

WB Form No. 3702
High Court Form No. (J)3

HEADING OF JUDGMENT ON APPEAL

**In the Court of the Additional District Judge, Fast Track, 3rd Court, Diamond
Harbour**

**Present : Sri Sachindra Mohan Bhowmick,
Additional District Judge,
Fast Track , 3rd Court, Diamond Harbour**

JO Code: WB01078

Date of Judgment: 20.05.2026

TITLE APPEAL NO. 50 of 2022

CNR No. WBSP1000-2934-2022



[Appeal against the impugned Judgment and decree dated 20.06.2022 as passed by Ld. Civil Judge, Junior Division, 2nd Court at Diamond Harbour in connection with Title Suit No. 14 of 2006]

1. Srimatya Rekha Ray

2. Sri Soumen Ray.....Appellants

Vs

1. Sri Soumitra Parui

2. Sri Somnath Parui.....Respondents

3. Sri Goutam Halder Pro- Respondents

This appeal coming up for hearing on 20.04.2026 and 11.05.2026 and having been heard in the presence of:

Sri Ashoke Kumar Dey Ld Advocate for the appellant

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Sri Dipankar Bhandari Ld. Advocate for the respondents

and having stood for consideration to this day, the Court passed the following judgment.

JUDGMENT

INTRODUCTION

1. The instant appeal has been preferred in terms of the provisions of Section 96 read with Order XLI, Rule 1 of the Code of Civil Procedure, 1908 and is directed against the Judgment and decree dated 20.06.2022 as passed by Ld. Civil Judge, Junior Division, 2nd Court at Diamond Harbour in connection with Title Suit No. 14 of 2006.

THE PLAINT CASE

2. The Title Suit No. 14 of 2006, filed by the plaintiffs/respondents no.1 and 2 herein was for eviction of tenant and recovery of khas possession and permanent injunction.

3. The case of the plaintiffs, shorn of unnecessary details, is that the predecessor in interest of the defendants no.1 and 2 namely Ajit Roy was inducted as a tenant in the suit premises, more fully described in the schedule to the plaint at a monthly rental of Rs.80/- payable according to English Calender months under the landlordship of the father of the plaintiffs, Anil Kumar Parui and the said landlord used to issue rent receipts in favour of the tenant and on the counter part of rent receipts, the said tenant and sometimes his son, the defendant no.2, on behalf of his father used to put counter signatures. On the demise of said Anil Kumar Parui, the right, title, interest and possession of the suit property and other non-suit properties devolved upon the plaintiffs being his two sons and his wife, Chandirani Parui and his mother, Sarala Bala Parui by way of inheritance. Thereafter, said Chandirani Parui and Sarala Bala Parui had transferred their distinct shares in the suit property and other non-suit property in favour of the plaintiffs by executing registered deed of gift on 02.05.1995 and this way the plaintiffs became the exclusive owners and possessors of the suit property. The predecessor-in-interest of the defendants, Ajit Roy accepted the plaintiffs as his landlord and used to pay rent to them in respect of the tenanted premises on proper receipts being issued by the plaintiffs. Further case of the

plaintiffs is that the suit building, an old dilapidated premises of 70 years old, requires immediate repair work and on inspection by mason, it was advised that the building was to be reconstructed as the repair work would not do any good and accordingly they obtained permission from the local municipality. The plaintiffs informed the matter to the predecessor in interest of the defendants, Ajit Roy by issuing a notice to that effect on 27.11.2003. The said Ajit Roy died leaving behind his wife and son as his legal heirs and successors and they being the defendants no. 1 and 2 herein have been possessing the suit premises in the capacity of tenants. Said Ajit Roy also had two daughters who are married and reside in their matrimonial homes and not being dependents of deceased Ajit Roy, they did not inherit the tenancy right in the suit premises on the demise of said Ajit Roy. It is the contention of the plaintiffs that since after the death of Ajit Roy, i.e. from the month of April, 2004, the defendants no.1 and 2 stopped paying rents to them and also sublet veranda of the eastern side of the tenanted premises to the defendant no.3 without their permission and knowledge and the said defendant no.3 is running a business of ready-made garments which is detrimental to the interest of the plaintiffs and the tenanted premises. It is further contended by the plaintiffs that they reasonably require the suit premises for their own purpose and also for building and re-building. The defendants no. 1 and 2 are also the habitual defaulters in payment of rents and accordingly the plaintiffs issued one notice to quit to the defendants through registered post by their Advocate, Dipankar Bhandari on 20.06.2005 and the said notice was served upon the defendant nos 1 and 2, duly received by the defendant no.2 on behalf of his mother and for himself. By the said notice, the plaintiffs required the defendants to quit and vacate the tenanted premises on termination of tenancy by the end of July, 2005 and also to pay the arrear rent, damages and mesne profit @ Rs. 30/- per day since the month of August, 2005. However, despite being served with the valid notice to quit, the defendants did not hand over the vacant possession of the tenanted premises in favour of the plaintiffs and also refused to pay the arrear rents. The defendant nos 1 and 2 are allegedly causing damages to the suit premises and threatened to change the nature and character of the same in connivance with the defendant no.3. The plaintiffs contended that the tenancy of the defendants was terminated by the notice to quit and since the

