

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

GA No. 1 of 2024

With

GA No. 2 of 2024

With

GA No. 3 of 2024

With

GA No. 4 of 2024

In

CS No. 185 of 2024

Jatia Estates Limited

Versus

Nirwan Finvest Private Limited

Mr. Tilak Bose, Sr. Adv.

Mr. Arindam Guha

Mr. Shuvasish Sengupta

... For the plaintiff.

Mr. Shyamal Sarkar, Sr. Adv.
Mr. Ram Anand Agarwal
Mr. Rajesh Gupta
Ms. Nibedita Pal
Mr. Ananda Gopal Mukherjee
Ms. Sonam Ray
Mr. Viraj Gupta

... For the defendant.

Hearing Concluded On : 26.02.2025

Judgment on : 06.03.2025

Krishna Rao, J.:

1. The plaintiff has filed an application being G.A. No. 1 of 2024 praying for interim order. The defendant has filed an application being G.A. No. 2 of 2024 for rejection of plaint. The plaintiff has filed an application being G.A. No. 3 of 2024 under Chapter XIII A of the Original Side Rules of this Court for summary judgment. The defendant has filed an application being G.A. No. 4 of 2024 for extension of time to file written statement.
2. Mr. Shyamal Sarkar, Learned Senior Advocate representing the defendant submits that the plaintiff has filed the present suit against the defendant for eviction of the defendant under the provisions of the Transfer of Property Act, 1882 but the fact remains that the rent for the two premises is being Rs. 3000/- and Rs. 3150/- respectively and the defendant is a monthly tenant. He submits that the tenancy is governed under the provisions of the West Bengal Premises Tenancy Act, 1997.

- 3.** Mr. Sarkar submits that in paragraph 2 of the plaint, the plaintiff admitted that the defendant is a monthly tenant with respect to two tenancy governed by agreements dated 2nd June, 1997 and 1st September, 1997. He submits that as per the Agreement dated 1st September, 1997, the rent is Rs. 3,150/- including service charges of Rs. 1000/- per month and the rent was agreed to increase by 5% on expiry of every 10 years. He submits that one Chandmal Properties became sub-tenant of the defendant and the defendant has right to sublet.
- 4.** Mr. Sarkar submits that Agreement dated 2nd June, 1997 provides monthly rent of Rs. 3,000/- per month without any escalation and the defendant has right to sublet. He submits that the plaintiff issued two notices under the West Bengal Premises Tenancy Act, 1997 dated 1st August, 2017 to enhance the rent. He submits that the defendant did not accept the enhancement of rent and requested the plaintiff to hold a meeting to discuss with respect to enhancement of the rent. He submits that plaintiff insisted that the bills already raised amounting to Rs. 7,05,460/- are to be paid first as precondition and only then, any discussion can be held. He submits that the defendant paid the said amount in instalments and requested the plaintiff to sit for a discussion for enhancement of rent.
- 5.** Mr. Sarkar submits that no meeting was held and there was no agreement regarding increase of rent. He submits that the plaintiff did

not want to sit for any discussion. To avoid any penalty or interest from the Income Tax Authorities and as per advised by the accountant of the defendant, the defendant has paid some random amount towards TDS. He submits that the two tenancies at all material times governed by the provisions of the West Bengal Premises Tenancy Act, 1997 but for the alleged non-payment of the purported increased rent, the plaintiff has issued a notice dated 10th July, 2024 under Section 106 of the Transfer of Property Act, but no notice under Section 6(4) of the West Bengal Premises Tenancy Act, 1997 was issued.

6. Mr. Sarkar submits that it is clear from the letter dated 24th July, 2019, the defendant never confirmed its acceptance to enhance rent. He submits that there is no agreement to increase of rent, rent continued to be Rs. 3,150/- and Rs, 3,000/- per month respectively. He submits that payment of TDS does not amount to any acknowledgement as it neither refers to any contract between the parties nor records any transaction between the parties. In support of his submissions, Mr. Sarkar relied upon the Judgment in the case of **S.P. Brothers vs. Biren Ramesh Kadakia** reported in **2008 SCC OnLine Bom 1599**.
7. Mr. Sarkar submits that the monthly rent of the premises are Rs. 3,150/- and Rs. 3,000/- per month respectively thus as per provisions of Section 3(f) of the West Bengal Premises Tenancy Act, 1997 governed under the provisions of the Act of 1997.

