

29.06.2026

Sl no. 17

Ct no. 2

P.M.

C.O. 4171 of 2023

Sri Dilip Kumar Khan & Ors.

- Vs -

Sri Sukdeb Dhara & Anr.

Mr. Pinaki Ranjan Mitra,
... for the petitioners.
Mr. Abhilash Chatterjee,
Ms. Najmee Parveen
... for the opposite party

1. Present petition has been filed challenging the impugned order dated 5th October, 2023 whereby learned Trial Court allowed the application of the opposite party/defendant under Section 7(2) of the West Bengal Premises Tenancy Act, 1997. Petitioner/landlord aggrieved of the same has invoked the jurisdiction of this Court.
2. Learned counsel for the petitioner submits that the premises in dispute was let out to late Samar Kanti Dhara. Learned counsel submits that Sri Samar Kanti Dhara died long back, however the factum regarding his death was not informed to the petitioner/landlord. Learned counsel submits that in view of Section 2(g) of the West Bengal Premises Tenancy Act, 1997 the petitioners have become trespasser in the suit property.

3. Learned counsel submits that since eviction was not filed on any of the ground mentioned in Section 6 of the West Bengal Premises Tenancy Act, 1997 the application filed by the opposite party under Section 7 of the West Bengal Premises Tenancy Act, 1997 were not maintainable at all.
4. Learned counsel submits that the learned Trial Court has fallen into error by returning the finding vide the impugned order at the preliminary stage to the effect that the opposite party are tenant in the premises in question.
5. Learned counsel for the opposite party submits that perusal of the plaint filed before the learned Trial Court would indicate that the petitioner had alleged that there was an arrear of rent and, therefore, on the basis of such pleadings it can be inferred that the eviction was sought on the ground of non –payment of rent.
6. The Court has considered the submissions and perused the record carefully. Initially Section 2(h) of the West Bengal Premises Tenancy Act, 1956 provided as under : -

"tenant" [means any person] [Words substituted
for the words 'includes any person' by W.B. Act

29 of 1965.] 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 the termination of his tenancy or in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death,] [Words substituted for the words 'also any person continuing in possession after the termination of his tenancy' by W.B. Act 29 of 1965.] but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction.

7. Consequent upon the amendments in the West Bengal Premises Tenancy Act, 1997, Section 2(g) provided as under :

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 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 remises [on condition of payment of fair rent]. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.

8. The bare perusal of the Section 2(g) would reveal that upon death of a tenant, the spouse, son, daughter, parent and the widow of predecessor, who were ordinary living with the tenant up to the date of his death as members of his family and were dependent on him and did not own or occupy any residential premises can stay for a period not exceeding five years from the date of such death or from the date of coming into force of this Act, whichever is later.
9. Further perusal of Section 2(g) would indicate that to fulfill the conditions of Section 2(g) certain factual matrix are to be taken into account, which includes, whether the persons were ordinarily residing with tenant up to the death of the tenant as the members of his family and dependent on him and whether they do not own or occupy any residential premises.

10. Learned counsel submits that in this circumstances, where the suit for eviction has been filed on the ground of Section 2(g) of the West Bengal Premises Tenancy Act., 1997 the Court cannot return the finding under section 7 of the West Bengal Premises Tenancy Act, 1997 regarding the status of the person claiming himself to be the tenant. Learned counsel submits that even the application under Section 7 is not maintainable at this stage.

11. In **Jugal Kisor Das Naskar** – Vs. – **Sri Dilip Das & Anr.** reported in 2023 Supreme (Cal) 369 it was inter alia held as follows : -

12. Thus upon reading the provisions contained in Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 it will be clear that the said sub-Sections provides the liability of tenant in depositing rent to get the benefit of protection against eviction.

13. However, the provision of Section 7 of the West Bengal Premises Tenancy Act 1997 provides that the condition laid down in the said section is to be complied in the event a suit for eviction is instituted by a landlord against a tenant on any of the grounds referred to in

Section 6. Thus when a suit is not instituted under Section 6 of the West Bengal Premises Tenancy Act 1997 by a landlord against a tenant the compliance of condition under Section 7 of the West Bengal Premises Tenancy Act does not and cannot arise. It will also not be open to the plaintiff to allege that the defendant has not complied the condition as provided under Section 7 of the West Bengal Premises Tenancy Act 1997, where suit is not instituted under Section 6 of the West Bengal Premises Tenancy Act 1997.

