

**(2003) 03 CAL CK 0004**

**Calcutta High Court**

**Case No:** C.O. No. 1961 of 2002

Felu Chandra Das

APPELLANT

Vs

Mahesh Prasad Singh

RESPONDENT

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**Date of Decision:** March 10, 2003

**Acts Referred:**

- Constitution of India, 1950 - Article 227
- Presidency Small Cause Courts Act, 1882 - Section 41

**Citation:** (2004) 4 CHN 248

**Hon'ble Judges:** Pranab Kumar Chattopadhyay, J

**Bench:** Single Bench

**Advocate:** Mrinal Kanti Roy and K.C. Sahoo, for the Appellant; Tapan Kumar Dutt and Anirban Mitra, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Pranab Kumar Chattopadhyay, J.

This writ petition is directed against the judgment and order dated 29.04.2002 passed by the learned Chief Judge, Small Causes Court, Calcutta. From the record, it appears that an application u/s 41 of the Presidency Small Cause Courts Act, was filed by the plaintiff (who is the petitioner herein) for eviction of the defendant M.P. Singh. According to the plaintiff the said M.P. Singh was allowed to occupy the suit premises as a licensee and since the said licence had been revoked, the defendant cannot remain in the suit premises. Accordingly, the plaintiff claims that he is entitled to get relief for recovery of khas possession of the suit premises by evicting the defendant therefrom.

2. The learned Chief Judge ultimately, held that the suit by licensor against a gratuitous licensee is not.....before the Presidency Small Cause Court u/s 41 of the Presidency Small Cause Courts Act and relying on the decision of the Division Bench of the judgment reported in [Ramesh Dwarkadas Mehra Vs. Indravati Dwarkadas](#)

[Mehra](#), observed that the suit should have been filed before the City Civil Court or in the High Court depending on valuation. The learned Chief Judge, therefore, on the ground of maintainability rejected the application of the plaintiff filed u/s 41 of the Presidency Small Cause Courts Act.

3. This Court, however, while deciding the earlier revisional application being C.O. No. 1521 of 2002 specifically held that the aforesaid judgment of the Bombay High Court was concerned in the interpretation of....."licensor" and "licensee" as contained in the Maharashtra Amendment. The said words do not appear in Section 41 as applicable in West Bengal and therefore, in the said judgment it was held that the judgment of the Bombay High Court has no manner of application in the State of West Bengal. This Court categorically held while deciding the said application being C.O. No. 1621 of 2002 that the aforesaid judgment of Bombay High Court is not at all applicable in the State of West Bengal and the learned Chief Judge, Small Causes Court at Calcutta had and still has jurisdiction to entertain the application filed u/s 41 of the Presidency Small Cause Courts Act in respect of the person occupying the premises on the basis of permission.

4. Relying on the aforesaid decision of this Court in C.O. No. 1621 of 2002, I now hold that the learned Chief Judge, Presidency Small Causes Court at Calcutta had erroneously held that the application filed by the plaintiff u/s 41 of the Presidency Small Cause Courts Act is not maintainable before the Presidency Small Causes Court. The finding of the learned Chief Judge on the point of maintainability therefore, stands quashed and the application filed by the plaintiff u/s 41 of the Presidency Small Cause Courts Act should be held as maintainable.

5. The learned Chief Judge, however, decided the said application filed by the petitioner u/s 41 of Presidency Small Cause Courts Act also on merits. Considering the evidence on record learned Chief Judge held that the plaintiff has failed to establish his case regarding induction of the defendant in the suit premises as licensee. The learned Chief Judge also recorded in his aforesaid judgment that from the evidence of the defendant it would appear that the said defendant has been residing in the suit premises alongwith his wife and children for more than 35 years and the learned Chief Judge therefore, disbelieved the claim of the plaintiff regarding grant of licence to the defendant w.e.f. 1st February, 1999 without any consideration.

6. Since the plaintiff and the defendant are not closely related, the learned Chief Judge did not accept the claim of the plaintiff regarding grant of licence to the defendant without any consideration. The learned Chief Judge also referred to the decision of Calcutta High Court reported in 2002(1) CHN in this regard wherein this Hon"ble Court specifically held as hereunder:-

"20 ..... Such a long uninterrupted possession in a distinct portion of the property exclusively for long 15 years without payment of any fee is next to

absurd unless parties are closely related..... .

7. In any event, the learned Chief Judge refused to believe on the basis of the evidence on record that the defendant was a mere licensee in respect of the suit premises without payment of any fee and held that the opportunity should be given to the defendant to prove his induction in the suit premises in a regular suit for eviction under the West Bengal Premises Tenancy Act, 1956.

8. The learned Chief Judge accordingly, came to the specific finding on the merits of the case that the plaintiff has failed to establish his case regarding induction of the defendant as a licensee in the suit premises and refused to grant any relief to the plaintiff for recovery of khas possession of the suit premises by evicting the defendant therefrom.

9. I find no illegality and/or irregularity on the aforesaid finding of the learned Chief Judge on merits of the case and the said decision of the learned Chief Judge on merits, therefore cannot be disturbed and/or upset by this Court in the present revisional application.

10. With the aforesaid observation, this revisional application stands disposed of. There will be no order as to costs.

11. Let xerox certified copy of the order, if applied for, be made available to the parties forthwith on usual undertaking.