

Ejectment Suit No. 459 of 2016

West Bengal Form No. 3701

**HIGH COURT FORM NO. (J)
HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE**

**DISTRICT : KOLKATA
IN THE COURT OF : JUDGE, 3RD BENCH,
PRESIDENCY SMALL CAUSE COURT, CALCUTTA**

PRESENT : SMT. GLADY BOMJAN

Ej. Suit No. 459 of 2016

**CNR NO : WBPS01-000984-2016
DATE : 04th Day of July, 2026.**

- 1. Sri Kapileswar Prasad Shah,**
- 2. Sri Gouri Shankar Shah,**
- 3. Smt. Jamuna Devi,**
- 4. Sri Sanjoy Kumar Gupta and**
- 5. Sri Sandeep Kumar Gupta Plaintiffs**

-VERSUS-

Sri Ranjit Singh defendant

**This suit coming on for final hearing on
17.06.2026 in presence of**

**Rituparna Chatterjee ... Advocate for Plaintiffs
Debdas Mukherjee ... Advocate for defendant**

**and having stood for consideration to this day, the
Court delivered the following Judgment:-**

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This is a suit for eviction of tenant and for recovery of Khas possession filed under section 6 of the West Bengal Premises Tenancy Act, 1997, shortened and hereinafter referred to as the WBPT Act, 1997 for the sake of convenience and to avoid repetition.

The suit is valued at ₹ 3600/- only.

Plaintiff's Case ::

The case of the plaintiffs as delineated in the plaint is that they are the undivided joint owners of the property being premises no. 4/H/13, Shew Prasad Road, P.S. - Hastings, Kolkata – 700022 being tile shed brick built single storied house having total six rooms therein shortened and hereinafter referred to as the “**suit building**”.

The defendant is a monthly tenant under the plaintiffs in respect of one room on the ground floor of premises no. 4/H/13, Shew Prasad Road, P.S. - Hastings, Kolkata – 700022 morefully described in the schedule of the plaint at a monthly rent of Rs. 300/- payable according to English Calendar month hereinafter shortened and referred to as the “**suit premises**”.

It is alleged that the defendant is a habitual defaulter in payment of rent and has defaulted in payment of rent from the month of November 2015. It is also alleged that the defendant has occasionally allowed the strangers in the suit premises by parting with the possession thereof in respect of the suit premises without the prior permission of the landlord.

It is stated that Arun Kumar Gupta and Smt. Archana Gupta are respectively the son and daughter in law of the plaintiff no.1 and they are the joint owners of premises no. 12/5/7, Kostho Danga Link Road, Sebrampur, Kolkata – 700061 wherein they have a one storied pucca brick built house with two rooms, a kitchen, where the plaintiff no. 1 along with his wife and the above named son, daughter-in-law and their children namely Arun Gupta and Mishika Gupta are residing. The plaintiffs no. 2 to 5 being the close relatives visit them often.

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The plaintiff no. 2 Shri Gourishankar Shaw has his separate accommodation being flat no. 7 on the 3rd floor at premises no. 79/1, Mahendra Mondal Road, Kolkata where he is residing with his family members.

The plaintiff no. 3 is the widow of Aditya Prasad Shah who is the deceased brother of the plaintiff no. 1 and 2. The plaintiffs no. 4 and 5 are the sons of the said deceased brother and they are residing at Jamshedpur, Jharkhand at present.

The plaintiff no. 1 along with his family members have been residing in two rooms and a kitchen and are facing difficulties due to the dearth of accommodation as they do not have any other alternative accommodation. Thus, the plaintiff no.1 reasonably requires one bedroom for himself and his wife, one bedroom for his son and his wife, one kitchen, one room for his grand son and grand daughter, one room for dining, one room for guest room, one room to be used as store room, one thakurghar, and, as such, in total he requires at least eight rooms to fulfill his and his family's requirement and the plaintiff no. 2 to 5 have also consented to such requirement of the plaintiff no.1. It is stated that the suit building is fully occupied by the tenants and they do not have any other alternate accommodation.

