

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1020 of 2017

With

IA NO: CAN 1 of 2017 (Old No: CAN 2850 of 2017)

CAN 2 of 2017 (Old No: CAN 8464 of 2017)

Sri Puran Shaw

VERSUS

Smt. Prabhawati Shaw (since deceased) represented by the legal heirs

Mohan Shaw & Ors.

For the appellant:

Mr. Debayan Sinha, Adv.

Ms. Anyasha Das, Adv.

For the respondent:

Mrs. Punam Verma, Adv.

Mr. Abhishek Verma, Adv.

Mrs. A Verma, Adv.

Mr. S. Naskar, Adv.

Ms. Aparna Sarkar, Adv.

Last Heard on: February 10, 2026

Judgment on: March 05, 2026

Biswaroop Chowdhury,J:

The Appellant before this Court was a defendant before Trial Court in a suit for eviction and respondent in Title Appeal where the Order Passed under

Order 7 Rule 11 of the Code of Civil Procedure by the Learned Trial Court was assailed by the plaintiff. The Appellant being aggrieved by the Order passed by Learned Civil Judge Senior Division Small Causes Court at Sealdah in Ejectment Appeal No-2 of 2016 arising out of Ejectment Suit no-91 of 2014 in which the order of dismissal of suit under Order 7 Rule 11 of the Code of Civil Procedure passed by Learned Trial Court was reversed and the matter remitted to Learned Trial Court to decide the suit on merits has come up with the instant appeal.

The Original plaintiff Pravabati Devi instituted Ejectment Suit against the appellant Puran Shaw under Section 6 of West Bengal Premises Tenancy Act 1999 for ejectment.

An application was filed by the appellant/defendant challenging the maintainability of the suit under Section 8(3) and Section 21 of West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001.

Learned Trial Judge upon considering the pleadings made in paragraph 1 of the plaint where the plaintiff claimed herself as owner of the structure standing on Thika Land and upon considering the provisions of Section 8(3) and Section 21 of West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 which came into effect on 1st March 2003, was pleased to hold that the suit was not maintainable before the Civil Court, and dismissed the same.

The plaintiff being aggrieved by the Judgment and Decree passed by the Learned Trial Court preferred an appeal. By Judgment and Order dated 9th

January 2017 the Learned Civil Judge (Senior Division) was pleased to allow the appeal being Ejectment Appeal no-3 of 2016 by observing and directing as follows:

There is nothing on record at the stage of the consideration of the maintainability of the suit that the plaintiff waived his claim. Unless the evidences is laid such conclusion cannot be drawn. In consideration of the record of the Learned Trial Court it appears that the determination of the jurisdiction of the Court depends upon the cause of action which involves mixed question of law and facts. Only on the basis of the consideration of the jurisdiction this question cannot be determined.

After due consideration of the order and decree of the Learned Trial Court, this Court finds that the impugned order and decree so passed by Learned Trial Court is not sustainable and requires interference. Therefore the Appeal succeeds the order and Decree passed in Ejectment Suit 91 of 2014 on 17th August 2015, by Learned Additional Civil Judge (Junior Division) Sealdah are hereby set aside.

Memo of appeal is correctly stamped.

Hence it is ORDERED that the Appeal be and the same is allowed on contest without any order of cost. The Order and Decree passed in Ejectment suit 91 of 2014 in 17th August 2015 by Learned Additional Civil Judge (Junior Division) Sealdah are hereby set aside. Let the Trial Court Record be returned

to the Learned Trial Court with this judgment on open remand, with request to dispose of the same considering the age of pendency of the case.

The Ejectment Appeal is thus disposed of on contest.'

The appellant being aggrieved by the Judgment and Order passed by the Appellate Court has come up with the instant appeal.

Heard Learned Advocate for the appellant and Learned Advocate for the respondents. Perused the materials on record.

Learned Advocate for the appellant/defendant submits that it is an admitted fact that the suit property is a Thika Property. Learned Advocate further submits that it is clearly stated in the plaint that the cause of action of the suit arose on 1st October 2005 after incorporation of the West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001. Learned Advocate also submits that The West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 Came into operation on 22nd November 2002. Therefore when the suit was instituted by the plaintiff/appellant in 2005, the West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 was enacted and given effect to. It is submitted by the Learned Advocate that Section 8(3) read with Section 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 puts an embargo in toto with respect to eviction of Bharatia under Section 6 of West Bengal Premises Tenancy Act 1997.