8. Mr. Sarkar submits that no “fair rent” is fixed in accordance with Section 17 of the Act of 1997. The increase of rent by six times by the notices both dated 1st August, 2017 was illegal and void and is not binding upon the defendant. He submits that the Act of 1997 has not permitted the landlord to fix rent or mode of increase of fair rent according to its own choice. He submits that in case of change of rate of rent, the parties can mutually agree or in case of difference as statutorily obliged to approach the controller and even Civil Court’s jurisdiction is excluded. In support of his submissions, he has relied upon the Judgment in the case of **Food Corporation of India vs. Anurag Properties Pvt. Ltd.** reported in **2006 SCC OnLine Cal 417**.
9. Mr. Sarkar submits that the leases of immovable property from year to year or for any term exceeding one year or reserving a yearly rent are to be compulsory registered. All other instruments, namely, any instrument for monthly tenancy, are not to be compulsorily registered. He submits that the two agreements are not required to be registered and the tenancy of the defendant is monthly tenancy.
10. *Per contra*, Mr. Tilak Bose, Learned Advocate representing the plaintiff submits that the two agreements are unregistered and insufficiently stamped, thus are not admissible in evidence. In support of his submissions, has relied upon the Judgment in the case of **Santosh Jayaswal and Another vs. State of M.P. & Others** reported in **(1995) 6 SCC 520**. He submits that it is settled law that unregistered

agreement creates only monthly tenancy and terms cannot be considered. Mr. Bose submits that the two monthly tenancies were subsequently clubbed into single monthly tenancy by the acts and conduct of the defendant.

11. Mr. Bose submits that it is settled law that even by consent, an unstamped/ insufficiently stamped documents which are inadmissible in evidence cannot be admitted in evidence. In support of his submissions, Mr. Bose relied upon the Judgment in the case of ***Avinash Kumar Chauhan vs. Vijay Krishna Mishra*** reported in ***(2009) 2 SCC 532***. He further submits that no manner of consent even allows an instrument with insufficient stamp duty to pass unchallenged merely due to technicalities which would result in undermining the legislative intent and fiscal interest of the State. In support of his submissions, he has relied upon the Judgment in the case of ***G.M. Shahul Hameed vs. Jayanthi R. Hegde*** reported in ***(2024) 7 SCC 719***.
12. Mr. Bose submits that for unregistered tenancy agreements, reference may be made to Sections 17 and 49 of the Registration Act, 1908. The terms of unregistered agreement as per proviso to Section 49 of the Registration Act, 1908 cannot be looked into and are not regarded as evidence of collateral transaction. In support of his submissions, he has relied upon the Judgments in the case of ***M/s. Bajaj Auto Limited vs. Behari Lal Kohli*** reported in ***(1989) 4 SCC 39***, ***K.B. Saha and Sons***

Private Limited vs. Development Consultant Limited reported in ***(2008) 8 SCC 564*** and ***Park Street Properties Private Limited vs. Dipak Kumar Singh & Anr.*** reported in ***(2016) 9 SCC 268***.

13. Mr. Bose submits that the defendant has made payments for the period from August, 2017 to March, 2019 in five instalments of an aggregate sum of Rs. 7,05,460/-. In respect of the said payments, TDS returns were also uploaded, wherefrom it appears that the defendant treated consolidated rent of Rs. 35,273/- per month in respect of two tenancies. He further submits that even for the subsequent period, the same amount of the rent has been shown in the TDS statement uploaded by the defendant but the rent has not been paid for which there is separate claim of Rs. 21,38,942/-.

14. The plaintiff is the absolute owner of a land measuring approximately 4 Cottahs 8 Chittacks and 43 Sq. Ft. together with a ground plus three storied building including (mezzanine floor and the roof) erected thereon, being premises No. 21, Rupchand Street, Burrabazar, Kolkata-700 007. The plaintiff and the defendant entered into two unregistered agreements dated 2nd June, 1997 and 1st September, 1997 wherein the plaintiff inducted the defendant as a monthly tenant of the entirety of the building save and except a room measuring 1000 square feet approximately situated on the ground floor of the said premises and located on the Northern side of the building. The Agreement dated 2nd June, 1997 provides monthly rent of Rs. 3,000/- per month without

enhancement and the tenant has right to sublet. The agreement dated 1st September, 1997, the rent is Rs. 3,150/- including service charges of Rs. 1000/- per month and it was agreed that the rent will be increased by 5% on expiry of every 10 years. The terms and conditions of both agreements are more or less same except in the agreement dated 2nd June, 1997, there is no clause for enhancement of monthly rent.

- 15.** As per the case of the plaintiff that the period of tenancy is more than one year and is compulsorily registerable. On the other hand, the case of the defendant is that the two tenancy agreements providing for month to month tenancy were not compulsorily registerable.

Clauses 1, 2, 3, 13 and 14 of the Agreement dated 2nd June, 1997 reads as follows:

“1. The Landlord hereby induct the Tenant as monthly tenant in respect of the entire Second floor, entire third floor and the roof of the said premises No. 21, Rup Chand Roy Street, Calcutta - 700 007 on and from the date of execution of this Agreement for Tenancy. The Tenant shall pay monthly rent of Rs. 3,000/- (Rupees Three thousand only) inclusive of all service charges in respect of the said entire Second floor, entire third floor and the Roof of the premises No. 21, Rup Chand Roy Street, Calcutta 700 007, fully described in Schedule hereunder written.

