

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

F.A. 97 of 2026
IA No: CAN 1 of 2026

Ashok Jaiswal
Vs.
Amalendu Kumar Nandi

For the appellant : Mr. Anshunath Chakraborty
For the respondent : Mr. Sounak Bhattacharya
Mr. Anirban Saha Ray
Mr. Abhirup Halder
Heard on : 19.08.2026
Judgment on : 19.08.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against a judgment of eviction passed against the appellant on the ground that the appellant was not a tenant in respect of the suit premises within the contemplation of Section 2(g) of the West Bengal Premises Tenancy Act, 1997 (for short, "the 1997 Act").
2. Learned counsel for the appellant argues that the essential ingredients for being excluded from the definition of a 'tenant' under Section 2(g) and its proviso were not pleaded in the plaint.

3. As such, it is contended that in the absence of such pleadings, the learned Trial Judge erred in law in looking into the evidence, since no amount of proof beyond the pleadings can be looked into by the Court.
4. Learned counsel cites *Shri Udhav Singh vs. Madhav Rao Scindia* reported at (1977) 1 SCC 511 in support of the proposition that the “material facts”, as opposed to “material particulars”, which lead to the cause of action for filing a suit, are essentially to be disclosed in a plaint; in default, the plaint is liable to be struck off under Order VI Rule 16 of the Code of Civil Procedure.
5. In the present case, the plaintiff/respondent merely stated in the plaint that on the death of Madhuri, the original tenant (who was the wife of the present appellant), the tenancy was extinguished and that the plaintiff was entitled to eviction against the defendant/appellant within the contemplation of Section 2(g) of the 1997 Act, without disclosing any further particulars.
6. Thus, it is submitted that the principles laid down in *Shri Udhav Singh (supra)* are attracted.
7. Secondly, learned counsel appearing for the appellant contends that the daughter of the original tenant Madhuri, who was admitted to be residing with her mother at the time of the latter’s demise, was not impleaded as a party to the suit, thereby making the suit liable to be dismissed for non-joinder of necessary party.

- 8.** Learned counsel cites *Moreshar Yadaorao Mahajan vs. Vyankatesh Sitaram Bhedi and others* reported at 2022 SCC OnLine SC 1307 in support of the proposition that a necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a necessary party is not impleaded, the suit itself is liable to be dismissed.
- 9.** Thirdly, learned counsel argues that despite the defendant/appellant having furnished his Aadhaar Card and electricity bill to show that the defendant/appellant was in possession of the suit premises at the relevant juncture, the learned Trial Judge came to the perverse finding that the appellant was ordinarily residing elsewhere than the suit premises, that is, at 9, Belilious Road, Howrah.
- 10.** It is argued that the legal effect of the Aadhaar Card and the electricity bill was completely overlooked by the learned Trial Judge.
- 11.** Furthermore, at least one rent receipt for certain months was produced by the defendant/appellant to indicate that the same was issued by the plaintiff/respondent in favour of the appellant as well as the son and daughter of the original tenant, thus admitting that the appellant was a joint tenant in respect of the subject property.
- 12.** The same was disbelieved by the learned Trial Judge merely on the ground that it was manufactured, by placing reliance on

other rent receipts produced by the plaintiff/respondent for a period which coincided with that reflected in the receipt produced by the defendant/appellant.

- 13.** Such finding, it is argued, was also illegal and perverse.
- 14.** Learned counsel places reliance on S. P. Sengupta's Book on West Bengal Premises Tenancy Act, 1997 (Fifth Edition) to argue that as per the author of the said text, the word "ordinarily", used in Clause (g) of Section 2 of the 1997 Act, clearly signifies that permanent living with the tenant up to the date of death of the tenant is not necessary.
- 15.** By placing reliance on the commentary section of the self-same book, learned counsel for the appellant further argues that in order to be a "dependent" within the contemplation of Section 2(g), such term need not be interpreted necessarily in the context of financial dependence.
- 16.** The author of the said text, *inter alia*, opined that the word "dependent" in legal parlance means "deriving existence, support or direction from another..." and that the word "dependence" means "a state of looking to another for support, maintenance, food, clothing, comfort and protection of a home and care", one who gets protection of a home and as such, can also be considered as a dependant of the person who gives him such protection.
- 17.** Thus, dependency is independent of any financial help.

