petitioner's defence has been stuck off. Hence the revisional application.
5. Mr. Banerjee, learned advocate appearing for the petitioner submits that the learned Trial Court has committed a serious error in not appreciating the fact that service by way of affixation of summons through bailiff is not a kind of service and in fact it raises only a presumption of service. It is submitted that the moment the petitioner filed the

applications indicating that the petitioner had not been served with the summons, the presumption was rebutted and it was incumbent on the learned Trial Court to allow the petitioner to contest the suit.

6. Mr. Banerjee has handed up to court a compilation of orders passed by the learned Trial Court and has indicated that although the opposite party had been directed to publish notice of the suit in any of the three newspapers namely “Anandabazar Patrika” or “Sangbad Pratidin” or “Bartaman Patrika” by an order dated November 18, 2024, yet the opposite party published such notice in a lesser circulated newspaper named “E-Samay”. It is further submitted that by the order dated January 10, 2025 the court accepted the news paper publication in “E-Samay” at the *“risk of the plaintiff”*.
7. Inviting the attention of this court to Section 7(1)(b) of the said Act of 1997. Mr. Banerjee, submits that the expression *“where he appears in the suit without the summons being served upon him”*, applies to the petitioner and the petitioner should be permitted to contest the proceedings by complying with the provisions of Section 7(1) of the said Act of 1997 and by depositing the admitted arrears of rent.
8. Relying on the judgment of the Hon’ble Division Bench of this Court in the case of **Jhabarmull Dudhwalla Vs. Bhagatram Serowgif** reported in

(1946-47) 51CWN 189, it is submitted that the provisions of Order 20 Rule 17 should be strictly complied with. It is submitted that there has been no compliance with the said provisions in the case at hand. Mr. Banerjee submits that the order impugned should be set aside.

9. Mr. Gupta, learned advocate appearing for the opposite party submits that the petitioner was in the know of the suit that had been instituted against him. It is submitted that the summons attempted to be served at the address of the petitioner returned since the *“defendants room was closed under lock and key”*.

10. Inviting the attention of the court to the copies of the order passed by the learned Trial Court (handed up to Court by Mr. Banerjee as indicated herein above), Mr. Gupta submits that the learned Trial Court has recorded its satisfaction as regards service of summons through bailiff on the basis of the bailiff's report dated October 04, 2024 and as such, there is sufficient compliance with the provisions of Order 5 Rule 20 of the Code of Civil Procedure. As regards Mr. Banerjee's contention that the petitioner had published the notice in a news paper different than the one that had been directed by the learned Trial Court, Mr. Gupta, relied on two judgments of the Hon'ble Supreme Court in the case of **Sunil Poddar & Ors. Vs.**

Union of Bank of India reported in ***(2008) 2 SCC 326*** and ***Basanti Singh & Anr. Vs. Roman Catholic Mission*** reported in ***(2002) 7 SCC 531***.

11. It is submitted by Mr. Gupta that merely because the opposite party had published to notice in a newspaper different than the one directed by the court the same would not render the publication bad.

12. It is further submitted by Mr. Gupta that the order dated January 10, 2025 whereby the court has accepted the bailiff's report has not been challenged.

13. Heard learned advocates appearing that the respective parties and considered the material on record.

14. By the order dated January 10, 2025 the learned Trial Court accepted the service of summons by affixation through bailiff in the following words:

“Further from the bailiff report dt. 04/10/2024 which reveals that the bailiff had pasted one copy of summons on the outer door of defendant's room and another copy on the notice board of the Court premises.”

15. While it is true that the learned Trial Court had recorded that the newspaper publication in the Bengali Daily named “E-Samay” was accepted “at the risk of the plaintiff” yet, the service by affixation

through bailiff has bridged the procedural irregularity that may have been there in publication of notice in a news paper different than the one that was directed by the learned Trial Court. In any case there is nothing on record to show that the newspaper where notice has been published is one of lesser circulation, although a submission to that effect was made by Mr. Banerjee.

16. The order dated January 10, 2025 clearly indicates that the court was fully satisfied as regards service by affixation through the bailiff. There is nothing on record before this court to disbelieve the conclusion reached by the court or to impeach the finding of the court as regards service by affixation through bailiff.

17. While Mr. Banerjee contended that service by affixation through bailiff or by publication is weak and rebuttable there precious little before this Court or even before the learned Trial Court in the form of pleadings (far less evidence) to suggest that the petitioner has been able to rebut the presumption of service. It not the petitioner's case, even in the least, that the summons were sought to be served or sent at an incorrect address.

18. In fact it is evident from the order dated July 19, 2024 that summons could not be served as the *defendant's room was closed under lock and key*. Summons sent through post also returned

unserved. There is no finding that the summons was sent to incorrect address. In such view of the matter, upon finding service of summons both through Court process as well as through registered post had failed, the Court was satisfied that summons could not be served upon the petitioner in the ordinary way and the Court therefore directed for substituted service.

19. As regards the judgment in the case of *Jhabarmull Dudhwalla (supra)* the same cannot help the petitioner in the case at hand inasmuch as the said case was in respect of service under Order 5 Rule 17 but the present case is one of substituted service under Order 5 Rule 20 where the Court was satisfied that summons could not be served upon the petitioner in the ordinary way and therefore directed for substituted service as indicated hereinabove.

20. Furthermore in any case, even assuming that the ingredients of Order 5 Rule 17 can be stretched and applied to service under Order 20 Rule 5, then also this Court does not find any reason to upset the finding of fact by the learned Trial Court which is based on the bailiff's report dated October 04, 2024.

21. Since the learned Trial Court was satisfied that the service had been effected and there is nothing on record to disbelieve or rebut the

conclusion as regards service, the order impugned dated August 25, 2025 whereby the learned Trial Court rejected the petitioner's application under Sections 7(1) and & (2) of the said Act of 1997 on the ground of non compliance with the mandatory provisions of Sections 7(1) of the said Act of 1997 cannot be faulted. It is now well settled that the provisions of Section 7(1) of the said Act of 1997 are mandatory. Since the court was satisfied that service through bailiff was conclusively done on October 4, 2024 any deposit that could have been made beyond one month thereafter, would definitely be hit by the bar of Section 7(1) of the said Act of 1997 and would incur the wrath of Section 7(3) of the said Act of 1997.

22. While exercising its supervisory jurisdiction under Article 227 of the Constitution of India, this Court cannot re-appreciate evidence as regards service, all the more so since there is no material on record to support a conclusion contrary to the one taken by the learned Trial Court.

23. For all the reasons aforesaid, this court does not find any illegality or material irregularity in the order dated August 25, 2025 passed by the learned Trial Court.

24. With the above observations, CO. 563 of 2026 stands dismissed. No order as to costs.

25. Urgent photostat certified copy of this order, if

applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)