

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

**APDT/12/2026
IA NO: GA/1/2026
GA/2/2026**

ASHA KESRI ALIAS ASHA KESHRI AND ORS.

-VERSUS-

A.K.R. CONSULTANTS P. LTD.

BEFORE:

HON'BLE JUSTICE DEBANGSU BASAK

-A N D-

HON'BLE JUSTICE MD. SHABBAR RASHIDI

For the Appellant : *Mr. Shaswat Nayak, Adv.*
Mr. Shuvajit Roy, Adv.

For the Respondent No.5 : *Mr. Arif Ali, Adv.*
Mr. Irshad Yakub, Adv.

HEARD ON : 19.05.2026

DELIVERED ON : 19.05.2026

DEBANGSU BASAK, J.:-

1. IA No.GA/1/2026 is an application for condonation of delay.
2. Plaintiffs and the other defendants to the suit are represented.
3. The delay is of 109 days.
4. Considering the averments made in the application for condonation of delay and for the ends of justice and considering the stand taken by the

plaintiffs, who are the actual parties and will be affected, we deem it appropriate to condone the delay. IA No.GA/1/2026 is allowed.

5. The appeal is taken up for final hearing by consent of the parties.
6. The appeal is at the behest of the defendant no.5 series.
7. Learned Advocate appearing for the appellants submits that, the learned Trial Judge erred in passing a decree on the basis of admission made in the written statement. He refers to the averments made in the plaint. He submits that, the case of the plaintiffs in the plaint was that the deceased father of the plaintiffs was a rank trespasser in the suit property.
8. Learned Advocate appearing for the appellants submits that, once the plaintiffs take the stand that, the deceased father of the appellants was a rank trespasser, then, under the provisions of Section 6 of the Specific Relief Act read with the provisions of the Presidency Small Cause Courts Act, 1882, particularly Section 18(2) thereof, as introduced by the Presidency Small Causes Courts (West Bengal Amendment) Act, 1999 will apply. He submits that, the suit was required to be filed before the Small Causes Court. He submits that, purely on the basis of the statements made in the written statement, the suit should not be treated as correctly filed before this Hon'ble Court.
9. Learned Advocate appearing for the appellants submits that, the plaintiff cannot be allowed to approbate and reprobate. Once the

plaintiffs accept the deceased father of the plaintiffs as rank trespasser, then, the plaintiffs cannot take shelter under the West Bengal Premises Tenancy Act, 1997 to evict the appellants.

10. Learned Advocate appearing for the appellants submits that, without prejudice to the previous contentions and in view of the provisions of Section 2(g) of the Act of 1997, the appellants are entitled to a right of preemption which was not offered by the plaintiffs. Consequently, the impugned judgment and decree is bad in law and should be set aside.
11. Learned Advocate appearing for the plaintiffs submits that, the suit was valued on the basis of the value of the suit property. The value of the suit property takes away the jurisdiction of the Small Cause Courts at Calcutta. The valuation of a plaint is made at the behest of the plaintiffs. There is no material on record to establish that the valuation is incorrect.
12. Learned Advocate appearing for the plaintiffs submits that, the other defendants are not claiming any right, title and interest in respect of the immovable property in question in respect of which the impugned decree was passed.
13. Respondent no.5 is represented.
14. A suit for eviction was filed against the appellants. In the suit, there are several defendants.

15. So far as the immovable property in respect of which the impugned decree was passed, no other defendants are claiming any right, title and interest.
16. In the suit, the appellants filed a written statement. In the written statement, the appellants took the stand that they are bona fide monthly tenants under the plaintiff no.3 and governed and protected by the Act of 1997.
17. During the pendency of the suit the father of the appellants expired on December 24, 2008.
18. After a lapse of 5 years from the date of death of the father of appellants, the plaintiffs filed an application for a decree for eviction on the basis of admission contained in the written statement.
19. By the impugned judgment and decree, learned Trial Judge directed eviction of the appellants from the immovable property concerned.
20. The contentions of the appellants do not appeal us. The plaintiffs are entitled to rely upon an admission made by the defendants in a pleadings of a suit. The stand of the appellants in their written statement was that the father of the appellants was a bona fide tenant under the plaintiff no.3 and that such tenancy was governed and protected under the provisions of the Act of 1997.
21. The Act of 1997 prescribes that, on the death of the recorded tenant, the heirs and legal representatives are entitled to protection of the Act of 1997 for a period of 5 years. The immunity granted to the heirs and

legal representatives of the deceased tenant for the 5 years is subject to the condition that, such heirs and legal representatives were dependents on the original tenant. We need not enter into the controversy as to whether or not the appellants before us were dependents on the original tenant at the time of death of the original tenant. The judgment on admission application was filed after expiry of a period of 5 years from the date of death of the original tenant i.e., December 24, 2008. Therefore, after an expiry of 5 years from the date of death of the original tenant, in any view of the matter, the appellants cannot claim immunity from eviction under the provisions of the Act of 1997. Rather, they are liable to be evicted under the provisions of the Act of 1997 after expiry of a period of 5 years from the date of death of the original tenant.

22. Section 2(g) of the Act of 1997 cannot be construed in the manner as claimed by the appellants. Right of preemption to buy the immovable property concerned does not vest upon the heirs and legal representative of a tenant after expiry of a period of 5 years from the date of death of the original tenant.
23. So far as the valuation of the suit property is concerned, we find that, the plaintiffs valued the suit on the basis of the valuation of the suit property. It is not the case of the appellants that the valuation of the suit property is such that it comes within the ambit of the pecuniary

jurisdiction of Small Cause Courts at Kolkata. Therefore, the provisions of Section 18(2) of the Act of 1882 are not applicable.

24. In view of the discussion above, we find no ground to interfere with the impugned judgment and decree.
25. Accordingly, APDT/12/2026 along with the connected applications are dismissed without any order as to costs.

(DEBANGSU BASAK, J.)

26. I agree.

(MD. SHABBAR RASHIDI, J.)

A/s.