

**IN THE COURT OF THE CHIEF JUDGE,
CITY CIVIL COURT, CALCUTTA.**

Present : Sri Abhijit Som, Chief Judge (WB01127)

Title Appeal No.82 of 2025
(Arising out of Ejectment Suit No.205 of 2024)
(CNR No.WBCC01-022036-2025)

- 1. Smt. Sheela Law**
- 2. Sri Anirban Law**

..... Appellants/Plaintiffs

-Vs-

Sri Naresh Gupta

..... Respondent/defendant

Date of delivery of Judgment : 07th day August, 2026

This appeal having come on for final hearing on 23.07.2026 in
the presence of -

Sri Sayantan Bose,
Neha Mishra,
Manish Das,
Priyanka Gope and
Dakshayani Basu

.....Ld. Advocate for the Appellants;

Sri Utpal Roy Chowdhury

.....Ld. Advocate for the Respondents.

and having stood for consideration on this day, the court
delivers the following Judgment:-

J U D G E M E N T

One unsuccessful landlord being the plaintiffs filed the instant

Title Appeal No.82 of 2025

appeal while their suit for recovery of possession was dismissed ex parte.

It was described in the plaint that the defendant (present respondent) was a tenant in respect of the suit property at a monthly rent of Rs.1,320/- under Nihar Law and Sheela Law. Subsequently by a registered deed of gift Nihar Law delivered his 50% share in favour of Sheela Law and Anirban Law. The other co-owners of the property Arun Kumar Law executed a Will and the same was probated in the Hon'ble High Court at Calcutta. Thus, the plaintiffs Sheela Law and Anirban Law became the absolute owners in respect of the entire suit premises No.23A, Balai Singhi Lane, Amherst Street, Kolkata.

It was further stated in the plaint that the tenancy of the defendant was terminated by a notice dated 26th April, 2024 calling upon the tenant to quit and vacant the suit property. The eviction was sought for on the grounds that the defendant did not reside at the suit property for a period more than 10 months as the tenant started residing at his flat at Bangur Avenue, Kolkata. The eviction suit was also filed on the ground that the defendant being the tenant parted with the possession of the suit property in favour of one Manojit Kundu. It was categorically stated that the notice dated 26th April, 2024 was received by the defendant at his Bangur Avenue flat on the following day i.e. on 27th April, 2024. On the other hand the postal article containing the notice dispatched to the defendant mentioning the address at the suit property, returned unserved with postal remark 'left'. Since the defendant did not vacate the suit property in spite of receipt of the notice, the suit was filed.

The suit was heard ex parte since the defendant did not contest the suit by filing written statement in spite of his appearance before the Court. The plaintiffs (appellant herein) adduced evidence and filed a lot of documents in support of evidence. P.W.1 Anirban Law filed affidavit-in-chief and in his deposition documents were marked as Exbt.1 to Exbt.9.

The suit was dismissed by the Ld. Trial Court mainly on the ground that the plaintiffs could not adduce cogent evidence that the suit property was sublet by the defendant and being the tenant he did not reside in the said property for months together.

Appeal was filed against the said judgment and decree passed

Title Appeal No.82 of 2025

ex parte. In the appellate court notice was served upon the respondent and the respondent appeared in the instant appeal. The hearing of appeal was taken up in presence of both sides. The appellant raised the ground that the ld. Trial Judge failed to appreciate the evidence of the plaintiffs properly and erred in law in dismissing the suit. The respondent was allowed to make submission on the issue of notice.

Points for determination

Now this court is to consider whether the impugned judgement of dismissal of the suit suffers from any infirmity on the ground that the Ld. Trial Court failed to appreciate the evidence in order to adjudge the ground of eviction and the legality of the notice to quit.

Decision with reasons

In view of the pleading the suit for ejectment was filed on the ground that the defendant being the tenant did not reside in the suit property for more than 10 months and started residing at his purchased flat in Bangur Avenue. The ground of subletting and parting with the possession of the suit property to one Manojit Kundu was also taken. In support of the plaint case it was stated that notice to quit was received by the defendant at his newly purchased flat address and the postal article containing the notice in the name of the defendant addressing to the suit property was returned unserved with endorsement 'left'. It was argued by the appellant before this Court that an Electricity Bill in respect of the suit property in the name of said Manojit Mondal was filed before the Trial Court, but the Trial Court did not consider the same in support of the case of the plaintiffs. The Electric Bill in the name of a third party was proof of the fact that the possession of the suit property was parted with by way of subletting and no such permission was taken from the plaintiffs. It was further argued that the certified copy of the Sale Deed in the name of the defendant was filed vide Exbt.8. The document indicated that the defendant purchased the flat elsewhere and started living there abandoning the suit property. So, the ground of eviction as provided in Section 6 (1) (a) & (l) of the West Bengal Premises Tenancy Act was established for granting a decree of

Title Appeal No.82 of 2025

eviction against the tenant.

