Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

FAT No. 561 of 2025

Sri Krushan Chandra Nayak
-vs-
Gobinda Charan Pyne

For the appellant : Mr. Anshunath Chakraborty.

For the respondent : Mr. Anirban Pal.

Heard on : March 23, 2026.

Judgment on : March 23, 2026.

Sabyasachi Bhattacharyya, J.:

Re: CAN 2 of 2026 (condonation)

1. The present application is for condonation of the delay of about twenty-one days in preferring the appeal.

2. Learned counsel for the appellant draws the attention of the Court to the pleadings in the condonation application to the effect that the appellant works as a sweeper under the Kolkata Municipal Corporation and is required to perform regular and continuous duties. It has further been pleaded that owing to his service obligations and financial constraints, the appellant could not immediately take steps for filing the appeal and required a reasonable time to obtain relevant case records and to contact his learned Advocate. Although the certified copies were applied for on the very next day after passing of the impugned judgment and decree, that is, on September 26, 2025, those were made ready and delivered on October 28, 2025.
3. Yet, the appellant contacted his learned Advocate for the purpose of presenting the present appeal only on December 10, 2025 for the reasons indicated above. The appeal was ultimately filed on December 18, 2025.
4. Learned counsel appearing for the respondent contends that there is no plausible explanation furnished in the application for the delay between October 28, 2025, when admittedly the certified copies of the impugned judgment and decree were made ready and delivered to the appellant, and December 10, 2025,

when the appellant first approached his learned Advocate for the purpose of preferring the appeal.

5. Learned counsel cites *Balwant Singh Vs. Jagdish Singh and others* reported at *(2010) 8 SCC 685* in support of the proposition that the applicant, who seeks the aid of the Court for exercising its discretionary power for condoning the delay, is expected to state correct facts and not state lies before the Court. Approaching the Court with unclean hands itself, it was further observed by the Hon'ble Supreme Court, is a ground of rejection of such application.

6. The "unclean hands" analogy is, unfortunately and ironically, applicable to the circumstances of the appellant in a different context. The appellant is a person employed with the Kolkata Municipal Corporation and works as a sweeper. By its very nature, such job demands that the appellant has to report for his work regularly.

7. We also take note of the fact that the appellant comes from the marginalized sections of Society and, as such, the averment regarding financial constraints and his job requirements, which prevented the appellant from taking steps in time, are quite credible in our opinion.

8. Hence, from the explanations offered in the condonation application, in paragraph no. 3 in particular, this Court finds that sufficient explanation for the delay has been made out. Accordingly, the “unclean hands” theory propounded in *Balwant Singh (supra)* is not applicable to the present case.

9. Even otherwise, we do not find any *mala fides* or gross negligence on the part of the appellant to refuse to condone the miniscule delay of only twenty-one days in preferring the appeal.

10. Accordingly, CAN 2 of 2026 is allowed on contest, thereby condoning the delay in preferring FAT No. 561 of 2025.

11. The said appeal is deemed to stand registered and admitted.

12. There will be no order as to costs.

Re: FAT No. 561 of 2025
With
CAN 1 of 2026

13. The appeal and the stay application are taken up together for hearing, in view of the short ambit of the appeal.

14. By the impugned judgment and decree, the learned trial Judge granted a decree of eviction against the

defendant/appellant on the premise that the defendant is a trespasser in respect of the suit premises, taking into consideration the effect of Section 2(g) of the West Bengal Premises Tenancy Act, 1997 (in short, “the 1997 Act”).

15. Learned counsel appearing for the defendant/appellant contends that the plaintiff/respondent has placed reliance on a gift deed allegedly executed by his mother, who became the owner of a demarcated portion of the larger joint family property, which comprises the suit premises, by dint of an alleged partition deed.

16. However, apart from the fact that such partition deed was never produced, which raises a doubt as to whether the property still remains joint and there remains other co-owners of the plaintiff’s mother, the property descried in the schedule of the gift deed, which was exhibited in the suit, does not tally with the schedule of the plaint.