The plaintiffs thus were compelled to terminate the tenancy of the defendant by sending a notice of eviction dated 18.05.2016 through his Ld. Advocate by speed post with acknowledgment due at his address which is the suit premises but the said notice was returned with the postal remark **"not claimed"**. As per the advice of the Ld. Advocate, the plaintiff no.1 tried to serve a copy of the notice by hand to the defendant who refused to accept the same after going through the contents of the notice hence, one copy of the notice was served by the plaintiff no.1 by affixing on the outer door of the suit premises on 24.05.2016. It is stated that the cause of action arose on 01.07.2016 and thereafter on subsequent dates as the defendant is still continuing with the occupation of the suit premises. Accordingly the plaintiffs submit and pray that the decree for recovery of khas possession of the suit premises be passed by evicting the defendant from the suit premises.

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Defendant's Case ::

The defendant by filing his written statement contested the claim of the plaintiffs and denied all the contents of the plaint, save and except specifically admitted by him therein. The defendant claimed that the suit property is a Thika Property and the plaintiffs are the Thika tenant, thus has no ownership to the suit property neither this Court has the jurisdiction to try the suit involving thika property.

The defendant has denied that he is defaulter in payment of rent since the month of November 2015 as alleged. It was contended that though the plaintiff no. 1 personally used to collect rent month by month but used to grant rent receipts at a time for several months as per his whims and command and inspite of requests to issue rent receipt monthly, he did not pay any heed. The plaintiff no.1 on one pretext and another, did not receive the rent from the defendant for the months of November 2015 to April 2016. So he tendered the rent for the month of May, 2016 by money order which was refused, hence, the defendant deposited the rent for the month of May, 2016 at the rate of Rs. 300/- before the Rent Controller, Calcutta in the credit of the plaintiffs. The defendant has already deposited the arrear rent along with the statutory interest and has also challenged the landlord/tenant relationship between the parties to this suit by filing the application under section 7(2) of the WBPT Act, 1997.

He also denied the composition of the family members of the plaintiffs. It is further contended that Basumati Devi has got other legal heirs also whose name have not been revealed by the plaintiffs. The defendant further contended that the premises no.12/5/7 Kasto Danga Link Road has five rooms and a store room, kitchen, bath and privy hence denied that the plaintiff no.1 has any requirement of the suit premises or the available accommodation is not sufficient. He further contended that the suit building consists of 24 rooms and not six rooms as stated by the plaintiffs.

Admitting the rate of rent, the defendant disputed the extent of tenancy and claimed that he is in occupation of one room, attached verandah and use of common bath,

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privy and water in the premises from the inception of the tenancy to till date.

The defendant denied any service of notice contending that the postal remark has been obtained by the plaintiff in collusion with the postal peon and the plaintiff no. 1 never visited the suit premises on 24.05.2016 or tendered the notice personally or that he refused to accept the same or that the plaintiff no. 1 affixed a copy of the notice on the outer door of the suit premises. The defendant further contends that if there is any such notice, then the same is bad, illegal and inoperative in law and was never acted upon.

He alleged that the instant suit has been filed to evict the defendant so that the plaintiffs can let out the suit premises to another tenant against a huge *selami*. Thus the defendant submits that the instant suit be dismissed as bad, malafide and harrassive.

Initially the following issues under head **ISSUES A** were framed for determination. At the time of writing of the judgment one additional issue being **“Whether there exists landlord and tenant relationship between the parties?”** has been framed as the defendant has raised this issue in his written statement and evidence. Accordingly issues under head **ISSUES B** were framed for final determination which are as follows:

ISSUES-A

Issues for determination

1. Is the suit maintainable in its present form and prayer?
2. Have the plaintiffs any cause of action to institute the suit?
3. Is the defendant a defaulter in payment of rent?
4. Does the plaintiffs reasonably require the suit premises for the use and accommodation of themselves and their family members?
5. Does the plaintiffs have any suitable alternative accommodation?
6. Are the eviction notice sent dated 18.05.2016 by the plaintiffs through their Ld. Advocate to the

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defendants, legal, valid and sufficient? If so, whether the said notice had been duly served upon the defendant?

7. Are the plaintiffs entitled to get the decree as prayed for?
8. What other relief or reliefs, if any, the plaintiffs are entitled to?

ISSUES-B

Issues for determination

1. Is the suit maintainable in its present form and prayer?
2. Whether there exists landlord and tenant relationship between the parties?
3. Have the plaintiffs any cause of action to institute the suit?
4. Is the defendant a defaulter in payment of rent?
5. Does the plaintiffs reasonably require the suit premises for the use and accommodation of themselves and their family members?
6. Does the plaintiffs have any suitable alternative accommodation?
7. Are the eviction notice sent dated 18.05.2016 by the plaintiffs through their Ld. Advocate to the defendants, legal, valid and sufficient? If so, whether the said notice had been duly served upon the defendant?
8. Are the plaintiffs entitled to get the decree as prayed for?
9. What other relief or reliefs, if any, the plaintiffs are entitled to?

