

08.4.2026
Ct. no. 6
D/L.14
Samarpita

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
(Appellate Side)

C.O. 1161 of 2026

Mukesh Gupta & Anr.

Vs.

Indira Devi & Ors.

Mr. Sibnath Ganguly,

Mr. Argha Banerjee,

Mr. Bishal Das

... for the Petitioners

Mr. Tarak Nath Halder

... for the opposite parties

1. Affidavit of service filed today is taken on record.
2. This revisional application lays challenge to an order dated January 7, 2026 passed by the learned Civil Judge (Junior Division) Additional Court at Sealdah, South 24 Parganas, in Title suit No. 346 of 2024, whereby, the petitioners application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956, has been dismissed upon holding the same to be not maintainable.
3. The opposite parties have instituted the Title Suit No. 346 of 2024 for eviction of the petitioners.
4. The said suit had initially been filed alleging that the petitioners were tenants under the opposite parties, under the West Bengal

Premises Tenancy Act, 1956 and it was originally numbered as Title Suit No. 333 of 1983.

5. It is worth recording that prior to the said suit, another suit being Title Suit No. 23 of 1977, had been instituted by the predecessor-in-interest of the opposite parties against the predecessor-in-interest of the petitioners, seeking decree of declaration of right, title and interest in respect of the suit property in favour of the plaintiff in the said suit, a decree for declaration that the defendants in the suit were tenants under the plaintiff and a decree for recovery of rent arrears.

6. The said suit was dismissed, but, it was held therein that the plaintiff in the suit had right, title and interest in respect of the said suit property. To be precise, issue no. 3 dealt with the right, title and interest of the plaintiff. The ultimate conclusion reached in respect of such issue, is quoted herein below:

“Therefore, after careful consideration of the documents and evidence on record I am of the view that the plaintiff has acquired right, title and interest in the suit properties. This issue is disposed of accordingly”.

7. Upon such decree being passed on April 25, 1994, the opposite parties made an

application for amendment of plaint in Title Suit no. 333 of 1983, thereby seeking to introduce the pleading, that the petitioners were licensees under the opposite parties.

8. Such amendment was allowed.
9. The order allowing amendment was challenged in revision before this Court by filing C.O. 293 of 1996. The said revisional application was dismissed by this Court by an order dated December 10, 1997, by observing that the amendment did not change the nature and character of the suit.
10. The said suit has been continuing presently as Title Suit No. 346 of 2024 upon being re-numbered as such.
11. In the said suit, the petitioners had filed an application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956, thereby, disputing the relationship of landlord and tenant between the opposite parties and the petitioners. The said application has been dismissed by the order impugned. Hence, this revisional application.
12. Mr. Ganguly, learned advocate appearing for the petitioner submits that the application under Section 17(2) of the 1956 Act could not have been dismissed by the learned Trial Court. It is further submitted

that it was incumbent on the learned Trial Court to decide the relationship between the petitioners and the opposite parties. Relying on a judgement of the Hon'ble Division Bench of this Court in the case of ***Syed Khawaja Moin and Another-Vs- Md. Safi Alam*** reported in ***[2026 (1) Indian Civil Cases (Cal.) 522]*** it is submitted that in a suit for eviction of a tenant, it is always open to the defendant to take a stand disputing landlord-tenant relationship. It is submitted that the defendant in such case is not obliged to deposit rent.

13. Mr. Halder, learned advocate appearing for the opposite parties submits that the application under Section 17(2) of the 1956 Act, was clearly not maintainable in view of the fact that upon the decree dated April 25, 1994 being passed in Title Suit No. 23 of 1977, thereby clearly deciding that there was no relationship of landlord and tenant between the opposite parties and the petitioners, the issue no longer remains *res-integra* and that such decree has been accepted by both the parties.

14. It is further submitted that, in such view of the matter, there was no scope to file any application under Section 17(2) of the

1956 Act. Relying on a judgement of the Hon'ble Supreme Court in the case of **Satyadhan Ghosal and others -Vs- Smt. Deorajin Debi and Another** reported at **AIR 1960 Supreme Court 941** he submits that the issues decided in the earlier suit being T.S. No. 23 of 1977 including declaration of title and landlord-tenant relationship would be barred by *res-judicata* in a subsequent suit.

15. Relying on a judgement of the Hon'ble Supreme Court in the case of **Bhagwati Prasad -vs- Chandramaul** reported at **AIR 1966 Supreme Court 735** it was submitted that even if a suit for eviction of a tenant had been filed and it subsequently transpired that there was no relationship of landlord-tenant between plaintiff and the defendant the court would not be powerless to grant a decree for eviction of the defendant in case, the Court finds that eviction of the defendant is justified on any other ground and for any other reason.

16. Paragraphs 12, 13 and 14 of **Bhagwati Prasad** (supra) have been pressed by Mr. Halder to buttress his contention that in cases like the one at hand it is open to Court to grant decree of eviction if it is found

that the defendant is a licensee. He has said so in the context of that based on the decree passed in Title Suit no. 23 of 1977 the plaintiff that had initially been filed for eviction of tenant was amended to one for eviction of licensee:

12. Turning then to the pleadings and evidence in this case, there can be little doubt that the defendant knew what he was specifically pleading. He had admitted the title of the plaintiff in regard to the plot and set up a case as to the manner in which he spent his own money in constructing the house. The plaintiff led evidence about the tenancy set up by him and the defendant led evidence about the agreement on which he relied. Both the pleas are clear and specific and the common basis of both the pleas was that the plaintiff was the owner and the defendant was in possession by his permission. In such a case the relationship between the parties would be either that of a landlord and tenant, or that of an owner of property and a person put into possession if it by the owner's licence. No other alternative is logically or legitimately possible. When parties led evidence in this case, clearly they were conscious of this position, and so, when the High Court came to the conclusion that the tenancy had not been proved, but the defendant's argument also had not been established, it clearly followed that the defendant was in possession of the suit premises by the leave and licence of the plaintiff. Once this conclusion was reached,

the question as to whether any relief can be granted to the plaintiff or not was a mere matter of law, and in deciding this point in favour of the plaintiff, it cannot be said that any prejudice had been caused to the defendant.

