Tapas Biswas Vs Shyama Prosad Ghosal
 Kajal Kr. Dutta Vs Arati Roy
 Dr. Md. Fazle Haque Vs Shameem Ahmed
 Triloke Mukhopadhyay Vs Swapan Kumar Paul and Others
 Sandhya Pramanick and Others Vs Durgapada Bhattacharjee

Court: Calcutta High Court

Date of Decision: Nov. 28, 2008

Acts Referred: Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 â€" Section 13(1), 21, 8
Civil Procedure Code, 1908 (CPC) â€" Section 115, 141, 2(2), 8, 96
Constitution of India, 1950 â€" Article 141, 226, 227, 323B, 323B(1)
Criminal Procedure Code, 1973 (CrPC) â€" Section 476
Land Acquisition Act, 1894 â€" Section 30, 49(1)
Presidency Small Cause Courts (West Bengal Amendment) Act, 1999 â€" Section 18(2), 19(1)
Presidency Small Cause Courts Act, 1882 â€" Section 19
West Bengal Land Reforms Act, 1955 â€" Section 8, 8(1), 9, 9(6)
West Bengal Premises Tenancy Act, 1956 â€" Section 13
West Bengal Premises Tenancy Act, 1997 â€" Section 10, 11, 2, 29, 3

Citation: (2008) 4 CALLT 455

Hon'ble Judges: Jyotirmay Bhattacharya, J

Bench: Single Bench

Advocate: Bidyut Banerjee and Shila Sarkar, in C.O. 4311 of 2007, Asish Bagchi, Prabir Kumar Misra and Amitabha Roy, in C.O. 3665 of 2007, Debasish Roy, Pran Gopal Das and Chandrani Dutta, in C.O. 264 of 2008 and Sabyasachi Bhattacharya and Shehnaz Tareq Mina, in C.O. 1264 of 2008, Sudhis Dasgupta, S.P. Roychowdhury, P.B. Sahu, Ashok Banerjee and Biswajit Basu, for the Appellant;Alok Kumar Mitra and S.P. Ghosh, in C.O. 4311 of 2007, Sujoy Mondal in C.O. 3665 of 2007, Zafirul Islam in C.O. 264 of 2008 and Ntiendu Bhattacharya, Sumita Shaw and Santanu Dalui for Opposite Party No. 1 in C.O. 1264 of 2008, for the Respondent

Final Decision: Allowed

Judgement

Jyotirmay Bhattacharya, J.
Since a common question touching the jurisdiction of this Court to entertain an application under Article 227 of

the Constitution of India against an order passed by the Civil Judge in any proceeding arising out of an eviction suit u/s 6 of the West-Bengal

Premises Tenancy Act, 1997, has arisen in most of these revisional applications, this Court has heard all the aforesaid revisional applications

simultaneously, to find out the answer to the aforesaid common question of law. Following incidental question has also cropped up in some of such

revisional applications:

Whether an appeal lies against an order and/or decree for eviction passed by the learned Civil Judge in a suit filed by the landlord for eviction of his

tenant u/s 6 of the said Act and in the event it is found that appeal lies against such order and/or decree, then what will be the forum of such

appeal?

General discussion on the aforesaid common question of law:

2. Confusion has arisen as divergent views have been expressed by two Division Benches of this Hon''ble Court on the common question of law as

indicated above.

3. In fact, the provision relating to pre-emption proceeding under Sections 8 and 9 of the West Bengal Land Reforms Act as well as the provision

relating to suit for eviction as contained in Section 6 of the West Bengal Premises Tenancy Act, 1997 are almost similar to each other so far as the

concept of ""authority"" is concerned with whom jurisdiction was vested for trial of the said suit and/or proceeding under the respective Acts.

4. Under West Bengal Land Reforms Act, the pre-emption proceedings are required to be considered by the Munsif having territorial jurisdiction.

Similarly, the eviction suit under the West Bengal Premises Tenancy Act, 1997 is required to be tried by the Civil Judge having jurisdiction.

5. Since detailed procedures have not been laid down in any of the said Acts for trial of the said eviction suit and/or pre-emption proceeding, very

often confusion arises as to the procedure which is required to be followed by the Civil Judge and/or the Munsif for trial of the eviction suit and/or

the pre-emption proceeding under the respective statutes. Incidentally a question has also cropped up as to whether the Munsif and/or the Civil

Judge while considering the pre-emption proceeding and/or the eviction suit, acts as persona designata or as a Court of special jurisdiction. While

considering a similar question in connection with a pre-emption proceeding under the West Bengal Land Reforms Act it was held by the Special

Bench of this Hon''ble Court in the case of Tarapada Som v. Parvati Charon Sarkar reported in 1983(2) CLJ 44 that the jurisdiction of the Munsif

and that of the District Judge have been fixed by the notification of the State Government u/s 13(1) of the Bengal, Agra and Assam Civil Courts

Act, 1887 and the West Bengal Land Reforms Act has merely conferred special jurisdiction on them to try a pre-emption proceeding and/or

appeal arising therefrom u/s 8(1) and Section 9(6) of the said Act. It was held therein that the Munsif and/or the District Judge, while dealing with

the pre-emption proceeding and/or the appeal arising therefrom functions as Court of special jurisdiction. It was further held therein that since the

procedure for the trial of the said proceeding and/or the appeal arising therefrom has not been provided therein exhaustively, the ordinary rules of

procedure applicable to suits and appeals will be applicable in such proceeding and/or the appeal therefrom.

6. Thus, the confusion which arose earlier in this regard, was set at rest by the said Special Bench decision of our High Court.

7. Subsequently the said confusion again aggravated with greater dimension as both the aforesaid Acts namely West Bengal Land Reforms Act,

1955 and West Bengal Premises Tenancy Act, 1997 have been included as specified Acts u/s 2(r) of the West Bengal Land Reforms and

Tenancy Tribunal Acts, 1997. Now, a question has arisen as to whether the provision of the West Bengal Land Reforms and Tenancy Tribunal

Act, is applicable to any proceeding arising out of an order passed by any Munsif and/or the Civil Judge under those specified Acts?