1st day of August, 2005 the defendants have been possessing the tenanted premises only as trespassers and thus are liable to be evicted.

THE DEFENCE CASE

4. The defendant no.2 appeared and contested the suit thereby filing written statement whereby and wherein, the defendant denied all the material allegations levelled against them. Apart from the making the general denials that the suit is not maintainable or the plaintiffs have no cause of action, the contesting defendant specifically contended that the plaintiffs do not require the suit property for building or re-building since the four storied suit building has never been damaged or dilapidated. Further contention of the defendant is that the plaintiffs run their business of selling garments from the non-suit building under their occupation and adjacent to their shop and the plaintiffs have their two storied dwelling house and having sufficient alternative accommodation, they have no reasonable requirement of the tenanted premises. The defendant has further contended that they have never been the defaulter in payment of rents in respect of the tenanted premises and ever since the death of his predecessor, Ajit Roy, his legal heirs made attempts to pay rents to the plaintiffs but they refused to accept the same and the contesting defendant sent the arrear of rent for the month of May 2004 to May 2005 through money order but the plaintiffs refused them too. He has contended further that the veranda of the suit premises was never sublet to the defendant no.3 as contended by the plaintiffs and no damage was caused to the said premises. The defendant denied and disputed the validity of the notice to quit dated 20.06.2005 issued by the plaintiffs and contended that their tenancy could not be determined by that notice. The defendant further controverted the service of the notice upon them and pointed out that the suit is defective for non impleadment of necessary parties. On the aforesaid contentions, the defendant prayed for dismissal of the suit.

ISSUES

5. On considering the submission of the parties, the Ld. Court of the first instance framed the following issues for determination in the suit:

- 1) Whether the suit is maintainable in its present form and law?
- 2) Whether the plaintiffs have any cause of action to file the instant suit ?
- 3) Whether the suit is barred by law of limitation?
- 4) Is the suit barred by doctrine of estoppel, waiver and acquiescence?
- 5) Is the suit barred under section 34 of the Specific Relief Act?
- 6) Whether the plaintiffs have any right, title and interest over the suit plot of land?
- 7) Whether the plaintiffs are entitled to get the decree as prayed for?
- 8) To what other relief/reliefs, if any the plaintiffs are entitled?

In addition to the aforementioned issues, the Ld. Trial court framed the following more issues:

- 9) Whether the plaintiffs reasonably require the suit premises or not?
- 10) whether the defendant is defaulter in payment of rent or not?
- 11) whether the defendant is still 'tenant' or a trespasser in respect of the suit premises under the provision of section 2(g) of the WBPT Act?
- 12) whether the notice to quit is legal, valid and duly served upon the tenants?

EVIDENCE

6. With the view to prove their case, the plaintiff, Somnath Parui has got himself examined as PW-1 and adduced the following documentary evidence in support:

Certified copy of the deed of gift being no.1689 of1995	Exhibit-1
LRROR in respect of Khatian No. 1266	Exhibit 2 (obj to)
LRROR in respect of Khatian No. 1269	Exhibit-3 (obj. to)
Rent receipts collectively	Exhibit-4 series
Carbon copy of legal notice	Exhibit-5
Two AD cards and postal receipts	Exhibit-6 series

During his examination, the following material has been marked as exhibit.

Monthly rent receipts	Mat Exbt-1
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On the other hand, the defendant, Soumen Ray has been examined as DW-1 but no documentary evidence was adduced on his behalf during his examination.

