

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

**IA NO. GA/4/2026
WITH CS/162/2016
In APD/7/2023**

**NASEEM AHMED KHAN
Vs
KARNANI PROPERTIES LTD**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Dhrubo Ghosh, Sr. Adv.
Mr. Arindam Paul, Adv.
Mr. Altamash Alim, Adv.
Ms. Debarati Das, Adv.

For the Respondent : Mr. Sabyasachi Choudhury, Sr. Adv.
Mr. Biswanath Chatterjee, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Mr. Neelesh Choudhury, Adv.
Ms. Anuradha Poddar, Adv.

HEARD ON : 10.03.2026

DELIVERED ON : 10.03.2026

DEBANGSU BASAK, J.:-

1. IA No: GA/4/2026 is an application for restoration.
2. Causes shown in the application for restoration are accepted and sufficient.
3. GA/4/2026 is allowed. The appeal is taken up for final hearing.

4. The appeal is at the behest of the defendant in a suit for eviction and directed against the judgment and decree dated January 25, 2023.
5. Learned Senior Advocate appearing for the appellant submits that, the respondent was unable to establish its case at the trial. He refers to the pleadings in the plaint. He submits that, the appellant was in actual physical possession of the suit property prior to 2007. In this regard, he draws the attention of the Court to the written statement filed by the respondent in a suit filed by the appellant before the learned City Civil Court at Calcutta being Title Suit No. 1829 of 2010.
6. Learned Senior Advocate appearing for the appellant submits referring to such written statement filed in Title Suit No. 1829 of 2010 which was marked as “Exhibit-D” at the trial that, the respondent acknowledged that, Central Calcutta Investments Private Limited is a tenant in respect of the suit property. He submits that, in the City Civil Court suit, the respondent took the stand that, Central Calcutta Investments Private Limited is a necessary and proper party to such suit, when such entity was not party to the City Civil Court suit.
7. Learned Senior Advocate appearing for the appellant submits that, since, the respondent did not implead the Central Calcutta Investments Private Limited as a party defendant in the present suit, therefore, the suit was bad for non-joinder of necessary and proper party. He refers to the deposition of the witness of the

respondent at the trial. He submits that, it is admitted by the witness of the respondent at the trial that, the Central Calcutta Investments Private Limited is a tenant under the respondent.

8. Relying upon **AIR 1967 SC 1853 (Hiralal Vallabhram Vs. Kastorbhai Lalbhai & Others)**, learned Senior Advocate appearing for the appellant submits that, since, the tenant was not made a party to the suit for eviction, the respondent is not entitled to a decree for eviction as against the appellant. He refers to Issue no. (vi) framed by the learned Single Judge at the trial. He submits that, Issue no. (vi) was wrongly decided by the learned Single Judge.
9. Learned Senior Advocate appearing for the appellant submits that, the appellant was paying rent to the Special Officer appointed by the High Court. In this regard, he refers to various rent receipts. He submits that, by reason of the suit filed by the appellant before the City Civil Court and the subsequent payment of rent to the Special Officer appointed by the High Court, the appellant cannot be treated as a trespasser in respect of the suit property.
10. Learned Senior Advocate appearing for the appellant submits that, the appellant did not dispossess any person from the suit property to enter into possession. Appellant was inducted into the suit property by one Sita Devi Kapur who was a tenant under Central Calcutta Investments Private Limited. Therefore, the question of the appellant being a trespasser to the suit property does not and cannot arise.

- 11.** Learned Senior Advocate appearing for the respondent submits that, the suit is for an eviction of a trespasser. He submits that, the respondent was able to establish that the appellant was a trespasser. He contends that, the City Civil court suit was dismissed for default on December 11, 2018. The suit was never restored.
- 12.** Learned Senior Advocate appearing for the respondent submits that, as the owner of the suit property, the respondent was entitled to seek eviction of the trespasser notwithstanding a tenancy existing in respect of such suit property. He submits that, the tenancy was created in favour of the Central Calcutta Investments Private Limited. He refers to various questions put to the witness of the appellant at the trial. He submits that, the witness of the appellant in cross-examination was asked as to whether, the suit was for eviction of the appellant as a trespasser or not, to which the said witness answered in affirmative.
- 13.** Learned Senior Advocate appearing for the respondent submits that, despite the respondent being aware of the suit for eviction and its parameters, the appellant did not take any steps for the purpose of establishing its so called sub-tenancy or tenancy. Therefore, the question of Central Calcutta Investments Private Limited being made a party to the suit for eviction of a trespasser does not arise. He submits that, the appellant did not establish any independent right or a right of tenancy in respect of the suit property. Therefore, the appellant was rightly treated as a

trespasser and was directed to be evicted. In support of his contention, he relies upon **(2010) 3 SCC 385 (Sadashiv Shyama Sawant Vs. Anita Anant Sawant)**.

