

HEADING OF JUDGMENT IN APPEAL

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE, 2nd Court,
SERAMPORE**

**Present : Nayyar Azam Khan
Additional District Judge
2nd Court Serampore**

Pre-emption Misc. Appeal No. 03 of 2022

(arising out of Order dated 29.6.2022 passed in Pre-emption Misc Case No. 18 of 2014 by the learned Civil Judge, Junior Division, 2nd Court Serampore)

Delivery of judgement Tuesday the 23rd day of June 2026.

Ranjit PanjaAppellant

-Vs-

Mahadeb SanaRespondent

This Appeal under Order 43 of the Code of Civil Procedure came up for hearing lastly on 22.6.2026 in presence of :-

Sri Gangesh MukhopadhyayLearned advocate for the Appellant

AND

Sri Samar GhoshLearned advocate for the Respondent

And having stood for consideration to this day, the Court delivered the following judgement

J U D G E M E N T

1) The appellant of the instant appeal has preferred herein the instant Pre-emption Misc Appeal challenging the Order No. 92 dated 29.6.2022 therein passed in Pre-emption Misc. Case No. 18 of 2014 by the learned Civil Judge, Junior Division, 2nd Court, Serampore. The genesis of the matter culminating in the order impugned is as follows :-

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Case of the petitioner in the trial court

The fact of the case of the petitioner Mahadeb Sana is that 43 Satak of Sali land in L.R. Plot No. 529 in Mouza Gultia within Jangipara P.S. which is described as schedule A land originally belonged to the proforma defendant/defendant No. 2 Biswasari Bhattacharya and her name was accordingly recorded in the L.R. Settlement Record but the petitioner is a Bargadar in the said property and his name was recorded with respect to Schedule A land as Bargadar since the year 1378 B.S. and presently is recorded as a Bargadar in the present Settlement Record who used to cultivate crops three times in a year in the said property. The respondent No. 1 Ranjit Panja is a complete stranger and outsider to the said schedule A property having no connection with it but suddenly on 10.02.2014, the petitioner came to know that the respondent No.1 had purchased the schedule A property from the respondent No. 2 who is the proforma respondent of this suit although the respondent No. 2 did not give any notice or intimation to the petitioner and secretly transferred the said property. Thereafter the petitioner inquired about the matter and came to know from the certified copy of the said sale deed that the said transfer was made vide Sale Deed No. 123 of 2014 registered before the A.D.S.R. Jangipara on 10.02.2014 although the said deed was presented at the residence of the respondent No. 2 on 09.01.2014 and also came to know that the sale consideration was exorbitantly mentioned therein as Rs. 209000/- although the respondent No.1 actually purchased the schedule A land from the defendant No. 2 at a market price of Rs. 20000/- . The said consideration money in the said sale deed was inflated only to avoid pre-emption by the petitioner although the recital of the said deed mentions that there is a Bargadar in the Schedule A property. The petitioner being desirous to purchase the said property in exercise of right of pre-emption deposited a sum of Rs. 22000/- being the amount of consideration money believed to have been actually paid by the respondent No. 1 to the respondent No. 2 plus ten percent of the same before the Id trial court and undertook to deposit any further amount if determined by the said court afterwards and simultaneously filed the instant case being Pre-emption Misc Case No. 18/2014 on 06.3.2014 under sec. 8 of The West Bengal Land Reforms Act (hereinafter referred to as the Act) praying therein for a decree of pre-emption with respect to the schedule A property.

2) The defence of the defendant in the trial court

The respondent No.1 Ranjit Panja after receiving the summons of the court made his appearance by filing his Vakalatnama and thereafter filed his written objection denying therein all the material allegations and averments of the petitioner. The said defendant in his written objection averred the following :

It is false that the respondent No. 1 is a complete stranger to the suit property or that no prior notice of the sale of the suit property was given to the petitioner. The respondent No. 2 had repeatedly stated before the petitioner about her poverty but the petitioner had not paid heed to it. The petitioner did not use to give the share of the harvest upon the suit land to the respondent