Evidence on Record

In support of his contention, the plaintiffs have examined two witness as PW-1 and PW-2.

Kapileswar Prasad Shah PW-1

Smt. Dipa Bhadhuri PW-2

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The following documents have been admitted into evidence on the part of the plaintiff :

Sl. No.	Documents	Exhibit No/Nos.
01	Letter of authorisation dated 06.06.2024	Exhibit-1
02.	Eviction notice dated 18.05.2016	Exhibit-2 (With objection)
03.	Original postal receipt along with postal track report	Exhibit-3 (as a whole)
04.	Sealed envelope along with A/D card	Exhibit-4 (as a whole)
05.	Counterfoil dated 08.10.2015	Exhibit-5
06.	Property tax receipt	Exhibit-6
07.	Computer generated tax receipt issued by KMC	Exhibit-7
08.	Original Aadhar Card	Exhibit-8
09.	6 Nos. of original Ration Cards	Exhibit-9 (collectively)
10.	Advocate Commissioner's report along with writ, field notes and annexures.	Exhibit-10 (as a whole).

In support of his contention, the defendant has examined himself as DW-1 but his cross examination was not completed for he did not made himself available.

Ranjit Singh DW-1

The following documents have been admitted into evidence on the part of the plaintiff :

Sl. No.	Documents	Exhibit No/Nos.
01.	81 (Eighty one) numbers of Rent deposit challans for the months from February 2018 to September 2025.	Exhibit-A (collectively)
02.	Original Aadhar Card along with xerox copy	Exhibit-B (simultaneously)

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03.	Ration Card being No. 1657113	Exhibit-C
04.	Voter Card being No. NSR1436690.	Exhibit-D.

Decision with Reasons

Before proceeding further for adjudication of the issues framed in the present suit it would not be out of place to mention that the instant suit was filed in the year 2016. Therefore, it is the West Bengal Premises Tenancy Act, 1997 (for short the WBPT Act), which has its application herein.

Issue Nos. 1, 2 & 3

Whether the suit is maintainable in its present form and prayer?

Whether there exists landlord and tenant relationship between the parties? And

Have the plaintiffs any cause of action to institute the suit?

Since the above issues are inter connected, hence for the sake of convenience and to avoid repetition, all the three issues are taken up together for consideration.

Plaintiffs have filed this suit for eviction having taken recourse to Section 6 of the West Bengal Premises Tenancy Act, 1997 for recovery of possession of the suit premises, claiming themselves to be the owner and landlord of the suit building, whereas the status of the defendant is a monthly premises tenant.

The defendant did not appear for the argument. Upon perusal of his written statement regarding the existence or non-existence of landlord tenant relationship in between the plaintiffs and the defendant, the defendant has contended that the suit property is a thika property and the plaintiffs are not the owners of the suit property hence this court has no jurisdiction to try the suit involving thika property. He also contended that there are other co owners of the suit property being the legal heirs of the deceased Basumati Devi, the original owner from whom the plaintiffs inherited

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the suit property but the plaintiffs have not impleaded all the co owners as plaintiffs in the suit. He has also deposed the same as DW1 in his examination in chief on affidavit.

Upon perusal of the record it is found that while disposing of the application under section 7(2) of the WBPT Act, 1997, the predecessor in chair vide order dated 02.07.2018 had been pleased to hold that the landlord tenant relationship between the parties have been established. The said order is still in force having not been challenged in the higher forum. This court is neither unmindful of the proposition of law that the said order being interim the relationship of landlord and tenant can be even opened and agitated at the time of the disposal of the suit.

This Court has further no hesitation to say that if the suit property is a Thika Property, the jurisdiction of the Civil Court cannot arise in view of the provision of Section 21 read with Section 8(3) of West Bengal Thika Tenancy (Acquisition and Regulation Act), 2001. However, at the same time it is also true that besides the mere submission of the defendant, apparently there is nothing on record to suggest that the suit premises is a Thika Property as alleged by the defendant. Besides taking the plea, it has to be substantiated by the party taking such plea by producing relevant evidence.