Learned Advocate relies upon the following judicial decision:

Krishna Shaw and ors. VS Netai Pandit.

Reported in (2016) 3 Cal. HCN. 1.

Learned Advocate for the respondents submits that the fact behind the initiation of the Appeal is that the Respondent/Plaintiff filed suit for ejectment of the defendant under Section 6 of the West Bengal Premises Tenancy Act 1997 which was re-numbered as Ejectment Suit no. 113 of 2005. Defendant appeared in the said suit and filed petition challenging the maintainability of the suit.

The basis of the plea was that the suit property being Thika Property the jurisdiction of Civil Courts is barred. The Trial Court held the suit to be non-maintainable against which the respondent preferred appeal and the order passed by Learned Trial Court was set aside and the matter remitted to Trial Court.

Learned Advocate further submits that the plaint clearly pleaded default in payment of rent since March 1981 and defendant liable to be evicted. Learned Advocate also submits that cause of action cannot be rejected merely on objection raised by the defendant, and it depends on bundle of facts and continuous default. Learned Advocate submits that the defendant was adjudged defaulter for the period March 1981-April 2006 by competent authority and such order remained unchallenged. Learned Advocate further submits that the applicability of the Thika Tenancy Act and its effect on Jurisdiction required evidence and statutory interpretation. Learned Advocate

also submits that retrospective application cannot defeat accrued cause of action under earlier tenancy Law.

Before proceeding to decide the material in issue it is to be remembered that although maintainability is a mixed question of law and fact and the Courts can decide the issue of maintainability along with other issues but where the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only it may try that issue. The relevant provision under Order XIV Rule 2 sub-rule 2 of the Code of Civil Procedure provides as follows:

‘Order XIV Rule 2 Sub-rule-2- Where issues both of law and of facts arise in the same suit and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only it may try that issue first if that issue relates to-

- a) the jurisdiction of the Court or
- b) a bar to the suit created by any law for the time being in force.

And for that purpose may if it thinks fit postpone the settlement of the other issues until after that issue has been determined and may deal with the suit in accordance with the decision on that issue.’

In the instant case the maintainable of the suit under Section 6(1) of the West Bengal Premises Tenancy Act 1997 before Civil Court is raised from the averments made in paragraph 1 of the plaint.

Paragraph 1 of the plaint contains the following statements:

“That the petitioner is the owner of the structure/house property standing on this land situated at and being Premises no. 112/1/H/6. Cossipore Road Police Station-Chitpore Kolkata-700002 and one Rajendra Prasad Shaw, the brother of the Opp.party was a monthly tenant for residential purpose under the petitioner in respect of One tile shed room with common facility of Latrine in the Ground floor of the said premises at the monthly rent of Rs. 15/- payable as per English Calender month and there existed a relationship of landlord and tenant between the petitioner and the said Rajendra Prasad Shaw. The said tenancy of Rajendra Prasad shaw is morefully described in the schedule hereunder written and hereinafter referred to as the ‘SUIT PROPERTY’”

On the plea taken by the defendant that the suit property is on Thika Land the plaintiff has admitted the same and has claimed his relationship with the defendant as Landlord and Tenant. At the outset it is to be determined as to whether the defendant is a Bharatia defined in Section (1a) of the Thika Tenancy Acquisition and Regulation Act 2001.

As per section 1a of West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 Bharatia means any person, by whom or on whose account rent is payable [for any structure including pucca structure if any or part thereof] owned by a Thika tenant but excludes any person paying rent to a Bharatia and any [resident of any structure including pucca structure if any]

forfeited by the State Government under sub-section (2) of Section 6, irrespective of the status the said person may have enjoyed earlier.

Under Section 2(14) Thika tenant means any person who occupies whether under a written lease or otherwise land under another person and is or but for a special contract would be liable to pay rent at a monthly or any other periodical rate for that land to that another person and has erected or acquired [by purchase or gift any structure including pucca structure, if acquired [by purchase or gift any structure including pucca structure, if any on such land] for residential manufacturing or business purpose and includes the successors-in-interest of such persons but excludes any resident of a structure forfeited to the State under sub-section (2) of Section 6 of this Act irrespective of the status he may have enjoyed earlier.

As per section 2(15) of West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 'Thika land means any land comprised in and appurtenant to tenancies of Thika tenant irrespective of the fact whether there is any claim of such tenancy or not and includes open areas and roads on such land.