17. Thus, the ownership in respect of the suit property has not been clearly established by the plaintiff merely by virtue of production of the said gift deed.

18. Secondly, learned counsel for the appellant argues that in the said gift deed, there is no mention of transfer of the actionable

2026:CHC-AS:467-DB

claim in respect of the right to evict the tenant from the subject property in favour of the plaintiff.

19. Learned counsel submits that there is not even any mention of the existence of a tenancy in the gift deed, despite the mother of the present defendant being a tenant in respect of the suit property at the relevant juncture.

20. Thus, it is argued that in the absence of transfer of such actionable claim, the eviction suit is hit by the provisions of Section 130 of the Transfer of Property Act, 1882 (hereinafter referred to as “the Act of 1882”), which envisage that an actionable claim is required to be specifically transferred by a written document. In the absence of such transfer, the eviction suit, it is submitted, was not maintainable at the behest of the plaintiff/respondent.

21. Thirdly, learned counsel argues that the other co-owners/co-sharers/co-landlords in respect of the suit property have not been impleaded in the suit.

22. Although the plaintiff claims himself to be the exclusive owner of the suit property, in the absence of any clear demarcation of the rights of landlordship of the plaintiff / respondent and / or his predecessor-in-interest / mother, the suit

was not maintainable at the behest of the plaintiff alone, without impleading the other co-owners/co-landlords.

23. Learned counsel argues further that the contemplation of a “lessor” under Section 109 of the Act of 1882 is distinct from the definition of “landlord” in Section 2(c) of the 1997 Act.

24. The landlordship under the 1997 Act, it is argued, does not automatically get transferred along with the property merely by dint of a deed transferring title in the property, in the absence of any specific assignment of the right to evict the tenant.

25. Learned counsel further points out that there was no letter of attornment at any point of time, on the supposed transfer of title in favour of the plaintiff, either from the end of the transferor/mother of the plaintiff or the transferee, that is, the plaintiff/respondent himself.

26. The above aspects were overlooked by the learned Trial Judge. Thus, it is argued that the impugned judgment is vitiated on all the above counts.

27. Learned counsel appearing on behalf of the plaintiff/respondent contends that there was clear admission in the appellant’s written statement with regard to the averments made in paragraph no. 5 of the plaint, to the effect that Bhikari

Nayak, the father of the defendant and the original tenant, died on October 26, 2011 and thereafter his spouse Sita Devi Nayak also died on December 22, 2017.

28. In paragraph no. 9 of the written statement, which dealt with the said averments of the plaint, there was evasive denial inasmuch as the defendant stated that the statements made in paragraph nos. 4 and 5 of the plaint were partly matters of record and partly denied, without categorically indicating that the above material averments were specifically denied.

29. Although the defendant/appellant pleaded that the schedule of the suit premises was not fully described, the subsequent plaint averments as to the dates of death of the parents of the defendant and that the defendant was not a dependant of his father, the original tenant, were not denied at all.

30. In such context, learned counsel for the plaintiff / respondent cites a judgment in the case of *Rajiv Ghosh Vs. Satya Narayn Jaiswal* reported at *2025 SCC Online SC 751* where the Hon'ble Supreme Court held that admissions made in pleadings or otherwise, whether orally or in writing, can form the basis for a judgment and that the court has discretionary power to pronounce

judgment provided the admissions are clear, unequivocal and unconditional.

31. In the said report, the Hon'ble Supreme Court further observed that the High was justified in decreeing the eviction suit based on specific admissions in the written statement as to status and termination of tenancy due to statutory limitation under Section 2(g) of the 1997 Act.

32. It is argued that in the present case as well, the said ratio is clearly applicable in view of the admissions in paragraph no. 9 of the written statement vis-à-vis the averments made in paragraph no. 5 of the plaint, as indicated above.