8. On plain reading of Sections 6, 7, 8, 9, 10 and 11 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, it appears that an order

passed by an authority under the specified Act is only assailable before the Tribunal constituted under the said Act; be it under Article 226 or

under Article 227 of the Constitution of India and no other Court including any Judge of the Hon''ble High Court sitting singly can entertain any

application under Article 226 and/or under Article 227 of the Constitution of India.

9. To justify as to whether such apparent view on such plain reading of the aforesaid provision of the said Act is correct or not, this Court is

required to examine the entire scheme of the said Act along with the provisions of the West Bengal Land Reforms Act and the provisions of the

West Bengal Premises Tenancy Act for ascertaining the real purport of the expression "authority" used in the West Bengal Land Reforms and

Tenancy Tribunal Act, 1997.

10. In this context, this Court will have to find out as to whether the Munsif while trying a pre-emption proceeding u/s 8 of the West Bengal Land

Reforms Act can be regarded as an authority within the meaning of ''authority'' as defined u/s 2(b) of the West Bengal Land Reforms and Tenancy

Tribunal Act, 1997 or not. Similarly an investigation has to be made to find out as to whether the Civil Judge, while considering any suit for eviction

of a tenant u/s 6 of the West Bengal Premises Tenancy Act, 1997 acts as an authority as per Section 2(b) of the West Bengal Land Reforms and

Tenancy Tribunal Act, 1997 or not.

11. The answer to the said questions has a vital effect inasmuch as if it is found that the Munsif while trying a pre-emption proceeding and/or the

Civil Judge while trying an eviction suit under those specified acts, is an authority within the meaning of the ''authority'' as defined in Section 2(b) of

the said Act then no doubt the Tribunal has the exclusive jurisdiction to entertain the applications under Article 226 or under 227 of the

Constitution of India in which any order passed by the Munsif in a pre-emption proceeding or by the Civil Judge in an eviction suit is challenged.

Fact remains that two learned single Judges of this Court, differed in their opinion on the aforesaid issue.

12. To resolve the differences of opinion between two learned single Judges of this Hon''ble Court as to whether the Munsif and/or the District

Judge who decide the matter of pre-emption under Sections 8 and 9 of the West Bengal Land Reforms Act, 1955 is the authority under the West

Bengal Land Reforms and Tenancy Tribunal Act, 1997 or not, a reference was made to the Division Bench of this Hon''ble Court in the case of

Pashupati Adhikary v. Pradyut Kumar reported in (2003)4 CHN 347 wherein the Division Bench of this Hon''ble Court, after considering various

provisions of the West Bengal Land Reforms Act and the West Bengal Land Reforms and Tenancy Tribunal Act and also after taking into

consideration the earlier judicial precedents, ultimately held that the judicial officers who are functioning under the Act of 1955 cannot, by any

stretch of imagination, be treated as ''authority'' as neither they are officers of the State nor they are functionaries of the State under the Act of

1955. Their Lordships further held that Judicial officers are class apart as against the employees of the State Government under the Act of 1955

and conferment of additional duty upon the judicial officers to adjudicate the issues of pre-emption will not change the character of judicial officer

to that of an authority or functionary under the Act of 1955. Therefore, it was held that the orders passed by the Munsif or the District Judge

cannot be subject to the orders of the Tribunal and it will be only subject to judicial review by the High Court u/s 115 of the CPC being directly

subordinate to the High Court. It was further held therein that both the authorities i.e. Munsif as well as District Judge are not the Revenue

Authority while deciding the question of pre-emption u/s 9 of the Act of 1955 and those authorities are Judicial Authorities appointed under

Bengal, Agra and Assam Civil Courts'' Act, 1887 and they are exercising their power as Judicial Authority and not as Revenue Authority.

13. A contrary view was taken by the other Division Bench of this Hon''ble Court in the case of Dipak Kumar Singh Vs. State of West Bengal and

Others, . By taking into consideration the decision of the Hon''ble Supreme Court in the case of State of West Bengal Vs. Ashish Kumar Roy and

Others, , their Lordships held that the judgment rendered in the case of Pashupati Adhikary v. Pradyut Kumar (supra) is no longer a good law in

view of the aforementioned subsequent pronouncement of the Hon''ble Supreme Court. The Division Bench of this Hon''ble Court, however,

without deciding as to whether any appeal lies against any decree passed in any eviction suit or not, ultimately held that even if appeal does not lie

but then remedy of the litigants against the decision of the Civil Judge under this Act obviously lies under the constitutional provision namely Article

226 and Article 227 which is an inviolable provision of the Constitution as the same is basic structure thereof. Their Lordships further held that the

Tribunal is conferred with the jurisdiction to decide the Constitutional rights and remedies as the said forum is supplementary to the High Court as

observed in L. Chandra Kumar Vs. Union of India and others, . Hence, it was held that the Tribunal is competent to entertain any petition in which

any order passed by the Civil Judge under the said Act is challenged.

14. In view of such divergent views expressed by two different Division Benches of this Hon''ble Court, this Court is now in a dilemma as to which

one is to be followed. Considering the seriousness of the question involved in all these revisional applications this Court invited all the learned

Advocates of this Court to address this Court on the point as to which one out of the said two decisions is sound in point of law so that this Court

can proceed to decide these revisional applications by accepting the decision which is better in point of law.

15. Accordingly, I have heard Mr. Dasgupta, learned senior counsel, Mr. Roy Chowdhury, learned senior counsel, Mr. Bidyut Kr. Banerjee,

learned senior counsel and many other learned advocates of this Hon''ble Court.

