

**EJECTION SUIT No. 162 of 2015**  
**CNR No. WBPS01-000449-2015**

**Order No. 59**  
**11.05.2026**

Today is fixed for passing ex parte order.

Plaintiff has filed through their Ld. Advocate.

The record is taken up for passing ex parte order.

Perused the plaint, the deposition of the witness and the exhibited documents.

The plaintiff is the absolute owner of the land and tin shed rooms lying and situated at the premises no. 12, Gour Dey Lane, P.S. - Muchipara, Kolkata – 700012 by purchase shortened and hereinafter referred to as the **suit property**. He purchased the same vide registered deed being no. 02853 of 2012 from its previous owner Sri Naru Singha Roy represented through Sanat Kumar Seal, Advocate / Receiver duly appointed in Execution Case No. 269 of 2010 arising out of the Suit No. 456 of 1991 following the order of the Hon'ble High Court, Calcutta vide order dated 11.08.2011 alongwith the name of the defendants as tenants whose name appears at Page No. 34 of the said Deed of Sale at a monthly rent of Rs. 150/- per month according to English Calendar month, in respect of 1(one) tin shed room on the ground floor of the suit property, shortened and hereinafter referred to as the **suit premises**.

After purchasing the suit property the plaintiff sent the Letter of Attornment dated 05.10.2013 under registered Post with A/D calling upon the defendants to pay the monthly rent from the month of March, 2012 to him and the said notice was received by the defendants on 08.10.2013 by putting his signature on the A/D card.

The plaintiff has alleged that the defendants are the defaulter in payment of rent since the month of March, 2012. Plaintiff further states that he alongwith his business partner/wife runs a business under the name and style M/s Aishwarya Construction & Projects from its office situated at Suri, District Birbhum although they are residing at 872, Rajdanga Main Road, Block – ED – 6, Sector E, P.S. Kasba, Kolkata 700107. They have around fifteen staffs working with them, but they do not have accomodation for them hence the plaintiff requires the suit premises and other tin sheds for running their business in Kolkata and accomodating himself, his partner and all his staffs.

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Accordingly, the plaintiff sent a notice to quit dated 08.07.2014 to the defendants through his Ld. Advocate Mr. Nasiruddin at the correct address of the defendants by paying proper postage which was duly received by the defendants on 11.07.2014. However, the defendants did not comply with the requirement of the said notice in vacating the suit premises rather have been in wrongful possession since 01.09.2014.

Accordingly, the plaintiff has filed the instant suit seeking eviction of the defendants from the suit premises as detailed and described in the schedule of the plaint.

The record reveals that the defendants had entered appearance in the suit but they did not file any applications u/s 7(1) & 7(2) of the WBPT Act, 1997, hence vide order dated 28.08.2017, the defence of the defendants against delivery of possession was struck off under section 7 (3) of the WBPT Act, 1997. Later the defendants did not turn up, hence vide order dated 21.08.2019 the suit proceeded ex parte against them.

The plaintiff has adduced both oral and documentary evidence in support of his case. The plaintiff has examined one witness namely **Archa Kumar Banerjee** as PW-1.

The following documents have been admitted into evidence from the plaintiff's side -

<b>Sl. No.</b>	<b>Description</b>	<b>Exhibit</b>
01.	Letters of Attornment dated 05.10.2013	<b>Exhibit-1 (Series).</b>
02.	Certified copy of Order No. 19, dated 28.08.2017	<b>Exhibit-2</b>
03.	Eviction notice dated 08.07.2014 along with four numbers of Postal receipts	<b>Exhibit-3 (series)</b>
04.	A/D card of Bani Saha	<b>Exhibit-4</b>
05.	A/D card of Parbati Saha	<b>Exhibit-5</b>
06.	A/D card of Tamasha Saha	<b>Exhibit-6.</b>

This is a suit for eviction of the defendants and recovery of khas possession on the ground of default in payment of rent and reasonable requirement as available under the West Bengal Premises Tenancy Act 1997. The P.W.-1 deposed that the defendants are the tenants under them in respect of the suit premises at the monthly rent of Rs.150/- payable as per the

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English Calender month. He also deposed that the Ld. Court vide order dated 28.08.2017 had hold that there exists relationship of landlord and tenant between the parties to the suit. He has also filed the certified copy of the said order makered herein as **exhibit 2**. It further appears that the plaintiff upon becoming the owner and landlord of the suit premises had sent the Letter of Attornment to the defendants. The same has been marked as **exhibit-1 (series)**. The **exhibit-1 (series)** shows that the plaintiff, as the owner of the suit property had given information to the defendants of the purchase of the suit property and had asked them to pay rent from March, 2012 in respect of the suit premises. The A/D card marked as **exhibit-1/1** shows receipt of such letter by the defendants.

It is important to note here that as the instant case comes within the purview of the West Bengal Premises Tenancy Act 1997, therefore, it is only to be seen by the Court as to whether the plaintiff has been able to substantiate that the defendants are tenants under the plaintiff or not.

**Exhibit-2** shows that the court has held that the defendants have admitted the plaintiff as the landlord. The said order and finding having not been challenged anywhere neither having been set aside by the higher forum still subsits confirming that the plaintiff is the landlord of the defendants in respect of the suit premises.

PW-1 deposed before this Court in ex parte and duly supported the plaint case in material particulars. Therefore, it can be said that from the unchallenged testimony of PW-1 and also from the exhibited documents referred above it can be certainly held that there exists landlord-tenant relationship between the plaintiff and the defendants with regard to the suit premises.