33. Furthermore, in paragraph no. 9 of the written statement, it was admitted that the heirs and legal representative of the original defendant, namely, Bhikari Nayak, had been depositing rent in favour of the plaintiff, along with other legal heirs of the original landlord, with the Rent Controller.

34. It is contended that by such pleadings in the written statement, the defendant categorically admitted the landlordship of the plaintiff and as such, cannot now deny the same.

35. Learned counsel further argues that the learned Trial Judge, in the impugned judgment, considered *Gopi Vs. Ballabh*

Vyas, reported at *(2022) 19 SCC 204*, to lay down the proposition that a bare perusal of Section 109 of the Transfer of Property Act would reveal that if a landlord transfers the property leased out or any part of it, the transferee, in the absence of any contract to the contrary, shall posses all the rights of the landlord. Thus, the inevitable consequence of the transfer of a leased-out property by the landlord in accordance with law to a third party, in the absence of a contract to the contrary, is that the third party concerned would not only become its owner having title but also would step into the shoes of the vendor as the landlord in relation to the lease holder at the relevant point of time.

36. In such circumstances, the Hon'ble Supreme Court held that the findings of the courts below in the said case, that there exists jural relationship of landlord and tenant between the respondent and the appellant, could only be held as the correct and lawful conclusion in the light of the evidence on record based on the legal position.

37. Thus, it is argued that the appellant's contention to the effect that the non-mention of the tenancy or non-assignment of the "actionable claim" to evict the tenant in the gift deed vitiates

the rights of the plaintiff vis-à-vis the present eviction suit, is not sustainable.

38. Learned counsel for the plaintiff / respondent thus submits that the appeal ought to be dismissed.

39. Learned counsel appearing for the appellant, in rejoinder arguments, submits that in *Gopi Vs. Ballabh Vyas* (supra), the Hon'ble Supreme Court was considering a situation under Section 109 of the Act of 1882, which is distinct and different from a situation under the 1997 Act, the latter statute categorically providing the definition of 'landlord' in Section 2(c).

40. Hence, it is argued that the ratio of the said judgment was erroneously applied in the present case by the learned Trial Judge.

41. Further, learned counsel for the appellant reiterates that the dispute as to the identity of the suit property and the property transferred by the gift deed in favour the plaintiff/respondent has not been addressed by learned counsel for the respondent in his arguments.

42. Upon hearing learned counsel for the parties, it transpires that one of the plinths of the challenge to the impugned judgment and decree is the purported discrepancy between the schedule of

the gift deed, through which the plaintiff claims title, and the schedule of the plaint.

43. However, we find that throughout the written statement, such objection as to the identity between the suit premises and that owned by the plaintiff was never raised.

44. To justify such omission, learned counsel for the appellant has cited the non-filing of the gift deed along with the plaint at the relevant juncture, due to which purportedly the defendant could not specifically raise the question of identity between the schedules of the plaintiff's gift deed and the plaint.

45. However, we cannot accept such contention, since it was always open to the defendant/appellant to seek an amendment to its written statement or to file an additional written statement, raising a dispute as to such identitly, upon the gift deed being disclosed by the plaintiff / respondent in evidence.

46. That apart, nothing prevented the defendant/appellant from seeking discovery of the gift deed, which was specifically mentioned in the plaint, in the suit.

47. Having not done so, nor having raised any dispute as to identity of the property during arguments before the trial court as

such, the defendant/appellant cannot be permitted to raise such question for the first time before the appellate court.

48. That apart, we find that the descriptions of the properties in the schedule of the gift deed relied on by the plaintiff and that described in the plaint of the present suit are more or less similar.

49. Certain minor discrepancies which have been pointed out by the defendant, such as the character of the roof of the one-storied shed being mentioned as a “tin shed structure” in the gift deed whereas the same has been described in the plaint as “partly tile and partly corrugated shed”.

50. However, such minor deviation in the description of the nature of the roof, more so since the roof itself is of a temporary nature and may be altered from time to time, cannot lead to the automatic conclusion that the two properties are different.