16. In fact, most of the learned Counsel in their uniform voice submitted that the principle which was laid down in Pashupatt Adhikary''s case still

holds the field as the same has not yet been set aside by the Hon''ble Supreme Court. This Court is informed that the SLP challenging the said

judgment passed in Pashupati Adhikary''s case is still awaiting consideration before the Hon''ble Supreme Court.

17. It was also submitted uniformly that the findings of the subsequent Division Bench to the effect that the principle laid down in Pashupati

Adhikary''s case is no longer a good law in view of the decision of the Hon''ble Supreme Court in the case of State of West Bengal v. Asish Kr.

Roy, is not correct.

18. Mr. Roy Chowdhury pointed out by reading in between the lines of the said decision of the Hon''ble Supreme Court in the case of` Ashish Kr.

Roy that the dispute as to whether the Munsif and/or the District Judge while discharging their function under the West Bengal Land Reforms Act

in a pre-emption proceeding, acts as an authority within the meaning of the ''authority'' as defined u/s 2(b) of the West Bengal Land Reforms and

Tenancy Tribunal Act or not, was not under consideration before the Hon''ble Supreme Court in the said decision. In the said decision the Hon''ble

Supreme Court considered the vires of certain provisions of the West Bengal Land Reforms and Tenancy Tribunal Act including the question as to

whether the decision of the Hon''ble Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, declared any law within the

meaning of declaration of law under Article 141 of the Constitution of India or not, besides the question as to whether the Tribunal constituted

under the said Act can be regarded as a Tribunal under Article 323B of the Constitution of India or not.

19. To show, what was actually under consideration before the Hon''ble Supreme Court in Ashish Kr. Roy''s case, Mr. Roy Chowdhury pointed

out from the said decision that three points were under consideration before the learned Single Judge of this Hon''ble Court in Asish Kr. Roy''s

case. Those points are as follows:

1. The Tribunal constituted under the said Act is not a Tribunal within the meaning of Article 323B(1)(d) of the Constitution of India as it lacks the

necessary attributes prescribed by the said Article.

2. The jurisdiction, power and authority of the Tribunal specified in Sections 5, 6, 7 and 8 of the said Act are ultra vires the Constitution of India as

the said provisions abridge and take away the power of judicial review of the High Court under Article 226 and 227 of the Constitution of India as

a Court of first instance.

3. The provision of the said Act, by which all pending matters, proceedings, cases and appeals before the High Court stood transferred to Tribunal

u/s 9, is also ultra vires the Constitution as it abridges and takes away the jurisdiction and powers of the High Court under Articles 226 and 227 of

the Constitution of India and consequently violates the basic structure of the Constitution.

20. Mr. Roy Chowdhury further pointed out that the Hon''ble Supreme Court observed in its judgment that the following decisions were taken by

the learned single Judge of this Court in Asish Kr. Roy''s case:

(i) The learned single Judge of our High Court negatived the first contention and held that the said Act was enacted for resolution of disputes

relating to and arising out of certain Acts specified therein for which purpose the Tribunal could be validly constituted under Article 323B of the

Constitution of India.

(ii) The learned single Judge also held that constitution of the Tribunal under the said Act in relation to the specified enactment was not ultra vires

Article 323B(2)(d) of the Constitution.

(ill) The learned single Judge, however, accepted the second and third contentions by taking the view that the observation made by the Constitution

Bench of the Hon''ble Supreme Court in L Chandra Kumar v. Union of India did not amount to law declared within the meaning of Article 141 of

the Constitution of India and, therefore, was not binding on the High Court. Having examined the provisions of the said Act independently, His

Lordship ultimately concluded that the impugned provisions of the said Act were violative of the Constitution including the basic structure thereof

and, thus, the said provisions namely sections 5, 6, 7 and 8 were struck down.

21. The propriety of the said order of the learned single Judge of this Hon''ble Court passed in the case of Asish Kr. Roy was considered by the

Hon''ble Supreme Court in appeal and the decision which was passed in the said SLP was reported in State of West Bengal Vs. Ashish Kumar

Roy and Others, . The Hon''ble Supreme Court ultimately held in the said appeal the learned single Judge of this Hon''ble Court was Justified in

rejecting the contention that the Tribunal constituted under the impugned act was not a Tribunal within the meaning of Article 323B of the

Constitution. Thus, the decision of the learned Single Judge of this Hon''ble Court with regard to the first contention was affirmed by the Hon''ble

Supreme Court in the said decision. But the view which was taken by the learned single Judge of this Hon''ble Court with regard to the second and

third contention as recorded above was not upheld by the Hon''ble Supreme Court in the said decision. The Hon''ble Supreme Court, thus,

declared that the impugned provisions of the said Act are intra vires.

22. Mr. Roy Chowdhury, thus, submitted that in the case of Asish Kr. Roy, the Hon''ble Supreme Court had no occasion to consider the question

as to whether the Judicial Officers of the existing Civil Courts with whom certain additional duties to consider the pre-emption case and/or the

eviction suit under those specified Act was vested, can be regarded as an authority within the meaning of ''the authority'' as defined in Section 2(b)

of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 or not. As such, according to Mr. Roy Chowdhury the subsequent Division

Bench was not probably correct in holding that the ratio which was laid down by the earlier Division Bench in Pashupati Adhikary''s case no longer

holds good in view of the decision of the Hon''ble Supreme Court in the case of State of West Bengal v. Asish Kr. Roy (supra).

23. Mr. Roy Chowdhury further submitted that the subsequent Division Bench of this Hon''ble Court while deciding the case of Dipak Kr. Singh v.

The State of West Bengal held that the term authority mentioned in Section 6 Clause (a) includes not only judicial authority but also the quasi

judicial one including the controller without taking into consideration the ratio decided by the Division Bench of this Hon''ble Court in the case of

Pashupati Adhikary as well as the earlier judicial precedents in this regard.