It was the specific case of the plaintiffs that the defendant left the suit property for a period of more than 10 months and started residing at his flat at Bangur Avenue after its purchase by the defendant in the year 2009. The purchase of flat by the defendant in the year 2009 could not be taken as evidence of leaving the tenanted property and parting with the same to the third party. Nothing was clearly pleaded as to when the tenant left the suit property to reside in his newly purchased property. If the period of leaving the suit property could be considered immediately after the purchase, then it was noted by this Court that the plaintiffs received monthly rent from the defendant on 09.01.2024 for the month of January, 2024 (Exbt.9). The plaintiffs did not make any dispute that the defendant was defaulter in respect of payment of rent for the months prior to issuance of the notice to quit. So, it caused **a genuine** doubt in the mind of the Court whether the plaintiffs received rent month by month from the defendant/tenant in spite of their grievance of subletting the suit property by the defendant to another person and the defendant abandoning the suit property for more than 10 months. Consequently the suit was dismissed due to non-disclosure of material facts in the plaint and absence of convincing evidence.

The relevant provision stated as below:-

“Section 6(1)(a)- where the tenant has sublet, assigned or otherwise parted with the possession of whole or any part of the premises without obtaining the consent in writing of the landlord or the tenant has used the premises for a purpose other than that for which it was let out without obtaining the consent in writing of the landlord;

Section 6(1)(l)- where the tenant, or his spouse, or son, or daughter, or parent, or the widow of his predeceased son, who is dependant on him, does not reside in the premises [ten months] and keeps the premises under lock and key.”

The situation indicated in Section 6(1)(l) of the Act that the tenant did not reside in the premises for 10 (ten) months and kept the premises under lock and key. So, the premises was required to be left under lock and key to establish the ground of eviction. If the tenanted property remained under lock and key, the possibility of parting with the possession by subletting was slim. In absence of cogent evidence

Title Appeal No.82 of 2025

the Court could not come to the conclusion that the property was not used by the defendant for months together and the possession of the same was parted with by subletting. No independent witness came before the Trial Court in support of the case of the plaintiffs. The electricity document was not formally marked as exhibit. Accordingly, the Ld. Trial Court did not give much importance in the downloaded copy of the Electricity Bill.

At the time of hearing before this Court the Ld. Advocate on behalf of the respondent stated that the notice to quit was not legal and valid. No doubt the validity of the notice could be challenged by the respondent at the appellate stage. Having gone through the notice to quit (Exbt.5) it appeared that the notice was issued on 26th April, 2024 stating as follows:-

“In the aforesaid circumstances I, on behalf of my clients, call upon you to quit and vacate the said premises on the expiry of the 30th day of April, or upon the expiry of one clear English Calendar month from the date of receipt by you of the said notice whichever is earlier failing which my clients shall be constrained to take such steps against you liable for all costs and consequences thereof.”

In view of Section 6(4) of the Act one month's notice expiring with a month of the tenancy was required to be given to the tenant as condition precedent for filing of the suit for recovery of possession. The language of the notice indicated that the tenant was asked to vacate the premises on the expiry of the 30th April, 2024 or upon expiry of one clear English calendar month from the date of receipt, whichever was earlier. So, the notice was received by the tenant on 27th April, 2024 and as per direction of the notice, the tenant was asked to vacate the suit property after three days i.e. 30th April, 2024. The suffix clause could not be taken into consideration as because of the comparative clause (whichever earlier). The notice was not given in terms of Section 6(4) of the Act. No doubt the suit was filed in the month of July, 2024. Therefore, an argument could be made that the suit was filed well after one clear month expiring with the month of tenancy. The rent act would be different from the central act in terms of issuance of notice to quit. In view of Section 106 (3) of Transfer of Property Act a notice determining a tenancy could not be treated invalid due to its short period if the suit was ultimately filed after the statutory period. The same analogy could not be applied here in the

Title Appeal No.82 of 2025

special rent statute. Any defect in the notice due to short period could not be cured by subsequent filing of the suit at a later stage after the statutory period. So, the argument of the respondent challenging the validity of the notice to quit made before this Court could not be ignored. The notice to quit dated 26th April, 2024 could not be treated as a valid one. Notice would be the foundation of the suit for eviction of tenant. So, if the notice was found not valid, the suit would not be maintainable.

In view of the above discussion, this Court does not find any infirmity in the order of dismissal of the suit passed by the Ld. Trial Court.

Accordingly the appeal is dismissed.

Let a copy of this judgement along with the T.C.R be sent to the Ld. Trial Court for information and necessary action.

Dictated and corrected by me,

Chief Judge,

Chief Judge,
City Civil Court, Calcutta.
07.08.2026