

**Ejectment Suit 6 of 2022**  
**Present: Biswaruop Bandyopadhyay, Chief Judge**  
**Order No.34, date 01.12.2025:**

The record is taken up for passing order upon the application filed by the defendant/tenant praying for framing a preliminary issue as to maintainability of the instant suit in terms of the provisions contained under Order 14 Rule 2 read with Section 151 of CPC.

The plaintiff/landlord contested the application and filed written objection thereto.

I have heard the submissions of the Ld. Counsels appearing for the defendant/tenant as well as the plaintiff/landlord.

It is not in dispute that the plaintiff who claimed to be the owner and landlord in respect of the suit premises filed the instant Ejectment Suit seeking recovery of possession of the suit premises by evicting the defendant from the suit premises, who according to the plaintiff is a tenant under him. The defendant having entered appearance in the suit, filed written statement and challenged the relationship of landlord and tenant, apart from controverting other allegations made in the plaint. It is specific case of the defendant that the defendant has never been a tenant under the plaintiff and accordingly, plaintiff has no locus standi to file or maintain the suit against him. According to the defendant, he was a monthly tenant by two sets of landlord, one Gangaprasad Jhawar and Shanti Devi Bagree; and another Mohanlal Jhawar, as trustees to Seth Pusharam Jhawar Trust, at a monthly rental of Rs.5,500/- payable per month according to the English calendar month and the said monthly rent was payable in two parts to two sets of landlord in equal shares, i.e, 2750/- to each set of landlords. It is further contention of the defendant that subsequently, on the death of Mohanlal Jhawar, the trustee to Seth Pusharam Jhawar Trust, the share of rent payable to the said trust was calculated by one Pushpa Devi Jhawar as trustee to Seth Pusharam Jhawar Trust and as such, this defendant has always been and still a tenant under two sets of landlords; one said Pusharam Jhawar Trust; and the other Gangaprasad Jhawar and Shanti Devi Bagree.

The plaintiff landlord countered such contention in his Affidavit-in-Chief filed in response to the aforesaid application of the defendant. It is specific contention of the plaintiff that defendant is occupying the room on the south western side of the ground floor of building at Premises No. P-18, Kalakar Street, P.S. Posta, Kolkata-700 007 which falls under Lot A and Lot B of the aforesaid property which is under exclusive

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ownership of the plaintiff by virtue of the Deed of Conveyance dtd. 25.01.2021 and accordingly the defendant is a tenant under plaintiff. Plaintiff/landlord prays for rejection of the instant application filed by the defendant.

It is not a disputed position between the parties so far as the present ejectment suit filed by the plaintiff seeking eviction of the tenant/defendant from the suit premises is concerned that the relationship between landlord and tenant is a material issue which needs to be adjudicated by this Court specially when, such relationship is under challenge from the side of the defendant/tenant. Accordingly, the defendant has not filed any application under Section 7(1) or 7(2) of the West Bengal Premises Tenancy Act, 1997, seeking to deposit admitted arrear of rent or adjudication with reference to disputed amount of rent. It is specific arguments of the Ld. Counsel for the defendant that as the defendant claims to be not a tenant under the plaintiff, he had no compulsion to file any application under Order 7(1) or 7(2) of the WBPT Act, 1997. According to the Ld. Counsel for the defendant, the provision contained under 7(2) of WBPT Act, 1997, does not contemplate any adjudication on the point of relationship of landlord and tenant and accordingly, the issue raised by the defendant questioning such relationship of a landlord and tenant needs to be adjudicated by framing a preliminary issue under Order 14 Rule 2 of CPC.

Ld. Counsel for the plaintiff by quoting provision under Order 14 Rule (2) CPC stressed upon the fact that such provisions does not allow any issue involving mixed question of law and fact to be adjudicated as it purely deals with maintainability on pure question of law. In support of such contention Ld. Counsel placed his reliance on the judgements in K. Shantharam and Ors vs. A Rama Amin and Ors, AIR 1987 Karnataka 1; and Major S.S Khanna vs. Brigadier FJ Dhillon, 1964 AIR Supreme Court 497.

According to the Ld. Counsel for the plaintiff, the plaintiff has already filed application under Section 7(3) of WBPT Act, 1997, seeking striking out of the defense of the defendant/tenant and if at all, the relationship of landlord and tenant needs to be adjudicated, it can very well be done under the provisions of Section 7(3) of WBPT Act, 1997.

