

OD – 7 to 9

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

IA NO. GA/1/2019 (Old No: GA/2943/2019)
In CS/244/2019
DALBIR KAUR KALRA
Vs
NEENA BHATIA

IA NO. GA/3/2020 (Old No: GA/142/2020)
In CS/244/2019
DALBIR KAUR KALRA
Vs
NEENA BHATIA

IA NO. GA/4/2024
In CS/244/2019
DALBIR KAUR KALRA
Vs
NEENA BHATIA

BEFORE:
THE HON'BLE JUSTICE SUGATO MAJUMDAR
Date: 2nd September, 2025

Appearance:
Mrs. Suparna Mukherji, Sr. Adv.
Mr. Ganesh Prasad Shaw, Adv.
Mr. Gaurav Kumar, Adv.
Mr. Harshit Thirani, Adv.
...for the Plaintiff

Mr. Chayan Gupta, Adv.
Mr. Pourush Bandyopadhyay, Adv.
Mr. Abhijit Sarkar, Adv.
...for the Defendant

The Court: the instant application is filed by the Defendant/Petitioner under Order VII Rule 11 of Code of Civil Procedure, praying for dismissal of the suit.

Manifold contentions of the application are, **firstly**, the tenancy in question was governed by the West Bengal Premises Tenancy Act, 1997 as result of which this Court has no jurisdiction to entertain the suit. **Secondly**, the tenancy was non-residential, bringing the tenancy within the ceiling of Rs.10,000/- per month rent; in other words, the tenancy was non-residential and admittedly rent was Rs.7,672/- for which the tenancy was to be governed by the West Bengal Premises Tenancy Act, 1997. **Thirdly**, valuation of the suit is improper or rather inflated and artificially made to bring the suit within the jurisdiction of this Court. **Fourthly**, by clever drafting and elution of the cause of action is created to invoke the jurisdiction of this Court which should be nipped of the bar.

In nutshell, it is pleaded that the plaint should be rejected.

Exchange of affidavit was made.

In affidavit-in-opposition, all the allegations are denied. It is contended that tenancy agreement expired on 31st October, 2018. Therefore, the Plaintiff has a cause of action against the Defendant from 1st November, 2018. The Defendant continued to occupy the suit premises illegally for which the instant suit has been instituted for recovery of possession.

The Learned Counsel for the Defendant Mr. Gupta relied upon **Ratan Lal Nahata Vs. Nandita Bose (1996 SCC OnLine Cal 240)** and argued that manifestly the tenancy is a non-residential for which it should be governed by the West Bengal Premises Tenancy Act, 1997 and the suit should be entertained by some other forum constituted under the Act. It is further argued by Mr. Gupta that on the

one hand, the plaint pleads expiry of tenancy, on the other hand, there is a notice of termination under the Section 106 of the Transfer of Property Act which is a later date. If mesne-profit be considered as equal to the existing rent from the said date of unauthorized occupation, it will fall below the pecuniary limit of jurisdiction of this court. Therefore, the plaint should be rejected.

The sum and substance of the argument of Mrs. Mukherjee, the Learned Counsel for the Plaintiff is that the question of mesne-profit, date of commencement of unauthorized occupation, the question of residential or non-residential tenancy, use of the flat in question as well as valuation of the suit on the basis of mesne-profit are all questions of fact to be decided in trial only. It is further argued that there is no cavil on the settled position of law that while hearing an application under Order VII Rule 11 of the Code of Civil Procedure, it is the plaint which should be considered only. Mrs. Mukherje relied upon **Eelco Housing and Industries Ltd. V. Ashok Vidyarthi & Ors., (2023 SCC OnLine SC 1612)**, **Smt. Nandita Bose V. Ratanlal Nahata (AIR 1987 SC 1947)**, **Steelco Syndicate V. Sashi Prasad Goenka (2011 SCC OnLine Cal 473)**, **M/s Ashok Optics V. Arun Chorone Roquitte (2015 SCC OnLine Cal 7083)** to fortify her argument.

I have heard rival submissions.

It is settled principal of law, as argued by Mrs. Mukherjee that while considering the issue of rejection of plaint, the Court should confine itself within the four corners of the plaint. *Prima facie* reading of the plaint shows that the tenancy is for residential purpose and the rent is above the ceiling limit. The questions whether the tenancy is residential or non-residential, whether the tenancy came to an end by efflux of time or by notice under Section 106 and the specific date from which the possession became unauthorized are all mixed questions of law and fact. Quantum

of mesne-profit shall be decided on the basis of a fact finding of the date from which the possession became unlawful. With aid of evidence and only after conclusion of trial, this question can be decided. Therefore, without embarking on any fact finding and keeping all the questions open, the demurrer application filed under Order VII Rule 11 of the Code of Civil Procedure being GA 3 of 2020, is dismissed and disposed of accordingly.

Fix 19th September, 2025 for hearing of GA 1 of 2019 and GA 4 of 2024.

(SUGATO MAJUMDAR, J.)