



**CNR No.WBHG05-002089-2024**

Presented on : 21.11.2024  
Registered on : 21.11.2024  
Judgement Reserved on : 29.01.2026  
Judgement delivered on : 16.03.2026  
Duration : 1 years 3 months 25 days

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,FAST TRACK COURT,  
SERAMPORE, HOOGLY**

**Title Appeal No. 84/2024 (CIS No.84/2024)**  
**CNR No. WBHG05-002089-2024**

**Present : Sri Madhusudan Pal**  
**Additional District Judge, Fast Track Court,**  
**Serampore, Hooghly (J.O. Code WB00925)**

Sri Ram Krishna Chatterjee

..... Appellant.

Versus

Sri Joydeb Patro

..... Respondent.

Ld. Advocate for the Appellant : Sri Pinaki Prasad Banerjee

Ld. advocate for the Respondent : Sri Kazi Izaz

**Date of delivery of Judgment: 16.03.2026**

## **J U D G E M E N T**

Being aggrieved by the exparte order dated 05.11.2024 followed by decree passed by Ld. Civil Judge (Jr. Divn.), Additional Court, Serampore, Hooghly in T.S No.287/2024, Appellant has preferred this appeal.

It appears from record that initially the suit before the Ld. Civil Judge (Jr. Divn.), Additional Court, Serampore, Hooghly was filed by the Appellant(Plaintiff before Ld. Trial Court) as a suit for eviction of premises tenant and mesne profit against present Respondent(Defendant before Ld. Trial Court) but was dismissed exparte. Contd....p/2

(2)

According to Appellant (Plaintiff before Ld. Trial Court) the schedule property was obtained by him by way of settlement by his father on 26.12.1984 and subsequent gift from his four brothers on 22.07.1998. The Respondent (Defendant before Ld. Trial Court) was inducted as a premises tenant at a monthly rent of Rs.300/- payable according to English Calendar month. However, since June, 2022 Respondent stopped payment of rent willfully and there was also due rent for the period December, 2018 to November, 2021, January, 2010 to June, 2015. He served eviction notice on 12.12.2023 by registered post with acknowledgment due through his Ld. Lawyer directing the Respondent to vacate the rented suit shop room at the expiry of Month of January, 2024. He exhibited before Ld. Trial Court along with others copy of eviction notice, postal receipt, A/D card. However, as the defendant did not vacate the schedule rented premises, Appellant as Plaintiff initiated the eviction suit being No.T.S 287 of 2024 but Ld. Trial Court being failed to appreciate provisions of law dismissed that the same on the ground of plaintiff's failure to establish that he had served valid notice upon the defendant by registered post through his Ld. Advocate at address of the defendant as per requirement of Section 106 of the Transfer of Property Act.

On the other hand Respondent (Defendant before Ld. Trial Court) contended that Ld. Trial Court was absolutely right in dismissing the suit filed by the Appellant as Plaintiff before Ld. Trial Court, due to lack of service of valid notice on Defendant.

Trial Court Record reveals that Plaintiff, in order to prove it's case before Ld. Trial Court examined Ramkrishna Chatterjee as P.W.1 and Chapal Mukherjee as P.W.2. The followings paved their way into the list of exhibits :

(i) Exbt.1 – One Khazna Dakhila dated 08.09.2015.

(ii) Exbt.2 – One Panchayet tax receipt dated 07.03.2024.

Contd....p/3

(3)

- (iii) Exbt.3 – Original LRROR bearing khatian No.4288.
- (iv) Exbt.4 and 4(a) – One copy of letter issued by Superintendent of Post Office in favour of Ld. Advocate Pinaki Prasad Banerjee along with one copy delivery register.
- (v) Exbt.5 – Certified copy of one Bandobasta Patra bearing No.7086/1984.
- (vi) Exbt.6 – Deed of gift being No.391/1998.
- (vii) Exbt.Y - Typed eviction notice bearing original signature of his Ld. Lawyer Pinaki Prasad Banerjee

POINT FOR CONSIDERATION

Whether the exparte order dated 05.11.2024 passed by the Ld. Civil Judge (Jr. Divn.) Additional Court, Serampore, Hooghly is illegal, arbitrary and perverse and the appellant is entitled to get the relief as prayed for ?

DECISION WITH REASONS

From materials on record it is found that before Ld. Trial Court Plaintiff had prayed relief under the provision of Section 106 of the Transfer of Property Act.

**Section 106(4) of The Transfer of Property Act** lays down that every notice under this provision must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it, or be tendered or delivered personally to such party, or to one of his family or servant at his residence, or if such tender or delivery is not practicable be affixed to a conspicuous part of the property.

In **Madan & Co Vs Wazir Jaivir Chand on 28 November, 1988** Hon'ble Supreme Court of India observed that a landlord must be held to

contd....p/4

(4)

have complied with the statutory requirement by sending a prepaid registered letter correctly address to the tenant by registered post.