51. Moreover, it transpires from a comparison between the two schedules that the premises described in the schedule to the plaint of the present suit is a room (with bath and privy) only, which is situated within a portion of the larger premises which was gifted to the plaintiff by his mother, measuring about 4 kathas, 3 chitaks and 15 square feet, which was a larger plot not confined merely to the one-storied structure.

52. Although there is difference between boundaries given in the two schedules-in-question, the reason for the same is obvious, since the suit property has been described in the plaint schedule to be bounded on its Southern and Western sides by the “plaintiff’s possession” which all the more indicates that the subject matter of the suit, being only a room with bath and privy, is a smaller portion carved out from the larger stretch of property given to the plaintiff by his mother by dint of the gift deed.

53. In any event, having not raised the said issue before the learned trial Court, either in pleadings or during arguments, it does not lie in the mouth of the defendant to raise the purported issue of identity of the suit property at this appellate stage.

54. The next question which has been raised by the defendant/appellant is whether the plaintiff acquired the right to sue for eviction without any specific assignment of any right with regard to the tenancy in the suit property being transferred specifically by dint of the gift deed executed by the plaintiff’s mother in his favour.

55. Although learned counsel for the appellant seeks to draw a distinction between the position under the Act of 1882 and under

the 1997 Act vis-à-vis such transfer, in essence, there is no distinction between the first principles governing the two.

56. Section 109 of the Act of 1882 provides, *inter alia*, that if the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it.

57. On the other hand, Section 2(c) of the 1997 Act defines the term “landlord” in an inclusive manner, to include any person who, for the time being, is receiving or is entitled to receive the rent for any premises, whether on his own account or on account of or on behalf of or for the benefit of any other person.

58. Thus seen, such definition in Section 2(c) of the 1997 Act is not only inclusive but operates in a wide spectrum, to include not only owners but any person who is even entitled to receive the rent for any premises.

59. In such context, Section 130 of the Act of 1882 is required to be looked into, since the defendant/appellant rests his case thereon, vis-à-vis non-transfer of actionable claim.

60. Sub-section (1) of Section 130 provides that the transfer of an ‘actionable claim’, whether with or without consideration, shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent and shall be complete and effectual upon the execution of such instrument.

61. To get to the root of the said concept, we are also to look at the definition of the term “actionable claim” as provided in Section 3, which is the interpretation clause of the Act of 1882. “Actionable claim” as defined therein means “a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent”.

62. It is, thus, obvious that the incidents of tenancy in respect of an immovable property are not covered by the said definition, thus, taking a situation as the present one beyond the purview of Section 130 of the Act of 1882 itself. The incidents of a tenancy

are neither “beneficial interest in movable property” nor a “claim to any debt” or a claim of like nature.

63. Hence, the argument as to non-transfer of the tenancy and its incidents or absence of specific mention of the same in the gift deed is a non-issue in the present *lis*.

64. Even otherwise, the concept of an ‘actionable claim’ is in the nature of a ‘chose in action’, being an inchoate right to initiate a legal action on the strength of some legal or *de facto* right of a party going with the property. A tenancy, as opposed thereto, is a specific encumbrance on a property. When the entire property is transferred, along with the entire bundle of rights associated with it, to a transferee, either by gift or by some other device, the rights of the original owner vis-à-vis the tenant are automatically transferred to the transferee.

65. As held by the Hon’ble Supreme Court in *Gopi vs. Ballav Vyas (supra)*, such a transfer automatically confers a right to sue on the basis of the jural relationship of landlord and tenant on the transferee. Such proposition laid down by the Hon’ble Supreme Court, although rendered in the context of Section 109 of the Act of 1882, is not limited to a lessor-lessee relationship under such

statute alone but is in the nature of a first principle, applicable across the board to similar jural relationships under all statutes.

66. As such, we do not find substance in the contention of the appellant that in the absence of a specific mention of the tenancy or any devolution of right through the said instrument to sue the tenant, such right was not automatically transferred to the transferee.

