07.10.2026

Item no. DL/24
Court No. 16

Asraf, A.R.(Ct.)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Case No.

SAT 86 of 2026
with
CAN 1 of 2026

In the matter of :

PRIYABRATA DAS

...Appellant

VS.

BIJAY KUMAR MANISH KUMAR HUF

...Respondent

For the Appellant :
Mr. Abhijit Ray
Mr. Santu Nandy

...Advocates

For the Respondent :
Mr. Sounak Bhattacharya
Mr. Ganesh Prasad Shaw
Mr. Gaurav Kumar

...Advocates

1. The present appeal has been preferred against a judgment of reversal. The plaintiff/respondent filed a suit for eviction of the defendant/appellant on the grounds of default in payment of rent as well as violation of Section 108 (m), (o) and (p) of the Transfer of Property Act, 1882 (in short, “1882 Act”).

2. Whereas both the Courts below turned down the ground of default in view of compliance of Section 7(4) of the West Bengal Premises Tenancy Act, 1997 by the appellant, the Trial Court dismissed the suit on the ground of violation of Section 108(m), (o) and (p) of the 1882 Act as

well, whereas the First Appellate Court reversed such decision on the said ground.

3. Learned counsel for the appellant argues that the plaintiff's burden of proving the violation of the said provision was never discharged. Moreover, the specific instance of violation was not even pleaded in the plaint. Learned counsel submits that two letters written on behalf of the appellant to the respondent were exhibited in the suit, from which it would appear that the specific alteration done to the suit premises was intimated by the appellant to the respondent and the respondent had consented to the same.

4. Thus, it is argued that the learned First Appellate Court substantially erred in law in overlooking the legal effect of such documents and the aforesaid circumstances in passing a decree on the ground of violation of Clauses (m), (o) and (p) of Section 108 of the 1882 Act.

5. However, from a perusal of the two exhibits, copies of which are handed over by learned counsel for the appellant to the Court, we find that in the initial letter written in the month of June, 2010, the appellant had informed that as a result of white ants/termites eating away the frame of the door to the suit premises, the same

had completely come off. Accordingly, it was intimated, as the door had given way, the appellant had immediately blocked the gap the next day.

6. In the said letter, the appellant also expressed gratitude to the respondent, purportedly for giving consent to take necessary action. However, apart from the written communication referring to a telephonic consent, we do not have any other proof of such consent being actually given to block the door in its entirety in the garb of repairing the wooden framework of the same, which had allegedly come off due to white ants/termites eating it away.

7. In the said letter, we find an endorsement, purportedly on behalf of the respondent, which merely indicates that the respondent received a copy and requested the appellant to "make corrections only". Even if we proceed on the basis that the said writing was actually inscribed on behalf of the respondent, fact remains that in the context of the appellant's version that the wooden frame of the door had come off due to being eaten away by white ants/termites, the respondent had merely consented for the appellant to take corrective measures, meaning thereby to rebuild/repair the said framework of

the door. However, from the cross-examination of the defendant/appellant as DW-1 dated March 7, 2020, a copy of which is handed over to us by learned counsel for the caveator/respondent on our request in view of the inability of the appellant to hand over such deposition, it is evident that the DW-1 categorically admitted that he had closed one door by cement and bricks and made one collapsible gate on another door.

8. Although in a subsequent letter written by the appellant, consent was apparently given by the respondent for erecting a collapsible gate, insofar as the complete closure of the other door by cement and bricks instead of merely repairing the wooden framework is concerned, we do not find an iota of consent even from the documents produced by the appellant before the Trial Court. Taken in conjunction with the admission of DW-1 that one door was closed by cement and bricks, there cannot be any manner of doubt that the learned First Appellate Court was completely justified in holding that the appellant came within the mischief of Clauses (m), (o) and (p) of Section 108 of the 1882 Act, particularly, in respect of Clause (p) thereof.

9. In the light of the above discussions, we do not find any disputed question of law involved in the

appeal at all, nor any error in such factual observation by the First Appellate Court.

10. Accordingly, SAT 86 of 2026 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure, 1908.

11. Consequentially, CAN 1 of 2026 stands dismissed as well.

12. There will be no order as to costs.

13. Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)

(Sandip Kumar De, J.)