24. According to Mr. Roy Chowdhury an authority and/or functionary under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997

means those authorities and/or functionaries who were not only authorized to discharge their function under the specified Acts but also were

appointed under the said Act. Mr. Roy Chowdhury submitted that when the specified Act vests jurisdiction to decide the pre-emption case and/or

the eviction suit upon the judicial officers having their authority emanating from the Bengal, Agra & Assam Civil Courts'' Act, such judicial officers

do not function as persona designata but they function as a Civil Court constituted under the Bengal, Agra and Assam Civil Courts'' Act, 1887.

Mr. Roy Chowdhury further submitted that when the procedure for trial of such proceeding and/or suit was not mentioned in the respective

specified Acts, the trial of the said proceeding and/or the suit will be conducted by the procedure and/or rules established under the Civil

Procedure Code. Mr. Roy Chowdhury pointed out from Section 6 and Section 7 of the West Bengal Premises Tenancy Act, 1997 that not only

the jurisdiction was conferred upon the existing Civil Courts but also provision was made therein for passing a decree and/or order of eviction in a

suit instituted by the landlord. Thus, according to Mr. Roy Chowdhury, if the said provisions are considered as a whole by keeping in mind the

useful expressions used therein such as ''suit'', ''decree'', ''Civil Judge having jurisdiction'', there would be no hesitation to hold that the legislature in

its wisdom left the adjudication of the suit for eviction and/or the preemption cases to the existing Civil Courts established under the Bengal, Agra

and Assam Civil Courts'' Act and the suit and/or the proceeding therein will be tried by the provisions of the CPC and as such, the interlocutory

orders passed in connection with such suit are assailable either u/s 115 of the CPC or under Article 227 of the Constitution of India before this

Hon''ble High Court and the decree passed in such a suit is assailable in appeal as per Section 96 of the CPC before the Appellate Forum as

prescribed under the Code.

25. Both Mr. Bidyut Kr. Banerjee, learned senior counsel and Mr. Ashok Banerjee, learned senior counsel also made their submission supporting

the view expressed by the Division Bench in the case of Pashupati Adhikary (supra). In fact, the submission which was made by Mr. Roy

Chowdhury was repeated by them and as such, their submissions are not recorded herein separately excepting one part of submission of Mr.

Bidyut Kr. Banerjee wherein he has shown some new light on judicial discipline. Relying upon a Division Bench decision of this Hon''ble Court in

the case of Eastern Coal Fields Ltd. v. Sudama Das reported in 2007(1) CHN 851. Mr. Banerjee submitted that when divergent views have been

expressed by two Division Benches of this Hon''ble Court, this Court, instead of judging the merit of those two decisions for finding out the one

which is much more meritorious between the said two decisions, should refer this matter to the Hon''ble Chief Justice for constituting a Larger

Bench for settling the dispute once for all.

26. After placing various provisions of the West Bengal Premises Tenancy Act, 1997, Mr. Biswajit Basu cited a Privy Council decision and a

decision of our High Court to show that applicability of CPC in the eviction suit as well as in pre-emption proceeding cannot be disputed.

27. The Privy Council in AIR 1948 12 (Privy Council) observed that where a legal right is in dispute and the ordinary Courts of the country are

seized of such disputes, the Courts are governed by the ordinary Rules of procedure applicable thereto and an appeal lies if authorized by such

Rules notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal.

28. Following the said Privy Council''s decision, this Hon''ble Court held in the case of Ganesh Chandra Dutta Vs. Chunilal Mondal and Another,

that even omission of any reference to the Bengal, Agra and Assam Civil Courts'' Act in the schedule to the West Bengal Premises Tenancy Act,

1956 is not material inasmuch as right of appeal is an incident of a decree passed by a Court established by the ordinary law, and as such decree

passed by the City Civil Court in a suit for eviction by following the provisions of CPC is assailable in appeal before the High Court.

29. Thus, according to Mr. Basu, if we follow the said principles then there will be no hesitation to hold that the ultimate decree which will be

passed by the Civil Judge in an eviction suit u/s 6 of the West Bengal Premises Tenancy Act, is appelable u/s 96 of the CPC notwithstanding that

West Bengal Premises Tenancy Act, 1997 does not in term confer a right of appeal upon the aggrieved party.

30. Let me now record the submission of Mr. Dasgupta, learned senior counsel who also made his submission as an amicus curiae in this case. At

the outset Mr. Dasgupta submitted that since the question which is involved in all these group of cases is of great public importance, it will be better

to refer these matters to the Hon''ble Chief Justice for a reference to a larger Bench for deciding the questions which were raised in all these groups

of cases. Mr. Dasgupta also submitted that consideration of these questions by this Court, of course, still remains open as the issue as to whether

an appeal lies against the decree for eviction passed by the Civil Judge in a suit u/s 6 of the West Bengal Premises Tenancy Act, 1997, has not

been resolved by the Division Bench of this Hon''ble Court in the case of Dipak Kr. Singh v. The State of West Bengal. Mr. Dasgupta further

submitted that repeated amendments carried out in the West Bengal Premises Tenancy Act, 1997 in quick succession, created a lot of confusions

with regard to the fate of the pending eviction proceeding and also with regard to selection of forum for challenge of the ultimate decision passed in

such a proceeding during the interregnum period. He further submitted that even confusion has arisen as to whether any appeal at all lies against the

decree for eviction passed by the Civil Judge according to the provision of Section 6 of the said Act, as it stands now.

31. Mr. Dasgupta submitted that the tenancy laws under the rent legislation and the laws of pre-emption under the Land Reforms Act cannot be

regarded as pari materia as the provisions contained in those legislations are not similar in nature. As such, according to Mr. Dasgupta while

considering the above-referred questions the Court should concentrate its consideration to the provisions of the West Bengal Premises Tenancy

Act of 1997 independently irrespective of the provisions contained in the West Bengal Land Reforms Act relating to pre-emption proceeding.

32. Mr. Dasgupta firstly concentrated himself to various provisions of the West Bengal Premises Tenancy Act, 1997 and the amendments made

therein from time to time to show the effect thereof.