“He who asserts must prove his case”. The burden of proof lies on the defendant to establish his claim by producing sufficient and credible evidence to support the claim and allegations in the written statement. If he fails, it is the duty of the court to dismiss his claim.

On the other hand the predecessor in chair vide order dated 02.07.2018 has already hold that the landlord tenant relationship between the parties have been established. The plaintiff no.1 Kapileswar Prasad Shah was examined as PW1 and during his evidence, he filed the Corporation tax receipt issued by the Kolkata Corporation Tax in respect of the premises no.4/H/13, Sew Prosad Road, Kolkata - 700022 wherein Basumati Devi, the ancestress of the plaintiffs has been recorded as owner. The document has been marked as **exhibit-6** and the plaintiffs have claimed to have inherited the suit property from Basumati Devi. The counterpart of

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the rent bill dated 08.10.2015 issued in the name of the defendant Ranjit Singh for the months of May 2015 to October 2015 amounting to Rs.1800/ marked herein as **exhibit-5**-. The **exhibit-5** goes to establish the defendant as the tenant of the suit premises and further establishes the right of the plaintiffs to the tenanted premises as landlords. Moreover, the defendant has also stated in the written statement that he even tendered the rent to the plaintiffs by way of money order and on refusal deposited the rent in the credit of the plaintiffs. The defendant by his conduct have accepted the plaintiffs as landlords of the suit premises. During the cross examination of PW-1 no questions were put to the witness regarding the issue of the suit premises being a thika property or question involving the issue of landlord and tenant, neither suggestions were put denying any of it. This being the situation, this Court does not find any further necessity to ponder over the question of landlords-tenant relationship between the parties.

Though the defendant challenged the extent of tenancy claiming attached verandah and use of common bath, privy and water in the premises from the inception of the tenancy to be the part of the tenancy, there is nothing on record to hold it otherwise than the extent of tenancy as provided by the plaintiff in the schedule of the plaint. Moreover the **exhibit-5** shows the tenancy as one room in the suit property. The rate of rent being an admitted fact does not need further consideration.

The plaintiffs are the co-owners of the suit property and there is nothing on record which shows that the plaintiffs have left behind some co owners as alleged by the defendant. Moreover, the settled principle of law is that one of the co-owners can alone and in his own right file a suit for ejectment of the tenant and it is no defence open to the tenant to question the maintainability of the suit on the ground that the other co-owner were not joined as parties to the suit. He can alone maintain a suit for eviction of the tenant without joining the other co-owners if such other co-owners do not object. None have come so far before the court objecting the eviction of the defendant.

The court holds that there exists the landlords-tenant relationship between the parties to the suit and the extent

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of tenancy is what has been provided by the plaintiffs in the schedule of the plaint.

Now let us see if the plaintiff has cause of action to institute the present suit. A cause of action in a suit for eviction of a tenant is a legal basis on which the landlord seeks to remove the tenant from the rental property. It consists of the facts and grounds that justify the eviction. The termination of tenancy through notice forms the basis of the cause of action in an eviction suit. However it is not the sole cause of action, it is a pre-condition for filing the eviction suit. Cause of action materialises if the tenant refuses to vacate after the notice period expires. In other words, in a suit for eviction filed by a landlord against the tenant, the right to sue and to get judgment arises from the determination of the tenancy by expiration of the notice to quit.

Claiming the ownership of the suit building and being the landlords in respect of the suit premises, the plaintiffs have asked for eviction of the defendant on the grounds of default in payment of rent from November, 2015 and reasonable requirement of suit premises for the use and occupation of the plaintiff no.1 and his family members.

According to the plaintiff, a notice of eviction has already been served upon the defendant prior to filing of this suit. The defendant did not give the vacant possession of the suit premises on the expiry of the month of June 2016, hence the right was accrued to the plaintiffs to file this suit for recovery of khas possession after evicting the defendant from the suit premises. Therefore, it is hold that the plaintiffs have the cause of action to file this suit.

After careful perusal of the materials on record, it indicates that this court has the territorial as well as the pecuniary jurisdiction and can grant the relief as prayed for and there is nothing on the record which suggests otherwise. This being the situation, having regard to the case made out by the plaintiffs and the prayer thereof, this Court opines that the suit is well maintainable in the eyes of law.

Therefore, all the issues are thus decided in favour of the plaintiffs.

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Issue No. 4

Is the defendant a defaulter in payment of rent?