In this context, submission of the Ld. Counsel for the defendant is that Section 7(3) contemplates summary procedures and no issue can be framed for the adjudication of the relationship between landlord and the tenant and accordingly, only recourse left

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for such adjudication is under Order 14 Rule 2 of CPC. In support of his argument Ld. Counsel referred to the following judgments:

Jiten Joyder vs. Smt. Urmila Jaiswal, 2018 (2) ICC 31; Bina Kumar vs. Sri Janardan Roy, 2016(4) ICC 2018; Synthetic Plywood Industries (Pvt) Vs. Manjulika Bhaduri (Calcutta), 1998 (2) ICC 218.

Now, the judgement of the Hon'ble Supreme Court in the case of Major S.S. Khanna v. Brig. F. J.Dillon, AIR 1964 SC 497 which was referred to in the case of Smt R. Lilavati v. Bank of Baroda and others, AIR 1987 Karnataka 2, undoubtedly creates a binding precedent with regard to the principle underlying Order XIV, Rule 2 of CPC as it stood prior to the amendment in 1976. The said judgement reiterated the settled principle that issues requiring adjudication into disputed question of facts cannot be decided as preliminary issue. It would be pertinent herein to quote provision of Order XIV Rule 2 as it stood or stands on the pre and post 1976 Amendment background. In Pre-1976 Amendment Order XIV Rule 2 provided that a court shall try issues of law first if it thinks the case can be disposed of on those issues; whereas amendment 1976 brought a significant change in the provision according to which the court shall pronounce judgment on all issues notwithstanding that a case may be disposed of on a preliminary issue; however, the Court may try a preliminary issue only if it relates to (a) jurisdiction or (b) a bar to the suit created by any law; and for that purpose if the Court thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue. The judgement of the Hon'ble High Court (D.B), Calcutta in the case of Synthetic Plywood Industries (P) Ltd V. Manjulika Bhaduri , 1998 SCC Online Cal 84 and subsequently in Jiten Joyder vs. Smt. Urmila Jaiswal, 2018 (2) ICC 31; and Bina Kumar vs. Sri Janardan Roy, 2016(4) ICC 2018 were delivered in the context of special circumstances of the West Bengal Premises Tenancy Act which mandates prior determination of the status of the parties with reference to landlord tenant relationship. The view of the Hon'ble High Court in the case of Synthetic Plywood Industries (P) Ltd (supra) is that a Court dealing with a suit for eviction on any of the grounds referred to in section 13(1) of the Act, 1956 can hear out an issue of relationship of landlord and tenant between the parties as a preliminary issue, along with an application under Sections 17(2) or 17(3) of the Act but must not dispose of the said suit on the basis of the decision on such issue if such issue is answered in negative and in such a case notwithstanding decision of the court on such issue is in negative, it will adjudicate all other issues involved in the suit and will give decisions on all issues.

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The subsequent judgments of the Hon'ble High Court, Calcutta in the case of Jiten Joyder (supra) and Bina Kumar (supra) rendered in the context of the similar provision of 7(2) and 7(3) of West Bengal Premises Tenancy Act, 1997 also lay down the same principle of framing of issue for adjudication on landlord tenant relationship if the same is under challenge. Interestingly, none of the aforesaid judgments hold framing of an issue under Order 14 Rule 2 of CPC for adjudication of landlord tenant relationship de hors the provisions of 17(2)/17(3) or for that matter provisions of 7(2)/7(3) of the West Bengal Premises Tenancy Act, 1956 or 1997 as the case may be. Such judgments mandate framing of such an issue in the proceedings under the above referred provisions and in that context only the judgment of the Hon'ble Supreme Court rendered in the case of Major S.S. Khanna (supra) is distinguishable. In the present suit an application under Section 7(3) of Act, 1997 has already been preferred by the plaintiff landlord and therefore such disputed relationship of tenant and landlord can only be adjudicated in course of proceeding under such application. The present application filed by the defendant landlord questioning adjudication on the maintainability of the suit separately by framing an issue under Order 14 Rule 2 appears to be pre-mature one and accordingly deserves to fail. However, it is made clear that the issue of landlord tenant relationship shall be taken up along with the 7(3) application as mandated by the Hon'ble Division Bench of the Hon'ble Calcutta High Calcutta in the case of Synthetic Plywood Industries (P) Ltd V. Manjulika Bhaduri , 1998 SCC Online Cal 84.

Hence, the application dated 23.07.2025 filed by the defendant stands rejected.

Fix 14.01.2026 for filing of written objection by defendant tenant to the application under Section 7(3); plaintiff is directed to supply the copy of application if not served in the meantime.

Dictated and corrected by me,

Chief Judge,  
City Civil Court, Calcutta.

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