33. Mr. Dasgupta pointed out that under the original Act of 1997 only one agency viz. ''Controller'' was created for deciding the disputes of any

description between the landlord and the tenant relating to the particular rent legislation. In the said Act ''Controller'' was defined in Section 2(a).

As per the said provision, ""Controller'' means a Controller appointed under subsection 1 of Section 38 and includes an Additional Controller or

Deputy Controller appointed under sub Section 2 of that Section. Section 38 of the said Act makes it clear that appointment of the Controller,

Additional Controller or Deputy Controller should be made by the State Government by notification. The appointment of such Controller was dealt

with in Sub-section 5 of Section 38 of the said Act which provides that a Controller and Additional Controller or a Deputy Controller appointed

under this section shall be a member of the Indian Administrative Service or executive or judicial branch of the State Civil Services.

34. Mr. Dasgupta, thus, submitted that the said provision made it clear that even a judicial member of the State Civil Services could have been

appointed as a Controller u/s 38 of the said Act. Mr. Dasgupta pointed out that in pursuance of the said provision several Judicial Officers were

appointed as Controller by the State Government to try the proceeding for eviction u/s 6 of the West Bengal Premises Tenancy Act, 1997 but in

2005 when the said Premises Tenancy Act was amended and the expression "Controller'' used in Section 6 of the said Act was substituted by the

expression ""the Civil Judge having jurisdiction"" by the said amendment, the eviction proceeding which was previously tried by the Controller is now

required to be tried by the Civil Judge having jurisdiction. Simultaneously the provision contained in Section 38(5) was amended by omitting the

words "or judicial" therefrom and as a result thereof no Judicial Officer can now be appointed as a Controller. From this juncture two agencies

were created under the said Act for trial of different types of disputes under the said Act. By 2005 amendment, the power of the Controller

provided u/s 39 of the said Act, was altered. Simultaneously powers of Civil Courts were altered by amending Section 44 of the said Act. By

virtue of such alteration, Controller"s jurisdiction to adjudicate certain matters was taken away and the said jurisdiction was exclusively given to the

Civil Judge.

35. Mr. Dasgupta further pointed out that in 2006 another amendment was made in the said Act of 1997 whereby the expression ""except on an

application made to him by the landlord in the prescribed manner"" appearing in Section 6 of the said Act was substituted by the expression ""except

on a suit being instituted by such landlord"".

36. Mr. Dasgupta submitted that Section 6 of the said Act, as it stands now, makes it clear that no order and/or decree for recovery of possession

of any premises shall be made by the Civil Judge having jurisdiction in favour of the landlord against the tenant except on a suit being instituted by

any landlord on one or more of the grounds as mentioned therein. By the amendment of 2005 the expression "Controller" was substituted by the

Civil Judge having jurisdiction. By the amendment of 2006 the words ""except on an application made to him by the landlord in the prescribed

manner"" was substituted by the words ""except on a suit being instituted by such landlord"". According to Mr. Dasgupta, substitution of a provision

results in repeal of the earlier provision and its replacement by the new provision. The said amended, provisions, thus, make it clear that now no

appointment of controller is necessary for trial of such a suit for eviction. The trial of the eviction suit will be made by the Civil Judge having

jurisdiction which necessarily means that the trial of such suits should be made by the existing Civil Court constituted under the Bengal, Agra and

Assam Civil Courts Act. Mr. Dasgupta, thus, submitted that once adjudication of the eviction suit are left to the Civil Court, the proceeding before

the Civil Court will be controlled by the CPC and as such, the decree for eviction which would be passed in such a suit is appelable as per Section

96 of the Civil Procedure Code. Mr. Dasgupta also contended that the Civil Judge cannot be regarded as an authority within the meaning of an

authority as defined u/s 2(b) of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 as the Civil Judges are not appointed by the State

Government under the provision of the specified Act to discharge their functions under the said specified Act. On the contrary certain additional

duties were given to the existing Civil Courts already constituted under Bengal, Agra and Assam Civil Courts Act.

37. According to Mr. Dasgupta these suits will be regulated by the Civil Procedure Code. Mr. Dasgupta submitted that the real problem will be as

to how the right of appeal will be regulated during the interregnum period. Mr. Dasgupta submitted that if any eviction order is passed by the

Controller before the amendment of 2005 came into effect, then such eviction order can be challenged in appeal before the Tribunal as per Section

43 of the said Act. If, however, a proceeding is initiated under the 1997 Act prior to amendment of 2005 but if the proceedings are ultimately

concluded by the Civil Judge after the amendment of 2005 came into operation, then the litigant cannot lose the forum of appeal even though the

present Act as it stands after amendment of 2005, does not provide for any appeal against the order and/or decree of eviction passed by the Civil

Judge.

38. Mr. Dasgupta submitted that the amendment of 2005 cannot be given retrospective effect so as to defeat a right of appeal which was in

existence at the time when the said Act received the assent of the President of India on 28th December, 1998. Mr. Dasgupta further submitted that

the right of appeal is a substantive right of the litigant but the forum of appeal is the procedure over which the litigants have no vested right and as

such, the substantive right cannot be taken away but the forum of appeal can be changed. As such, those who filed eviction suit under the original

provision of 1997 Act cannot lose the right of appeal after 2005 if the suit is ultimately decreed by the Civil Judge. In support of the said

submission, Mr. Dasgupta relied upon a Privy Council decision in the case of The Colonial Sugar Refining Co. Ltd. v. Irving reported in 1905 AC

369. Mr. Dasgupta also referred to another decision of the Hon''ble Supreme Court in the case of Ittavira Mathai Vs. Varkey Varkey and

Another, wherein it was held that no party has a vested right to have his appeal heard by a specified number of Judges. The said decision, thus,

makes it clear that the parties have no say regarding the change of forum but the right of appeal which the party had originally at the time of

initiation of the proceeding for eviction cannot be taken away. As such, it cannot be said that the aggrieved party has no right of appeal against the

decree of eviction passed in the aforesaid situation.