- 14.** Learned Senior Advocate appearing for the respondent submits that, the suit for eviction was filed in 2016. He refers to Section 26 of the West Bengal Premises Tenancy Act, 1997. He submits that, a sub-tenant existing prior to the Act of 1997 coming into force was required under Section 26 of the Act of 1997 to issue notice to the owner with regard to such sub-tenancy within two years from the date of the Act of 1997 coming into effect. He submits that, till the filing of the suit, no such notice was issued by the appellant in respect of the suit property. On such count also, the appellant cannot be considered as a sub-tenant in respect of the suit property.
- 15.** Learned Senior Advocate appearing for the respondent draws the attention of the Court to the various questions put to the witness of the appellant at the trial. He submits that, the appellant was repeatedly asked in cross-examination as to whether, the appellant was aware of the scope and ambit of the suit to which, the appellant answered in affirmative.
- 16.** As noted above, the learned Trial Judge, decreed the suit of the respondent on January 25, 2023. At the trial of the suit, the learned Trial Judge, framed six issues for consideration.
- 17.** For the purpose of the appeal, Issue no. (vi) framed at the trial of the suit assumes significance as it is the contention of the

appellant that, Issue no. (vi) was incorrectly decided by the learned Single Judge. Issue no. (vi) framed at the trial is as follows:

“(vi) Does the plaintiff possess the requisite legal status to institute the instant proceeding before this Hon’ble Court as the purported landlord of the suit property?”

- 18.** At the trial, the learned Single Judge decided Issue no. (vi) in favour of the respondent. Learned Single Judge found that, the respondent was able to establish his ownership in respect of the suit property by virtue of “Exhibit-A” being registered document of title with regard to the suit property. Consequently, the learned Trial Judge held that, the respondent was the owner of the suit property.
- 19.** Ownership of the suit property by the respondent is not disputed by the appellant in the appeal. What is contended is that, despite the respondent being the owner of the suit property, it admittedly let out the suit property to Central Calcutta Investments Private Limited. Therefore, Central Calcutta Investments Private Limited being a tenant, is both necessary and proper party in the suit for eviction. What is also contended is that, the appellant was put into possession of the suit property by one Sita Devi Kapoor who was the sub-tenant of Central Calcutta Investments Private Limited. In fact, the appellant is a tenant under Sita Devi Kapoor.
- 20.** In the written statement, the appellant does not run a case of sub-tenancy under any person let alone in the manner as noted in the

previous paragraph and as contended at the time of hearing of the appeal. At the stage of evidence, the factum of the so called sub-tenancy under Sita Devi Kapoor is introduced albeit, without any document to establish such claim.

- 21.** “Exhibit-D” is a written statement filed in a suit before the learned City Civil Court at Calcutta, which was initiated at the instance of the appellant. In such written statement, respondent took the stand that, Central Calcutta Investments Private Limited is a tenant in respect of the suit property. Such stand is of the witness of the respondent at the trial also. Such suit was dismissed for default on December 11, 2018.
- 22.** However, as noted above, it was for the appellant to establish his sub-tenancy in respect of the suit property through Sita Devi Kapoor as it claimed in the deposition at the trial. The appellant failed to discharge such burden of proof at the trial. No document establishing such tenancy/sub-tenancy was introduced at the trial by the appellant.
- 23.** Rent receipts issued by Special Officer/Receiver appointed by Court in other proceeding, in favour of the appellant, in respect of the suit property does not create any tenancy in favour of the appellant or clothe the otherwise trespass with any decree of legality which it did not possess prior to the issuance of the rent receipt. The rent receipt was issued by the Receiver with the note that it would not create any tenancy in respect of the suit property.

- 24.** The ratio of **Hiralal Vallabhram (Supra)** comes into operation in a fact scenario where the owner of an immovable property seeks to evict the sub-tenant without making a tenant a party to the suit. It is of the view that, the owner is required to evict the tenant so as to obtain an eviction of the sub-tenant.
- 25.** **Sadashiv Shyama Sawant (Supra)** notices the law on the subject of dispossession of the tenant from the immovable property and the right of the owner to seek possession from the trespasser. It is of the view that, dispossession of a tenant from a suit property, is a dispossession of the owner also. The owner can, therefore, sue for obtaining possession from the trespasser in respect of an immovable property over which, the tenancy was created without impleading the tenant.
- 26.** In the facts and circumstances, we are of the view that, the learned Single Judge, decided Issue no. (vi) correctly and was right in granting the decree for eviction.
- 27.** We find no merits in the present appeal. APD/7/2023 along with any other applications are dismissed, without any order as to costs.

(DEBANGSU BASAK, J.)

- 28.** I agree.

(MD. SHABBAR RASHIDI, J.)

Later:

- 29.** Prayer for stay made on behalf of the appellant is considered and refused.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)