2. The Tenant shall have the right to sublet the said demised premises or any portion or portions thereof to such person or persons of its own choice and on terms and conditions to be agreed upon by and between the said Sub-tenants and the Tenant only once. The Tenant shall have further right to induct sub-tenant for the second or

subsequent times with prior consent of the Landlord;

3. *The Landlord shall not call upon the Tenant to vacate the said demised premises or any portion thereof on the ground of his own use and occupation and/or for building or rebuilding thereof or under any law, statute, Ordinance presently in force or enacted or passed on any future date by any Government, Semi Government, Body or Court of Law;*

13. *The Tenant shall have right to make additions and alterations to the demised premises without previous permission and interference of the Landlord but on obtaining permission from the Calcutta Municipal Corporation;*

14. *In case the Tenant fails and neglects to pay monthly rent for twelve months or fails and neglects to comply with the terms and conditions of this Agreement for Tenancy, in that case the Landlord shall have right to cancel this Agreement for Tenancy and re-enter into the demised premises.”*

Clause 1 of the Agreement dated 1st September, 1997 reads as follows:

“1. *The Landlord hereby induct the Tenant as monthly tenant in respect of the entire Ground floor, entire 1st floor and mezzanine floor of the said premises No. 21, Rup Chand Roy Street, Calcutta 700 007 on and from the date of execution of this Agreement for Tenancy. The Tenant shall pay monthly rent of Rs. 2,150/- (Rupees Two thousand one hundred and fifty only) and service charge Rs. 1,000 per month in respect of the said entire Ground floor, entire first floor and mezzanine floor of the premises No. 21, Rup Chand Roy Street, Calcutta 700 007, fully described in the Schedule hereunder written. Rent and Service Charge will be increased by 5% on expiry of every 10 years.”*

16. Section 17(1)(d) of the Registration Act, 1908 reads as follows:

“17. Documents of which registration is compulsory.- (1) *The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely,*

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly ren.”

Section 107 of the Transfer of Property Act, 1882 reads as follows:

“107. Leases how made.- *A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.*

[All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

[Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:]

*Provided that the State Government may [***] from time to time, by notification in the Official Gazette direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.]”*

Section 17(1)(d) of the Registration Act, 1908 and Section 107 of the Transfer of Property Act, 1882, provides that “from year to year”, or

“any term exceeding one year”. In the case of **Santosh Jayaswal & Anr. (supra)**, the Hon’ble Supreme Court held that :

“8. Under Section 17 of the Registration Act, read with Section 2(16) of the Indian Stamp Act, ‘lease’ means a lease of immovable property and includes a patta, a kabuliyat or other undertaking in writing, not being a counterpart of a lease to cultivate, occupy, or pay or deliver rent for immovable property etc. Right to catch fish is profit a prendre and benefit to arise out of land is an immovable property for the purpose of stamp duty. It would, therefore, be clear that since it is a right given to the appellants to catch fish in the tank, it is a profit a prendre attached to or benefit to arise out of the land. Therefore, it is an instrument for the purpose of stamp duty. Since the duration of lease in LPA No. 21 of 1994 is only nine months, it is not a compulsorily registrable instrument by operation of Section 17(1)(c) of the Act. The civil appeal arising out of LPA No. 21 of 1994 relating to Santosh Jayswal is, therefore, partly allowed. It is an instrument which requires to bear the appropriate stamp duty but is not a compulsorily registrable instrument. In appeal arising out of LPA No. 22 of 1994 of Surendra Shukla, since the duration of lease is more than a year, it is an instrument and compulsorily registrable by operation of Section 17(1)(c) of the Registration Act and liable to stamp duty under the Indian Stamp Act. Therefore, it cannot be acted upon unless it is duly engrossed with stamp duty and registered.”

In the case of **Satish Kumar vs. Zarif Ahmed and Others** reported in **(1997) 3 SCC 679**, the Hon’ble Supreme Court held that:

“7. The question, therefore, that arises is whether a lease of immovable property from month to month or for 11 months is a compulsorily registerable document, though it was reduced to writing as an instrument defined under Section 2(14) of the Stamp Act. A conjoint reading of the first part of Section 107 read with Section 17(1)(d) of the Registration Act, as extracted hereinbefore, does indicate that a lease of immovable property from year to year, or for any term exceeding one

year or reserving an yearly rent should be made only by a registered instrument and all other instruments, though reduced to writing and possession is delivered thereunder, are not compulsorily registerable instruments.”

In the case of **Siri Chand (dead) Through Legal Representatives vs. Surinder Singh** reported in **(2020) 6 SCC 288**, the Hon'ble Supreme Court held that:

“21. We may notice that in the above case although the annual rent was mentioned but, however, payment of monthly rent was mentioned in the lease deed. The rent note, which we are considering contains only monthly rent and payment month by month. As per law laid down by this Court in Ram Kumar Das there shall be a presumption that the tenancy in the present case is monthly tenancy. When the clauses of rent note are cumulatively read, the intention of the tenant is more than clear that tenancy was only monthly tenancy, which could have been terminated on default of payment of rent by 5th day of any month or by notice of one month. The rent deed did not confer any right to tenant to continue in the tenancy for a period of more than one year nor it can be said that tenancy was created for a period of more than one year. Clause (9), which noticed the promise of the tenant of payment of rent by increasing 10% each year was a promise contingent on tenancy being continued beyond one year but cannot make the tenancy year to year or tenancy for a period of more than one year. Present was a case of tenancy for which no period was specified and looking to all the clauses cumulatively, we find that the rent note was not such kind of rent note, which requires compulsory registration under Section 17(1)(d).”

