

Form No. J(2)

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

FA 465 of 2025
IA No: CAN 1 of 2025

Maria Rixon and others
Vs.
Debasis Mullick

For the appellants	:	Mr. Partha Pratim Roy, Mr. Arnab Sinha, Mr. Dyutiman Banerjee, Mr. Amartya Basu
For the respondent	:	Mr. Aniruddha Chatterjee, Sr. Adv., Mr. Surya Prasad Chattopadhyay, Mr. Sib Sankar Das
Heard on	:	04.02.2026
Judgment on	:	04.02.2026

Sabyasachi Bhattacharyya, J.:-

1. As per our previous direction, the appeal is taken up for hearing along with the connected application.

2. The present appeal has been preferred by the defendants/tenants against a decree of eviction passed on the premise that the appellants, being the heirs of the original monthly tenant (since deceased), have been rendered trespassers by operation of Section 2(g) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as “the 1997 Act”).
3. Learned counsel for the appellants places reliance on the agreement of tenancy entered into between the predecessor-in-interest of the appellants and the respondent on March 04, 1982, a copy of which is handed over in court today and kept with the records. In the description of the parties as depicted in such agreement, the heirs, executors, administrators, legal representatives and assigns of the original tenant were included within the definition of tenant.
4. Hence, it is contended by learned counsel for the appellants that by dint of the said contract between the parties, the present appellants, who are heirs of the original tenant, are protected from the rigours of Section 2(g) of the 1997 Act, having been included within the purview of ‘tenant’ as contemplated in the said tenancy agreement.
5. Learned senior counsel appearing for the respondent controverts such allegation and submits that since the appellants are statutory tenants, the provision of Section 2(g) of the 1997 Act would override the terms of the agreement.
6. Upon hearing learned counsel for the parties, we are of the opinion that the respondent is justified in arguing that the provision of Section 2(g) of the 1997 Act would override the definition of tenant as

given in the tenancy agreement executed between the landlord and the original tenant.

7. Upon service of an eviction notice within the contemplation of Section 6(4) of the 1997 Act, the contractual tenancy is severed and the legal status of the contractual tenant is transformed to that of a statutory tenant.
8. Hence, the appellants, although otherwise entitled to the protection of the 1997 Act, are simultaneously also governed by the provisions of the said Act and the jural relationship between the parties under the contract no longer subsists.
9. Viewed from such perspective, Section 2(g) of the 1997 Act operates in full swing.
10. The said provision is quoted hereinbelow:

“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 dependant 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 dependant on him or a person authorised by the tenant who is in possession of such premises 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 dependant 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 dependant 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 on condition of payment of fair rent. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.”

11. Hence, on the expiry of five years after the demise of the original tenant in the year 2010, when the 1997 Act was already in force, the heirs of the original tenant are relegated to the status of trespassers vis-à-vis the tenanted property, even if they were otherwise covered by the ingredients of the said clause.
12. Moreover, we do not find any conflict between the description of the tenant in the agreement and the provisions of Section 2(g) of the 1997 Act, since Section 2(g) recognizes the status of those heirs of the original tenant, who were dependent on him and were residing at the subject premises with the original tenant at the time of his death, as tenants for the purpose of the Act. Such tenants, however, although initially recognized as tenants, lose such status by operation of Clause (g) of Section 2 after expiry of five years from the date of death of the tenant.

13. It is well-settled that since the 1997 Act is a beneficial statute and provides an additional cloak of protection to the tenants, which is not otherwise available to them after cessation of the contractual landlord-tenant relationship, the rigours of the said Act are also equally applicable to the tenants, since what is given in the one hand in the statute can also be curtailed by the Legislature by the self-same statute.
14. In view of the above principle, since it is an admitted position that the original tenant died in the year 2010, after the expiry of five years thereafter, the status of the appellants, being the heirs of the original tenant, was demoted to mere trespassers.
15. Thus, we do not find any error, either of law or of fact, in the impugned judgment granting eviction of the appellants on such ground.
16. Accordingly, FA 465 of 2025 is dismissed on contest, thereby affirming the judgment and decree dated April 23, 2025 passed by the learned Judge, Fifth Bench, City Civil Court at Calcutta in Title Suit No. 1664 of 2016.
17. In view of pendency of the appeal in the interregnum, the time for vacating the premises given to the appellants is extended for 90 days from date. In default, the plaintiff/respondent will be at liberty to resume or initiate, as the case may be, execution of the impugned eviction decree.
18. CAN 1 of 2025 is consequentially disposed of as well.
19. There will be no order as to costs.

20. A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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