Now, the point for determination is whether the defendant is a defaulter in the payment of rent or not. The plaintiff has alleged that the defendant is a defaulter in payment of rent from the month of November, 2015. The rent of the suit premises is Rs. 300/- per month as per English Calendar month.

It is further important to mention here that the defendant on entering appearance in this suit filed two applications u/s 7(1) and 7(2) of WBPT Act.

The application under section 7(1) of the Act was disposed of vide order dated 10.11.2016 permitting the defendant to deposit the current month rent month by month and the application under section 7(2) of the Act was disposed of vide order dated 02.07.2018 observing that the defendant paid the rent before the Rent Controller from the month of May, 2016 till September, 2016 and before the court an arrear of rent from November, 2015 to April, 2016 along with the statutory interest and from October 2016 he was paying rent month by month. The court thus hold the defendant is not to be a defaulter in payment of rent.

During his evidence as DW1 on 10.11.2025, the defendant produced the court deposit challans showing deposit of rent till the month of September, 2025. The challans have been marked collectively as **exhibit-A**.

Needless to say, that as per provision of Section 7(4) of the WBPT Act, a tenant, who has not made any default in payment of rent as per direction under Section 7(1) & 7(2) of the WBPT Act, 1997 is entitled to get a protection from eviction on the ground of default, provided he has not made similar default earlier. It is not the case of the plaintiffs that, the defendant has availed of such a protection earlier. So, no further discussion is required, in this regard.

In course of his argument, Ld. Advocate for the plaintiff has not raised any point regarding any ‘**default**’ made by the defendant in making payment of rent as per direction of this Court given in the event of disposing of the

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application under Section 7(1) of the WBPT Act or depositing current rent, as well. No point was further raised against the defendant, which can debar them from availing of the protection under Section 7(4) of the WBPT Act nor he has availed of the provision of Section 7(3) of the WBPT Act during trial.

Therefore, the provision of Section 7(4) of the WBPT Act is invoked protecting the eviction of the defendant from the suit property on the ground of “default”.

Therefore, the issue is thus decided against the plaintiffs.

Issues No. 5 & 6

Whether the plaintiff reasonably require the suit premises for the use and accommodation of himself and their family members? and

Whether the plaintiff has any suitable alternative accommodation?

It is the case of the plaintiffs that they reasonably require the suit premises for the use and occupation of plaintiff no.1 and his family members. The examination in chief on affidavit as submitted by plaintiff no.1 as PW-1 is the replica of plaint. He deposed that his family consists of himself, his wife and his son namely Arun Kumar Gupta, his wife Smt. Archana Gupta and their two children namely Arun Gupta and Mishika Gupta. Arun Kumar Gupta along with his his wife Smt. Archana Gupta are the joint owners of premises no.12/5/7, Kostho Danga Link Road, Sebrampur, Kolkata – 700061 wherein they have a one storied pucca brick built house with two rooms, a kitchen, where the plaintiff no.1 along with his wife and the above named son, daughter-in-law and their children are residing. The plaintiff no.1 along with his family members have been facing difficulties due to the dearth of accommodation as they do not have any other alternate accommodation. Thus, the plaintiff no.1 reasonably requires one bedroom for himself and his wife, one bedroom for his son and his wife, one kitchen, one room for his grand son and grand daughter, one room for dining, one room to be used as guest room, one room to be used as store room, one thakurghar, and, as

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such, in total he requires at least eight rooms to fulfill his and his family's requirement and the plaintiff no. 2 to 5 have also consented to such requirement of the plaintiff no.1.

The plaintiff no.2 Shri Gourishankar Shaw has his separate accommodation being flat no. 7 on the 3rd floor at premises no.79/1, Mahendra Mondal Road, Kolkata where he is residing with his family members.

The plaintiff no.3 is the widow of Aditya Prasad Shah who is the deceased brother of the plaintiff no. 1 and 2. The plaintiffs no. 4 and 5 are the sons of the said deceased brother and they are residing at Jamshedpur, Jharkhand at present.

The defendant has denied the existence of the ground of reasonable requirement of the suit premises by the plaintiff no.1 by specifically stating that the above premises has five rooms, a store room, kitchen, bath and privy hence denied that the plaintiff no.1 has any requirement of the suit premises or the available accommodation is not sufficient. He further contended that the suit building consists of 24 rooms rented out to various tenants and the plaintiffs never tried to reside at the suit property as the same is of sub standard for the use and the occupation of the plaintiffs. The plaintiff is simply trying to evict the defendant to let out the suit premises for handsome *selami*.