If one read Clause 3 and Clause 9 of the Agreement dated 1st September, 1997 and Clause 3 and Clause 14 of Agreement dated 2nd June, 1997, it is clear that Clause-3 creates the perpetual tenancy and

Clause 9 of Agreement dated 1st September, 1997 and Clause 14 of agreement dated 2nd June, 1997 provides that *“In case the tenant fails and neglects to pay monthly rent for twelve months”*, so the tenancy is more than one year. In Clause 1 of the Agreement dated 1st September, 1997, it is also mentioned that *“rent and service charge will be increased by 5% on expiry of every 10 years”*.

On plain reading of the said Clauses, it transpires that the agreements do not create any tenancy terminable at Will. In the case of **Siri Chand (supra)** in paragraph 2.1, the Hon'ble Supreme Court noted that *“The shop owner, if is in need of the shop, can serve notice of one month and get the shop vacated from the tenant”* but in the case in hand, the said liberty is not with the owner.

17. Considering the above, this Court rejects the contention of the defendant that the tenancy is month to month and the agreements are not required to be registered.
18. As per agreement dated 2nd June, 1997, the monthly rent is Rs. 3000/- inclusive of all service charges. As per the Agreement dated 1st September, 1997, the monthly rent is Rs. 2,150 and service charge is Rs. 1000/- per month and the rent and service charge will be increased by 5% on expiry of every 10 years. The defendant had been making payment of consolidated monthly rent in respect of the premises till 31st July, 2017. On 1st August, 2017, the plaintiff issued two notices to the defendant demanded for enhanced monthly rent along with service

charges and proportionate share of municipal tax aggregating to Rs.35,273/- (Rs.20,547/- + Rs.14,726/-) in respect of the total occupation of the defendant in the premises.

- 19.** On receipt of the letters dated 1st August, 2017 in between 1st October, 2018 to 28th March, 2019 by way of five cheques, the defendant has paid an amount of Rs. 7,05,460/- towards rent, service charges and municipal tax for a period from 1st August, 2017 to 31st March, 2019 without deducting TDS. Subsequently, the defendant has deposited an amount of Rs. 65,625/- being TDS for the period from 1st August, 2017 to 31st March, 2019 against the total sum of Rs. 70,546/- leaving a deficit of Rs. 4,921/-. The defendant has further deposited TDS for a period from April, 2019 to June, 2020 amounting to Rs. 52,905/-.
- 20.** The defendant relied upon two letters dated 6th April, 2018 and 24th July, 2019. As per the case of the defendant, the defendant has issued the letter dated 6th April, 2018 to the plaintiff regarding meeting for an agreement towards enhancement of rent but the plaintiff has suppressed the said letter and not disclosed in the plaint. It is the further case of the defendant that since the meeting for mutual agreement for enhancement of the monthly rent did not take place between the parties and to avoid any penalty or interest from the Income Tax Authorities and as per advice of the Accountant has paid TDS. As regard to the rent, it is the case of the defendant that the defendant has paid total rent along with service charge to the plaintiff from the month

of August, 2017 to the month of October, 2024 total amounting to Rs. 5,28,900/- as per agreed rent and also paid an amount of Rs. 1,18,530/- towards TDS total amounting to Rs. 8,23,990/-, thus an amount of Rs. 2,95,090/- is refundable by the plaintiff to the defendant.

- 21.** The defendant has relied upon the Judgment in the case of **S.P. Brothers (supra)** wherein the Bombay High Court held that the issuance of TDS certificates does not amount to an acknowledgement of defendant within the meaning of Section 25 of the Indian Evidence Act and the Full Bench Judgment of the Bombay High Court in the case of **Jyotsna (supra)** puts the matter beyond doubt. The TDS certificate is primarily to acknowledge the deduction of tax at source. The certificate does not refer to any amount of loan or even the rate of interest which is payable on the said principal amount. It does not refer to any contract between the parties and even a transaction.
- 22.** In the present case, the defendant has admitted that the defendant has paid an amount of Rs. 7,05,460/- being the total rent and service charge for the period from August, 2017 to October, 2024 and Rs. 1,18,530/- towards TDS aggregating to Rs. 8,23,990/-, thus an amount of Rs. 2,95,090/- is refundable by the plaintiff to the defendant.

In view of the above, the facts of the present case are distinguishable from the facts of the case of **S.P. Brothers (supra)** and thus the said judgment is not applicable in the present case.