Now upon considering the definition of Bharatia, Thika tenant, and Thika land as provided under West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 and the contention made in paragraph 1 of the plaint and that the plaintiff has admitted the suit property to be Thika Land and the

Defendant to be his tenant the plaintiff in effect has admitted the defendant to be her Bharatiya.

As the plaintiff has sought for eviction of defendant admitting him to be his Bharatiya, it is to be decided as to whether a suit for eviction of Bharatia is maintainable before Civil Court.

Section 8(3) of West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 provides that any dispute regarding payment of rent by the thika tenant to the State Government or by a Bharatia to a thika tenant or any case of eviction of Bharatiya shall be disposed of by the controller in such manner as may be prescribed.

Section 21 of West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 provides that no Civil Court shall have jurisdiction to decide or to deal with any question or to determine any matter which by or under this Act is required to be or has been decided or dealt with or which is to be, or has been determined by the controller or the appellate or other authority specified in the provisions of this Act, and no order or judgment passed or proceedings including execution proceedings commenced under the provisions of this Act shall be called in question in any civil Court.

As the present suit is for eviction of a Bharatiya it has to be disposed of by the Controller as provided under Section 8(3) of West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001.

In the case of Krishna Shaw and Ors. VS Netai Pandit reported in (2016) 3 Calcutta HCN.P-1. Hon'ble Division Bench of this Court observed as follows:

‘11. Sub-Section 3 of Section 8 of the said Act provides that any dispute regarding payment of rent by the thika tenant to the state Government or by a Bharatia to a thika tenant or any case of eviction of Bharatia shall be disposed of by the Controller in such manner as may be prescribed.

12. The Controller has also been defined in Section 2(2) of the said Act which provides that controller means an officer appointed [under Section 9] and includes an Additional Controller and a Deputy Controller.

13. Necessary rule for dealing with such eviction proceeding has also been framed under Rule 13 of the West Bengal Thika Tenancy (Acquisition and Regulation) Rules 2004 such rule was notified in Kolkata Gazette Extraordinary issue on 2nd November 2004.

14. As such we have no hesitation to hold that both the Act and the Rule were in operation at that time when the suit was filed. Considering the aforesaid provisions of the said Act as well as the Rule framed therein, we have no hesitation to hold that an eviction suit filed by the thika tenant for evicting the Bharatiya lies before the controller appointed under Section 9 of the said Act.

Such suit will not lie before the Civil Court even though the West Bengal Premises Tenancy Act provides for maintaining such suit before the Civil Court

for simple reason that the West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001 received the assent of the Governor on 22nd November 2002. i.e. subsequent to the grant of assent by the Governor to the West Bengal Premises Tenancy Act 1997 on 10th July 2001.

15. Since it is well settled that when the provision of two States Acts contradicts with each other, the provision of the latter Act will prevail over the other for the simple reason that while considering the latter Act, the Governor had before His excellency all the earlier Acts and despite noticing the contrary provision contained in the earlier Act, the Governor was pleased to grant assent to the latter Act and thereby expressing His desire to implement the latter Act.

16. Following this principle, we hold that the suit for eviction of a Bharatia by the thika tenant will lie before the Controller appointed under Section 9 of the said Act.

Upon hearing the Learned Advocates and considering the Judicial decisions this Court is of the view that the suit against the appellant/defendant is not maintainable before the Civil Court and it has to be instituted before the Controller under Section 8(3) of the West Bengal Thika Tenancy Acquisition and Regulation Act 2001. Thus the Order passed by the Learned First Appellate Court cannot be sustained and the same should be set aside.

Hence this Appeal FMA 1020 of 2017 stands allowed. Judgment and Order dated 9-01-2017 passed by Learned Civil Judge (senior Division) Small Causes Court at Sealdah in Ejectment Appeal No. 3 of 2016 is set aside. The

Ejectment suit being No-113 of 2005 instituted before 1st Civil Judge (Junior Division) Sealdah and thereafter transferred and re-numbered as. Ejectment Suit No. 91 of 2014 before Learned Civil Judge Junior Division) Additional Court Sealdah stands dismissed. It is however made clear that this Court has not gone into the merits of the case and rights of the parties, and all points with regard to merits are kept open to be raised by the parties before the Controller. It is further made clear that as plaintiff was pursuing a suit before Civil Court from 2005 till today this pendency will be considered as a ground for condoning delay if any before the respective forum.

The Trial Court Record be sent back.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)