13. When Mr. Setalvad was pressing his point about the prejudice to the defendant and the impropriety of the course adopted by the High Court in confirming the decree for ejectment on the ground of licence, we asked him whether he could suggest to us any other possible plea which the defendant could have taken if a licence was expressly pleaded by the plaintiff in the alternative. The only answer which Mr. Setalvad made was that in the absence of definite instructions, it would not be possible for him to suggest any such plea. In our opinion, having regard to the pleas taken by the defendant in his written statement in clear and unambiguous language, only two issues could arise between the parties : is the defendant the tenant of the plaintiff, or is he holding the property as the licence subject to the terms specified by the written statement ? In effect, the written statement pleaded licence, subject to the condition that the licence was to remain in possession until the amount spent by him was returned by the plaintiff. This latter plea has been rejected, while the admission about the permissive character of the defendant's possession remains. That is how the High Court has looked at the matter and we are unable to see any error of law in the approach by the High Court in dealing with it.

14. *In support of its conclusion that in a case like the present a decree for ejectment can be passed in favour of the plaintiff, though the specific case of tenancy set up by him is not proved, the High Court has relied upon the two of its earlier Full Bench decisions. In Abdul Ghani v. Musammat Babni (I.L.R. 25 All. 256.), the Allahabad High Court took the view that in a case where the plaintiff asks for the ejectment of the defendant on the ground that the defendant is a tenant of the premises, a decree for ejectment can be passed even though tenancy is not proved, provided it is established that the possession of the defendant is that of a licensee. It is true that in that case, before giving effect to the finding that the defendant was a licensee, the High Court remanded the case, because it appeared to the High Court that that part of the case had not been clearly decided. But once the finding was returned that the defendant was in possession as a licensee, the High Court did not feel any difficulty in confirming the decree for ejectment, even though the plaintiff had originally claimed ejectment on the ground of tenancy and not specifically on the ground of licence. To the same effect is the decision of the Allahabad High Court in the case of Balmakund v. Dalu (I.L.R. 25 All. 498.).*

17. Having heard the learned advocates appearing for the respective parties and having considered the material on record this Court does not find any reason to interfere with the ultimate conclusion reached by the learned Trial Court in holding that the

application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956 was not maintainable.

18. It is not in dispute that the judgement and decree dated April 25, 1994 passed in Title Suit no. 23 of 1977 has attained finality. The same is binding therefore on the parties. It is also not in dispute that upon the said decree being passed, the opposite parties amended the plaint and incorporated the pleading that the petitioners are licensees under the opposite parties in respect of the property in suit.

19. In view of the decree dated April 25, 1994, having been passed in Title Suit no. 23 of 1977, it is no longer open to contest that no landlord-tenant relationship exists between the plaintiff and the defendant in Title Suit No. 346 of 2024. In such view of the matter, an application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956, would evidently not be maintainable.

20. The observations of the Hon'ble Division Bench in the case of **Syed Khawaja Moin** (supra) in paragraph 39 of the judgment also clearly indicate that an application made under section 17(2) would

not be required to be filed in a case of the present nature where there is no landlord tenant relationship. The same are quoted hereinbelow:

39. However, even proceeding on such premise, the cardinal basis of the judgment rendered by the Division Bench in Synthetic Plywood Industries (P) Ltd. (supra) (1998 (2) ICC (Cal) 280) did not change by the amendment of statute. Just as in Section 17 of the 1956 Act, in Section 7 of the 1997 Act as well, the language used is “tenant” and not “defendant”. On such premise, the Division Bench held in Synthetic Plywood Industries (P) Ltd. (supra) that if a “defendant” takes a stand disputing the landlord tenant relationship itself, he is not obliged to make the deposit or file an application under Section 17(1) or Section 17(2), since under the said Section, it is only a “tenant”, and not a “defendant”, who is to make such deposit. The position would have been otherwise if the language used in the Section was “defendant”, in which case, there would be no option for the defendant not to make the applications or make the deposits.

21. The application under section 17(2) was therefore clearly not required to be filed in the case at hand.

22. **Satyadhan Ghosal** (supra) is a salutary authority on the point of finality of judicial decision by application of the principles of *res judicata*.

23. For all the above reasons aforesaid, which are entirely different than those mentioned in the order impugned, no

interference with the ultimate decision taken by the learned Court is called for.

24. **C.O. 1161 of 2026** stands disposed of accordingly. No costs.

25. Since the suit is one of the year 1983, the learned Trial Court is requested to dispose of the suit being Title Suit No. 346 of 2024 (re-numbered) as expeditiously as possible and preferably within a period of six (06) months from the date fixed without granting any unnecessary adjournment either of the parties.

26. Urgent photosat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Om Narayan Rai, J.)