- 23.** On relying upon the letter dated 24th July, 2019, the defendant has made out the case that the defendant has not accepted the enhancement of the rent and requested the plaintiff to hold meeting for discussion on account of increase of rent but the plaintiff insisted that the bills were already raised and being precondition the amount is paid in instalments.
- 24.** On 14th May, 2024, the plaintiff has sent a letter to the defendant calling upon the defendant to pay the outstanding rent of Rs. 20,84,108/- within fifteen (15) days from receipt of the notice but the defendant has not paid the said amount and accordingly, the plaintiff has sent a notice under Section 106 of the Transfer of property Act, 1882 on 10th July, 2024 by terminating the tenancy. The defendant in the affidavit-in-opposition denied with regard to the service of the notices dated 14th May, 2024 and 10th July, 2024. The plaintiff has not disclosed with regard to service of letter dated 14th May, 2024. With respect to notice under Section 106 of the Transfer of Property Act, 1882 dated 10th July, 2024, it reveals that the said notice sent to the defendant in two addresses. As per the track report, one notice delivered to “sender” not to “addressee” and another notice delivered to the “addressee”. Thus, it is clear that the notice under Section 106 of the Transfer of Property Act, 1882, is duly served upon the defendant.

Though in the affidavit-in-opposition in GA No. 3 of 2024, the defendant has denied with respect to receipt of the notice but during argument, the defendant has not argued that the notice was not served upon the defendant. The defendant has also not raised such plea in the written notes of argument.

- 25.** The plaintiff has argued that the defendant has neither sent any reply to the notice under Section 106 of the Transfer of Property Act, 1882 nor has vacated the premises now at the later stage the defendant has taken some other plea which is not permissible. The defendant has argued that first available opportunity to raise objection to the notice under Section 106 of the Transfer of Property Act, 1882 is at the time of filing of written statement. In support of his submissions, Mr. Sarkar relied upon the Judgment in the case of **Harjit Singh Uppal vs. Anup Bansal** reported in **(2011) 11 SCC 672** wherein the Hon'ble Supreme Court held that:

“26. In view of the above legal position, we shall now advert to the facts of the present case. The tenant at the first available opportunity i.e. in his written statement filed on 24-4-2009 averred that he has been paying the rent to the landlord by cheques and from 1-4-2007, he has paid rent of Rs 37,00,950 to the landlord. As a matter of fact, the tenant by his counterclaim prayed for refund of the excess payment made to the landlord. Then he filed his affidavit dated 6-6-2009 setting out the details of the payments made towards rent from April 2007.”

- 26.** In the case of **Apollo Zipper India Ltd. vs. W. Newman & Co. Ltd.** reported in **(2018) 6 SCC 744**, the Hon'ble Supreme Court held that :

“51. First, when the appellant sent a quit notice dated 17-5-2012 to the respondent under Section 106 of the TP Act determining the tenancy and calling upon the respondent to pay the arrears of rent and vacate the suit premises, despite receipt of the quit notice, they did not reply to it.

52. In our view, the respondent ought to have replied to the notice at the first available opportunity, which they failed to do so. It amounts to waiver on their part to challenge the invalidity or infirmity of the quit notice including the ownership issue raised therein.

53. In *Parwati Bai v. Radhika*, the question arose as to whether the tenancy was terminated in accordance with the provisions of Section 106 of the TP Act. The defendant despite receiving the notice from the plaintiff did not reply to it.

54. This Court held that if the defendant does not raise any objection to the validity of quit notice at the first available opportunity, the objection will be deemed to have been waived. The following para 6 of the decision is apposite which reads as under :

“6. The singular question to be examined in the present case is whether the tenancy was terminated in accordance with the provisions of Section 106 of the Transfer of Property Act. The receipt of notice by the defendant is admitted in the written statement. The defendant has not raised any specific objection as to the validity of the notice. An objection as to invalidity or infirmity of notice under Section 106 of the TP Act should be raised specifically and at the earliest; else it will be deemed to have been waived even if there exists one. It cannot, therefore, be said that the notice in the present case suffered from any infirmity. A copy of the notice was exhibited and proved by the plaintiff as Ext. P-4.”

27. In the case of **Harjit Sing Uppal (supra)**, the **landlord** challenged before the Hon’ble Court was the order passed by the Rent Controller

and the Rent Controller has not considered the affidavit filed by tenant and thus the Hon'ble Supreme Court held that the tenant at the first available opportunity i.e. in his written statement filed on 24th April, 2009 averred that he has been paying the rent to the landlord by cheques. In the present case, the defendant has received the notice under Section 106 of the Transfer of Property Act, 1882 but has not sent any reply. In the affidavit-in-opposition also he has not thrown any challenge to the said notice but only denied that it was not received but the track report of the Postal Authority established that notice was served upon the defendant.

