

Form No. J(2)

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Sandip Kumar De

FA No. 204 of 2024

Srikanta Paul
Vs.
Purshottam Lal Sanganerla (HUF)
represented by Karta Purshottam Lal
Sanganeria and others

For the appellant : Mr. Debnath Ghosh, Sr. Adv.,
Mr. Sarosij Dasgupta,
Mr. Barun Kr. Samanta, Advs.

For the respondents: Mr. Rahul Karmakar,
Mr. Sounak Mukherjee,
Mr. Soumojit Saha, Advs.

Heard on : 13.08.2026.

Judgment on : 13.08.2026.

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred by the defendant in a suit for eviction on the ground of operation of Section 2(g) of the West Bengal Premises Tenancy Act, 1997 (in short "the 1997 Act").

2. The brief facts of the case is that the originally the grandfather of the present appellant, one Hemanta, was inducted in the suit premises in the year 1910 as a tenant. Subsequently, on the demise of Hemanta, Tapan, the father of the appellant, inherited such tenancy.
3. On the death of Tapan, the present appellant, as his son, inherited the tenancy in respect of the suit property.
4. It may be noted that the rent receipts in respect of the said tenancy were all along issued in the name of the sole proprietorship of the successive tenants.
5. The present challenge has been preferred primarily on three grounds, as enumerated below:
 - i) The City Civil Court did not have subject matter jurisdiction to entertain or decide the suit;
 - ii) The operation of Section 2(g) of the 1997 Act is not retrospective and, as such, could not affect the accrued tenancy rights in respect of the suit property in favour of the predecessors of the appellant, through whom the appellant claims tenancy, and therefore the tenancy rights of the appellant; and
 - iii) In view of the issuance of rent receipts by the respondents in favour of the appellant even subsequent to the demise of Tapan, the father of the appellant, it ought to have been construed that the appellant has been independently recognized by the landlords/respondents as a tenant in respect of the suit property.
6. We proceed to adjudicate the appeal issue-wise.

Issue no. (i) - Whether the City Civil Court had subject matter/inherent jurisdiction to entertain and decide the suit.

7. Learned senior counsel appearing for the appellant places reliance on Section 12A of the 1997 Act, in terms of which, notwithstanding anything contained in any other law, a suit or proceeding by a landlord against a tenant, in which recovery of possession of any premises to which the 1997 Act applies is claimed, shall lie to the Courts as set out in Schedule IV and no other Court shall be competent to entertain or try such suit or proceeding.
8. Conjointly with Section 12A, learned senior counsel places Schedule IV, which stipulates that where the premises are situated on land wholly within the ordinary original civil jurisdiction of the High Court, in case the value of the suits exceeds ten lakh rupees, the suit would lie, under Clause (a) of Schedule IV, to this Court, whereas in case the value of the suit does not exceed ten lakh rupees but exceeds sixty thousand rupees, the City Civil Court established under Section 3 of the City Civil Courts Act, 1953 would have jurisdiction, under Clause (b).
9. On the other hand, any other suits, covered by Clause (c) of Schedule IV, would lie to the Chief Judge of the Court of Small Causes constituted under the Presidency Small Causes Courts Act, 1882 in the town of Calcutta.

10. Learned senior counsel argues that since the present suit has been filed under the 1997 Act, Section 12A, read with Schedule IV, would mandate that the same was filed before the Court of the Small Causes, the valuation of the suit being admittedly much below the designated lower limit of valuation for the suit to lie before the City Civil Court.
11. Learned senior counsel also places reliance on the valuation statement as given in the plaint itself, which indicates that the suit was valued at Rs.4391 (being 12 months last paid rent), and Rs. 100/- tentatively for recovery of damages and Rs. 100/- for permanent injunction.
12. Learned senior counsel next cites Section 19 of the Presidency Small Causes Courts Act, 1882, Clauses (d) and (i) of which respectively exclude the jurisdiction of the Small Causes Court in suits for recovery of immovable property and suits to obtain injunction.
13. However, it is submitted that the said bar is overridden by the statutory mandate as contemplated in Section 12A of the 1997 Act.
14. Learned senior counsel also places reliance on the First Schedule of the City Civil Courts Act, 1953, in terms of Item no. 17 of which suits and proceedings triable by the Small Causes Court are excluded under Section 5(4) of the said Act from the jurisdiction of the City Civil Court.
15. It is submitted that a composite reading of the aforesaid provisions would squarely go on to show that it would be the Small Causes Court which had jurisdiction to entertain the suit.
16. Thus, the City Civil Court lacked inherent / subject matter jurisdiction to decide the same.

