

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

C.O. 1822 of 2025

Tapan Mitra
Vs.
Tushar Chawla

For the petitioner : Mr. Anirban Roy, Adovate
Mr. Ashok Kumar Roy, Adovate
Mr. Suwendu Sarkar, Adovate
Mr. Debjit Basu, Adovate

For the opposite party : Mr. D. K. Kundu, Adovate
Mr. Arjun Basu, Adovate

Heard on : 20.03.2026

Judgment on : 20.03.2026

Ravi Krishan Kapur, J.:

1. This revisional application arises out of an order dated 23 April 2025 passed by the Learned Civil Judge, (Junior Division), 2nd Additional Court at Alipore, South 24 Parganas in Title Suit No. 1676 of 2023. By the impugned order, an application under Order 12 Rule 6 read with section 151 of the Code of Civil Procedure filed by the plaintiff/petitioner has been dismissed.
2. The suit is for eviction and mesne profits. The suit premises comprises of a residential flat situated in the heart of South Kolkata on the northern portion of the second floor of premises no. 7 Clarke Street, Kolkata-700026 which consists of two bedrooms, one dining room, one hall, one kitchen and two bathrooms.

3. Initially, the petitioner's mother one Subarna Mitra since deceased as the original landlord had by a letter dated November 21 1970 inducted M/s. Kapoor and Chawla at a monthly rent of Rs. 650/- and Rs. 250/- (for other facilities and fittings) respectively to the entirety of the second floor of the suit premises. In or about 1999, the partnership firm stood dissolved and both the partners Pradip Kapoor and Suresh Chawla respectively became independent tenants in respect of the entirety of the second floor of the premises (i.e. northern and southern portion). The southern portion being occupied by Pradip Kapoor and the northern portion by Suresh Chawla.
4. Later, Pradip Kapoor surrendered his tenancy in favour of the petitioner. On 29 November 2004, Suresh Chawla died intestate leaving behind his wife and son. The wife of Suresh Chawla, Karishma Chawla died in 2021. Her son being the sole defendant herein continues to reside in the suit premises even after her death. In this background, this suit has been filed on the ground that under section 2(g) of the West Bengal Premises Tenancy Act, 1997, the statutory protection to the respondent son expired in 2009 and the petitioner became entitled to a decree for eviction. Upon filing of the suit, the respondent entered appearance and filed the written statement and counterclaim denying the case of the petitioner.
5. The primary ground for resisting the application for judgment and admission is that in a prior suit filed before the Learned 2nd Civil Judge, Junior Division for eviction of the respondent and his mother it was held that the defendants were tenants under the petitioner and not licensees.

6. By the impugned judgment, it has been held that from the pleadings and other materials on record, it could not be seen that there was a clear and unequivocal admission that the petitioner was entitled to the suit premises under section 2(g) of the Act. It was further held that the respondent had asserted his own rights in respect of the suit premises. It was contended that from the materials and pleadings on record, the right of the respondent to assert his tenancy could only be decided after trial.

7. For convenience, section 2(g) of the 1997 Act reads as follows:

“2(g) "tenant" means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family and were dependent on him but shall not include any person against whom any decree or order for eviction has been made by a court of competent jurisdiction:

Provided that the time limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises:

Provided further that the son, daughter, parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.”

8. In *Rajiv Ghosh vs. Satya Naryan Jaiswal* 2025 SCC OnLine SC 751, while interpreting the scope and ambit of the above section, the Supreme Court has held as follows:

“17. Thus, the plain reading of Section 2(g) referred to above would indicate that the dependent heir of the original tenant unless she is the widow of the original tenant would be entitled to carry on as a tenant [coming within the definition of “tenant” as defined under Section 2(g)] in such capacity for a period of 5 years from the demise of the original tenant.

18. In the case on hand, the defendant is the son of the original tenant. It is not in dispute that he claims his right to continue as a tenant in the suit premises through his father i.e. the original tenant.”

