

**Ej. Suit No. 576 of 2004**  
**CNR No. : WBPS01-001061-2004**

Order No. 95  
21.01.2025

Today is fixed for hearing of the petition under Section 151 of the CPC filed by the plaintiff dtd. 15.06.2023, written objection, if any, in the meantime.

Both parties have filed their respective haziras.

Now in presence of both sides the record is taken up for hearing.

The plaintiff by filing the instant petition submits that plaintiff no.2 namely, Biswanath Ghosh died intestate on 17.03.2020 as Bachelor and the legal heirs of the deceased is already on record, accordingly the plaintiff desires to expunge the name of deceased plaintiff no. 2 from the cause title of the plaint and hence the instant petition.

The defendant prays for necessary order.

Heard.

Perused the petition and other materials on record.

Considered.

On perusal of the petition which is duly accompanied by the death certificate of Biswanath Ghosh this Court finds that the legal heirs of the deceased plaintiff is already on record and, as such, the name of the deceased should be expunged from the cause title of the plaint. The petition is thus considered and accordingly the same is allowed on contest at the risk of the plaintiffs.

Hence, it is,

**Ordered**

that the petition dt. 15.06.2023 is allowed on contest.

Let the name of plaintiff no. 2 Biswanath Ghosh be expunged on account of death.

Fix 07.04.2025 for peremptory hearing of the suit.

Dictated and corrected by me:

Judge

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

**Ej. Ex. Case No. 124 of 2024**  
**CNR No. WBPS01-000518-2024**

**Dated : 13.01.2025**

**Order No. 06**

Today is fixed for Bailiff Report.

Judgment debtor files a petition praying for an order to recall and set aside the orders dated 11.11.2024 and 13.12.2024 both passed exparte against her in this execution case and stay the order of delivery of possession fixed today.

Copy not served upon the other side hence has been annexed with the above application.

Judgment debtors have also filed vokatnama and let it be kept with the record.

Bailiff Report is already received and is with the record.

Since there is Resolution of the local Bar Association requesting the Court not to take any matter on 13.01.2025 from 12.00 Clock as a mark of respect of the departed soul and the fact that the decree holder is nowhere to found, case is adjourned in the interest of the justice.

Copy be served to the other sides.

To **11.02.2025** for hearing of the petition filed by the judgment debtor on 13.01.2025.

Dictated and corrected by me:

Judge

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

**Ej. Suit No. 361 of 2023**  
**CIS No. WBPS01-000740-2023**

**Order No. 11**  
**13.01.2025**

Today is fixed for appearance of the parties.

Both sides filed hazira through their Ld. Lawyers.

Defendant has filed one petition this day praying for modification of the order dated 21.11.2024 passed by the Ld. Chief Judge, Presidency Small Cause Court, Calcutta.

Copy served upon the other sides.

Heard on behalf of the both sides.

Perused the petitioner and other materials on record.

Considered.

Now the record is taken up for hearing of the petition filed by the defendant this day.

The defendant submitted that he has been imposed to pay cost of Rs. 3000/- for accepting the written statement which was filed beyond the prescribed period of limitation. The defendants submit that the defendant lost his parents in 2023 and 2024 respectively and his daughter is also suffering from jaundice since September, 2023. There has been huge medical expenses in the past years and he is facing financial hardships at present. Further the business of the defendant is not running smoothly and, as such, prays for modification of the order dated 21.11.2024 thereby reducing the cost as imposed.

The Ld. Lawyer for the plaintiff vehemently objected such prayer of the defendant.

It appears that the defendant had received summons on 03.01.2024 but submitted the written statement only on 21.11.2024 and, as such, the cost of Rs. 3000/- had been imposed upon the defendant. The defendant had filed written statement after a considerable period of the expiry of the prescribed period for filing written statement. The defendant though gave various reasons but did not file any documents to support his contention. The cost imposed is neither disproportionate to the negligent conduct of the defendant in filing his written statement.

