

JP-11
Ct No.07
10.06.2026
AK

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Civil Appellate Jurisdiction

C.O. 24 of 2026

Sri PuruShottam Agarwal
Vs
Sri Krishna Kumar Daga

Mr. Anand Bhandari
Mr. Mayank Bhandari

.... for the petitioner.

Mr. Bikramaditya Ghosh
Mr. Vivek Saha
Mr. Binayak Bandopadhyay

...for the opposite party.

1. An interesting question is involved in the present revisional application.
2. In a suit for eviction filed by the plaintiff/opposite party no.1, the defendant no.1/petitioner took out an application, captioned to be under Section 151 of the Code of Civil Procedure, seeking to deposit arrears and current rent.
3. By the impugned order, the said application was rejected.
4. While dismissing the said application, the learned Trial Judge proceeded, *inter alia*, on the basis that the provision of Section 114 of the Transfer of Property Act is not applicable in the

present case as there was no registered lease deed.

5. That apart, the learned Trial Judge observed that the suit does not fall within the ambit of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'the 1997 Act') in view of the rent for the suit premises being above the threshold value stipulated for the said statute to be attracted.
6. Thus, since the suit is governed by the Transfer of Property Act, it was held that the petition to deposit rent was not maintainable.
7. Learned counsel appearing for the petitioner argues that the bar contemplated with regard to the threshold rent, as applicable in the present case, is embodied in Section 3 (f)(ii) of the 1997 Act which stipulates that nothing contained in the 1997 Act shall apply to any premises let out for non-residential purpose which carries more than five thousand rupees as monthly rent in other areas to which this acts extends than the limits of the Kolkata Municipal Corporation and the Howrah Municipal Corporation.
8. However, learned counsel argues that the said provision is ambiguous as to whether it is applicable to tenants who, at the point of induction, came within the purview of the rent

as stipulated in Section 3(f)(ii) but subsequently, due to enhancement of the rent, went outside the purview thereof.

9. In support of his contention that accrued rights in favour of a tenant cannot be taken away by subsequent legislation retrospectively, learned counsel cites the judgment of *Rajesh Mitra @ Rajesh Kumar Mitra and another vs. Karnani Properties Ltd. (Civil Appeal Nos. 3593-3594 of 2024)*, where the Hon'ble Supreme Court, while discussing the applicability of the 1997 Act and its predecessor statute of 1956, *inter alia* observed that a new statute which touches upon existing rights cannot be retrospective without an express provision or necessary implication expressing the clear intent of the legislature.
10. Learned counsel next argues that the frame of the suit as depicted in the plaint clearly indicates that the same was filed under the 1997 Act.
11. Learned counsel places particular reliance on paragraph no.15 of the plaint where it has been stated by the plaintiff/opposite party no.1 that the plaintiff is entitled to recovery of possession of the suit premises after evicting the defendant therefrom on the ground of default and as the defendant has committed breach of the

provisions of the 1997 Act and also on other grounds stated in the paragraphs above.

- 12.** Hence, it is argued that in any event, the application filed by the petitioner was entertainable under Section 7 of the 1997 Act.
- 13.** Learned counsel appearing for the plaintiff/opposite party no.1, the main contesting opposite party, controverts the submissions of the petitioner and places reliance on the various paragraphs of the plaint.
- 14.** It is submitted that the content and pith and substance of the plaint is required to be looked into for ascertaining the purport of the same, instead of looking at the captions or the statutes as mentioned therein.
- 15.** Learned counsel submits that in view of the specific bar under Section 3(f)(ii) of the 1997 Act, the suit cannot be construed to be one under the Premises Tenancy Act, in whatever manner the plaint is couched.
- 16.** Even otherwise, learned counsel submits that since there was no registered lease deed nor any occasion of forfeiture on the ground of non-payment of rent, the provisions of Section 114 of the Transfer of Property Act are not applicable.
- 17.** Upon hearing learned counsel for the parties, the contents of the plaint acquires relevance.

- 18.** Undoubtedly, in paragraph no.15 of the plaint, the plaintiff/opposite party no.1 has specifically referred to the provisions of the 1997 Act.
- 19.** Again, in certain paragraphs such as paragraph no.5, grounds available only under the 1997 Act have been referred to.
- 20.** In paragraph no.5, the plaintiff/opposite party no.1 pleads reasonable and *bona fide* requirement, which is not available under the Transfer of Property Act but is provided in the 1997 Act as a ground for eviction.
- 21.** However, simultaneously, it is to be seen that after an initial notice under the provisions of the 1997 Act, the plaintiff/opposite party no.1 also issued a notice under Section 106 of the Transfer of Property Act to the defendant/petitioner before filing the suit.
- 22.** In terms of the said subsequent notice, the defendant was given 15 days' time, in consonance with the provisions of Section 106 of the Transfer of Property Act, to vacate the premises.
- 23.** Moreover, in certain paragraphs of the plaint, grounds available for eviction to the lessor under the Transfer of Property Act have also been referred to.