In **Basant Singh & Anr. Vs Roman Catholic Mission on 03<sup>rd</sup> October, 2002** Hon'ble Supreme Court interalia observed that Order 5, Proviso to Sub-Rule (2) of Rule 19 A C.P.C provides that where summons are properly addressed, prepaid and duly sent by registered post with acknowledgment due, notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within 30 days from the date of issue of the summons the Court shall presume that notice is duly served. Sec. 27 of The General Clauses Act, 1987 also provides similar provision.

In **Harihar Banerji and Ors. Vs Ramsashi Roy and Ors., on 16<sup>th</sup> July 1918** The Privy Council interalia observed that if a letter properly directed containing a notice to quit is proved to have been put into the post office, it is presumed that the letter reached its destination at the proper time, accordingly the regular course of business of the post office and was received by the person to whom it was addressed. That presumption would apply with greater force to registered letters. Besides, service of a notice upon or delivery to an agent would be good service or delivery to the principal though in fact that was destroyed by the agent and never was seen or heard by the principal. It is an entire mistake to suppose that the addressee must sign the receipt for registered letter himself or that he can not do so by the hand of another person or that if another does sign it on the addressee behalf, the presumption it never was delivered to the addressee himself mediately or immediately.

In **Singamsetty Bhagavath Guptha Vs Allam Karibasappa case on 25<sup>th</sup> September 2025** Hon'ble Supreme Court of India observed that appellate courts have a duty to intervene when the trial courts evaluation of evidence is flawed. Hon'ble Court also observed that appellant courts

Contd....p/5

(5)

have the authority and responsibility to correct errors when trial courts misread the evidence.

Besides, considering principles of law laid down by Hon'ble Court in **Prabhu Ram v Emperor AIR 1937 Lahore 155 : 38 Cr LJ 438 and Chandrakant v Shaikh Kassim 1995 AIHC 4636 (Bom)**, it can be safely holds that copies made from original by some mechanical process, e.g., copies prepared by lithography, cyclostyle, photostat, xerox, photography and compared with it and carbon copy of signature are secondary evidences within the meaning of **Sec. 63 (a)** of the Indian Evidence Act.

Thus when there are dictums from upper strata act of lower Judiciary becomes easier and bearing in mind such principles of law let me begin the eisegesis in the facts and circumstances of the present case.

Here, record reveals before Ld. Trial Court, plaintiff stated in the plaint that notice under was served on defendant under Section 106 of The T.P Act by registered post with A/D on 12.12.2023 yet the defendant neither paid the arrear rent nor vacated and handed over the suit scheduled shop room to the plaintiff. From the evidences on record it is found that the plaintiff had submitted the carbon copy of the typed eviction notice bearing original signature of his Ld. Lawyer Pinaki Prasad Banerjee on the defendant which Ld. Trial Court marked as Exhibit-'Y' but report from Sr. Superintendent of Pos South Hooghly Division, Serampore – 712201 dated 20.08.2024 which were marked Exhibit 4 and 4(a) respectively regarding non receipt of A/D card for article NO.RW597728005IN proved that article concerned was delivered on 15.12.2023. There is nothing on Trial Court record to shake the plaintiff's evidence. So, it stands proved that evection notice u/s 106 T.P Act, from plaintiff to defendant was duly served. Findings of Ld. Trial Court that as plaintiff did not file track report, A/D card regarding service of notice u/s

Contd....p/6

(6)

106 T.P. Act, service is not lawful cannot be accepted as there is Exhibit 4 and 4(a) on record from Indian Postal Authority. In view of golden threads of principles of law laid down by Hon'ble Court as discussed in the foregoing paragraphs the typed carbon copy of eviction notice bearing original signature of Ld. Lawyer of plaintiff must be considered as legally valid and **Secondary Evidence** of said eviction notice whose production in original was not possible for plaintiff as the original eviction notice was already sent to defendant Joydeb Patra and received by defendant Joydeb Patra as per Exhibit 4 and 4 (a).

Thus it stands proved on record that eviction notice u/s 106 T.P. Act by plaintiff Ramkrishna Chatterjee to defendant Joydeb Patro was duly served upon the defendant, yet he did not vacate the suit scheduled shop room.

Consequently this Court holds that the present Respondent Joydeb Patra cannot be allowed to occupy the scheduled suit shop room and Appellant Ramkrishna Chatterjee is entitled to get the relief by way of getting decree of eviction as prayed for in the plaint.

Court fees paid is correct.

Hence, it is

**ORDERED**

That the order No.8 dated 05.11.2024, which is impugned in this Appeal is set aside. The Appeal is allowed on contest.

The Respondent Joydeb Patra is directed to hand over vacant possession of the scheduled suit shop room in favour of the Appellant Ramkrishna Chatterjee within one month from the date of passing of this order failing which Appellant is at liberty to enforce through due process of law.

Contd...P/7

(7)

Let a copy of this Judgement and order along with Trial Court Record be sent to Ld. Civil Judge (Jr. Divn.), Additional Court, Serampore, Hooghly for information.

Note in relevant Register.

Dictated & Corrected by me,

Additional District Judge,

Fast Track Court, Serampore, Hooghly.

Additional District Judge,

Fast Track Court, Serampore, Hooghly