In view of the above, there is no merit in the application of the defendant filed this day hence the same is hereby rejected on contest.

Fixing **21.02.2025** for hearing of the petition u/s 7(2) of the WBPT Act, 1997.

**Dictated and corrected by me:**

*Judge*

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

**Misc. Case No. 112 of 2024**  
**CIS No. WBPS01-000441-2024**

**Order No. 45**  
**13.01.2025**

Today is fixed for hearing on the point of maintainability as decree is found to be contested decree.

Heard the Ld. Lawyer for the petitioner who submitted that in his absence the Court heard the argument and passed order. He prays that an opportunity may be given to him by setting aside the judgment and decree passed in Ej. Suit No. 133 of 2020.

Having heard, perused and considered the submission of the Ld. Lawyer and the case record, it appears that on 29.07.2024 when the suit was fixed for argument, defendant was absent and in his absence the Ld. Predecessor-in-Chair, closed the argument on behalf of the defendant and accordingly the argument of the plaintiff was heard in full. It is pertinent to mention here that the parties had adduced their respective evidences, both oral and documentary.

Later, on 01.08.2024 the Predecessor-in-Chair delivered the judgment and passed a decree on contest.

The Ld. Lawyer for the petitioner has filed the instant application under Order-9, Rule-13 of CPC r/w Section 151 of CPC which was registered as Misc. Case.

When a decree is passed ex parte against the defendant in his absence, he can take recourse to Order-9, Rule-13 of CPC for setting aside the said order on demonstrating the sufficient cause. In the instant case, the decree has been passed on contest and the remedy available to the aggrieved person i.e. the petitioner is to file an appeal in the Higher Forum against the said contested decree.

In view of the above, it is thus,

**ORDERED,**

that the application file Order-9, Rule-13 of CPC is not-maintainable, hence, rejected as misconceived.

Note in register.

**Dictated and corrected by me:**

*Judge*

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

**Ej. Ex. Case No. 162 of 2011**  
**CIS No. WBPS01-000149-2011**

Order No. 53  
08.01.2025

Today is fixed for hearing of the petition under Section 151 of the CPC dtd. 21.09.2021 filed by the decree holder.

Decree holder files hazira through his Ld. Advocate.

Heard Ld. Lawyer for the decree holder.

The decree holder states that who has submitted on 23.08.2021 the case was fixed for filing affidavit by the decree holder to the effect that no appeal has been filed or is pending against the decree and that there is no order of stay of the execution of the decree.

On 31.03.2021 when the decree holder had been show-cause and he had filed only the show-cause application but he had not filed such affidavit, hence, the Court further order dated 23.08.2021 to drop the execution proceeding for the absence of the decree holder. The decree holder further submits that during those days due to the prevailing Covid situation and there has the Resolution were taken by the Bar Association for not to pass any adverse order in the absence of the litigant as there is the restriction imposed by the Government. The decree holder had not the impression that such no adverse order is still continuing in its days also had been take any step, as a result of which the Court drop the execution proceeding.

The decree holder prays that he should be pleased to recall the said order dated 23.08.2021 and restore the instant ejectment execution case for the ends of justice on otherwise he should be deprived of the decree and if the execution proceeding is not registered resulting in the irreparable loss and injury to the decree holder. Hence, prays for for the recall of the order dated 23.08.2021 registering execution proceeding.

It appears that the petition was filed on 21.09.2021.

**Ej. Suit No. 178 of 2021**  
**CIS No. WBPS01-000037-2021**

Order No. 40  
08.01.2025

Today is fixed for hearing of the petition Under Order-22, Rule-2 of CPC filed by the plaintiff dtd. 10.12.2024, written objection, if any, in the meantime.

Both sides filed hazira.

Defendant has filed the written objection against the petition filed by the plaintiff under Order-22, Rule-2 of CPC on 10.12.2024. Copy served upon the other sides.

Now the record is taken up for hearing of the petition filed by the plaintiff under Order-22, Rule-2 of CPC on 10.12.2024.