THE DECISION OF THE LD. TRIAL COURT

7. Upon hearing and consideration of oral and documentary evidence on record, the Ld. Trial court disposed of the suit which was decreed on contest. The joint right, title and interest of the plaintiffs over the suit property was declared and the plaintiffs got a decree of ejectment against the defendants in respect of the suit premises mentioned in the schedule of the plaint. The defendants were directed to quit and vacate the suit premises within 60 days from the date of decree. The plaintiffs also got decree of mense profit to be determined by separate proceeding.

8. Being aggrieved and dissatisfied with the judgment passed by the Ld. Trial court, the defendant no 1 and 2 (herein after referred to as appellants) came up with the present appeal against the defendants (hereinafter referred to as respondents) before the Court of the Ld. Additional District Judge, Diamond Harbour and subsequently the same was transferred to this Court for disposal.

GROUND OF APPEAL

9. The appellant challenged the propriety of the impugned judgment and decree passed by the Ld. Court of first instance on the grounds, *inter alia*, that the Ld. Court approached to decide the suit from an entirely wrong point of view and came to an erroneous decision disregarding the material evidence on record. It is specifically contended by the appellants that suit property as described in the schedule to the plaint was vague, indefinite and non ascertainable and on that score, the suit was liable to be dismissed. Another ground on which the impugned judgment and decree was assailed is that the suit was bad in law for non-joinder of necessary parties as the daughters of the original tenant, Ajit Roy have not been made parties to the suit on his demise. The appellants further challenged the impugned judgment on the ground that the plaintiffs/

respondents could not prove their contention of reasonable requirement of the suit premises and the notice to quit was not legal and valid one and accordingly the tenancy in question could not have been determined on the basis of that illegal notice. It is further contended that the plaintiffs have also failed to prove the point of sub-letting of the tenanted premises to third party and requirement of the same for the purpose of building and re-building.

ARGUMENT

10. Before delving deep into the discussion of material issues involved in this appeal, it would be pertinent to briefly point out the argument canvassed by Ld. Counsels of both the parties. The Ld. Counsel representing the appellants boastfully submitted that the Ld. Court of first instance has failed to appreciate the materials on record from a correct perspective and has acted under a misconceived notion of law in determination of the suit in question and has thereby arrived at an erroneous finding which is not sustainable in the eye of law. He has further contended that no local inspection was held at the instance of the plaintiffs to substantiate the point of reasonable requirement of the suit premises and the eviction notice was not in conformity with the legal requirements for which the suit was liable to be dismissed with cost. On the other hand, Ld. Counsel for the respondents/plaintiffs submitted that the impugned judgment and decree conform to all settled legal principles and is a classic example of a just and reasonable decision which does not call for any interference by this court in the present appeal. It is further submitted by the Ld. Counsel that the appellants were adjudged as defaulters in making payment of rent for the tenanted premises and their defence against delivery of possession was struck out by the order of the court and the said order remained in force till the disposal of the suit. Ld. Counsel would further argue that plaintiffs have successfully established the issue of reasonable requirement of the tenanted premises before the Ld. Court of first instance and the notice to quit served upon the defendants also conform to all legal formalities. He contended that there is no merit in the instant appeal and same is liable to be rejected with exemplary cost.

DECISION WITH REASONS

11. First and foremost, it would be pertinent to mention here that the relationship between the parties to the suit, viz. plaintiffs/respondents being the owners of the suit premises and the defendants/appellants being the tenants under the owners has not been denied and disputed in the original suit as well as in the instant appeal. Neither the appellants nor the respondents have put forward any pleading or argument in this regard at the time of final hearing of the appeal. The father of the plaintiffs, Anil Kumar Parui was the original owner and possessor of the suit property along with other non-suit properties and on his demise, the plaintiffs being his two sons, his wife and mother inherited the right, title and interest in those properties and thereafter the mother and grand mother of the plaintiffs transferred their share in the suit premises in favour of the plaintiffs by executing registered deed of gift and thus the plaintiffs became the exclusive owners of the suit premises with other non-suit properties partly by way of inheritance and partly by dint of transfer through the deed of gift. The predecessor in interest of the defendants no.1 and 2 namely Ajit Roy was inducted as a tenant in respect of the suit premises during the lifetime of original owner, Anil Kumar Parui at a monthly rental of Rs.80/- payable according to English Calender months. Said tenant accepted the plaintiffs as their landlords and used to pay rent for the tenanted premises on receipt of rent receipts. Subsequently, said Ajit Roy expired leaving behind the defendant nos. 1 and 2 being his wife and son and they continued to possess and enjoy the tenanted premises as the successors of the original tenant. So far the maintainability of the suit no argument was placed before this court or before the court of first instance by the contesting defendants and the Ld. Court of first instance rightly disposed of the issue on the point of maintainability of the suit in the affirmative.