- 28.** The defendant has raised another objection that Section 2(b) of the West Bengal Premises Tenancy Act, 1997 defines "fair rent" as the rent fixed under Section 17 of the Act of 1997. The defendant says that Section 17 of the Act of 1997 provides that only the Controller can fix "fair rent" in accordance with the said Act. It is further stated that Section 18 of the 1997 Act provides that fair rent fixed shall be automatically increased by 5% every three years. It is the contention of the defendant that increase of rent by six (6) times by the notices dated 1st August, 2017 are bad and illegal and is not binding upon the defendant. It is further contended that Section 13 provides that no tenant shall be liable to pay the landlord any amount in excess of fair rent unless such amount is lawful increase in accordance with the provisions of Section 17 of the Act of 1997. It is also contended that Act of 1997 has not permitted the landlord to fix "fair rent". In support of

his submissions, Mr. Sarkar has relied upon the Judgment in the case of **Food Corporation of India vs. Anurag Properties Pvt. Ltd. and Anr.** reported in **2006 SCC OnLine Cal 417.**

29. Section 2(b), 13, 17 and 18 of the West Bengal Premises Tenancy Act, 1997 reads as follows:

“2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

(b) “fair rent” means the rent fixed under Section 17;

13. Rent in excess of fair rent not chargeable. (1)(a) No tenant shall, notwithstanding any agreement to the contrary, be liable to pay to the landlord for the occupation of any premises any amount in excess of fair rent of the premises, unless such amount is lawful increase of the fair rent in accordance with the provision of this Act.

(b) Subject to the provisions of clause (a), any agreement for payment of rent in excess of fair rent shall be construed as an agreement for the payment of fair rent only.

(2) Fair rent shall be paid within the time fixed by the contract or, in the absence of any such contract, by the fifteenth day of the next month following the month for which it is payable, provided the tenant may pay the rent payable for any month at any time during such month before it falls due.

17. Fixation of fair rent. (1)The Controller shall, on application made to him either by the landlord or by the tenant in the prescribed manner, fix the fair rent in respect of any premises in accordance with the provisions of this Act.

(2) The fair rent for a year in respect of any premises constructed and let out after the year 1984, shall be fixed [on the basis of annual payment of an amount equal to six and three-fourth per cent per annum of the aggregate amount of the

actual cost of construction and the market price of the land on the date of commencement of construction.]

Explanation. - The cost of construction of a premises shall include the cost of water supply and sanitary and electric installation and shall be determined with due regard to the rates adopted for the purpose of estimate by the Public Works Department of the State Government for the area concerned. The Controller may allow or disallow the variation of estimates upto ten per cent, having regard to the nature of the premises:

Provided that while calculating the market value of the site on which the premises was constructed, the Controller shall take into account only the portion of the site on which the premises was constructed and sixty per cent of the portion of the vacant land, if any, appurtenant to such premises, the excess portion of the vacant land being treated as amenity.

(3) Where a tenancy subsists for twenty years or more in respect of the premises constructed in or before the year 1984, the fair rent shall be determined by adding to the rent as on 1.7.1976 not more than three times, and then deducting the increase if any, in the manner provided in Schedule II, or by accepting the existing rent if such rent is more than the increased rent determined according to that Schedule.

(4) Where a tenancy subsists for ten years or more but less than twenty years in respect of the premises constructed in or before the year 1984, the fair rent shall be determined by adding to the rent as on 1.7.1986 not more than two times, and then deducting the increase if any, in the manner provided in Schedule III, or by accepting the existing rent if such rent is more than the increased rent determined according to that Schedule.

(4A) Where a tenancy subsists for twenty years or more in respect of the premises constructed in or before the year 1984 and used for commercial purpose, the fair rent shall be determined by adding the rent as on 1.7.1976 five times or by accepting the existing rent if such rent is more than the increased rent determined under this sub-section.

(4B) Where a tenancy subsists for ten years or more but less than twenty years in respect of the premises constructed in or before the year 1984 and used for commercial purpose, the fair rent shall be determined by adding to the rent as on 1.7.1986 three times or by accepting the existing rent if such rent is more than the increased rent determined under this sub-section.

(5) Where at the commencement of this Act, any proceeding is pending for fixation of the fair rent of such premises under the West Bengal Premises Tenancy Act, 1956, the rent fixed under the said proceeding shall be the fair rent under this Act.

(6) Where none of the foregoing provisions of this section applies to any premises, the fair rent shall be such as would be reasonable, having regard to the situation, locality and condition of the premises and the amenities provided therein and, where there are similar or nearly similar premises in the locality, having regard also to the rent payable in respect of such premises.

18. Revision of fair rent.- *The fair rent initially fixed shall be automatically increased by five per cent every three years:*

Provided that the State Government may issue notification varying such rate of increase every four years from the date of commencement of this Act."

30. In the case of **Food Corporation of India (supra)**, the Hon'ble Division

Bench of this Court held that :

"16. *Question is whether a Writ Court can permit a landlord to enforce a void contract simply because the tenant is a State within the meaning of the Article 12 of the Constitution of India. If by a regular suit, the same cannot be done, by taking recourse to Article 226 of the Constitution of India the same relief cannot be achieved simply because the defendant happened to be a State, for, a Writ Court cannot direct the State to comply with a void agreement.*

