

**Title Suit 35486 of 2014**

**Present: Sri Subhash Kumar Kar, Judge, Bench-V (WB00592)**

**Order No. 90 / Dated 16.05.2025**

Parties have taken their respective steps.

Date is fixed for order on the petition dated 12.03.2025 filed by the defendant under Section 151 of C.P.C.

This is a suit for recovery of arrears of rent and possession filed by the plaintiff against the defendant on the premises that a tenancy was created in respect of the suit property by an unregistered Memorandum of Agreement dated 17.03.2005 and initial rent was Rs.15000/- per month and it was revised from time to time and according to the plaint case said tenancy was determined by notice dated 29.09.2014 issued under Section 106 of Transfer of Property Act and it is alleged that defendant has failed and neglected to vacate the premises even after the said notice.

Defendant has filed one written statement wherein it is admitted that defendant was a tenant under the plaintiff and it is claimed that said tenancy is governed under West Bengal Premises Tenancy Act, 1997.

Instant petition under Section 151 of C.P.C filed by the defendant with the prayer for production of unregistered Memorandum of Agreement dated 17.03.2005 on the premises that same has not been produced by the plaintiff at the time of the evidence of the P.W.1 though it is mentioned in examination in chief on affidavit and it is required for the purpose of proper adjudication.

Plaintiff has contested the petition by filing one written objection wherein it is stated that defendant has admitted the landlord tenant relationship in his written statement and since the suit is filed under the provisions of the Transfer of Property Act 1882 for eviction of the

defendant the said document if not produced shall not have any bearing on the subject matter of the dispute and it is prayed to reject the petition.

On perusal of the record, it appears that initially defendant has made an attempt to bring on record the fact of subsequent registration of the said agreement which was rejected by this court and thereafter Hon'ble Court also affirmed the same and thereafter defendant again made an attempt to bring those fact by way of cross examination on recall of P.W. 1 under Order 18 Rule 17 of C.P.C which was also rejected by this court vide order dated 17.10.2023 and the said order was also affirmed by the Hon'ble Court by judgement and order dated 04.03.2025 pronounced in C.O. no. 12 of 2024.

Since the defendant has taken a substantial defence that the tenancy is governed under the W.B.P.T. Act, 1997 the burden of proving the same lies on the defendant and therefore the production of the unregistered memorandum dated 17.03.2005 has no bearing on the facts in issue involved in the suit and the petition dated 12.03.2025 is liable to be rejected accordingly.

Hence, it is

**ORDERED**

That the instant petition dated 12.03.2025 filed by the defendant under Section 151 of C.P.C. stands rejected on contest but without any cost.

Fix 25.06.2025 for evidence of the defendant.

D/c by me,

Judge.

Judge, Bench-V,  
City Civil Court, Calcutta.