

OD – 25 & 26

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

CS/249/2022
IA NO: GA/1/2023,
GA/2/2023
ASHA BANSAL AND ORS.
VS
CHANDER SUREKHA

CS/250/2022
IA NO: GA/1/2023,
GA/2/2023
ASHA BANSAL AND ORS.
VS
CHANDER SUREKHA

BEFORE:

The Hon'ble JUSTICE SUGATO MAJUMDAR

Date: 30th January, 2026

Appearance:

Mr. Meghnad Dutta, Adv.

Mr. Rajesh Upadhyay, Adv.

Ms. Surabita Biswas, Adv.

...for the Plaintiffs

Mr. Rajarshi Dutta, Adv.

Ms. Arpita Saha, Adv.

Ms. Khushboo Chowdhury, Adv.

Ms. Shuchismita Dutta, Adv.

...for the Defendant

CS/249/2022
GA/2/2023

The Court: This is an application filed by the Defendant, praying for rejection of the plaint, alternatively dismissal *in limine* or permanent stay.

The suit is for decree for eviction and recovery of *khas* possession of one shop-room measuring about 130 sq. ft. situated in the suit premises along with other prayers.

One of the pleas of the Defendant in the demurrer application is that the original tenant late Sitaram Surekha expired on 12th May, 2018 leaving behind him his legal heirs who became statutory tenants under the West Bengal Premises Tenancy Act, 1997 and monthly rent was Rs.975/-. The suit should be filed in appropriate forum under the West Bengal Premises Tenancy Act, 1997, since the statutory period of 5 years as contemplated under Section 2 (g) of the West Bengal Premises Tenancy Act, 1997, was subsisting at the time of institution of the suit. According to the Defendant, the suit does not disclose any cause of action against the heirs and legal representatives of the deceased original tenant. It is further pleaded that the suit property is a shop-room use for commercial purpose, therefore, the dispute involves in a commercial dispute. Since the suit was instituted in the year 2023 the plaint should be rejected in terms of the applicable law.

One of the contentions in the affidavit-in-opposition is that after expiry of five years from the death of original tenant, the occupiers are trespassers and not tenants coming within the purview of the West Bengal Premises Tenancy Act, 1997. It is further contended that there is no agreement between the Plaintiff and the present Defendants which will bring the matter within the ambit of commercial dispute.

Heard arguments on behalf of the both the Learned Counsels.

There is no cavil that while considering an application under Order VII Rule 11, four corners of the plaint should not be transgressed and court must confine itself within that periphery. Firstly, it is averred in the plaint that the original tenant expired sometimes in the year 2015; the statutory period under Section 2(g) of the West Bengal Premises Tenancy Act, 1997, therefore, expired in the year 2020. *Prima facie*, it appears that the Defendants are not tenants. Actual date of death is a question of fact to be established on evidence and not pleaded in the plaint. Once the same is established on evidence, question of applicability of the West Bengal

Premises Tenancy Act, 1997 could be considered. The question as to whether the dispute involves a commercial dispute or not, should be considered along with the question whether the suit should come within the ambit of the West Bengal Premises Tenancy Act, 1997 or not. These two are not disparate questions. Thus, in nutshell, the jurisdictional questions as well as maintainability of the suit are mixed question of law and fact which cannot be decided at this stage. However, question will remain open and should be considered as a preliminary issue at the time of trial. Preliminary issue should be framed accordingly.

CS/250/2022
GA/2/2023

CS 250 of 2022 is a similar suit filed against the same Defendant as in CS 249 of 2022 but in respect of go-down situated in the suit premises. GA 2 of 2023 is filed in the suit with similar plea as in the previous one; pleadings are same and the questions involved are also the same. In this application also maintainability and jurisdictional issues are raised. For the reasons discussed above, these issues should be decided as a preliminary issue at the time of trial, since they involve mixed question of law and fact.

GA 2 of 2023 in CS 249 of 2022 and GA 2 of 2023 in CS 250 of 2022 are dismissed and disposed of accordingly.

Fix 11th February, 2026 for hearing of GA 1 of 2023 of both the suits.

(SUGATO MAJUMDAR, J.)