39. According to Mr. Dasgupta since the decree is ultimately passed by the Civil Judge in a suit according to the provision of the Civil Procedure

Code, an appeal against such a decree will lie to the Court which is authorized to hear appeal from the decision of the original Court as per Section

96 of the Code of Civil Procedure.

40. Mr. Dasgupta submitted that the question as to whether the application under Article 227 of the Constitution of India can be entertained by the

High Court or not which is raised in the instant case can be resolved with reference to the case of Young v. Bristol Aeroplane Co. Ltd. reported in

(1944)2 All ELR 293 which was also followed by our High Court in the case of Nishikanta Roy v. Monmohan Sengupta reported in AIR 1973

Cal 525 wherein it was held that the Court of appeal is bound to follow its own decision and that of Courts of co-ordinate jurisdiction and the Full

Court is in the same position in this respect as a decision of the Court consisting of the three members. It was held therein that there are only three

exceptions to the said Rule which are as follows:

1. The Court is entitled and bound to decide which of two conflicting decisions of its own it will follow.

2. The Court is bound to refuse to follow a decision of its own which, though not expressly overruled, cannot in its opinion stands with decision of

the House of Lords.

3. The Court is not bound to follow a decision of its own if it is satisfied that the decision which was given per incuriam i.e. Statute or a Rule having

statutory effect which could have affected the decision was not brought to the attention of the earlier Rule.

41. Mr. Dasgupta, thus, submitted that since none of the exceptions is attracted in the instant case, the judgment which was passed by the Division

Bench in the case of in Pashupati Adhikary"s case so far as concept of authority is concerned, should have been followed by the subsequent

Division Bench.

42. Mr. Sahu, learned Advocate, also supported the views expressed by both Mr. Dasgupta and Mr. Roy Chowdhury. Mr. Sahu submitted that

since the decision in Pashupati Adhikary"s case has not yet been overruled either directly or impliedly by any higher forum, the law laid down in the

said decision still holds the field. Mr. Sahu further submitted that it is rightly pointed out by Mr. Roy Chowdhury that the Hon"ble Supreme Court

had no occasion to consider as to whether the functionary under the West Bengal Land Reforms Act while deciding a pre-emption proceeding can

be regarded as "an authority" within the meaning of the "authority" as per Section 2(b) of the West Bengal Land Reforms and Tenancy Tribunal

Act, 1997 or not. As such, it cannot be held that the decision in Pashupati Adhikary"s case, stood virtually overruled by the decision of the

Hon''ble Supreme Court in Asish Roy''s case. Mr. Sahu, thus, submitted that now two contradictory decisions of two Division Benches of this

Hon''ble Court have been passed but since both the aforesaid decisions are equally binding upon the Bench of a lesser strength of this Court, the

Bench of the lesser strength can consider as to which out of those two judgments is much more reasonable and is better from the point of law and

may accept the said decision which is much more reasonable and better in point of law. To support such submission Mr. Sahu relied upon the

following decisions of different High Courts as well as of the Hon''ble Supreme Court:

1. In the case of Indo Swiss Time Limited Vs. Umrao and Others,

2. In the case of Bholanath Karmakar v. Madan Mohan Karmakar reported in (1987)2 CLJ 332 (Special Bench).

3. In the case of Gujarat Urja Vikash Nigam Ltd. Vs. Essar Power Ltd., .

43. Mr. Sahu also relied upon another decision of the Hon''ble Supreme Court in the case of Transmission Corporation of A.P. Vs. Ch. Prabhakar

and Others, to show that the right of appeal is a substantive right which can be taken away only by subsequent enactment if it so provides

expressly or by necessary intendment and not otherwise. Mr. Sahu, thus, submitted that since the subsequent amendment does not specifically

provide that the litigant will have no right of appeal against the decree for eviction, it cannot be held that the right of appeal of the litigant is lost by

virtue of such amendment of 2005.

44. Mr. Bagchi, learned Advocate, submits that the provision contained in Section 6 of the West Bengal Premises Tenancy Act, 1997 as it now

stands after the amendment of 2006 clearly indicates that decree for eviction can be passed only by Civil Judge having jurisdiction in a Suit

instituted by the landlord. According to Mr. Bagchi since such suits are being tried as per the provision of the Civil Procedure Code, appeal against

the decree of eviction and/or refusal to grant a decree for eviction passed by the Civil Judge, will lie to the Court having jurisdiction to hear such

appeal u/s 96 of the Civil Procedure Code. Mr. Bagchi submitted that a question came up for consideration before the Division Bench of this

Hon''ble Court as to whether a proceeding regarding application u/s 476 of the Criminal Procedure Code before the Civil Court can be regulated

by the CPC or by the Criminal Procedure Code. The said dispute was ultimately resolved by the Division Bench of this Hon''ble Court by holding

inter alia that the proceeding regarding an application u/s 476 of the Criminal Procedure Code before a Civil Court, since its entertainment till its

disposal either by rejection or by filing a complaint, continues to be a civil proceeding and consequently Section 141 of the CPC can legitimately

be made applicable to such an application and an application u/s 476 filed before a Civil Court could be governed by the procedure of that Court

namely the Civil Procedure Code. The said principle which was laid down in the case of Sambhi Nath Sadhukha v. Meghesh Kr. Sadhukha,

reported in 1985 CWN 645, according to Mr. Bagchi, is applicable to the suit for eviction u/s 6 of the said Act, inasmuch as so long as the suit for

eviction is pending before the Civil Judge such suit should be regulated by the Civil Procedure Code, right from its initiation upto its disposal.