17. In such context, learned senior counsel cites *Hindustan Zinc Limited (HZL) Vs. Ajmer Vidyut Vitran Nigam Limited*, reported at (2019) 17 *Supreme Court Cases* 82, where it was held by the Hon'ble Supreme Court that it is a fundamental principle well-established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings.
18. Learned senior counsel next argues that as per the frame of the suit, since the same was valued on the basis of twelve months' rent, the plaintiffs/respondents themselves perceived the jural relationship between the parties to be one of landlord and tenant, thus attracting the provisions of Section 12A of the 1997 Act.
19. It is argued by learned senior counsel for the appellant that the appellant could not, in any event, be construed to be a trespasser, even if, by operation of Section 2(g) of the 1997 Act, the tenancy of the appellant was to be taken to have determined.
20. In such circumstances, it is argued, the defendant/appellant would, at the worst, be a tenant at sufferance.
21. For such proposition, learned senior counsel cites a coordinate Bench judgment of this Court in the case of *Nellimaria Jute Mills Company Ltd. Vs. Rampuria Industries & Investments Ltd.*, reported at (2000) 2 *Cal LJ* 70, which was affirmed on merits by the Hon'ble Supreme Court in the judgment of *Nellimaria Jute Mills Company Ltd. Vs. Rampuria*

Industries & Investments Ltd., reported at (2004) 13 Supreme Court Cases 448.

22. Both this Court as well as the Hon'ble Supreme Court, it is pointed out, affirmed the proposition that "trespasser" means a person who has been one from the very beginning and not who had originally title but had lost the same because of efflux of time and/or by operation of law.
23. Seen from such perspective, it is contended that the suit could not be one for eviction of trespasser even if Section 2(g) were to be applicable, and was to be filed before the Presidency Small Causes Court, coming within the purview of Schedule IV(c) read with Section 12A of the 1997 Act.
24. Learned counsel appearing for the plaintiffs/respondents controverts such contention on the ground that Schedule IV of the 1997 Act applies only to a suit for eviction of "tenants" within the contemplation of the 1997 Act.
25. In the present case, since by operation of Section 2(g), the appellant was rendered a trespasser, the suit was one for eviction of trespasser and as such, did not come within the trappings of Schedule IV(c) of the 1997 Act.
26. As, under Section 19 of the Presidency Small Causes Courts Act, 1882, no eviction suit lies before the said court, it is argued that the suit was rightly instituted before and decided by the City Civil Court at Calcutta.
27. While deciding the aforesaid issue, we take note of the status of a person whose tenancy, which otherwise devolved on him on the

demise of his predecessor, the original tenant, within the contemplation of “tenant” as defined under Section 2(g) of the 1997 Act, has ceased with the expiry of the five year moratorium from the demise of the original tenant, as stipulated in the said provision.

28. The status of such a tenant, as held in the *Nellimarla Jute Mills* case, both by the Hon’ble Supreme Court and a coordinate Bench of this Court, could at best be termed as a “tenant at sufferance”.
29. Indeed, a person, under normal circumstances, can be labelled as a “trespasser” only if his entry point in possession was unlawful.
30. Even proceeding on the said premise, however, we do not find any qualitative difference between the status of a ‘tenant at sufferance’ and a ‘trespasser’ insofar as the applicability of Section 12A, read with Schedule IV, of the 1997 Act is concerned.
31. The question which is relevant for such purpose is not whether a person was a ‘trespasser’ or a ‘tenant at sufferance’, but as to whether he/she was a “tenant” as defined in Section 2(g) of the 1997 Act.
32. Hence, the context of the judgment rendered in *Nellimarla Jute Mills* cases is not applicable to the present case.
33. Although the instant suit was valued on the premise of twelve months’ rent, as is the case when a suit for eviction of a tenant is filed, the mere valuation of a suit cannot be a valid determinant of the jural relationship between the parties, which is otherwise governed by law.
34. Even as per the frame of the suit, the plaintiffs/respondents have categorically pleaded that by operation of Section 2(g) of the 1997 Act, the status of the appellant was denuded of that of a tenant.