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No. 2 in spite of the fact that the respondent No. 2 was the owner of the suit land. The respondent No. 2 being in need of a sum of Rs. 200000/- for the cancer treatment of her son had repeatedly asked the petitioner to purchase the suit property at market price from her but the petitioner kept on dilly-dallying the matter and had asked the respondent to execute the sale deed by taking Rs. 20000/- and promising that he would give further Rs. 40000/- in two installments at which the said respondent had told the petitioner that she would sell the suit property to any outsider who would give her Rs. 200000/- which she needed for the said treatment to which the petitioner had in the presence of Panchayat member had stated that he would have no objection to the same. Accordingly, the respondent No. 2 had sold the suit property at the market price of Rs. 200000/- to the respondent No.1 by executing registered sale deed on 09.01.2014 and thus the respondent No.1 is now in constructive possession of the said land by virtue of becoming the owner thereof. It is false that the respondent No. 2 has sold the suit property to the respondent No.1 by taking sale consideration of only Rs. 20000/-. It is false that the petitioner wanted to purchase the suit property at market price from the respondent No. 2 because the petitioner has only deposited Rs. 22000/- against the said property before the Id trial court. The defendant No. 2 accompanied with the Panchayat member had gone to the house of the petitioner and also requested him to give Rs. 200000/- for the marriage of her daughter otherwise the negotiation of the said marriage would break down to which the petitioner had given consent to sell out the property to the defendant No.1 and that accordingly the defendant No. 2 sold out the suit property at the consideration price of Rs. 209000/-

It is false that the defendant No.1 is now in illegal possession of the suit property as the said defendant has purchased the suit property and registered it according to the government rules. The instant case of the petitioner was liable to be dismissed as the petitioner was not entitled to pre-emption of the suit property.

3) On the basis of the rival contentions of the parties, the learned trial Court has framed the following issues :-

- 1) *Whether the present case is maintainable or not ?*
- 2) *Whether the petitioner has any cause of action in the instant case or not ?*
- 3) *Whether the petitioner is a Bargadar of the property in dispute or not ?*
- 4) *Whether in filing the instant Misc. (P) application the provisions regarding the law of limitation has been followed or not ?*

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- 5) *Whether the petitioner is entitled to get pre-emption as sought for in the prayer portion of the petition ?*

4) In support of his case in the Trial Court, the petitioner Mahadeb Rana adduced the evidence of himself who deposed in this case as P.W.1.

P.W.1 in the course of his deposition in court proved the L.R. Information Slip which was consequently marked as Exhibit 1. He also proved the certified copy of registered sale deed being No. 0123/2014 marked Exhibit 2 and civil challan of Rs. 22000/- marked Exhibit 3.

On the other hand, the respondent No. 1 adduced the evidence of himself who deposed in this case as O.P.W.1 who in the course of his evidence proved the rent receipt i.e. Khajna Dakhila in the name of the respondent which was marked Exhibit A. He also proved the L.R.R.O.R. Parcha in the name of the respondent marked Exhibit B and the original registered sale deed being No. 0123/2014 marked Exhibit C. The respondent also adduced the evidence of his witnesses Sri Sushanta Ghosh and Sri Haradhan Bag who deposed in this case as O.P.W.2 and O.P.W.3 respectively.

The Id trial court after taking evidence in this matter and after hearing both the sides was pleased to pass Order No. 92 dated 29.6.2022 thereby allowing the prayer of the petitioner for pre-emption on contest against the respondent No. 1 after allowing the prayer of the petitioner for expunging the name of the respondent No. 2 from the instant suit.

Being aggrieved by and dissatisfied with the aforesaid order, the respondent No. 1 Ranjit Panja preferred the instant misc. appeal against the petitioner Mahadeb Sana on 19.7.2022.

ARGUMENT OF THE CONTESTING PARTIES

5) Learned advocate for the appellant in the course of his arguments in this case submitted that the impugned order was incorrect as it was passed without considering that the pre-emption case was itself not maintainable as the petitioner-respondent has not paid entire amount of the sale consideration money of the transferred land i.e. Rs. 209000/- which was payable as per the registered sale deed but has only paid Rs. 22000/- thereupon. He further submitted that the pre-emptor was liable to pay the above entire amount of the consideration money mentioned in the sale deed as per sec. 8 of WBLR Act and if it did not do so, the pre-emption case was itself not maintainable and thus there was no question of decreeing of the case in favour of the pre-emptor/petitioner in this case. He further submitted that the Id trial court had erred in allowing the

petitioner to deposit the deficit amount of the pre-emption money of Rs. 207900/- as the Id trial court could not permit the pre-emptor to post facto remedy the defect in the pre-emption procedure by allowing the deposition of the balance sale consideration money after decreeing of the case in favour of the pre-emptor which was supposed to be deposited along with the earlier deposited amount at the time of filing of the pre-emption case. He drew the attention of this court to the following judgements :

Rash Behari Ghosh & Ors, Vs Bhabani Prasad Ghosh & Ors 2022 (4)ICC 169 passed by the Hon'ble Calcutta High Court on 10.8.2022.