It is the settled position of law that in a suit for eviction on the ground of reasonable requirement, the plaintiff-landlord has to fulfill two ingredients which are as follows:

- i) Requirement must be reasonable and bonafide and
- ii) No other suitable accommodation is available to the plaintiff/landlord.

In the case of **Hasmat Rai Vs Raghunath Prasad (1981)3 SCC 103**, the Hon'ble Supreme Court has held that in order to successfully claim eviction for tenant on the ground of reasonable requirement the plaintiff landlord must establish that he bonafide requires possession of the suit

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property and that he has no other reasonably suitable accommodation of his own in this occupation.

While adjudicating upon the bonafide need or reasonable requirement it would be pertinent to keep in mind that **“bonafide requirement”** is an honest need by the landlord to reclaim the property not influenced by any ulterior motives and **“reasonable requirement”** is the necessity to reclaim the property is rational and justified falling between a mere desire and obsolete urgent need. The distinction between **“desire”** and **“need”** should doubtless be kept in mind but not so as to make even a genuine need as nothing but a desire.

In the present case the plaintiffs have made it very clear from the very beginning of the suit that the tenanted room is required by the plaintiff no.1 to fulfill his and the needs of his family members regarding the residential purpose. The plaintiff no.1 has stated that he is residing along with his family members occupying two rooms and a kitchen at premises no. 12/5/7, Kostho Danga Link Road, Sebrampur, Kolkata – 700061 which is the joint property of his son and daughter in law. The plaintiff no.1 has a wife, son, daughter in law and two grandchildren. The Advocate Commissioner who hold the local inspection of the suit premises was examined as PW-2. As per the report of the Commissioner which was marked as **exhibit-10**, the plaintiff no.1 has under his possession one room used as the bedroom and kitchen was situated below the staircase measuring North to South 4 ft 7 inches and East to West measuring 8 ft 2 inches along with bathroom and privy used commonly by all. This confirms the present extent of occupation of the plaintiff no.1.

Regarding the reasonable requirement of the landlord, it is the settled position of law as sanctioned by various Authorities of the Hon'ble Calcutta High Court and the Hon'ble Apex Court that the landlord is the best judge of his requirement and he must have a complete freedom in the matter and the Court should not dictate the landlord as to how and in what manner he should live or prescribed for him a residential standard of their own. Therefore, if it is found that the need of the landlord for additional

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accommodation is genuine and reasonable, the decree for eviction must follow. [2004 (3) CHN 353 relied upon].

In support of the composition of the family members of the plaintiff no.1, the PW-1 deposited the Aadhar cards and the ration cards of all the members of his family marked herein as **exhibit-8 and exhibit-9** respectively. The address shown therein is that of the premises no. 12/5/7, Kostho Danga Link Road, Sebrampur, Kolkata – 700061 which is under the name of the son and daughter in law of the plaintiff no.1 as is evident from **exhibit-7** which is the computer generated tax receipt issued by the K.M.C. The premises used by the plaintiff no.1 has only one room excluding the kitchen space whereas there are four adult members and two minors aged 16 and 10 years old respectively in the family of plaintiff no.1. The defendant did not give any written objection to the report of the Ld. Commissioner but brought to the notice of the court in the cross examination that the premises was partly two storied and the Ld. Commissioner did not even go to the second floor and the accommodation of the plaintiff no.1 was on the ground floor.

Even the bare perusal at the composition of the family of the plaintiff, one room available to the plaintiff no.1 is too scanty. No doubt that the extent of requirement varies from man-to-man depending upon the status and the position in the society and there cannot be a straight jacket formula in this regard. What has to be looked into and consider is that the landlord is entitled to get a comfortable living. Separate bedrooms for the adults, dining room, room for the children, kitchen are the basic necessities that one is entitled to have for a comfortable and decent living. These are the actual need and not a mere fanciful or whimsical desire of the landlord. The necessity of a rented property for bonafide use is required to be adjudged from the perspective of the landlord and not from the perspective of the tenant. The landlord plaintiff and his family cannot be dictated to squeeze within one room so available. The requirement of the plaintiff and his family is genuine and a bare necessity of a human being. It is also to be mentioned that it is for the plaintiff-landlord to decide on his requirement and standard and it is neither for the Court nor for the tenant to impose it's view on the bonafide

requirement of the landlord. Even though the defendant casted a doubt upon the report of the Ld. Commissioner that she did not inspect the second floor but nothing more has come during the evidence that more rooms were on the second floor and she has neither explained what she meant by partly two storied. No evidence was adduced from the defendant's side to prove the same neither he made himself available for cross examination.