- 18.** Learned counsel argues that, as such, the mere stray admission of the defendant/appellant in his cross-examination to the effect that he has a business need not necessarily imply that he was not dependent on his spouse, the original tenant.
- 19.** Even otherwise, although certain documents might have been produced in evidence which indicate that the appellant also had a residence at 9, Belilious Road, Howrah, that is, elsewhere than the suit premises, it did not necessarily mean that the appellant was not “ordinarily” residing with the original tenant during her lifetime till her demise at the suit premises.
- 20.** It is further argued, also by placing reliance on the book referred to above, that the alternative accommodation contemplated in Section 2(g) of the 1997 Act has to be read on a similar footing as that mentioned in Section 6(1)(d) of the said Act.
- 21.** Seen thus, the said alternative accommodation has to be within an area of 10 kilometers from the suit premises and within an area to which the Act extends.
- 22.** In the absence of any proof in that regard, it is submitted, the accommodation of the appellant at 9, Belilious Road, Howrah, even if true, could not be a determinant of whether the appellant was covered by Section 2(g).
- 23.** Thus, it is contended that the impugned judgment ought to be set aside.
- 24.** Learned counsel appearing for the plaintiff/appellant categorically controverts the arguments of the appellant and

points out that the defendant/appellant clearly admitted in his cross-examination that he does business, which fact was borne out by the affidavit in support of the written statement of the appellant as well.

- 25.** The appellant further admitted in his cross-examination that he cast his last vote from premises no. 9, Belilious Road, Howrah and that except the Aadhaar Card, in all his documents, his address was given at 9, Belilious Road, Howrah.
- 26.** It is further argued by learned counsel for the respondent that the appellant also admitted in his cross-examination that he did not file any document to show that he was residing in the suit premises during the lifetime of Madhuri Jaiswal, his spouse (the original tenant).
- 27.** Moreover, learned counsel argues that the appellant cannot espouse the cause of his daughter, to whom it was open to take recourse to appropriate legal remedy if she was entitled to retain possession within the contemplation of Section 2(g) of the 1997 Act.
- 28.** The daughter, in fact, adduced evidence as one of the plaintiff's witnesses in support of the cause of the appellant but never took the plea that she was independently entitled to protection as a tenant under the 1997 Act.
- 29.** Thus, the argument of non-joinder falls flat, it is submitted.
- 30.** With regard to the documents produced before the trial court, learned counsel points out that from the death certificate

produced by the defendant/appellant himself, it would be evident that appellant's permanent residence was not the suit premises but 9, Belilious Road, Howrah.

- 31.** Insofar as the purported rent receipt produced by the appellant is concerned, it would be clear that the same was written at one go, covering several months, a portion of which was contemporaneous with a period for which counterfoils of rent receipts had also been produced in evidence by the plaintiff/respondent, the veracity of which was never challenged by the appellant.
- 32.** Thus, it is argued that the learned Trial Judge was justified in passing the impugned judgment.
- 33.** Upon hearing learned counsel for the parties, we find substance in the contentions of the respondent.
- 34.** Insofar as the contention of the appellant, that the necessary ingredients of Section 2(g) of the 1997 Act were not pleaded by the plaintiff/respondent in the plaint, there is no statutory requirement to separately plead the ingredients as embodied in Section 2(g). It is sufficient if the rudiments of the foundational facts comprising the cause of action are pleaded, which are subsequently substantiated by evidence during trial. In any event, it is trite law that law need not be pleaded.
- 35.** After both parties led evidence and the suit was decided finally on a full-fledged trial on evidence, the question as to whether

some ingredient of law or the other was not pleaded in the plaint becomes rather academic.

- 36.** In the present case, both parties were confronted with the issues involved in the suit and substantially argued on the same, also leading evidence in support of their respective cases.
- 37.** Having not taken such objection at any point of time, it does not lie in the mouth of the appellant now to raise such issue for the first time before the appellate court.
- 38.** In paragraph no.1 of the plaint, it was categorically pleaded that one Madhuri Jaiswal was a recorded tenant in respect of the suit premises.
- 39.** In paragraph no.2 thereof, it was pleaded that Madhuri Jaiswal died and after her demise, the tenancy held by her has been extinguished under the provisions of Section 2(g) of the 1997 Act.
- 40.** Such pleadings were sufficient for the purpose of leading evidence on whether the ingredients of Section 2(g) were satisfied.
- 41.** It was not the case of the plaintiff/respondent but the positive assertion of the defendant/appellant that the latter ought to have been granted the benefit of Section 2(g), since he was depending on his spouse and he had been living with his spouse, the original tenant, at the time of her demise, at the suit premises and had been ordinarily living at the suit premises with her.