As per Subsection (4) of Section 6 of the West Bengal Premises Tenancy Act 1997, no suit for recovery of possession of any premises on the grounds, available under Section 6 of the West Bengal Premises Tenancy Act 1997, barring clause (e) of Subsection (1) of Section 6, shall be instituted by the landlord unless he has given to the tenant one month's notice expiring with a month of tenancy. The essential conditions of a valid notice as contemplated in Subsection (4) of the Section 6 of the West Bengal Premises Tenancy Act 1997 are that the period of notice shall not be less than a month expiring with the month of the tenancy and the notice should be sufficiently complied with the requirement of Subsection (4) of Section 6, conveying to the

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tenant the information that the landlord intends to file a suit for the recovery of the possession of the premises on any of those grounds as provided in Section 6 of the Act, on expiry of the period of the notice.

In this suit the plaintiff has stated in the plaint that he has served ejectment notice dated 08.07.2014 upon the defendants and he has filed the copy of the said notice along with the postal receipts herein marked as **exhibit-3 (series)**. Upon perusal of the **exhibit-3 (series)**, it is found that the said notice was addressed to the defendants at the registered address of the defendants i.e. of the suit premises. The original postal receipts dated 10.07.2014 marked here as **exhibit-3/1, 3/2, 3/3 & 3/4** shows that said notice was duly sent at the registered address of the defendants by paying proper postage stamp.

It is the settled position of law that, unless and until the contrary proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business, when a notice is sent by speed post, pre-paid and at proper address. The presumption can be raised irrespective of the fact whether the acknowledgment due is received from the addressee or not.

In the present case, **exhibit-4, 5 & 6** which are the A/D cards through which the ejectment notice was sent to the defendants clearly shows that the said notice was duly received by the defendants which further establishes due service of the ejectment notice upon the defendants. Therefore, it can be safely concluded that the defendants have duly been served with the notice of eviction.

On careful perusal of the notice, it appears that the notice was made after complying all the legal requirements as enshrined in the Act of 1997 and the notice to quit dated 08.07.2014 is found to be legal, valid, and sufficient about the description of the property and its purpose in terminating the tenancy.

Thus, in absence of any rebuttal evidence, it is to be presumed that notice was duly served upon the defendants as the defendants have not come up with any evidence to hold the contrary. As such, this Court finds no justification to disbelieve the unchallenged testimony of the plaintiff. Therefore, it can be said that the notice to quit has been properly served upon the defendants.

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The plaintiff has prayed for eviction of the tenant on the grounds that the defendants are defaulter in payment of rent from March, 2012. To substantiate the same the plaintiff has adduced evidence as P.W-1 and as a matter of fact, his testimony has not been challenged. Therefore, the unchallenged testimony of the plaintiff is sufficient enough to conclude that the defendants are defaulter in payment of rent since March, 2012 i.e., three months within a period of twelve months and he is liable to be evicted from the suit premises on the ground of default.

The plaintiff has also sought eviction on the ground of reasonable requirement of the suit premises by the plaintiff for the use and occupation of the plaintiff and his business partner for running their business under the name and style “Asharya Construction & Project”. Besides oral evidence, the plaintiff did not give any documentary evidence to support his contention.

Further the plaintiff has not conducted any inspection over the suit premises or the suit building to bring the actual picture of his accommodation therein which he does not have to cater their present need and in my considered view, the plaintiff has not been successful in establishing the ground of reasonable requirement as specifically pleaded in the plaint.

The Hon’ble Supreme Court in **Nagar Nigam. Gwalior v Motilal Munnalal (AIR 1977 Madh Pra 1821)** has been pleased to observe as follows: “We may here point out that every court dealing with an ex parte case should take good care to see that the plaintiff’s case is at least prima facie proved”( **relied on**)

Regardless of the defendant’s non appearance, the plaintiff always bears the burden of proving his case to obtain a decree. Even in ex parte suits the plaintiff is required to present adequate evidence to support their claims **Raman Moti Rathwa vs State of Gujarat.(relied on)**.

The Hon’ble Supreme Court and the Hon’ble High Courts by way of various judicial pronouncements have consistently held that even in ex parte proceedings, the plaintiffs must prove their case with adequate evidence and can not be granted relief solely due to the absence of the defendant. If there is no sufficient evidence, plaintiffs’ claim is liable to be dismissed. Thus, considering the evidence, the plaintiffs have failed to prove the grounds of reasonable requirement by adducing cogent evidence.

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However, the plaintiff has been able to prove that the defendants are defaulter in payment of rent. He discharged their initial burden of proving his case. Hence, the defendants are liable to be evicted from the suit premises on the ground of default in payment of rent in respect of the suit premises and the plaintiff is entitled to get the decree of khas possession as prayed for.

The court fees paid is correct,

Hence, it is,

**O R D E R E D**

That the suit be and the same is decreed on ex parte against the defendants but without cost. The defendants are hereby directed to quit and vacate the suit property within 60 days from the date of passing of the order and failing of which the plaintiff will be at liberty to execute the decree in accordance with law.

The suit is thus disposed of.

Give note in relevant register and upload a copy of this order in CIS server at once.

Dictated and corrected by me:

Judge

**Smt. Glady Bomjan,**  
**(J.O. Code: 01039)**  
**Judge, 3<sup>rd</sup> Bench,**  
**Presidency Small Cause Court,**  
**Calcutta**