Heard on behalf of the both sides.

Perused petition, plaint and other materials on record.

Considered.

It appears from the petition that defendant no.-1 Sri Sushavan Sirkar Singh after receiving the summons and avoided to appear and contest the above suit and accordingly exparte hearing is fixed against him and for such consequence it is not required to bring the names of the legal heirs of the deceased defendant no. 1 and it is required to expunge the name of the defendant no. 1 in the cause title of the plaint and defendant no. 2 and 3 be recorded as defendant nos. 1 & 2 respectively.

On the other hand, the defendant has prayed that the application/petition without mentioning any Section of CPC and is liable to be rejected in limine awarding costs to these plaintiffs as the petition is devoid in merit and has filed only to delay the proceedings of the instant case.

Upon perusal of the application, I find that the on death of defendant no.-1, there are no legal heirs of the said defendant to be substituted. Hence, I consider that the petition need be allowed for proper adjudication of the case and for ends of justice.

Hence, it is,

O R D E R E D,

That the petition u/o/-22, rule-2, r/w section of C.P.C. dated 10.12.2024 is hereby allowed.

Let the name of defendant no.-1 Sri Sushavan Sirkar be expunged from the cause title of the suit.

Amend cause title accordingly.

Plaintiff to file amended copy of plaint.

Fix 13.02.2025 for filing amended copy of the plaint.

**Dictated and corrected by me:**

*Judge*

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

**Ej. Ex. Case No. 129 of 2024**  
**CIS No. WBPS01-000557-2024**

Order No. 03  
08.01.2025

Record is put-up before me by way of put-up petition by the BC-I of this Bench.

Judgment debtor / petitioner appeared this day on his own and has filed a petition for deferring or adjourning the execution proceeding.

Hd. the petitioner/judgment debtor.

Though the petitioner/judgment debtor submitted that he intends to prayer an appeal against the judgment and decree passed by this Court in Ej. Suit No. 133 of 2020, but the petitioner did not disclose any such ground in the petition. The petition rather seems incomplete and vague.

It is the settled position of law that mere preferring an Appeal or application before the Higher Forum does not entitle a party preferring such Appeal or application to obtain an order of stay from the Trial Court and it has been communicated to all the Courts subordinate to the Hon'ble Court in the form of various judicial pronouncements as well as administrative direction for not staying matter pending before it only on account of pendency of an application/appeal before any Higher Forum without any specific order of stay.

In this context reliance is being placed on order dated 26.02.2013 in CRR No. 2683 of 2009 passed by the Hon'ble Court which was communicated to all the Courts of the District Judiciary of West Bengal vide Memo No. 1397-RG, dated 08.04.2013 wherein the Hon'ble Court was pleased to direct for not staying matters pending before it without any specific order of stay.

In the instant case, the judgment debtor has not even preferred appeal yeat but is intending to prefer one.

Be that as it may, here the judgment debtor has prayed for adjourning / deferring the execution proceeding in the instant case for the ends of justice and in my considered view that since there is no order of stay from any Higher Forum, there is no impediment to proceed with the execution case. The petition filed by the judgment debtor lacks merits and hence rejected.

To date.

Dictated and corrected by me:

*Judge*

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

**Ej. Suit No. 289 of 2007**  
**CIS No. WBPS01-000805-2007**

Order No. 84  
06.01.2025

Today is fixed for hearing of the petition under order 22, Rule-3 of r/w Section 151 of CPC dated 27.03.2023 filed by the plaintiff and another u/s 66 of the Indian Evidence Act filed by the defendant.

Parties are present filing their respective haziras.

Heard both sides.

Perused the petition and other materials on record.

Considered.

The defendant submits that the affidavit in respect of the application filed by the plaintiff under Order-22, Rule-4 of CPC has been sworn by the Constituted Power of Attorney holder of the plaintiffs, and, as such, he prays for direction upon the plaintiff to supply him the copy of the said Power of Attorney.

The plaintiff submitted that within a week the copy shall be served upon the defendant.