- 24.** For example, in paragraph no.6, it has been alleged that the defendant, without any prior permission and approval from the plaintiff, has illegally constructed a wooden storage, installed steel Almirahs and a toilet in the suit premises.
- 25.** Again, in paragraph no.7 of the plaint, it is alleged that the defendant had changed the nature and character of the premises and is liable to be evicted from the premises on such ground, which is a ground for eviction under both the statutes under consideration.
- 26.** Default in payment of rent, although a ground in both the statutes, finds place in the Transfer of Property Act, 1882 under the purview of forfeiture in the event the rent as agreed upon by the parties is not paid by the tenant.
- 27.** Thus, there are common ingredients of both the 1882 and 1997 statutes in the plaint of the present suit.
- 28.** In such premise, it cannot be said beyond doubt that the provisions of the 1997 Act would be applicable.
- 29.** Hence, no right accrues in favour of the defendant/tenant to file an application under Section 7 of the 1997 Act. which contemplates an application for deposit of rent to be filed on a suit “being instituted by the landlord for eviction

on any of the ground referred to in Section 6” of the 1997 Act.

- 30.** In view of the above discussion, it cannot be said beyond doubt that the suit, as framed, comes within the purview of the 1997 Act and not under the 1882 Act.
- 31.** Rather, there is sufficient indication in the plaint that the suit is one under the Transfer of Property Act, in view of the specific bar in Section 3(f)(ii) of the 1997 Act.
- 32.** With respect, the argument of the petitioner that there is an ambiguity in the said provision is not acceptable.
- 33.** The language of Section 3 is very specific. It provides the exemptions to applicability of the 1997 Act. The relevant date for such consideration would obviously be the date on which the suit for eviction is presented in the court. If, on such date, the quantum of rent for the premises exceeds the ceiling as stipulated in Section 3, the suit could not have been governed by the 1997 Act.
- 34.** In *Rajesh Mitra (supra)*, the Hon’ble Supreme Court was considering an entirely different aspect of the 1997 Act. The question which fell for consideration there was whether the substantive rights in favour of tenants, which

devolved upon them on the demise of the original tenant, that is, their predecessor, accrued prior to the enactment of the 1997 Act, could be retrospectively taken away by the subsequent promulgation of the 1997 statute.

- 35.** In such context, the essence of the judgment was a consideration of whether substantive and already-accrued rights under a prior statute can be denuded by retrospective operation of a subsequent statute without any specific provision in the subsequent statute to that effect.
- 36.** In such context, the Hon'ble Supreme Court was please to decide that the rigours of Section 2(g) of the 1997 Act, insofar as the devolution of tenancy right is concerned, is only applicable prospectively, if the death of the original tenant occurs subsequent to the enactment of the 1997 Act, and would not apply in cases where the demise of the original tenant and the consequential devolution of tenancy rights on his/her heirs occurred prior to promulgation of the 1997 statute.
- 37.** However, Section 3 of the 1997 Act has nothing to do with any sort of accrued or substantive rights but merely delineates the applicability of

the statute and the consequential jurisdiction of the court.

- 38.** Section 3 of the 1997 Act is an exemption clause in respect of applicability of the statute and does not take away or confer any “accrued right”.
- 39.** If the proposition of the petitioner is to be accepted, the right to litigate under a particular statute has to be frozen in time for eternity, not giving way to subsequent statutes or amendments to the existing statute.
- 40.** The right to file a litigation under a particular statute, under no stretch of imagination, can be elevated to the pedestal of a substantive and accrued right of a person but is purely procedural and jurisdictional in nature.
- 41.** Thus, the ratio laid down in *Rajesh Mitra (Supra)* is not attracted in the present case in any manner whatsoever.
- 42.** That apart, there is no ambiguity in Section 3(f)(ii) inasmuch as the relevant date for consideration of the said ceiling would be the date when the plaint is presented.
- 43.** In the present case, the suit has been filed in the year 2025, that is, much after the enactment of the 1997 Act and the relevant amendment to Section 3(f)(ii) of the 1997 Act, which was

introduced subsequently with retrospective effect from July 10, 2001.

44. In such view of the matter, the argument of the petitioner that the suit has been filed under the 1997 Act cannot be accepted, thus ruling out the applicability of Section 7 of the 1997 Act.
45. Even the petitioner was aware of such position, due to which the application-in-question was filed under Section 151 of the Code of Civil Procedure and not under Section 7 of the 1997 Act, which are two distinct and different remedies altogether.
46. Inasmuch as Section 114 of the Transfer of Property act is concerned, the learned Trial Judge was justified in refusing to apply the said provision. Apart from there being no registered lease agreement between the parties despite the lease being for more than one year, the suit has not been filed simpliciter on the ground of forfeiture for non-payment of rent.
47. Thus, there is no provision at all under which the application seeking to deposit rent, both arrears and current, could be entertained by the learned Trial Judge.
48. In view of the above, this court does not find any illegality or jurisdictional error in the impugned order.

- 49.** Accordingly, C.O. 24 of 2026 is dismissed on contest against the opposite party no.1 and *ex parte* against the opposite party no.2 and affirming the impugned order, being Order no.9 dated November 19, 2025 passed by the Learned Civil Judge (Senior Division), District-Kalimpong in Title Suit No.07 of 2025.
- 50.** It is made clear that none of the above observations shall be deemed to be conclusive at the final hearing of the suit and it will be open to both parties to canvass all contentions at the final hearing of the suit without being influenced in any manner by the observations made above.
- 51.** There will be no order as to costs.
- 52.** Urgent certified copies, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)