- 42.** It was, thus, to be established by the defendant/appellant, who positively asserted such status, that he fulfilled all the tests of a ‘tenant’ as stipulated under Section 2(g).
- 43.** In the present case, the defendant/appellant himself, in his cross-examination as D.W.1, categorically demolished whatever case he sought to make out in defence.
- 44.** As to the first ingredient under Section 2 (g), that is, dependence on the original tenant, the appellant admitted that it is a fact that he does business. The self-same fact was reiterated on oath in the affidavit filed in support of the written statement of the defendant/appellant in the trial court.
- 45.** Thus, the ingredient of dependence on the spouse was not made out at all.
- 46.** With utmost respect, the authority sought to be derived by the appellant from the text placed before us is misplaced.
- 47.** The said authority has not acquired such an elevated status, with due respect, that the same can be cited as a settled principle of law.
- 48.** We have full regard to the opinions expressed by the author in the said text but nonetheless, those remained only the opinion of the author and did not have the authority of law behind it.
- 49.** We cannot agree with the extreme proposition that the expression “dependent” used in Section 2(g) can be stretched to such a limit that the dependency would traverse beyond the financial element of the same and also extend to a psychological

or an extraneous element, completely divorced from the finances of the dependent.

- 50.** The term “dependent”, as understood in law, has either to be relatable to the categories of dependents as provided in the Succession Acts, for example the Hindu Succession Act, or alternatively, has to have a financial context to it, there being a dependence between the dependent and the person on whom he or she is dependent insofar as financial support is concerned.
- 51.** In the absence of the same, we have to construe the word dependent in Section 2(g) completely in its financial context.
- 52.** From such perspective, in view of the admission of the occupation of the appellant to be business, we are unable to accept that he was financially dependent on the original tenant, his wife.
- 53.** Even dependence of any other sought is not evident, at least from the cross-examination of the appellant, since the appellant categorically admitted that he had cast his last vote from a different premises than the suit premises, where his wife was living during her lifetime, and also that except the appellant’s Aadhar Card, all other documents in the possession of the appellant showed his address to be 9, Belilious Road, Howrah, which was not the suit premises where his spouse resided during her lifetime. Therefore, the appellant miserably failed to establish by cogent evidence that he was even living at the suit premises with his wife during her lifetime.

- 54.** Thus, the other extended elements of dependency, although not relevant, are also not attracted in the present case.
- 55.** With regard to the argument of the appellant as to the expression “ordinarily resided” not necessarily referring to permanent residence, even going by such proposition, the “ordinariness” of the residence has to be seen in the light of some element of permanence insofar as the intention of the concerned person to reside at a particular place is concerned. A stray visit or occasional stay, if it those had been proved, would not amount to the appellant ‘ordinarily residing’ at the suit premises.
- 56.** From such perspective as well, we find that the appellant unequivocally admits in his cross-examination that he cast his last vote from a different premises than the suit premises and all his documents apart from the Aadhaar Card pertain to such other premises.
- 57.** The defendant/appellant also admitted in his evidence that he did not file any document to show that he was residing in the suit premises at all during the lifetime of Madhuri Jaiswal, his wife, who was the original tenant.
- 58.** Thus, such ingredient of Section 2(g) is also not satisfied.
- 59.** The ‘suitability’ of the accommodation as provided in Section 6(1)(d) is completely different and operates in a distinct and different field than that the sense in which it is used in Section 2(g).

- 60.** Whereas Section 6(1)(d) furnishes a ground for eviction in the event the tenant has a suitable accommodation within 10 kms. from the suit premises, such qualification is utterly missing with regard to the alternative accommodation as mentioned in Section 2(g).
- 61.** Since the Legislature, in his wisdom, deliberately dropped the other qualification from the term 'alternative accommodation' in Section 2(g), we cannot, as a Court, read something into the statute who was not intended to be there by the Legislature.
- 62.** In the absence of any ambiguity of language in the proviso to Section 2(g), we have to interpret the alternative accommodation as contemplated in the said proviso in the literal sense of the term and not import the 10 km. radius ingredient into it by drawing an unnecessary analogy with Section 6(1)(d) of the 1997 Act.
- 63.** Hence, the admitted residence of the appellant at 9, Belilious Road at all points of time takes him outside the purview of Section 2(g) on such count as well.
- 64.** The ratio laid down in *Moreskar Yadaorao Mahajan (supra)* regarding non-joinder of necessary party is a well-settled proposition and there cannot be any quarrel with the same.
- 65.** As per the Code of Civil Procedure itself, a person who ought to have been joined as a party and in whose absence no effective decree could be passed, if not impleaded, the suit itself is vitiated.

