

**EJECTMENT SUIT NO. 168 OF 2009 (3226 of 2014)**  
**C.N.R No. WBPS01-000534-2009**

**IN THE COURT OF 4TH BENCH, PRESIDENCY SMALL CAUSE**  
**COURT, CALCUTTA.**

**PRESENT: SMT. ARCHITA SEN, JUDGE, BENCH-4, PRESIDENCY**  
**SMALL CAUSE COURT.**

**ORDER NO- 108**  
**DATED 13.08.2025:**

Today is fixed for passing Order on the point of the ambit of evidence in the light of the Order of the Hon'ble High Court, Calcutta passed in C.O 3555 of 2017. Both the parties file separate attendance through their respective Ld. Advocates.

In the instant suit evidence was adduced by the plaintiff only in respect of the application of the provision of section-2(g) of the W.B.P.T Act after the lapse of the period of 5 years from the date of death of the original tenant, in view of the Order of the Hon'ble Court in C.O.3555 of 2017. Nothing was stated by PW-2 regarding the eviction notice or grounds of eviction in his written examination in chief. It was the direction of the Hon'ble Court that the issue relating to the tenancy and/or trespasser could be considered based on the evidence on record and since the Court is always entitled to deal with the existence of its jurisdiction on the basis of certain facts which are in the jurisdictional realm, therefore, in fitness of things, it would be appropriate that the Small Cause Court record a finding with regard to the status of respondents and if it expresses the view that they are not the tenants but encroachers, then it can take recourse to Order VII Rule 10A of the C.P.C. So from the observation of the Hon'ble Court it is clear that the Hon'ble Court has directed this Court to record evidence of the parties for coming to the conclusion about the status of the defendants; whether they are trespassers or encroachers. In adducing evidence on this issue, there is no need to visit all corners of the plaint including the grounds of eviction. But the Ld. Advocate for the defendants tried to cross examine PW-2 on every points stated in the plaint in anticipation of the final adjudication of the Court on the aforesaid issue. It is needless to say that the first task of this Court, according to the direction of the Hon'ble Court, is to decide whether the defendants are tenants or trespassers or encroachers. If this Court comes to the finding that the defendants are tenants or trespassers (as per the Order in C.O 3555 of 2017) then the Court will adjudicate whether the grounds of eviction exists in the suit or not when both the parties will be allowed to adduce evidence on merit of the suit. The defendants, while cross examining the witness of the plaintiffs on this limited purpose, can not jump into the conclusion.

Accordingly the defendants are directed to remain confined within the issue whether the defendants are tenants or trespassers or encroachers in respect of the suit premises, while cross examining the witnesses of the plaintiffs.

To 27-10-2025 for further cross examination of PW-2.

Typed,corrected and printed by me:

Judge, Bench-4  
P.S.C.C, Calcutta

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