In **Rena Drego Vs Lalchand Soni (1998) 3 SCC 341** it was observed that in the light of the factual position in that case when the landlady says that she needs more accommodation for her family there is no scope for doubting the reasonableness of the requirement. It was held that the circumstances of the case raised a presumption that the requirement was bonafide and that tenant has failed to show that the demand for eviction was made with any oblique motive. It was held that in the absence of such evidence by the tenant the presumption of the bonafide need stood un rebutted.

It has been the consistent view of the Hon'ble Courts in a number of decisions that if the requirement of the landlord of the tenanted premises is for his personal use and occupation, such requirement of landlord shall be presumed to be genuine and bonafide and once the landlord is able to establish his bonafide requirement or need, he is entitled to get the decree of eviction. **Moloy Ghosh -vs- Tapan Kumar Mallick and Others 2022 (4) ICC 620 CAL.**

Keeping in mind the above principle of law, if the pleadings of the parties are carefully considered, then it would appear that the plaintiffs have categorically narrated that they need the suit premises for the purpose of accommodating plaintiff no.1 and his family and the grounds are justified. There is no evidence on record to suggest that the plaintiff no.1 has any alternate accommodation to fulfill his requirement. Hence they are entitled to get a decree on this score.

Therefore, considering the relevant evidence on record and the principle of law as laid down by various Authorities as referred above, it can be said that the plaintiffs have been successful in establishing the fact that the plaintiff no.1 and his family reasonably requires the suit premises for

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their use and occupation and apart from the suit premises there is no other suitable accommodation available to them for the said purpose.

Accordingly, the issue is thus decided in positive in favour of the plaintiffs.

Issue No. 7

Are the eviction notice sent dated 18.05.2016 by the plaintiffs through their Ld. Advocates to the defendant, legal, valid and sufficient? If so, whether the said notice had been duly served upon the defendant?

In the suit for eviction it requires proper notice to the tenant which is a precondition to eviction and the notice is the very basis and backbone of a suit for eviction.

Now, let us come to the point of notice of eviction dated 18.05.2016 and its due service upon the defendant.

The instant suit has been filed under section 6(1) of the West Bengal Premises Tenancy Act 1997 shortened as WBPT Act. Section 6(1) of the WBPT Act provides that no order or decree for recovery of the possession of any premises shall be made by the Civil Judge having jurisdiction in favour of the landlord against the tenant except in the suit being instituted by such landlord on one or more of the ground specified in various causes of section 6(1) of the WBPT Act. Therefore it affords a tenant protection from eviction until and unless the landlord is successful in proving one or more of the grounds specified in various causes of section 6(1) of the said WBPT Act. From a bare reading of the said provision it is evident that in order to institute a suit under section 6(1) of the WBPT Act there has to be an existence of landlord and tenant relationship between the parties.

In this suit, the plaintiffs stated that they sent a notice of eviction to the defendant through his Ld. Advocate by speed post at the suit premises. It was contended by the plaintiffs that the notices were returned with the endorsement “**not claimed**” which is deemed a good service. As per the advice of the Ld. Advocate, the plaintiff no.1 tried to serve a copy of the notice by hand to the

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defendant who refuse to accept the same after going through the contents of the notice hence, one copy of the notice was served by the plaintiff no.1 by affixing on the outer door of the suit premises on 24.05.2016. The defendant was asked to vacate the suit premises on the expiry of June, 2016 vide said eviction notice, but in spite of due service of notice, the defendant did not vacate the suit premises in favour of the plaintiffs rather the defendant is occupying the same most illegally.

The defendant, on the other hand, denied and disputed the service of notice of eviction upon him and alleged that the postal remark was made in collusion with the postal peon. He also stated that notice, if any is bad in law.

Now coming to the eviction notice dated 18.05.2016 which is marked as **exhibit-2**. On perusal of **exhibit-2**, it is found that the same is addressed to the defendant by the plaintiffs through their Ld. Advocate. The address mentioned therein is the address of the suit premises which is also mentioned in the cause title of the plaint and is found to be correct. It also bears the report of the plaintiff no.1 stating that he served the notice by affixation on the outer door of the house of the defendant. **Exhibit-3 (as a whole)** are the postal receipts which show that the notice was sent by registered post paying proper postage.