18. *As held by a Division Bench of this Court in the case of Ramington Rand v. Rajgheria, reported in 87 CWN 923, the West Bengal Premises Tenancy Act has given exclusive jurisdiction to the Rent Controller in the matter of fixation of fair rent. Even a Civil Court is not competent to decide such question. The Supreme Court has gone to the extent that such a duty to assess fair rent or increase of fair rent vested with a Controller or a Court, as the case may be, under different Rent Control legislations cannot be discharged by those authority simply on the basis of consent of the parties but must be adjudicated by the authority invested with such duty to assess by application of its mind on the basis of materials; otherwise, the decision on the question of assessment of fair rent would be a nullity (See: Prithivi Chand v. Shinde, reported in AIR 1993 SC 1929 and Dev Karan v. Monoharlal, reported in AIR 1994 SC 2747). Moreover, once an application for fixation or fair rent is disposed of by increasing the existing rent, according to the provisions contained in the West Bengal Premises Tenancy Act, such increase will take effect from the month next to the filing of the application for fixation of fair rent and not from a date anterior to it. In this case, the writ petitioner wants increase from 1972 which is not at all permissible under the law when no application has yet been filed before the appropriate forum.*

19. *From our aforesaid discussions, it is clear that the legislature has not permitted either the landlord or the tenant to fix fair rent of a premises or mode of increase of the fair rent according to their own agreement earlier made before commencement of tenancy unless agreed to and at the same time, accepted by both the parties. Even if, there was such agreement prior to commencement of tenancy, the tenant or the landlord is not bound by such agreement and if any of them is not agreeable to enhance the existing rent or wants to fix the fair rent, only remedy available to the aggrieved party is to approach before the Rent Controller. Even according to section 4(3) of the West Bengal Premises Tenancy Act, 1956 any amount in excess of the fair rent is not recoverable by the landlord and such provision has been maintained in section 13 of the new Act of 1997.*

21. *Moreover, even in the matter of creation of tenancy as well as the terms of enhancement of the rent according to the provisions contained in the Transfer of Property Act, the agreement must be a bilateral one and as pointed out earlier, once a tenancy is continuing under the provisions of the West Bengal Premises Tenancy Act, in case of further change of rate of rent the parties are required to approach the Controller and even Civil Court's jurisdiction is excluded. In such a situation, in our view, the learned Single Judge erred in law in directing the Zonal Manager of the appellant to come to a conclusion and to force the appellant to agree to pay rent according to his determination."*

In the said case in a writ proceeding, the Learned Single Judge of this Court directed the Zonal Manager of the Food Corporation of India to reconsider the matter afresh including the claim of the writ petitioner for enhancement of rent from the year 1972. In paragraph 19, the Hon'ble Division Bench of this Court held *that "unless agreed to and the same time, accepted by both the parties"*.

In the present case, it is the admitted case of the defendant that the plaintiff has issued two notices both dated 1st August, 2017 and then defendant has sent a letter to the plaintiff on 6th April, 2018 to meet and discuss the matter and to resettle amicably. The letter dated 24th July, 2019 sent by the defendant to the plaintiff reads as follows:

Date: 24.07.2019

*"To
Shri Sandeep Ji Jatia
Jatia Estates Limited
1, Penn Road
Alipore
Kolkata – 700 027*

Respected Shri Sandeep Ji,

This with reference to your August 2017 rent increment for Premises No. 21, Rup Chand Roy Street, when we requested for a conversation with you for the same. We were informed by your representative that we should make the due payment as per your bills first and the meeting can be held post it. So, we initiated the payment in October 2018, as per the bills provided, fully paid as on the date.

We have been requesting your representative since then to schedule a meeting, but in vain.

Payments of rent have been made upto date as on May, 2019, as per the bills provided to us.

As requested by your representative to pre-inform the purpose of the meeting, I would like to share the same. I look forward to discuss the increment in rent since August 2017 and also voice a few words shared between your father, Shri Birendra Ji and myself.

I would hence request a few minutes of your valuable time.

*Thanking You,
Regards,*

*Nirwan Finvest Pvt. Ltd.
Mahendra Kumar Jain
Mobile: 9830005262.”*

- 31.** As per the said letter, the defendant has agreed to pay the bill raised by the plaintiff for enhanced rent and has paid from 1st October, 2018 till 31st March, 2019 by way of five cheques on different dates total amounting to Rs. 7,05,460/- without raising any objection. The defendant has also admitted that the defendant has paid TDS. When the plaintiff has demanded enhance rent, the defendant has not raised any objection. The defendant stopped payment from the month of April, 2019, the plaintiff has sent notice to the defendant, inspite of receipt of

notice, the defendant has not raised any objection. Only when the plaintiff has filed the present suit and also obtained an interim order, the plaintiff has made out the case that the letter dated 24th July, 2019 is not the acknowledgement and the amount paid by the defendant is the arrears of rent and service charges till October, 2024 and an amount of Rs. 2,95,090/- is recoverable from the plaintiff.

32. This Court finds that the defendant on receipt of the notices both dated 1st August, 2017 and the bills raised by the plaintiff, accepted the enhance rent and paid the same to the plaintiff from the month of October, 2018 till March, 2019 and also paid TDS without any objection, thus the contention raised by the defendant is not sustainable.

