

A-11
Ct No.16
02.03.2026
TN

SAT 167 of 2025
IA No: CAN 1 of 2026

Swapan Chakraborty
Vs.
Amit Banerjee also known as Amit Bandyopadhyay and
others

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Ms. Bipasha Bhattacharyya

....for the appellant

1. The present second appeal has been preferred against a judgment of affirmance, whereby both the trial court and the first appellate court granted a decree of eviction against the defendant/appellant on multiple grounds.
2. Simultaneously, the learned courts below held that the plaintiffs/landlords/respondents were entitled to a decree of eviction on the ground of reasonable requirement, as contemplated in Section 6 of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as "the 1997 Act") and also observed that since the appellant has ceased to be a tenant by operation of Section 2(g) of the said Act, the plaintiffs were, in any event, entitled to eviction.
3. Learned counsel for the appellant raises certain questions. First, it is argued that the suit itself was initiated on the premise of a notice under Section 6(4)

of the 1997 Act. Moreover, throughout the plaint, averments were made on the premise that the appellant is a tenant. Within the four corners of the plaint, it is contended, no pleading of the appellant being rendered a trespasser by operation of Section 2(g) of the 1997 Act has been mentioned.

4. Moreover, the learned Trial Judge, as it appears from the impugned judgment of the said court, framed the issue of Section 2(g) additionally.
5. It is argued, by placing reliance on a judgment of a learned Single Judge of this Court (one of us) in the matter of *Samir Kumar Kundu vs. Dipali Roy and others*, reported at 2019 SCC OnLine Cal 8172, that where such contradictory pleadings are made, premised on the footing that the defendants are tenants as well as that Section 2(g) operates, the courts erred in law in granting a decree of eviction.
6. Learned counsel appearing for the appellant also cites an unreported order of a coordinate Bench of this Court in SAT 159 of 2017 (*Smt. Manu Kar & Ors. vs. Sri Hironmoy Das*). In the said order, the coordinate Bench was pleased to admit a second appeal by framing a substantial question of law as to whether the First Appellate Court therein was justified in passing a decree for eviction against the defendant/appellant by referring to the provision

contained in Section 2(g) of the 1997 Act even though the suit for eviction was not founded on the ground of extinguishment of the tenancy of the defendant in conformity with the provision of Section 2(g) of the said Act or not.

7. Learned counsel further argues that in the event the appellant was decided to be a trespasser, the frame of the suit would be bad, since simultaneously, an eviction suit cannot be filed on the grounds for eviction of a tenant under the provisions of the 1997 Act, which is a special statute, and as an ordinary civil suit for eviction of a trespasser.
8. However, in our opinion, none of the above grounds can be said to be debatable substantial questions of law.
9. Insofar as the absence of specific pleadings in the plaint with regard to the appellant having been rendered a trespasser by operation of Section 2(g) of the 1997 Act is concerned, the said rendering of a person as trespasser under the said provision after the moratorium period of five years from the demise of the original tenant is by operation of law and it is well-settled that law need not be pleaded in the pleadings, particularly if the foundational facts are otherwise evident from the pleadings and the materials on record.

10. Secondly, we find that not only did the learned Trial Judge frame an additional issue specifically on the operation of Section 2(g) but both the parties, including the defendant/appellant, advanced their arguments thereon. Thus, it also cannot be said that the defendant/appellant was taken by surprise at the time of trial on the said issue.
11. Thirdly, as to the maintainability of the suit before the trial court, since the 1997 Act provides that an eviction suit under Section 6 of the said Act shall be filed before a learned “Civil Judge”, without any indication that such investiture of power is in the capacity of a *persona designata*, and a Civil Judge also has the determination, by default, to entertain a suit for eviction of a trespasser, we do not see any difficulty in the maintainability of the suit both on the grounds of the appellant being rendered a trespasser and on reasonable requirement. Even otherwise, the alteration of the capacity of the appellant from a tenant to a trespasser is not a standalone feature but a necessary fallout of the 1997 Act itself. Hence, broadly speaking, a suit for eviction under the 1997 Act may contemplate a lesser relief of the defendant being rendered a trespasser under a provision of the self-same statute without such reliefs being labelled as contradictory.

12. Even otherwise, the lack of specific pleadings in the plaint as to the operation of Section 2(g) of the 1997 Act does not deter the court from passing such a decree, since it is also well-settled that there cannot be any estoppel or acquiescence against the statute.
13. In the matter of *Samir Kumar Kundu (supra)*, the Court observed in paragraph no.25 that in the said case, the consistent pleading of the plaintiff was that the defendants were original tenants and the court distinguished between a tenancy-in-common created upon the death of the original tenant and an original tenancy, in case of the latter there being no scope of operation of Section 2(g) of the 1997 Act.
14. Thus, the said judgment is distinguishable on such count.
15. Inasmuch as the judgment of the coordinate Bench in *Smt. Manu Kar (supra)* is concerned, the learned Division Bench had only formulated a substantial question of law and did not lay down any proposition either way on the said issue. Hence, with utmost respect, the said judgment is also not a binding precedent on the issue at hand.
16. In view of the above findings, we are of the opinion that no substantial question of law is involved in the appeal.

17. Accordingly, SAT 167 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. Consequentially, CAN 1 of 2026 is also dismissed.
18. There will be no order as to costs.
19. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)