In view of the above, the prayer of the defendant is allowed.

The plaintiff is directed to supply the copy of the Power of Attorney by the next date positively.

Fix **25.02.2025** for hearing of the petition u/O-22, Rule-3 of CPC and objection, if any, in the meantime.

Dictated and corrected by me:

*Judge*

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

**Ej. Suit No. 155 of 2023**  
**CIS No. WBPS01-000361-2023**

Order No. 15  
04.01.2025

Today is fixed for order in respect of the petition u/s 151 of CPC filed by the defendant on 17.11.2023 as well as consideration of the petition u/s 7(1) of W.B.P.T. Act, 1997 filed by the defendant on 18.08.2023.

Both parties present by filing hazira.

No written objection filed on behalf of the plaintiff against the petition u/s 151 of CPC filed by the defendant.

It appears from the petition that the defendant filed application u/s 7(1) of W.B.P.T. Act, 1997 and accordingly deposited rent before the Ld. Rent Controller, Kolkata since January, 2018 to January, 2020. It is revealed that the petitioner intends to deposit the arrear rent from September 2016 to December 2017 and February, 2020 to June 2023 at the rate of Rs. 175/- per month along with the 10% statutory interest and the current rent for the month of July, 2023. The defendant filed another application on 17.11.2023 under section 151 CPC submitting that he intends to deposit the arrear rent for the month of July 2023 as well and inadvertently same has been calculated only upto June 2023. Besides that he intends to deposit the current rent from the month of August 2023.

Ld. Advocate on behalf of the plaintiff raised objection by filing his written objection.

Having heard, perused and considered the submission of both parties and the case record, it appears that the petition under section 7(1) of the W.B.P.T. Act has been filed within time and the petition is maintainable and the court does not find any hindrance in allowing the said petition. Hence, I consider that the instant petition need be allowed for ends of justice.

Hence, it is,

**ORDERED,**

That the petition under section 7(1) of the W.B.P.T. Act 1997 and petition u/s 151 of C.P.C. dated 17.11.2023 filed by the defendant is hereby allowed on contest.

Defendant is permitted to deposit the current rent for the month of August, 2023 before this Ld. Court within the stipulated period and thereby go on depositing the current rent month by month on every month within the 15<sup>th</sup> of the following month to the credit of the landlord at his own risk without prejudice to the right and contention of the parties as per law.

Fix 14.02.2025 for hearing of the petition u/s 7(2) of the WBPT Act, 1997.

Dictated and corrected by me:

*Judge*

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

**Ej. Suit No. 284 of 2022**  
**CNR No :: WBPS01-000500-2022**

**Date – 04.01.2025**

**Order No. 30**

Today is fixed for passing order with regard to hearing of petition u/o-7, Rule-11 of CPC as filed by the defendants on 18.04.2024.

Both sides have filed their respective haziras.

I have already heard both sides with regard to the above petition.

Accordingly, the record is taken up for passing order in respect of the petition dated 18.04.2024 filed the defendants u/o-7, Rule-11 of CPC.

It is submitted by the defendant that the present suit has been filed by the plaintiffs for eviction and recovery of khas possession against the defendants by terming the defendants as tenants in respect of the suit property and by claiming that ejectment notice has been duly served upon both the defendants prior to the institution of the present suit in terms of 6(4) of the WBPT Act, 1997. Now it is specifically stated by the

defendant that the plaintiff has submitted to have purchased the suit property on 9<sup>th</sup> April 2012 and has filed the present suit for default in payment of rents and the suit is not maintainable in the eye of law as the plaint of the above suit does not disclose the cause of action and as such the above plaint is liable to be rejected with cost. Canvassing the above, the defendant has prayed for rejection of the plaint in terms of provision under Order-7, Rule-11 of CPC.

On the other hand, the Advocate for the plaintiff submitted that the petition is absolutely malafide in nature and has been filed only with intent to delay the case as the plaintiff and the suit is very well maintainable against the defendants. Accordingly, the plaintiff prays for outright rejection of the petition with cost.