33. Chapter XIII A (B), Rules 6, 7 and 9 of the Original Side Rules of this Court reads as follows:

“(B). for the recovery of immovable property with or without a claim for rent or mesne profits by a landlord against a tenant whose term has expired or has been duly determined by notice to quit or has become liable to forfeiture for non-payment of rent or against persons claiming under such tenant.

6. Judgment unless good defence.- Upon such application the Judge may, unless the defendant by affidavit or otherwise as the Judge may direct shall satisfy him he has a good defence to the claim on its merits or disclose such facts as may be deemed sufficient to entitle him to defend, make an order refusing leave to defend and forthwith pronounce judgment, in favour of the plaintiff.

7. Where one defendant has good defence but other not.- *If it appears to the Judge that any defendant has a good defence to or ought to be permitted to defend the claim and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend and the plaintiff shall be entitled to judgment against the latter; and may issue execution upon a decree to be drawn up pursuant to such judgment without prejudice to his right to proceed with his claim against the former.*

9. Leave to defend. – *Leave to defend may be given unconditionally or subject to such terms as to giving security, or time, or mode of trial or otherwise as the Judge may think fit.”*

34. In the case of ***Kiranmayi Dasi vs. J. Chatterjee*** reported in **1945**

SCC OnLine Cal 114, this Court held that :

“From the above authorities the following propositions may be laid down with regard to an application under O. XIV:—

(a) If the defendant satisfied the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence yet shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim, the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend, but in such

the Court may in its discretion impose condition as to the time or mode of trial but not as to payment into Court or furnishing security.

(d) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine, there ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then, although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may allow the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on condition and thereby show mercy to the defendant by enabling him to try to prove a defence.”

- 35.** As per Rule 9 of Chapter XIII A of the Original Side Rules of this Court, leave to defend may be given unconditionally or subject to such terms as to giving security, or time, or mode of trial or otherwise as this Court may think fit.
- 36.** In the case of ***Kiranmayi Dasi (Supra)***, this Court held that if there is no defence or the defence is illusory or sham or practically moonshine then, although ordinarily the plaintiff is entitled to leave to sign Judgment, the Court may allow the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on condition and thereby show mercy to the defendant by enabling him to try to prove a defence.
- 37.** In the present case, the defendant has filed an application under order VII, Rule 11 of the CPC for rejection of plaint on the ground that the

suit filed by the plaintiff is not maintainable before this Court as the tenancy governed under the West Bengal Premises Tenancy Act, 1997 and Section 106 of the Transfer of Property Act, 1882 does not apply. The increased rent paid by the defendant is not an acknowledgment by the defendant. This Court has decided all the issues raised by the defendant against the defendant.

- 38.** The plaintiff has filed an application under Chapter XIII A of the Original Side Rules of this Court on the ground that the defendant is in default in paying rent and has also not vacated the premises on receipt of the notice under Section 106 of the Transfer of Property Act, 1882.
- 39.** Considering the above circumstances, this court finds that the defense raised by the defendant are illusory and sham, thus no leave can be granted to the defendant to defend the suit. In view of the above, the application filed by the defendant under Order VII, Rule 11 of the CPC for rejection of plaint being **G.A. No. 2 of 2024** is **dismissed**. The application filed by the plaintiff under Chapter XIII A of the Original Side Rules of this Court being **G.A. No. 3 of 2024** is **allowed**. The defendant is directed to vacate the premises situated at 21, Rupchand Roy Street, Burrabazar, Kolkata- 700007 being Annexure "A" of the plaint and to hand over the peaceful vacant possession of the premises to the plaintiff. The defendant is also directed to pay Rs. 21,38,942/- being the outstanding consolidated rent from April, 2019 till July, 2024.

- 40.** As regard mesne profit, an enquiry is to be conducted to be conducted. Shri Anuj Singh, (Mobile No. 9830202752), Advocate is appointed as Special Referee to conduct enquiry to ascertain the mesne profit from 1st August, 2024 till the delivery of peaceful possession of the suit premises by the defendant to the plaintiff. The remuneration of the Special Referee is fixed Rs. 3,00,000/-. Initially, the plaintiff shall pay the remuneration to the Special Referee and the plaintiff is at liberty to recover the remuneration of the Special Referee from the defendant.
- 41.** The Special Referee is directed to complete the enquiry within a period of three (3) months from the date of receipt of this order and to submit report on or before 11th June, 2025.
- 42.** As this Court allowed the application filed by the plaintiff under Chapter XIII A of the Original Side Rules of this Court, thus no order is required to be passed in G.A. No. 1 of 2024 and G.A. No.4 of 2024. Accordingly, **G.A. No.1 of 2024** and **G.A. No. 4 of 2024** are thus **dismissed**.

(Krishna Rao, J.)

Later:

After delivery of the judgment, Learned Counsel for the defendant prayed for stay of the operation the judgment. Learned Counsel for the plaintiff raised objection and submits that if the defendant fail to

comply with the judgment, the plaintiff has to file execution petition, thus no order of stay can be passed.

Heard the Learned Counsel for the respective parties, prayer for stay is refused.

(Krishna Rao, J.)