Abdul Matin Mallick Vs Subrata Bhattacharya & Ors. 2022 AIR SC 2175 passed by the Hon'ble Supreme Court of India on 05.5.2022

Barasat Eye Hospital & Ors. Vs. Kaustabh Mondal (2019) 9 SCC 767 passed by the Hon'ble Supreme Court of India on 17.10.2019

Kamala Rani Roy & Ors Vs Sambhu Sen & Ors 2021 AIR CC 907 passed by the Hon'ble Calcutta High Court on 18.12.2020

Swati Sankar Mookherjee Vs Anupam Koley & Ors. 2024 (4)Cal. H.C.N. 100 passed by the Hon'ble Calcutta High Court on 14.3.2024

Debasish Saha & Ors. Vs Madan Mohan Saha passed by the Hon'ble Calcutta High Court on 01.12.2025

Chitta Ranjan Mishra Vs Subrata Majhi & Ors passed by the Hon'ble Calcutta High Court on 13.9.2023.

He prayed for allowing the present appeal and for setting aside the impugned judgement passed by the Id trial court.

Ld Advocate for the respondent submitted that the impugned order was perfect and needed no interference. He argued that the Id trial court had rightly allowed the petitioner to deposit the balance consideration money and compensation amount by challan before the Id trial court after finding that the petitioner possessed the right of pre-emption in this matter. He further argued that the Barasat Eye Hospital case (supra) was decided by the Hon'ble Court on 17.10.2019 in which the law as regards the deposit of consideration money with compensation amount with pre-emption application was settled which would apply post facto in similar cases while the instant case was filed by the pre-emptor/petitioner before the Id trial court before thereto on 06.3.2014 which practically shuts down the application of this decision in the instant case as a decision of a higher forum cannot have retrospective effect unless explicitly mentioned in the same, which is

not the case. Ld Advocate for the respondent drew the attention of this court to the judgements passed by Hon'ble Calcutta High Court on 16.7.2021 in *Sk. Abdul Odud Ali Vs Emanulla Khan & Ors. 2021 AIR CC 2722* and on 11.01.2023 in *Maya Debnath Vs. Uttan Sarkar & Anr. 2023(2) ICC 203 (Cal.)* and prayed for dismissal of the present appeal.

6) POINT FOR DETERMINATION

Whether the impugned Order No. 92 dated 29.6.2022 arising in Pre-emption Misc. Case No. 18 of 2014 passed by the learned Civil Judge, Junior Division, 2nd Court, Serampore is sustainable in law and facts ?

7) DECISION WITH REASONS

Having heard the counsel of the parties and having gone through the impugned order, it is apparent that the Id trial court has framed five issues for determination of the instant case. However, this court will only dwell upon the Issue No. 1 viz whether the present case is maintainable or not and upon the resultant Issue No. 5 viz whether the petitioner is entitled to get pre-emption as sought for in the prayer portion of the petition, as the remaining three issues being Issue No. 2 viz whether the petitioner has any cause of action in the instant case or not, Issue No. 3 viz whether the petitioner is a bargadar of the property in dispute or not and Issue No. 4 whether in filing the instant Misc. (P) application the provisions regarding the law of limitation has been followed, which have all been decided by the Id trial court to be in favour of the petitioner/respondent has not been disputed or challenged by the appellant in this appeal. The challenge posed by the appellant in this appeal is with regard to Issue No.1 which relates to the maintainability of the pre-emption case filed by the petitioner-respondent in this case.