9. Order 12 Rule 6 of the Code of Civil Procedure, 1908 provides as follows:

“Judgment on admissions.—(1) Where admissions of fact have been made either in the pleading or otherwise; whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

10. In *E.D. Enterprises Private Ltd. vs. Kaiser Begum and Anr.* 2022 SCC OnLine Cal 4428, this Court held as follows:

*“7. The provision of Order XII Rule 6 of the Code is enabling, discretionary and permissive. The object of the Rule is to expedite trials and enable a party to obtain a speedy judgment at least to the extent of the relief which according to the admission of the defendant the plaintiff is entitled. The Rule permits the Court at any stage of the suit, either on the application of any party or of its own motion and without determination of any other question between the parties, to make such order or give such judgment as it may think fit on the basis of the admission, having regard to such admissions. The purpose of this Rule is for either party to get rid of so much of the rival claims about “which there is no controversy”. Lord Jessel in *Throp and Holdsworth* (1876) 3 Ch D 637. Basically, the Rule permits the Court to sift through*

unworthy defences and leave the Court to spend time only on such aspects of the claim which call for an adjudication. The spirit and object of the Rule cannot be whittled down to suggest that every denial of the factum of admission or every dispute of the consequent liability on merits is to be pushed to trial (Adhunik Ispat Ltd. v. Triveni Infrastructure Development Co. Ltd., (2011) 2 CHN 527).

8. An admission can also be inferred from the facts and circumstances of the case without there being any dispute. In such cases, in order to expedite and dispose of the matter such admission can be acted upon. Even on constructive admissions or what follows as a natural corollary the Court can proceed to pass a decree in the plaintiff's favour. [Charanjit Lal Mehra v. Kamal Saroj Mahajan (Smt), (2005) 11 SCC 279 at paragraph 8, Pradeep Khanna v. Renu Khetarpal, (2015) 219 DLT 417 at paragraph 28, Sirjit Sachdev v. Kazakhstan Investment Services Pvt. Ltd., 66 (1997) DLJ 54 at paragraphs 12 and 17, Rajgopal (HUF) v. The State Bank of India, (1999) 49 DRJ 285 at paragraphs 8 and 9, H.K. Taneja v. Bipin Ganatra, (2013) 1 Mah LJ 783 at paragraph 20, Concrete Developers v. State Bank of India, (2022) 3 Bom CR 636 at paragraphs 11 and 22, Pooja Sharma v. Garmeet Kaur, 2013 SCC OnLine Del 4730 at paragraphs 17-19, Deepak Thiruwani v. Lalman Das Mansharmani, (2013) 203 DLJ 391 at paragraph 12].”

11. In *Rajiv Ghosh vs. Satya Naryan Jaiswal (Supra)*, it has also been held as follows:

“24. Rule 6(1) empowers the court to pronounce a judgment upon admissions made by parties without waiting for the determination of other questions.

25. Rule 6(2) states that a decree shall be drawn up in accordance with the judgment.

26. The primary object underlying Rule 6 is to enable a party to obtain speedy judgment at least to the extent of admission. Where a plaintiff claims a particular relief or reliefs against a defendant and the defendant makes a plain admission, the former is entitled to the relief or reliefs admitted by the latter. [See : Uttam Singh v. United Bank of India, (2000) 7 SCC 120].

27. As observed in the Statement of Objects and Reasons for amending Rule 6, “where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled.”

28. The provisions of Rule 6 are enabling, discretionary and permissive. They are not mandatory, obligatory or peremptory. This is also clear from the use of the word “may” in the rule.

29. The powers conferred on the court by this rule are untrammelled and cannot be crystallized into any rigid rule of universal application. They can be exercised keeping in view and having regard to the facts and varying circumstances of each case.”