35. Hence, fact remains that as per the frame of the suit, the appellant was no longer a “tenant” within the contemplation of the 1997 Act on the expiry of the moratorium period of five years from the demise of his father, the original tenant.
36. The language of Section 12A is very specific. Irrespective of the *non obstante* clause therein, the said provision stipulates that a suit or proceeding “by a landlord against a tenant”, in which recovery of possession of any premises to which the Act applies is claimed, shall lie to the courts as set out in the Schedule IV thereof.
37. As per the frame of the present suit, the same was not a suit for eviction of a “landlord against a tenant”, whether the defendant fits the category of a trespasser or a tenant at sufferance. Thus, the statutory jurisdiction conferred on the Small Causes Court under Schedule IV (c), read with Section 12A, of the 1997 Act was not attracted at all.
38. Since Section 19 of the Presidency Small Causes Courts Act, 1882 otherwise excludes the jurisdiction of the Small Causes Court from taking up suits for eviction, the instant suit was rightly instituted before the City Civil Court at Calcutta, in view of the territorial jurisdiction coming within that of this Court or the City Civil Court.
39. Thus, this issue is decided in the affirmative. We hold that the City Civil Court had subject matter / inherent jurisdiction to entertain as well as decide the suit.

Issue no. (ii) - Whether the provisions of Section 2(g) of the 1997 Act are applicable to the appellant in view of the appellant claiming tenancy rights through his grandfather, the original tenant, who expired prior to the coming into force of the 1997 Act.

40. Learned senior counsel for the appellant, in the context of such argument, cites *Rajesh Mitra alias Rajesh Kumar Mitra and another Vs. Karnani Properties Ltd.*, reported at (2024) SCC Online SC 2607, and contends that in terms of the said decision, once tenancy right accrued in favour of the original tenant prior to the coming into force of the 1997 Act, the said Act cannot retrospectively take away such rights.
41. Learned counsel for the plaintiffs/respondents opposes such contention on the ground that the facts of the said case were distinguishable from the present.
42. In the said case, it is argued by the respondents, the tenancy devolved on the appellant along with their mother, Usha Mitra, prior to the promulgation of the 1997 Act.
43. Hence, it is argued that in such context, the Hon'ble Supreme Court observed that the operation of Section 2(g) could not apply retrospectively to take away accrued rights of the appellants.
44. Upon a thorough consideration of *Rajesh Mitra* (supra), we find substance in the contention of the respondents.
45. In paragraph no. 4 of the said judgment, it was recorded by the Hon'ble Supreme Court that the premise was originally let out to one Shri S. K.

Mitra. Subsequent to his death in 1970, as per Section 2(h) of the West Bengal Premises Tenancy Act, 1956 (the predecessor-statute of the 1997 Act), the tenancy devolved on his legal heirs, who were ordinarily residing with him. Thereafter, upon quoting Section 2(h), it was found that in other words, in the event of the death of the tenant, the tenancy devolved on the legal heirs of the tenant, “who ordinarily resided with him”.

46. Therefore, it was held, the *tenancy devolved on* S. K. Mitra’s widow and *the appellants*, who were his children aged 2 and 5 years *at the time of his death* (emphasis supplied).
47. In such context, the Hon’ble Supreme Court went on to observe that if Section 2(g) was construed literally, it would lead to an absurdity.
48. It was ultimately laid down in the said judgment that there is no ambiguity in case the original tenant passes away after the commencement of the 1997 Act, as in such a case, it is clear that the specified heirs will get a limited protection of 5 years only.
49. We find such statement being recorded in paragraph no. 12 of *Rajesh Mitra* (supra).
50. However, in the event the tenancy devolved prior to the coming into force of the 1997 Act, it was held by the Hon’ble Supreme Court that such substantive accrued rights could not be retrospectively taken away by the promulgation of the 1997 Act.
51. If the said principle is applied in the context of the present case, we find that although the grandfather of the appellant became a tenant in the year 1910 and the father of the appellant, the next in line of

succession, also inherited such tenancy prior to the enactment of the 1997 Act, the tenancy devolved on the appellant, on his father's death, only in the year 2009, that is, after promulgation of the 1997 Act.

52. If the tenancy of the appellant's father, Tapan, was challenged, the principle laid down in *Rajesh Mitra* would hold good and it could not be said that such right, having accrued prior to the 1997 Act, would also be taken away by Section 2(g) of the said Act.
53. However, it is nobody's case that the present appellant also inherited the tenancy along with his father, Tapan, on the demise of the appellant's grandfather prior to the 1997 Act.
54. The clear case of both sides is that only after the demise of Tapan in the year 2009, the right of the appellant to claim tenancy accrued. Hence, the accrual of rights, so far as the present appellant is concerned, is governed by the rider stipulated in paragraph no. 12 of *Rajesh Mitra* (supra) which we have narrated in paragraph no. 48 above, since the accrual of the appellant's tenancy right occurred only after the enactment of the 1997 Act.
55. Any contrary interpretation of Section 2(g) or the ratio laid down in *Rajesh Mitra* (supra) would render the said provision otiose.
56. Insofar as the appellant is concerned, his father Tapan would be construed to be the original tenant. On the demise of Tapan after the enactment of the 1997 Act, thus, Section 2(g) would squarely be applicable.