8) The instant pre-emption case was filed by the pre-emptor/petitioner Mahadeb Sana on 06.3.2014 against the defendant No. 1 Ranjit Panja who is the transferee of the suit property and against the defendant No. 2 i.e. the proforma defendant who is the vendor of the same. The said petitioner is found to have deposited a sum of Rs. 22000/- by challan before the Id trial court on the same date which has been apportioned by the petitioner as Rs. 20000/- towards consideration and Rs. 2000/- towards compensation. The petitioner as P.W.1 in this case mentioned in his filed affidavit-in-chief that on 10.02.2014 he came to know from the locale and also from the gesture and posture of the defendant No.1 that the respondent No. 1 purchased the schedule A property i.e. the suit property

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from the defendant No. 2 although the defendants never gave any notice or intimation to him and that practically the respondents in collusion with each other, illegally and clandestinely transferred the suit property. P.W. 1 further averred therein that he vigorously searched about the matter and applied for getting the certified copy and after receiving the certified copy of Deed No. 123 of 2014 from the office of A.D.S.R. Jangipara which was registered on 10.02.2014 came to know that the said deed was presented on 09.01.2014 at the private residence of defendant No. 2 and on perusal of the said deed he came to know for the first time that the consideration price has been exorbitantly mentioned in the said deed to be Rs. 209000/- although the defendant No. 1 purchased the suit property at the actual market price of Rs. 20000/- as consideration price to the defendant No. 2 and that the consideration price was inflated only to avoid pre-emption by himself and that in the recital of the said deed it has also been mentioned that there is a bargadar in the suit property. P.W.1 further averred therein that he being the recorded bargadar desirous to purchase the suit property transferred to the defendant No.1 by the defendant No.2 in exercise of right of pre-emption had deposited a sum of Rs. 20000/- being the amount of consideration money believed to have been actually paid by the defendant No.1 to the defendant No.2 together with 10% interest thereof in total Rs. 22000/- and that he undertook to deposit further amount if at all determined by the Id court afterwards or as per direction of the Id court and accordingly he has prayed for relief as per prayer of his plaint.

P.W.1 further in his affidavit-in-chief has denied that defendant No.2 had informed him regarding her helplessness and that in spite of the same, he did not give any effect or that he did not give the bhag produce to the defendant No.2 or that the petitioner failed to give bhag produce to the owner in spite of interference made by the local Panchayat. P.W.1 has also therein denied that the defendant No. 2 was in need of money for her ailing son suffering from cancer and for which she requested him to purchase the suit property according to the market price and that the petitioner used to kill time by giving hoax or that the defendant No. 2 had gone to his house accompanied with Panchayat member and had requested him for making arrangement of money due to illness of the aforesaid son and that he did not render any help to her. P.W.1 also denied that the defendant No. 2 had requested him to pay Rs. 200000/- for the treatment of her said son or that the petitioner stated that he would pay Rs. 40000/- on two installments or that in presence of the Panchayat member, he had categorically stated that the defendant No. 2 could sell out the property if anybody agreed to pay Rs. 200000/- and on that score the defendant No. 2 sold out the property to the defendant No.

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1 at the market price of Rs. 200000/- . P.W.1 also denied that he being the bargadar never intended to purchase the suit property. He further denied that the defendant No. 2 accompanied with the Panchayat member had gone to his house and requested him to give Rs. 200000/- for the marriage of her daughter otherwise the negotiation of the said marriage would break down to which he had given consent to sell out the property to the defendant No.1 and that accordingly the defendant No. 2 sold out the suit property at the consideration price of Rs. 209000/-. Most importantly, P.W.1 proved the certified copy of the registered Sale Deed being No. 0123/2014 which was marked Exhibit 2 and further proved the civil challan amounting to Rs. 22000/- dt. 07.3.2014 which was marked Exhibit 3.