Upon hearing it is found that the Ld. Advocate for the defendant has challenged the maintainability of the suit on the ground of no cause of action accruing to the plaintiffs. The defendant intends to say that the plaintiff purchased the suit property on 9<sup>th</sup> April 2012 whereas he has filed this suit for default of payment of rent from November 1989. He has further submitted that the suit is bad for non joinder of necessary parties in view of the paras 7, 8 and 9 of the plaint.

Contd....P/2

[Page-2, Ej. Suit No. 284 of 2022, order No. 30, dated 04.01.2025]

Now for better understanding of the situation it is appropriate to go through the provision of Order 7 Rule 11 of CPC under which the application has been filed by the defendant which is as under -

**Order-7, Rule 11. Rejection of plaint.**— The plaint shall be rejected in the following cases:—

- (a) **where it does not disclose a cause of action;**
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;

1 [(e) where it is not filed in duplicate;]

2 [(f) where the plaintiff fails to comply with the provisions of rule 9:]

3 [Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

It is settled position of law that while proceeding with an application under Order 7 Rule 11 of CPC the Court is to consider the plaint only and the statements made in the plaint should be clear enough to find out sufficient material to hold it as not maintainable for which it must be rejected under Order 7 Rule 11 of CPC.

Order 7 Rule 11 of CPC has a limited application. It must be shown that the suit is not maintainable for reasons specified in the Rule for which the plaint is liable to be rejected by the Court and the ground taken by the defendant challenging the maintainability of the suit on

Contd....P/3

**[Page-3, Ej. Suit No. 284 of 2022, order No. 30, dated 04.01.2025]**

account of “non disclose of any cause of action in respect of the schedule premises” does not fall within the scope of Order-7, Rule-11 of CPC as the same is matter of evidence.

The plea of “non disclose any cause of action in respect of the schedule premises” is founded on proof on certain facts and then by applying the law to the facts so found. Such plea should be taken clearly in the pleading and issue is required to be framed on that point. No only the plea has to be taken, it has to be substantiated by the party taking such plea by producing relevant evidence.

Therefore, in the light of the above discussion, it is held that while deciding an application under Order 7 Rule 11 of CPC, the scope is very limited and it must only be seen by the court as to whether the plaint discloses any cause of action or not or it is being undervalued or not or it is being barred by any law or not. It is very much clear that it is only the

plaint which is to be looked into and the defence of the defendant cannot be looked into while deciding an application under Order 7 Rule 11 of CPC.

Here in the present case, the defendant has challenged the basic maintainability on the point of “non disclose any cause of action in respect of the schedule premises” which involves question of fact and the same can never be decided at this stage without resorting to the mode of evidence when there is nothing in the plaint to come to the finding that the suit is apparently barred for reasons specified in Order-7, Rule-11 of CPC. Moreover, the plaint specifically mentions that tenancy has devolved upon the defendants terming them monthly tenants under the plaintiff who became the owner/landlord of the suit premises on purchase from the erstwhile owner. Further besides the default in payment of rent, the plaintiff has sought eviction of the defendants on the ground of reasonable requirement and notice as required under section 6(4) of the W.B.P.T. Act 1997 was duly been served upon the defendant in that regard. Further the issue of joinder and non joinder of necessary parties in a suit does not come under the purview of order 7 rule 11 of the CPC which again can not be considered without adducing evidence.

Contd....P/4

**[Page-4, Ej. Suit No. 284 of 2022, order No. 30, dated 04.01.2025]**

In the light of the above, this Court is of the view that the petition filed by the defendant under Order-7, Rule-11 of CPC lacks merit and accordingly the same is rejected on contest.

Hence, it is,

**ORDERED**

That the petition dated 18.04.2024 under Order-7, Rule-11 of CPC is rejected on contest but without cost.

**Fix 05.02.2025** for framing of issues.

Dictated and corrected by me:

**Judge**

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