57. Accordingly, we hold this issue against the appellant and in favour of the respondents, to the effect that the appellant's tenancy rights on the demise of his father were revoked / annulled after five years from the demise of his father in 2009, by operation of the Section 2(g) of the 1997 Act.

Issue no. (iii) - Whether, by dint of issuance of rent receipts subsequent to the demise of Tapan, the appellant's independent tenancy right was admitted by the respondents.

58. Learned senior counsel appearing for the appellant contends that by virtue of issuance of rent receipts in the name of the sole proprietorship, which was then being run by the present appellant, even after the demise of his father, Tapan, the tenancy rights of the appellant was admitted by the respondents.
59. In reply, learned counsel appearing for the respondents relies on an unreported coordinate Bench judgment of this Court in FA 34 of 2012 (*Bela Rani Goswami since deceased represented by Krishnendu Goswami and Ors. vs. Alok Roy Chowdhury and Ors.*).
60. In the said judgment, it was, *inter alia* held that it is trite law that mere acceptance of rent after the expiry of the period of tenancy, without anything more, does not automatically create a fresh tenancy. It is true that the assent of the lessor may be inferred from the acceptance of rent, it was observed, but what is relevant is, if such acceptance was made with a view to create fresh tenancy.

61. Learned senior counsel for the appellant, while controverting such proposition, submits that in the present case, there was something further than the mere acceptance of rent, being that the rent receipts continued to be issued in the name of the sole proprietorship, which was existent all along, initially in the name of the predecessors of the appellant and then run by the appellant himself.
62. By dint of such common thread, it is submitted that the tenancy rights of the appellant was acknowledged by issuance of several rent receipts.
63. Learned counsel for the respondents further adds that all the rent receipts after the demise of the appellant's father were during the period of moratorium contemplated under Section 2(g), the last of the same being issued in the month of October, 2010, whereafter, from November, 2010, the appellant started depositing rent with the Rent Controller. It is thus contended that during the five year moratorium period after the demise of the appellant's father, even under Section 2(g), the appellant continued to be a tenant, till he ceased to be so after the expiry of five years therefrom.
64. On a careful consideration of the arguments of the parties, this Court comes to the conclusion that as held in *Bela Rani Goswami* (supra), mere acceptance of rent does not tantamount to creation of a new tenancy. To establish novation of tenancy and/or creation of a new tenancy and/or the ingredients of holding over, it had to be established by the appellant by positive assertion and evidence that there was an intention and consent on the part of the plaintiffs/respondents to create

a new tenancy in the name of the appellant. Such creation would be premised on acceptance of the proposition that the earlier tenancy of the appellant had ceased to operate by dint of Section 2(g) and only thereafter, a new tenancy was created.

65. We find utter lack of any evidence to that effect in the present case. Even otherwise, the respondents are justified in contending that all the rent receipts issued after the demise of the appellant's father, the original tenant, *vis-a-vis* the appellant, were issued within the moratorium period contemplated in Section 2(g) of the 1997 Act. Thus, it cannot be said that subsequent issuance of rent receipts *per se* indicated that the appellant's independent tenancy rights were acknowledged by the plaintiffs/respondents.

Conclusion

66. In view of the aforesaid findings, we are of the view that no arguable case has been made out by the appellant in the present appeal. The grant of eviction by the impugned judgment and decree, on the premise of operation of Section 2(g) of the 1997 Act, was justified and within the purview of law.
67. Accordingly, the appeal fails.
68. Hence, FA 204 of 2024 is dismissed on contest, thereby affirming the impugned judgment and decree dated June 29, 2024 passed by the learned Judge, Sixth Bench, City Civil Court at Calcutta in Title Suit No. 97 of 2016.
69. Interim orders, if any, stand vacated.

70. There will be no order as to costs.
71. A formal decree be drawn up accordingly.
72. The trial court records, if lying in this Court, be sent down immediately.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Sandip Kumar De, J.)