Exhibit-4 (as a whole) are the notice along with the envelope and the original A/D card in the name of defendant sent at the address of the suit premises returned with the postal remark **“I/S”** dated 19.05.2016 and **“I/S”** on 20.05.2016 of the postal authority. The other notice affixed on the outer door of the defendant as on 24.05.2016.

The notice addressed herein returned with the remarks **“I/S”** which stands for **“Intimation Served”**. In the instant case, the defendant has not taken the defence that the address mentioned in the notice is wrong or incomplete. There is no averment either in written statement or in evidence of the defendant that the defendant was away from the station at that relevant point of time or the addresses mentioned are wrong or incomplete. Despite intimation served the defendant did not claim the notice. His allegation

that the postal peon worked in collusion with the plaintiffs to get such endorsement is an allegation without any base or proof.

Kamala Devi vs. Durgacharan Dutta, 77 CWN page 870: the Hon'ble High Court has been pleased to held that in the absence of evidence to show that the defendant was away or absent from the disputed premises and there was nobody to accept the letter on his behalf, a registered letter returned with the endorsement **"Not Claimed"** has to be accepted as a good service.

It is the settled proposition of law pronounced through catena of judgments that once notice, properly addressed pre-paid and sent by registered post, presumption of due service of the said notices upon the addressee would arise under the relevant provision of the Central or the State General Clauses Act. When a notice is sent by registered post, there is an inherent presumption under section 114 of the Evidence Act that allows the court to presume delivery unless effectively rebutted by the tenant by cogent evidence. The said presumption can not be taken away by mere denial. Once the notice sent following the proper procedure and at the correct address, the addressee has nothing to here except act on the endorsement of the postal authority. Mere bald denial of the service of notice does not rebut the above presumption. The defendant has not adduced any evidence to rebut such presumption. The defendant does not have any enmity with the postal authority nor has brought on evidence that the postal authority has acted in collusion with the plaintiff to give such report. It is also the established law that in absence of any rebuttal evidence, it is to be presumed that notice was duly served upon the defendant as the defendant has not come up with any evidence to hold the contrary.

It is necessary to mention here that if service of notice is denied no question can arise as to its legality and validity. (63 CWN Page 253 (Union of India Vs. D. N. Mondal relied upon).

The **exhibit-2** have properly described the tenanted premises and the language of the said notice is unambiguous and explicit about its purpose. So far as the legality and sufficiency of the notice of eviction are

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concerned, nothing is found adverse to that effect. The suit is filed after the statutory period of notice of eviction, which makes the notice of eviction valid.

Therefore, the evidence on record leaves no place for confusion to come to the finding that a valid notice of eviction has been duly served upon defendant resulting in determination of the tenancy of the defendant.

Hence this issue is decided and disposed of in favour of the plaintiffs.

Issues No. 8 & 9

Whether the plaintiff is entitled to get the decree as prayed for? and

To what other relief or reliefs, if any, the plaintiff is entitled to?

These issues are taken together for consideration for the sake of brevity and convenience.

The plaintiffs has filed this suit for eviction against the defendant-tenant on the ground of default in payment of rent and reasonable requirement as available under the West Bengal Premises Tenancy Act 1997 and after mindful consideration of the entire fact and circumstances of the case in the light of evidence on record, it appears that the plaintiff has been successful to establish that the suit premises is required for reasonable requirement of plaintiff no.1 himself and for the use and occupation and that of his family members.

Accordingly, the plaintiffs are entitled to get the decree of eviction of the defendant from the suit premises on the ground of reasonable requirement of the plaintiff no.1 for his use and occupation and that of his family members.

The issues under consideration are thus decided in positive in favour of the plaintiffs.

In result the instant suit succeeds on contest.

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Court fees paid are found sufficient.

Hence, it is,

O R D E R E D

That the suit be and the same is decreed on contest.

The plaintiffs do get a decree for eviction of the defendant from the suit property. The defendant is directed to quit and vacate the suit property within a period of 03 (three) months from the date of this order in default, the plaintiff shall be at liberty to put the decree into execution in accordance with law.

The suit is thus disposed of.

Note in register and upload the copy of this judgment in the CIS Server at once.

Dictated and corrected by me:

Judge

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