9) In his cross examination P.W.1 admitted that the defendant No. 2 was the daughter of Gobardhan Chakraborty who the actual owner of the suit property and that after his demise the defendant No.2 became its owner and that the defendant No.1 purchased the said property from defendant No.2. He also admitted that the son of the defendant No.2 i.e. Gopal Bhattacharjee was suffering from cancer but he denied the suggestions posed to him that the defendant No. 2 came to him with an offer requesting him to purchase the suit property from her at a consideration money of Rs. 200000/- as she was in dire need of money at that point of time on account of the treatment of her son. P.W.1 in his cross examination further denied the suggestions put to him that several meetings were convened at the house of Haradhan Bag, member of the Zilla Parishad for the amicable settlement of the dispute between him and the opposite party or that he used to pressurise the defendant No.2 to transfer the property to him for a meager sum of Rs. 20000/- and by doing that he took undue advantage of her poor condition or that in consequence of her refusal to accede to his request, she made an offer to a third person in his presence or that he had approved the same. Importantly, P.W.1 denied the suggestion posed to him that the property was subsequently transferred in favour of the defendant No.1 Ranjit Panja at the consideration price of Rs. 209000/- P.W.1 in his cross examination admitted that he had not filed nay valuation certificate before the Id trial court but he denied that the suit property was not valued at RS. 20000/-.

10) The defendant No. 2 as O.P.W1 filed his affidavit-in-chief wherein he averred that the defendant No.2 had approached the petitioner to purchase her property at the market price of Rs. 200000/- as she required the said sum of money for the cancer treatment of her son but the petitioner refused to do so and pressurized her to sell the same at Rs. 40000/- of which he would pay in two

installments of Rs. 20000/- each. O.P.W.1 further averred therein that the defendant No. 2 had also approached the petitioner for the same purpose of selling the suit property to him at market price of Rs. 200000/- as she required the said sum of money for the marriage of her daughter, otherwise she would sell the same to the said witness i.e. defendant No. 1, and at that time too the petitioner had refused to purchase the same at the said price and had instead given her the consent to sell the said property to the witness, after which the defendant No.2 was forced to sell the said property to the witness by a registered deed of sale being No. 0123 of 2014 dt 10.02.2014 at a sale consideration price of Rs. 209000/-. Importantly, this witness proved the original registered sale deed being No. 00123 for the year 2014 which is marked as Exhibit C. In his cross examination this witness admitted that he did not serve any prior notice upon the petitioner and further stated that he could not say whether his vendor Biswasari Bhattacharya i.e. defendant No.2 had served any such notice or not. He also admitted that he had not filed any document in support of the cancer disease of the son of the vendor and that he had not filed any document to show the market valuation of the suit property in the subject area which was prevailing at the relevant point of time. He also admitted that he had not filed any document to show that his said vendor requested the petitioner to purchase the suit property at a consideration money of Rs. 200000/- for meeting out the expenses of the cancer treatment of her son and that he had not filed any document relating to the sum of Rs. 209000/-. This witness further stated that he could not say the dates when the defendant No.2 had a talk regarding the sake of the disputed property but he stated that he was not present when she had a talk with the petitioner. He also stated that he could not say the date on which the defendant No.2 went to meet Haradhan Bag but said that Susanta Ghosh, Atanu Pal, Ratan Bhattacharya and other persons were present in her meeting with Haradhan Bag. This witness in his cross examination also denied the suggestion posed to him that defendant No.2 did not request the petitioner to purchase the disputed property at a consideration of Rs. 200000/- which the petitioner did not agree or that in view of such refusal of the petitioner the defendant No.2 also made such a request before Haradhan Bag. O.P.W.1 also denied the suggestion that the petitioner did not declare that he would have no objection if any third party would purchase the disputed property at a consideration money of Rs. 200000/- or more. The witness admitted that he did not have any document to show that at the time of execution of the impugned deed, he had an amount of Rs. 209000/- in his possession and he denied the suggestions that at the time of execution of the said deed, he neither had the amount of Rs. 209000/- nor had he paid the same to his vendor Smt. Bisweswari Bhattacharya or that the actual market value to the suit property

was Rs. 20000/- or that the defendant No.2 requested him to give her an amount of Rs. 200000/- for her son's treatment. He admitted that he did not file any document except his purchase deed in support of the current market price of the suit property being Rs. 209000/- at the time of his purchase. He denied that he falsely showed the market price of the suit property as Rs. 209000/- as the petitioner is a poor person and would not be able to exercise his Bargadar pre-emption right with respect to the suit property.