12. The present suit is based under the West Bengal Premises Tenancy Act, 1997 on the limited ground of extinction of the tenancy by operation of law under section 2 (g) of the Act. In this background, the prior litigation between the parties which has been relied on by the respondent is not germane. It is true that the petitioner had filed a prior suit seeking eviction on the ground of a licensee. Such proceeding was premised on termination of a license when the mother of the petitioner was alive and before her expiry. Any finding in that suit does not give protection to the respondent in this suit or act an embargo insofar as the cause of action in this suit is concerned. There is nothing to even remotely suggest that any independent tenancy was ever created in favour of the respondent. In such circumstances, there is no requirement of any further evidence. (*Utpal Roy vs. Ratul Krishna Banerjee* 2016 SCC OnLine 4442).

13. The cause of action in both the suits are different. In the Affidavit of Evidence filed in the prior suit, the respondent had unconditionally admitted that after the death of his father, the respondent being the only son and his mother being the widow of the deceased tenant had jointly inherited the tenancy. Once the respondent admits that upon his father's death he inherited the tenancy, section 2(g) is automatically

triggered. In such circumstances, the plea of adverse possession raised as a counter claim in this suit is contradictory, irreconcilable and meritless with the case of tenancy and is consequently rejected. [*Brij Narayan Shukla vs. Sudesh Kumar* (2024) 2 SCC 590 and *Nand Ram vs. Jagdish Prasad* (2020) 9 SCC 393.].

14. False claims and false defenses are a reality in real estate litigation predominantly because of the ever escalating prices of real estate. It is for this reason that the Hon'ble Apex Court in *Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*, (2012) 5 SCC 370 has cautioned Courts against delay in the adjudication of such suits.
15. Another peculiar feature of this litigation has been that the respondent continues to enjoy the suit premises as a residential accommodation and has not paid a single penny as rent or occupational charges since 2010. The parties have been litigating for nearly two decades, and it would be a travesty of justice for the petitioner landlord to await a full-fledged trial.
16. The clear, unconditional and unequivocal facts which can be culled out from the materials on record are as follows:
 - (a) Admittedly, the petitioner is the landlord of the suit premises.
 - (b) The petitioner's mother inducted the partnership firm M/s. Kapoor and Chawla in respect of the entirety of the 2nd floor.
 - (c) The said firm stood dissolved in 1999.
 - (d) One of the partners being Pradip Kapoor handed over a portion of the 2nd floor to the petitioner in June 2024.
 - (e) The respondent's father Suresh Chawla was the original recorded tenant of the suit premises died on 29 November 2004.
 - (f) Upon his death, the defendant's mother inherited the tenancy who died in 2021.

- (g) There is nothing on record to demonstrate that any fresh or independent tenancy was ever created by the petitioner in favour of the respondent.
- (h) The rent which was initially being deposited with the Office of the Rent Controller and has not been paid since January 2010.
- (i) The statutory five year period expired in November 2009 i.e. 5 years after the death of the original tenant in 2004.
- (j) The widow of the original tenant had enjoyed lifetime protection till 2021. Upon her death, the respondent ceased to enjoy any statutory protection and his possession became unauthorized and illegal in law.

17. In view of the above, this is a fit case for a judgment of an admission with regard to the extent of a decree for khas and peaceful possession of the suit premises. The findings of the Trial Court are erroneous and based on a misappreciation of the facts and the law. The ingredients of section 2(g) of the West Bengal Premises Tenancy Act, 1997 have all been fulfilled and there is no dispute with respect to the same. In such circumstances, unnecessary procrastination of the suit would only result in wastage of time. (*Payal Vision Limited vs. Radhika Choudhary* (2012) 11 SCC 405, *Shivani Properties Ltd. vs. Rama Shankar Pandey* 2021 SCC OnLine Cal 4284, *Mangalic Enterprise vs. Swapan Kumar Das* 2022 SCC OnLine Cal 2036, *Karnani Properties vs. Rajesh Mitra* 2022 SCC OnLine Cal 1811).

18. For the above reasons, the impugned order is set aside. The Trial Court is directed to draw a decree in terms of the prayer (a) of the plaint. The remaining reliefs claimed in the plaint are with regard to mesne profits,

costs etc. would be adjudicated upon in accordance with law by the Trial Court. With the above directions, CO 1822 of 2025 stands allowed.

(Ravi Krishan Kapur, J.)