67. Hence, the said argument is also not tenable in the eye of law.

68. Thirdly, although the appellant has raised a question as to whether there were other co-landlords/co-owners of the property who were required to be impleaded in the property, in view of the evidence on record, the learned Trial Judge came to a categorical finding that upon partition, a specific portion of the larger joint property was allotted to the mother of the plaintiff and subsequently, gifted to the plaintiff by his mother.

69. The concept of co-owners or co-landlords, thus, is not apt in the circumstances.

70. Even otherwise, it is trite law that one of the co-owners has the right to sue a tenant of his, unless it is specifically shown that the other co-owners dispute such legal action.

71. Hence, irrespective of whether the plaintiff was an exclusive owner or a co-owner of the suit premises, the plaintiff had full rights to sue the defendant.

72. A more cardinal issue cannot also be overlooked in the above context.

73. In the present case, the appellant was nothing more than a trespasser, not even being covered by Section 2(g) of the 1997 Act, in view of the doctrine of non-traverse. In paragraph no. 9 of the written statement, which dealt with paragraph nos. 4 and 5 of the plaint, there was no specific denial on the part of the defendant/appellant as to the categorical averment of the dates of death of the original tenant and his wife, respectively the parents of the present defendant/appellant, much prior to the period of five years from the date of institution of the suit.

74. Even otherwise, the specific averment that the defendant/appellant was not a dependant of the original tenant at the time of the demise of the original tenant, as averred in paragraph no. 5 of the plaint, has not been denied at all by the defendant, either in paragraph no. 9 or any other paragraph of the written statement. Hence, the defendant was not even entitled to get the protection for five years afforded by Section 2(g) of the

1997 Act from the date of demise of the original tenant. Hence, the argument as to the title of the plaintiff does not lie in the mouth of the defendant/appellant, who is merely a trespasser and not even a tenant in respect of the suit property at any point of time.

75. That apart, it is rightly pointed out by learned counsel for the plaintiff/respondent that in the written statement, it was admitted by the defendant that he had been paying rent, *inter alia*, in the name of the plaintiff before the Rent Controller, thereby clearly admitting the landlordship of the plaintiff.

76. Seen in the above perspective, there is no scope of entertaining the argument of the defendant/appellant to the effect that the plaintiff was not entitled to institute the suit against the defendant, that too, on the ground of a trespasser.

77. However, in the case of *Rajiv Ghosh (supra)*, although the Hon'ble Supreme Court held that admission of tenancy status and termination of tenancy due to statutory limitation under Section 2(g) of the 1997 Act entitled the plaintiff to have a judgment on admission, the said decision was rendered in the specific context of Order XII Rule 6 of the Code of Civil Procedure, which does not govern the present impugned judgment. Hence, it is

somewhat doubtful as to whether the said decision can be regarded as a binding precedent insofar as the issue at hand is concerned. However, fact remains that the proposition laid down therein to the effect that an admission of tenancy status and termination due to statutory limitation under Section 2(g) of the 1997 Act entitles the plaintiff to eviction is apt in the circumstances.

78. Be that as it may, in view of our above observations, the appeal fails.

79. Accordingly, FAT 561 of 2025 is dismissed on context, thereby affirming the impugned judgment and decree dated September 25, 2025 passed by the learned Judge, Fourth Bench, City Civil Court at Calcutta in Title Suit No. 2145 of 2023.

80. CAN 1 of 2026 is disposed of accordingly in the light of the above observations.

81. There will be no order as to costs.

82. The defendant/appellant is granted ninety days' time for vacating the suit property.

83. In default, the execution case levied by the plaintiff/respondent shall revive and the respondent shall be entitled to obtain eviction of the appellant in due process of law.

84. A formal decree be drawn up accordingly.

I agree.

(**Sabyasachi Bhattacharyya, J**.)

(**Supratim Bhattacharya, J**.)