11) O.P.W2 Susanta Ghosh stated in his affidavit-in-chief that the defendant No.2 along with her son had come to the party office and that the petitioner Mahadev Sana had also come there in order to resolve their dispute of selling the suit property. In his cross examination he admitted that it was a fact that the petitioner Mahadev Sana is the recorded Bargadar with respect to the property in dispute. He also deposed that he had not filed any document to show that the son of the petitioner was suffering from cancer. He denied the suggestion put to him that he stated falsely that in spite of their repeated request, the petitioner did not agree to purchase the disputed land from the defendant No.2 or that he had stated falsely that the petitioner openly declared that they would have no objection if defendant No.2 sells the disputed land to anyone else or that he had stated falsely that the defendant No.1 duly purchased the impugned property from defendant No.1.

O.P.W.3 stated in his cross examination that he could not remember when the defendant No.2 came to the party office with her son and that he had not filed any document in support of the disease of her son but he admitted that Mahadev Sana cultivates the property in dispute and is the recorded Bargadar with respect to the said suit property. He admitted that he did not file any document to show that for the treatment of the son of the defendant No.2 a sum of Rs. 225000/- was required or to show that they tried for a settlement through the local Panchayat. The witness denied the suggestion that he had stated falsely in his filed affidavit-in-chief that in his presence and in presence of the local Panchayat, Mahadev Sana had stated that he did not have any objection if the suit property is sold to any third party

12) Thus, the evidence in this case basically shows that the defendant No. 2 had approached the defendant No.1 to purchase her suit property at the market price of Rs. 200000/- as she needed the money for the cancer treatment of her son but in spite of her repeated requests, the petitioner did not agree to purchase

the same at the said price but instead wanted to purchase the same at a much lesser price. The instant issue of maintainability however is not concerned with that matter and is basically concerned whether the petitioner had filed the consideration money mentioned in the sale deed viz Rs. 209000/- before the Id trial court at the time of filing of the instant case and the answer clearly is in the negative that the petitioner did not do the same and only deposited a sum of Rs. 22000/-. Now let us visit the relevant provision of law in this respect.

Section 8(1) of The West Bengal Land Reforms Act, 1955 (hereinafter referred to as The WBLR Act) says *“If a portion or share of a holding of raiyat is transferred to any person other than a co-sharer in the holding, the bargadar in the holding may, within three months of the date of such transfer, or any co-sharer raiyat of the holding may, within three months of the service of the notice given under sub-section (5) of section 5, or any raiyat possessing land adjoining such holding may, within four months of the date of such transfer, apply to the Munsif having territorial jurisdiction, for transfer of the said portion or share of the holding to him, subject to the limit mentioned in section 14-M on deposit of the consideration money together with a further sum of ten per cent, of that amount:*

Provided that if the bargadar in the plot of land, a co-sharer of raiyat in a plot of land and a raiyat possessing land adjoining such plot of land apply for such transfer, the bargadar shall have the prior right to have such portion or share of the plot of land transferred to him, and in such a case, the deposit made by others shall be refunded to them: Provided further that where the bargadar does not apply for such transfer and a co-sharer of a raiyat in the plot of land and a raiyat possessing land adjoining such plot of land both apply for such transfer, the former shall have the prior right to have such portion or share of the plot of land transferred to him, and in such a case, the deposit made by the latter shall be refunded to him: Provided also that as amongst raiyats possessing lands adjoining such plot of land preference shall be given to the raiyat having the longest common boundary with the land transferred.”

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Section 9(1) of the Act states on the deposit mentioned in sub-section (1) of section 8 being made, the Munsif shall give notice of the application to the transferee, and shall also cause a notice to be affixed on the land for the information of persons interested. On such notice being served, the transferee or any person interested may appear within the time

specified in the notice and prove the- consideration money paid for the transfer and other sums, if any, properly paid by him in respect of the lands including any sum paid for annulling encumbrances created prior to the day of transfer, and rent or revenue, cases or taxes for any period. The Munsif may after such enquiry as he considers necessary direct the applicant to deposit such further sum, if any, within the time specified by him and on such sum being deposited, he shall make an order that the amount of the consideration money together with such other sums as are proved to have been paid by the transferee or the person interested plus ten per cent of the consideration money be paid to the transferee or the person interested out of the money in deposit, the remainder, if any, being refunded to the applicant. The Munsif shall then make a further order that the portion or share of the plot of land be transferred to the applicant and on such order being made, the portion or share of the plot of land shall vest in the applicant.