12. The issues framed by the Ld. Court of first instance with regard to suit being barred by limitation, principles of estoppel, waiver and acquiescence have been succinctly discussed and disposed of by the Ld. Trial Court in favour of the plaintiffs and before this court, those points have not been agitated further and I

too did not come across anything contrary to hold the suit being hit by the law of limitation or any other above principles.

13. Let us now examine the issue with regard to question of defendants/appellants being the alleged defaulters in payment of rent. Admittedly, the defendants/appellants were making payment of monthly rent @ Rs. 80/- to the plaintiffs/respondents. The case of the plaintiffs is that the defendants have made default in payment of monthly rent from the the month of April, 2004 since after demise of their predecessor Ajit Roy and they have been possessing the suit premises after determination of tenancy only as rank trespassers. On examination of the trial court record and the deposition of the DW-1, it would be explicit that the defendant no.2 has clearly admitted to have not deposited any rent for the suit premises in favour of the landlords. The trial court record would further make it clear that applications under section 7(1) and 7(2) of the WBPT Act, 1997 were filed by the defendant no.2 before the Ld. Court of first instance only after the expiry of the period of limitation and the Ld. Trial court was pleased to reject those applications holding them as not maintainable being barred by limitation and his defence against the delivery of possession was ordered to be struck out in terms of order no.119 dated 28.11.2017 in accordance with the provision of law as envisaged under section 7(3) of the WBPT Act. The defendants did not challenge that order and same was in force till the disposal of the suit. Therefore, in view of the appearing circumstances, when the defendants have failed to file applications for deposit of regular and arrear of rents within the stipulated time and their defence was also struck out as discussed above, there is no manner of doubt in holding the defendants/appellants as the defaulters in payment of rent. The Ld. Court of first instance had dealt with the aforementioned issue in its proper perspective and rightfully hold the defendants as the defaulters in payment of rent in respect of the tenanted premises.

14. On the question of reasonable requirement of the tenanted premises it has been the contention of the plaintiffs/respondents both in their plaint as well as in their written affidavit in chief that they reasonably require the said property for their own purpose and for their building and rebuilding purpose. On the

other hand, the defendants/appellants contended that plaintiffs have no reasonable requirement of the tenanted premises as they have sufficient accommodation wherein they reside with the family members. It is further contended that no local inspection was conducted by the plaintiffs to substantiate their claim of reasonable requirement of tenanted premises and therefore the claim of the plaintiffs are not bona fide and justified.

15. In the schedule to the plaint, the suit premises has been clearly depicted and described with reference to boundary. In the written statements as well, the defendants have pointed out that the suit premises is part of a three storied building of which ground floor consists of six rooms with privy and bathroom. PW-1 clarified that in one of the rooms at the basement of that three storied building, his sister-in-law runs a garment shop under the name of style of 'Sriniketan'. The other rooms are being occupied by different tenants. On the first floor, there are five rooms which are also occupied by tenants and one of the rooms is presently under the occupation of the defendants/appellants. In the second floor of the building there are six rooms of which three are possessed by the tenants as shops and other three are used as godowns for wine. In the third floor of the said building the plaintiff no.1 reside with his family members.

16. In his cross-examination and in answer to the suggestion put to him by the defendants, the plaintiff no. 2 as PW-1 has reaffirmed that he has no room for himself either in the two storied building or in the three storied building. No further suggestion with regard to availability of alternative accommodation was put to the plaintiff from the end of the defendants during his cross-examination.

17. In the case of **Puspa Dubey v Madhabi Mukherjee & Ors, 2024 SCC OnLine Cal 8213**, the Hon'ble Calcutta High Court reiterated the settled principle that the landlord is the best judge of his requirement and the courts have no concern to dictate the landlord as to how and in what manner he should live.

18. In a recent decision in the case of **Kanahaiya Lal Arya v Md. Ehshan & Ors. 2025 INSC 271**, the Hon'ble Apex Court has been pleased to observe that the

landlord is the best judge to decide which of his property should be vacated for satisfying his particular need. The tenant has no role in dictating as to which premises the landlord should get vacated for his need alleged in the suit for eviction.