45. By relying upon another decision of the Hon''ble Supreme Court in the case of Deep Chand and Others Vs. Land Acquisition Officer and

Others, Mr. Bagchi submitted that where a legal right of a party, to a dispute, has to be adjudicated by Courts of ordinary civil jurisdiction,

ordinary rules of Civil Procedure become applicable and an appeal lies, even if not otherwise provided for by such rules, i.e. to say,

notwithstanding that the legal right claimed, arises under a special statute which does not in terms confer right of appeal, an appeal lies. By referring

to the said decision Mr. Bagchi pointed out that the Hon''ble Supreme Court in the said decision made a distinction between the ultimate decision

passed u/s 30 of the Land Acquisition Act and the decision passed u/s 49(1) of the said Act. The Hon''ble Supreme Court in the said decision held

that the determination u/s 49(1) is not a decree within the meaning of Section 2(2) CPC as no civil right is adjudicated under the said provision but

the decision which is taken u/s 30 of the said Act amounts to a decree as legal right of the parties to a dispute has to be adjudicated by the Court

of ordinary civil jurisdiction under ordinary rules of Civil Procedure and, therefore, appeal lies against the ultimate decision passed u/s 30 of the

said Act as per Section 96 of the Civil Procedure Code.

46. Mr. Bagchi, thus, submits that if the aforesaid principles is applied in the facts of the instant case then there would be no hesitation to hold that

appeal lies against the decree of eviction passed by the Civil Judge u/s 6 of the said Act notwithstanding the said Act does not provide for an

appeal and such appeal will lie to the Civil Court which is competent to hear such appeal as per Section 96 of the Civil Procedure Code.

47. Mr. Mondal, learned Advocate, appearing on behalf of the opposite party in CO. No. 3665 of 2007 supported the later Division Bench

judgment passed in the case of Dipak Kr. Singh v. State of West Bengal. However, since there are some special distinguishable features in CO.

No. 3665 of 2007, this Court wants to deal with the submission of the learned Counsel of the respective parties in the said Revisional Application

separately.

48. Let me now consider the common question of law involved in the aforesaid revisional applications hereunder:

(A) In the aforesaid context, this Court first of all wants to find out the answer as to whether any appeal lies against an order of eviction of a tenant

passed u/s 6 of the West Bengal Premises Tenancy Act, 1997 or not and in the event the answer is in the affirmative, then what will be the forum

for such appeal?

If the provision of Section 6 of the said Act the it stood prior to the amendment of 2005 is considered, then the only authority which was

authorised to pass an order of eviction against a tenant under the said Act, was the controller.

Section 43 of the said Act provides that an appeal shall lie from the final order of the controller to such Tribunal as the State legislature may, by

law, provide:

Provided that until a Tribunal is so provided, an appeal from the final order of the Controller lie to the High Court.

49. Thus, Section 43 of the said Act makes it clear that the order of eviction which was passed by the controller u/s 6 of the said Act prior to its

amendment effected in 2005, is appealable before the Tribunal constituted under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997.

50. Situation became very much complicated when the provision of Section 6 of the said Act was repeatedly amended, i.e. once in 2005 and

thereafter in 2006. By the amendment of 2005 the expression ''Controller'' appearing in Section 6 of the said Act was substituted by the

expression "the Civil Judge having jurisdiction''. Again in 2006 Section 6 of the said Act was further amended and thereby the expression ""except

on an application made to him by the landlord in the prescribed manner"" was substituted by ""except on a suit being instituted by such landlord"".

51. By those two amendments the jurisdiction of the Controller to pass an order of eviction on an application made to him by the landlord in the

prescribed manner was taken away and a different forum was created for trial of the eviction proceeding as indicated above. The provision

contained in Section 6 of the said Act as it stands now makes it clear that the Civil Judge having jurisdiction was vested with the exclusive power to

pass a decree for eviction against a tenant in a suit instituted by the landlord on any of the grounds as mentioned therein.

52. Even though the provisions of Section 6 of the said Act was successively amended once in 2005 and thereafter in 2006, but no corresponding

amendment was made in the provision of Section 43 of the said Act. No other provision was also introduced in the said Act making provision for

an appeal against the decree passed by the Civil Judge having jurisdiction in any forum. As such, the only conclusion, which can be arrived at by

this Court that the decree for eviction passed by the Civil Judge having jurisdiction in a suit for eviction u/s 6 of the said Act is not appealable u/s

43 of the said Act.

53. But, in this context, two questions will crop up immediately. Firstly, where a landlord filed an application for eviction against his tenant before

the controller u/s 6 of the said Act before the amendment of 2005 came into operation but ultimately got a decree for eviction from the Court of

the Civil Judge having jurisdiction after the amendment of 2005 and 2006 came into operation, then will the tenant lose the right to challenge such a

decree before any appellate forum because of the subsequent amendment? The other question which will crop up is that if the landlord gets a

decree for eviction against his tenant by the Civil Judge having jurisdiction in a suit u/s 6 of the said Act after the amendment of 2005 came into

operation, then can the tenant challenge the said decree in appeal before any appellate forum?

54. In fact, if the entire scheme of the West Bengal Premises Tenancy Act, 1956 is considered, then it will be found that even in the said Act no

provision was made for challenging any decree passed in an eviction suit before any forum. As such, confusion was earlier created as to whether a

decree passed in an eviction suit u/s 13 of the said Act is appealable or not. The said dispute was ultimately resolved by a decision of this Hon''ble

Court in the case of Ganesh Chandra Dutta Vs. Chunilal Mondal and Another, wherein it was held that the expression ''decree'' in the West Bengal

Premises Tenancy Act. 1956 has the same meaning as that of the ''decree'' as defined in Section 2(2) of the Code of Civil Procedure. As such, it

was held therein that:

Under Section 96 of the CPC save as otherwise expressly provided in the body of the Code or by any other law for the time being in force an

appeal shall He from every decree passed by any Court exercising original jurisdiction to the Court authorized to here the appeals from the

decision of such Courts. There is nothing in the West Bengal Premises Tenancy Act limiting or affecting such right of appeal against a decree

passed in a suit for recovery of possession.