It is not in dispute that the petitioner is a Bargadar with respect to the suit property. Now as it is apparent that the petitioner did not deposit the full amount of consideration money as shown in the sale deed before the Id trial court, at the time of filing of the instant case, he has not complied with the essential condition of applying for pre-emption as given in sec. 8(1) of the Act, due to which the foregoing stipulations mentioned in sec. 9(1) do not come into play. In this respect, it can very well be said that the instant case of pre-emption filed by the petitioner before the Id trial court is not maintainable due to failure of compliance of the essential condition given in sec. 8(1). The issue of limitation of filing of the instant case or of the issue of serving of notice before such transfer can only be considered if the petitioner has complied with the essential condition of deposit of entire consideration money plus ten percent of the same which is not the case. As regards the decision of the Id trial court to allow the pre-emption prayer of the petitioner and then award him the opportunity to deposit the balance sum of consideration money before it is outside the scope of sec. 9(1) of the Act as the court cannot allow the petitioner to post-facto rectify the defect found at the time of filing of the pre-emption case.

The Hon'ble Supreme Court of India in its reported judgment in *Barasat Eye Hospital* (supra) passed on 17.10.2019 has made the following observations :

"25. Now turning to Section 9 of the said Act, from which, apparently, some judgments of the Calcutta High Court have sought to derive a conclusion that an inquiry into the stated consideration is envisaged. However, the commencement of sub-section (1) of Section 9 is with "on the deposit mentioned in sub-section (1) of Section 8 being made..." Thus, for anything further to happen under Section 9 of the said Act, the deposit as envisaged under Section 8 of the said Act has to be made. It is only then that the remaining portion of Section 9 of the said Act would come into play."

13) It is apparent that the respondent is laying his trust upon the word consideration money given in sec. 8(1) of the Act to agitate that it is the actual money of Rs. 20000/- paid by the defendant No.1 to the defendant No.2 and not the money of Rs. 209000/- mentioned in the sale deed which is an inflated amount and thus as per sec. 9(1) of the Act, the Id trial court was well within its powers to accept the said amount as consideration money along with ten percent of it and allow the respondent to pay the balance amount. This court however is in disagreement to this contention of the respondents that a pre-emptor can assume any amount as consideration money given in sec. 8(1) of the Act and proceed to deposit the same on the assumption that the Id trial court would allow him to deposit the balance after the determination of his pre-emption right. It is obvious from the above ratio as also from the opening words of sec. 9(1) of WBLR Act *"On the deposit mentioned in sub-section (1) of section 8 being made....."*, and in absence of reliable evidence showing that the recited consideration was fictitious or sham, the consideration stated in the registered deed must be treated as the consideration money required to be deposited under Section 8(1) of the purchaser and thus the same should be deposited within the limitation period to avail such a right of pre-emption in his favour. As the petitioner has not deposited the full amount as consideration money within the limitation period of one year, the right of the petitioner has come to an end as the consideration money of the full amount mentioned in the sale deed is sacrosanct along with the limitation period. The statute as given in sec. 9(1) read with sec. 8(1) of the Act regarding the above matter is clear that there is no scope therein to make deposit of lesser amount of money along with compensation amount by the pre-emptor at the time of making the pre-emption application and then deposit the balance amount after the pre-emption prayer is decided by the trial court. The liberty given by the Id trial court to the petitioners to deposit the balance amount is far-fetched and beyond the contours of the statute. However, the real challenge in this appeal is not with regard to the above principle of mandatory payment of full consideration money as mentioned in the sale deed for pre-emption to lie, but is with regard to whether the above decision in Barasat Eye Hospital (supra) would apply retrospectively or prospectively. The respondent claims that this decision would lie prospectively on and from 17.10.2019 and since the petitioner has filed the instant case for pre-emption on 06.3.2014, the Id trial court was rightly not bound by its directive that a pre-emption case would not be maintainable if full deposit of consideration money is not made at the time of filing of the case. The appellant claims that the above decision would lie retrospectively and hence the decision of the Id trial court in allowing the petitioner to make deposit of the balance consideration money after allowing the pre-emption in favour of the petitioner is incorrect.

