

CO. 4599 of 2025

20.05.26
D/L
SI-07
Ct. 06
(Samar)

Kanaialal Chawla
Vs.
Prabhat Jhawar

Mr. Mainak Bose, Ld Sr. Adv.,
Mr. Gautam Das,
Mr. Lokesh Sharma,
Mr. Deokinandan Sharma
... for the petitioner.
Mr. Shivshankar Banerjee,
Mr. Siddharth Chaurasia,
.... for the opposite party.

1. This revisional application is directed against an order dated December 1, 2025 passed by the learned Chief Judge, City Civil Court at Calcutta in Ejectment Suit No. 06 of 2022 whereby the petitioner's application under Order 14 Rule 2 read with Section 151 of the Code of Civil Procedure has been rejected as premature by observing that the issue of landlord and tenant relationship shall be taken up along with the application under Section 7(3) filed by the opposite party.
2. The opposite party has instituted Ejectment Suit No. 06 of 2022 before the learned Chief Judge, City Civil Court, Calcutta praying for eviction of the petitioner. In the said suit, the petitioner filed an application under Order 14 Rule 2 read with Section 151 of the Code praying *inter alia* for framing a preliminary issue as regards the maintainability of the suit itself. The petitioner

contended that the petitioner is not a tenant under the opposite party and as such the suit is not maintainable. Such application has been rejected by the learned Trial Court by observing that the same is premature. On the other hand, the opposite party has filed an application under Section 7(3) of the West Bengal Premises Tenancy Act, 1997 praying for striking out the defence of the petitioner in the suit. Such application has been fixed for hearing by the learned Trial Court along with the issue as regards the relationship of landlord and tenant between the petitioner and the opposite party.

3. Feeling aggrieved thereby the petitioner has approached this Court by filing the present revisional application.
4. Mr. Bose, learned senior advocate appearing for the petitioner submits that the learned Trial Court could not have fixed the two matters to be heard together. Relying on a judgment of the Hon'ble of Division Bench this Court in the case of ***Synthetic Plywood Industries (P) Ltd. Vs. Smt. Manjulika Bhaduri & Others*** reported at **(1998)1 CHN 378**, he submits that the issue as regards relationship of landlord and tenant must be decided prior to taking up the application under Section 7(3) of the West Bengal Premises Tenancy Act, 1997.
5. Mr. Banerjee, learned advocate appearing for the

opposite party submits that the learned Trial Court has committed no error in observing that the issue as regards landlord and tenant relationship shall be decided along with the application under Section 7(3) of the 1997 Act.

6. Heard learned advocates appearing for the respective parties and considered the material on record.
7. It is now well settled that going by the language of the West Bengal Premises Tenancy Act, 1997 the wrath of Section 7(3) of the 1997 Act would be incurred only by a tenant who is non-complaint with the conditions of Section 7(1) and 7(2) of the 1997 Act and none else. It is for this reason that the statute uses the expression tenant and not defendant. The provision of Section 7(3) would be attracted only if the defendant is a tenant and not otherwise.
8. The Hon'ble Division Bench of this Court in the case of ***Synthetic Plywood Industries (P) Ltd.*** (supra) has held that while the suit may not be disposed of on the basis of decision on the issue as regards landlord and tenant relationship, (if the decision is in the negative) without pronouncing judgment on all the other issues, yet, such issue can always be decided as preliminary issue.
9. In such view of the matter, since this court finds that the learned Trial Court has held that the said

learned Court would decide the issue of landlord and tenant relationship, the same cannot be faulted. However, it needs to be clarified that the issue as regards landlord and tenant relationship must be decided prior to a decision being taken on the opposite party's application under Section 7(3) of the 1997 Act.

10. CO. 4599 of 2025 stands disposed of. There shall be no order as to costs.
11. 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.)