19. Admittedly, there are many tenants in the suit premises who are running businesses under the landlordship of the plaintiffs but when the plaintiffs have decided to get the tenanted premises vacated from the possession of the defendants and initiated legal proceeding to that effect, no plea can the defendants take in such situation that plaintiffs could have proceeded against other tenants excepting them.

20. In view of the above discussion in the light of settled proposition of law and the evidence on record, it can be said that the plaintiffs/respondents have successfully established their reasonable requirement of the suit premises and the issue has been rightly decided by the Ld. Court of first instance in the affirmative and in favour of the plaintiffs/respondents.

21. The next question comes for consideration is whether the notice to quit issued upon the appellants/defendants was legal and valid and properly served upon the them. The plaintiffs claim to have issued the notice to quit to the defendants through registered post with A/D by their Ld. Advocate on 20.06.2005 and that same was duly served upon the defendants no.1 and 2 on 22.06.2005 which was duly received by the defendant no.2 for himself and on behalf of his mother. The plaintiffs have adduced the carbon copy of the said notice 20.06.2005 in evidence which has been marked as Exhibit- 5. On perusal of the said notice it would be explicit that the plaintiffs have specifically clarified that the defendants have made default in payment of rent for the tenanted premises since May, 2004 and also sublet the portion of the veranda of the tenanted premises and caused damages to it. By the aforesaid notice, the plaintiffs determined the tenancy of the defendants with the expiry of the month of July 2004 and required the defendants to hand over vacant possession of the tenanted premises unto them and also to make payment of mesne profit since the month of August, 2004 if it is occupied thereafter. The original postal receipts

and A/D cards have been marked in evidence as Exhibit-6 collectively. The A/D cards would go to show that the notice was duly received by the defendant no. 2 and he put his signature over the A/D cards for himself and on for his mother since both of them were residing together at the same premises. The defendant no.2 in his cross-examination admitted and recognized the signatures over the A/D card as those of his own. Therefore, all these documentary evidence, clearly signify that the notice to quit issued by the plaintiffs upon the defendants conforms to all legal formalities as was duly served upon the defendants. With the tenancy between the parties to the suit having been determined with the service of a legal and valid notice at the instance of the plaintiffs, the defendants have ceased to have any legal right to occupy the tenanted premises after the expiry of notice period.

22. The appellants/plaintiffs have thus, in the light of above discussion, succeeded in establishing their claim in the suit on the grounds of reasonable requirement of the tenanted premises and defendants being defaulters in payment of rent in respect of the tenanted premises. The Ld. Trial court has also clearly found the respondents/defendants not in possession of the tenanted premises in the capacity of statutory tenants. Evidently, with the determination of tenancy by virtue of a legal and valid notice issued by the plaintiffs on the ground of default in payment of rent and reasonable requirement, the appellants are placed no better than the rank trespassers in respect of the tenanted premises. Indeed, the plaintiffs did not establish their claim of subletting of the tenanted premises by the defendants with substantive evidence but that they were able to prove their case and entitled to get the suit decreed in their favour.

23. On the basis of the above discussion, this court has no hesitation to conclude that the impugned judgment as passed by the Ld. Court of the first instance does not suffer from any material irregularity which makes the same unsustainable in the eye of law and calls for any interference with the same in this appeal.

24. In the result, the instant appeal fails to succeed.

25. The memo of appeal is correctly stamped.

FINAL OUTCOME

26. Hence, it is

ORDERED

that the instant appeal being Title Appeal No. 50 of 2022 is hereby dismissed on contest against the respondents no.1 and 2 and ex parte against the proforma respondent no.3 but without any order as to costs. The impugned judgment and decree dated 20.06.2022 as passed by the Court of Ld. Civil Judge, Junior Division, 2nd Court at Diamond Harbour in Title Suit No. 14 of 2006 is hereby affirmed.

The interim order of stay stands vacated.

Let a copy of this judgment be sent down to the Court of the Ld. Civil Judge, Junior Division, 2nd Court at Diamond Harbour for information and necessary action.

LCR be sent down to the Ld. Trial court at once.

Typed by me:

Sd/-
ADJ, FTC- III
Diamond Harbour,
South 24 Parganas

Sd/-
(Sachindra Mohan Bhowmick)
ADJ, FTC- III
Diamond Harbour,
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