14) In Chitta Ranjan Misra (supra) the Hon'ble Calcutta High Court while referring to the Barasat Eye Hospital (supra) decision and other decisions has made the following observations :

“Upon a meaningful reading of the decision, it is evident that the object of the said decision was to put to rest the controversy in respect of exercise of such a weak right, especially in the matter of short deposits, The Apex Court took note of the fact that the decision would have a far larger ramification, as many cases were pending before this High Court on this point, Secondly, the law was in existence since 1955, but the interpretation of the same in respect of the requirement to deposit the consideration amount was finally put to rest in the decision of Barasat Eye Hospital (supra)t. It was a law declared on the point and will have a retrospective effect. The Hon’ble Apex Court was of the view that if short deposits were allowed, a weak right would give rise to speculative suits. In the decision of Abdul Matin (supra), a similar view was taken by the Apex Court upon relying on the decision in Barasat Eye Hospital (supra). The Hon’ble Apex Court was dealing with Misc. Pre-emption Case No. 8 of 2012 which had been filed before the trial court. The Misc. Pre-emption case was dismissed by the trial court. Misc. Appeal No. 7 of 2014 was preferred, The misc appeal was allowed and the order of the trial court was set aside. The application for pre-emption was allowed on the ground of co-sharership. The first appellate court allowed deposit of the balance consideration money. Aggrieved, the pre-emptee approached the High Court which dismissed the revisional application by upholding the order of the first appellate court and also upholding the decision of the first appellate court to allow a belated deposit of the balance consideration money. Such order was challenged in Civil Appeal No. 3500 of 2022. In such a pending proceeding, the decision of Barasat Eye Hospital (supra) was referred to and it was held that the learned lower appellate court was not justified in permitting the pre-emptor to deposit the balance consideration money with additional 10% and the High Court was also not justified in upholding such decision. Thus, the Apex Court applied the decision of Barasat Eye Hospital (supra) even in a pending pre-emption case of 2012, and set aside the order of the High Court passed in C.O. 4266 OF 2016. The decision of Barasat Eye Hospital (supra) was rendered in 2019.

In the decision of Assistant Commissioner, Income Tax Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd. reported (2008) 14 SCC 171, the Hon’ble Apex Court held as follows :

In our judgement, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the court to pronounce a “new rule” but to maintain and expound the “old one”. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the latter decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

In the decision of P.V. George & Ors. Vs State of Kerala & Ors. reported in (2007) 3 SCC 557, the Hon'ble Apex Court held that the law declared by a court will have retrospective effect if not otherwise stated to be so specifically.

The decision of the Hon'ble Apex Court was a law declared on the point that deposit of the full amount stated as the sale consideration together with further deposit of 10% was a precondition to filing an application under sec. 8(1) of The West Bengal Land Reforms Act, 1955. The conflicting legal position was clarified, interpreted, rectified and altered, The decision has a retrospective effect and will apply to pending proceedings"

15) Thus, it is now clear from the above observations that the decision of Barasat Eye Hospital (supra) is retrospective in operation. Hence the deposit of Rs. 22000/- by the petitioner before the Id trial court instead of the deposit of Rs. 229900/- falls foul of the principle laid down by the Apex Court in Barasat Eye Hospital (supra).

Hence, it is apparent from the above discussions that the case of the petitioner is not maintainable and in this respect the determination of Issue No.1 to be in favour of the petitioner is incorrect. Consequently, the Issue No. 5 viz whether the petitioner is entitled to pre-emption as sought for in his application also stands decided in the negative against the petitioner. The determination of the Id trial court in this respect is found to be incorrect.

As such, the impugned order suffers from infirmity and deserves interference by this court. As a result, the point of consideration is decided in the negative.

Court fees paid is sufficient.

Thus, it is

O R D E R E D

that the Misc. Appeal No. 03 of 2022 be and the same is allowed on contest. However, there is no order as to costs.

The Order No. 92 dated 29.6.2022 in Pre-emption Misc. Case No. 18 of 2014 passed by the learned Civil Judge, Junior Division, 2nd Court, Serampore is hereby set aside. The petitioner is at liberty to withdraw the amount deposited by him before the trial court in this matter.

Let a copy of this judgement along with the Trial Court Record be sent to the learned trial court at once.

Dictated & corrected by me

Sd/-

**Additional District Judge, 2nd
Court, Serampore.**

Sd/-

**Additional District Judge, 2nd
Court, Serampore.**