- 66.** However, the daughter of the original tenant adduced evidence as a witness in the present case and supported of the appellant but at no point of time either sought to implead herself or made any independent claim of coming within the purview of Section 2(g) of the 1997 Act, claiming tenancy through her mother, the original tenant.
- 67.** In order to establish that a person comes within the purview of the said provision, he or she has to assert such right and prove the foundational ingredients to come within the purview of the said definition of a tenant.
- 68.** The daughter of the appellant and the deceased original tenant, despite having full knowledge of the suit, adduced evidence therein but, despite having opportunity to do so, never sought to either implead herself or to assert in any manner her independent right as a tenant under Section 2(g).
- 69.** Thus, we cannot permit the appellant, that too at this belated stage, to espouse the cause of his daughter on a footing which is independent from that of the appellant.
- 70.** Hence, we do not find the daughter of the original tenant to be a necessary party at all on the basis of the pleadings of both the parties as well as the frame of the suit.
- 71.** Insofar as the reliance of the appellant on his Aadhaar Card and electricity bill is concerned, it is well-settled that such documents are not conclusive proof of either citizenship or

residence. At best, those may create a *prima facie* presumption of possession, which is rebuttable in law.

- 72.** The presumption, even if any raised by the Aadhar Card and/or the electricity bill produced by the appellant, was demolished convincingly by his own cross-examination and his admission that all other document showed that he did not live in the suit premises at all.
- 73.** The purported rent receipt produced by the appellant indicated that the same was issued at one go, a single receipt covering different periods, including the months of November and December 2018 and January to September, 2019, without any clear explanation as to such issuance.
- 74.** The learned Trial Judge, on facts, came to a finding that the said document was not credible, particularly in the teeth of rent receipts issued exclusively to the original tenant for the same period having been produced in evidence by the plaintiff/respondent.
- 75.** We do not find any reason to reverse such finding of fact simply because another view is possible.
- 76.** The appellant also seeks to rely on the deposits of rent before the Rent Controller by the appellant. However, such unilateral deposit by the appellant does not create any special right or equity in favour of the appellant.
- 77.** The Rent Controller, within the purview of the 1997 Act, is not authorised in law to decide the tenancy of a person or to issue a

declaration to that effect, which is reserved to the exclusive domain of the Civil Court.

- 78.** Thus, the acceptance of unilateral deposits made by the appellant by the Rent Controller did not create any legal right which did not vest in the appellant in the first place, particularly in the absence of any proof that the plaintiff/respondent ever withdrew such deposits or admitted the appellant's tenancy by any overt act.
- 79.** Even otherwise, we do not find any substance in the contention of the appellant that the absence of pleadings in the plaint as to the ingredients of Section 2(g) vitiates the suit itself, particularly since both parties led evidence substantially on the said issue.
- 80.** The reliance of the appellant on *Udhav Singh (Supra)* is also misplaced, since the said judgment was rendered in the context of an election petition, where the trappings of the Code of Civil Procedure are also applicable.
- 81.** The pleadings referred to in paragraph 44 of the said judgment, were rendered categorically in the context of fraudulent and corrupt practices under the electoral statutes.
- 82.** Since such fraud and corrupt practices required particulars of pleadings akin to Order VI Rule 4 of the Code of Civil Procedure, the Hon'ble Supreme Court discussed the said provision as well, in the context of Order VI Rule 2 of the Code.
- 83.** In such perspective, it was held that it was vital that the corrupt practice charged against the respondent should be a full and

complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondents to meet the case and to defend the charges.

- 84.** In the present civil proceeding, the yardstick of evidence assessment is preponderance of probability, as opposed to charges of a criminal nature.
- 85.** It is trite law that the law is not required to be pleaded in the plaint or the written statement.
- 86.** It would suffice if the necessary factual premise for invoking particular provisions of law is disclosed in the plaint.
- 87.** In the present case, thus, sufficient rudimentary ingredients were disclosed in the plaint and substantiated not only by the evidence of the plaintiff/respondent but convincingly and clinchingly by the evidence and the cross-examination of the defendant/appellant itself.
- 88.** In such view of the matter, we do not find any merits in the appeal.
- 89.** Accordingly, FA 97 of 2026 is dismissed on contest, thereby affirming the impugned judgment and decree dated January 16, 2026 passed by the learned Judge, Tenth Bench, City Civil Court at Calcutta in Title Suit No. 111 of 2022.
- 90.** CAN 1 of 2026 is also disposed of consequentially.
- 91.** There will be no order as to costs.
- 92.** A formal decree be drawn up accordingly.

- 93.** Urgent photostat certified copies of this judgment, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Sandip Kumar De, J.)

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