

06.05.2026
Item No.20 (DL)
Court No.06
AJ.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 1240 of 2026

**Smt. Bulu Adhikary
-Vs-
Smt. Sabitri Patra & Anr.**

Mr. Samrat Dey Paul.
.....for the petitioner.

Mr. Arjun Samanta,
Mr. S. Nandi.
.....for the opposite party no.1.

Mr. Subhomoy Paul.
....for the opposite party no.2.

1. This revisional is directed against an order dated December 22, 2025 passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah in Title Suit No.48 of 2019 whereby the petitioner's application under Order 14 Rule 2 read with Section 151 of the Code of Civil Procedure, 1908 has been dismissed.

2. The opposite parties have instituted Title Suit No. 48 of 2019 before the learned Civil Judge (Junior Division), 2nd Court at Sealdah praying *inter alia* for a decree for recovery of possession upon evicting the petitioner from the suit property and for mesne profits. In the said suit, an application for rejection of plaint under Order VII Rule 11 of the Code had been filed alleging that the learned Trial Court lacked jurisdiction to try the suit and that the Thika controller has jurisdiction to adjudicate the dispute. Such application under

Order VII Rule 11 of the Code was rejected by the learned Trial Court by an order dated December 14, 2021.

3. Thereafter, the petitioner took out an application under Order XIV Rule 2 of the Code, once again claiming that the petitioner is “*Bharatia*” in terms of the relevant provisions of the Thika Tenancy Act, and that the suit property is a “*Basti land*” under the “*Thika Controller of the Kolkata and also under WB Thika Tenancy Act as well as Kolkata Thika Tenancy Act, 1948*”. By the said application, the petitioner prayed for dismissal of the suit asserting that the learned Trial Court has no jurisdiction to decide the suit. The said application has been turned down by the learned Trial Court by the order impugned. Hence, the revisional application.

4. The learned Advocate appearing for the petitioner submits that the property in question is actually a *Khas Mahal* land. He further submits that the petitioner (the defendant no.2) had never filed any application under Order VII Rule 11 of the Code and that the application referred to by the learned Trial Court had been filed unauthorizedly by her brother.

5. It is next submitted that the issue that has been raised by the petitioner ought to have been

decided by the learned Trial Court as a preliminary issue.

6. It is further submitted that the learned Trial Court has rejected the petitioner's application under Order XIV Rule 2 of the Code only on the basis of an earlier rejection of an application under Order VII Rule 11 of the Code that was not filed by the petitioner which is not proper.

7. Learned Advocate appearing for the opposite party no.1 submits that there is nothing on record to support the petitioner's assertion that the petitioner did not file the said application under Order VII Rule 11 of the Code as contended. It is submitted that the petitioner's Vakalatnama which is on record would actually reveal that such application had indeed been filed by the petitioner only.

8. It is next submitted that there is no pleading anywhere in the written statement that the property is a *Khas Mahal* land and that such point has been raised for the first time before this Court. He supports the order impugned.

9. 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.

10. Although the petitioner has contended before this Court that the property is situated on a Khas Mahal land, the application filed by the petitioner under Order XIV Rule 2 of the Code (page 42 of the revisional application) does not show that such point was raised. In fact the said application is also based on Thika Tenancy.

11. In such view of the matter, this Court does not find that the learned Trial Court was in any way wrong in basing its conclusion on the earlier rejection of the application under Order VII Rule 11 of the Code, even if it is assumed that the said application was not filed by the petitioner. This is so since the issues raised in the application for rejection of plaint and the application under Order 14 Rule 2 are exactly the same and the order passed on the application under Order VII Rule 11 has not been challenged.

12. Furthermore, in any case, an issue as to whether the property is situated on Khas Mahal land or not or as to whether the petitioner is a Bharatia or not would require evidence to be led. These are essentially questions of fact and at least mixed questions of law and fact which would require evidence to be led for a decision thereon. Such questions cannot be said to be pure questions of law and as such the same in any event could not have been decided as preliminary issues under

Order XIV Rule 2 of the Code. In that view of the matter the rejection of the petitioner's prayer was quite justified.

13. The learned Trial Court has every authority to frame such issues as may be arise in the suit based on the pleadings of the parties in accordance with law.

14. In such view of the matter, the order impugned does not call for any interference.

15. C.O. 1240 of 2026 stands disposed of. There shall be no order as to costs.

16. 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.)