14. In the instant suit the plaintiff has alleged that the defendants/opposite parties are the trespassers in the suit property, on the other hand the defendants/opposite parties have claimed themselves to be tenants of the suit property. Now in the event the defendants can establish themselves as tenants of the suit property the suit will become 'not maintainable' and will fail as because a tenant under West Bengal Premises Tenancy Act 1997 can be evicted only on the grounds as provided under Section 6 of the said statute. In such a case the maintainability of the suit should be decided

first in accordance with law. In the event suit becomes non-maintainable it shall fail. On the other hand if the suit is maintainable it has to be proceeded and decided in accordance with law.

15. In the case of Ramkrishna Poddar and ors VS Sudhanshu Saha being CO 915, 917 and 918 of 2019, a Learned Single Bench of this Court observed as follows:

‘13. Learned Advocate for the plaintiff referring decision reported in MANU/WB/1047/2017 : 2018 (1) CHN (Cal) 545 delivered in the case of Dipali Halder VS. Chandan Das submitted that Section 7 of the West Bengal Premises Tenancy Act, 1997 would be attracted only, when the grounds available under Section 6 of the Act were invoked for eviction of tenant. The opposite party/defendant had nothing to controvert the settled proposition of law, as already referred by the petitioner that the protections available under Section 7(1) and 7(2) of West Bengal Premises Tenancy Act, 1997 would be attracted only in cases where grounds shown in Section 6 of the Act were made use for eviction of tenant under the Act.

14. Admittedly, no notice was issued before the institution of the suit on the ground that the suit was not framed on the basis of cause of action arose following service of notice under Section 6(4) West Bengal Premises Tenancy Act. The proposition of law is that notice under Section 6(4) of the Act will be served upon the defendant/tenant mandatorily before filing of such suit after expiry of the notice period provided under Section 6(4) of the Act, if the tenant does not vacate the tenanted premises after expiry of the notice period. But here in this case neither the suit was founded, nor framed on the basis of cause of action following service of notice under Section 6(4) of the West Bengal Premises Tenancy Act, 1997. The instant suit not being against the tenant within the meaning of tenant as defined under West Bengal Premises Tenancy Act, 1997, the defendant/O.P.is not entitled to get any protection under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act. The present suit essentially being a suit for eviction of a trespasser, which is very much maintainable in the manner in which it was framed or rather founded where there is no scope of application

under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act.'

16. Upon considering the nature of the suit and the judicial decisions relied it will appear that the Learned Trial Judge erred in keeping the application under Section 7(1) and 7(2) of West Bengal Premises Tenancy Act 1997 for consideration with the preliminary issue when the said applications are not maintainable. Thus the order passed by the Learned Civil Judge (Senior Division) 3rd Court at Alipore in Ejectment Suit no-26 of 2021 should be modified. Hence the applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 filed in Ejectment Suit No-26 of 2021 before Learned Civil Judge Senior Division 3rd Court at Alipore stands dismissed as not maintainable. However, the order of Learned Trial Judge in framing the issue as to whether the defendant is a tenant under the plaintiff or trespasser in respect of the suit premises is affirmed. The said issue shall be decided in accordance with law.

12. Perusal of the impugned order would indicate that the learned Trial Court has fallen into error by reaching to the conclusion at the

preliminary stage that right to stay in the suit property in favour of the opposite party/defendant as per definition of Section 2(h) of the West Bengal Premises Tenancy Act.

13. The Court considers that in view of Section 7 of the West Bengal Premises Tenancy Act a petition filed by the opposite party/defendant under Section 7(1) and (2) of the West Bengal Premises Tenancy Act were not maintainable in the present proceeding, as the eviction was not filed on any of the grounds mentioned in Section 6 of the West Bengal Premises Tenancy Act, 1996. The present suit has been filed for eviction against the alleged trespasser. The learned Trial Court should have framed a preliminary issue regarding the status of the opposite party/defendant in the suit property and could return the finding only after giving both the parties an opportunity of leading the evidence.

14. In view of the discussion made above the Court considers that the present order is not sustainable under the law .

15. This petition is allowed.

16. Urgent Photostat certified copy of this order, duly applied for, be given to the parties

upon compliance of all usual requisite formalities.

(Dinesh Kumar Sharma, J.)