55. Accordingly, it was held in the said decision that the order of eviction passed by the City Civil Court is appealable before the High Court. A

confusion may again arise as the said decision was given in the context of a decree passed by the City Civil Court inasmuch as Section 8 of the

City Civil Court''s Act itself provides that an appeal shall lie to the High Court from every decree passed by the City Civil Court and sub Section 6

of Section 29 of the West Bengal Premises Tenancy Act provides that the provision of Civil procedure shall apply to all suits and proceedings

referred to in Section 20 except suit and proceeding which lie to High Court. If these two provisions are taken into consideration, then apparently

an impression may grow that only in case of eviction decree passed by the City Civil Court appeal lies to High Court. But the said confusion may

again be removed with reference to the discussion made in paragraph 5 in the said decision of Ganesh Chandra v. Chunilal wherein a Privy Council

decision in AIR 1948 12 (Privy Council) was relied upon to show that where a legal right is in dispute and the ordinary Courts of the country are

seized of such disputes, the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorized by such

rules notwithstanding that the legal right arises under a special statute which does not in terms confer a right of appeal.

56. In fact, the views which were expressed by the Privy Council in the aforesaid case was reiterated in a subsequent decision of the Hon''ble

Supreme Court in the case of Deep Chand and Others Vs. Land Acquisition Officer and Others,

57. The significance of the use of the expressions such as ""Civil Judge having jurisdiction,"" ""suit"", ""decree"" in the amendments of the West Bengal

Premises Tenancy Act, 1997 in 2005 and in 2006, cannot be lost sight of, inasmuch as these expressions were all introduced in the said

amendments without defining those expressions in the Act itself. In the absence of any special meaning given to those expressions by defining them

differently in the Act itself, this Court will have no other alternative but to hold that those expressions convey the same meaning with which we are

ordinarily familiar. When the detailed procedure for conduct of such suits before the Civil Court has not been laid down in the Act itself, this Court

has no hesitation to hold that the ordinary rules of procedure which are applicable to the Civil Suit, are applicable to the suit and/or proceeding u/s

6 of the said Act before the Civil Judge. As sueh, the provision relating to appeal and/or the forum of appeal which is applicable to civil suit before

the Civil Court will apply mutatis mutandis in case of suit for eviction under the said Act.

58. On consideration of the aforesaid facts and circumstances, this Court holds that a decree of eviction passed by the Civil Judge having

jurisdiction, in a suit for eviction filed u/s 6 of the said Act after the amendment of 2005/2006, is appealable u/s 96 of the A CPC and the forum of

appeal will be selected as per Section 21 of the Bengal Agra and Assam Civil Courts Act, 1887.

59. I fully endorse the views of Mr. Dasgupta and Mr. Roy Chowdhury with regard to appealability of the decree passed by the Civil Judge u/s 6

of the West Bengal Premises Tenancy Act, 1997 as recorded above.

(B) Let me now consider the other question as indicated above. If a proceeding for eviction is filed by a landlord before the Controller u/s 6 of the

said Act prior to its amendment in 2005 and if during the continuation of the said suit, the Controller ceases to have jurisdiction to try the said

proceeding because of the amendment of 2005, then can the decree which will be passed in such a suit and/or proceeding by the Civil Judge

having jurisdiction after 2005, be challenged in appeal or not?

60. In my view, this problem has been rightly explained by Mr. Dasgupta by referring to the decision in the case of Colonial Sugar Refining Co.

Ltd. v. Irving reported in 1905 AC 369 and also to the decision of the Hon''ble Supreme Court in the case of Ittavira Mathai Vs. Varkey Varkey

and Another, wherein it was held that no party has a vested right to get its appeal heard by a specified number of Judges as the parties have no say

regarding the change of forum but the right of appeal which the party had originally at the time of initiation of the proceeding for eviction cannot be

taken away.

61. Following the said principles which was laid down in the said decision, this Court holds that since at the time of initiation of the said proceeding

prior to 2005, the parties had a right of appeal u/s 43 of the said Act, the said right of appeal of an aggrieved party against a decree for eviction

cannot be denied. As such, this Court holds that even in the said circumstances the aggrieved party has a right of appeal against any decree passed

in an eviction suit by a Civil Judge having jurisdiction u/s 6 of the said Act after its amendment in 2005.

62. In my view, since the ultimate decree which is passed in such a suit has all the trappings of the decree as defined u/s 2(2) of the Civil Procedure

Code, appeal against such decree will lie u/s 96 of the said Act before the appellate forum as per Section 21 of the Bengal, Agra and Assam Civil

Court''s Act, 1887.

63. The submission which was made by Mr. Dasgupta in this regard is fully accepted by this Court.

(C) Let me now consider the other question being the primary question which is raised in all the aforesaid revisional applications i.e. as to whether

any interlocutory order passed in such an eviction suit is assailable under Articles 226 and 227 of the Constitution of India before this Hon''ble

Court or not.

64. In fact, it is rather a very difficult job for this Court to give any straight cut answer to the said question as two different Division Benches of this

Court differed in their opinion in this regard.

65. Though 1 know my limitations but still then I cannot avoid to consider as to which one out of the aforesaid two decisions of the Division

Benches of this Hon''ble Court is much more reasonable and acceptable as it was laid down by the Special Bench of this Hon''ble Court in the

case of Bholanath Karmakar v. Madan Mohan Karmakar reported in (1987)2 CLJ 332 that where there are contrary decisions of the Hon''ble

Supreme Court rendered by the Benches of equal strength, the High Court in theory, being bound by each one, is, in effect, bound by none and is

not necessarily obliged to follow the latter in point of time, but may follow the one which, according to it is better in point of law.

66. In fact, an identical view was also expressed by the Full Bench of Punjab & Haryana High Court in the case of Indo Swiss Time Limited Vs.

Umrao and Others, .

67. Bearing in mind the principles laid down in the aforesaid two decisions of our High Court as well as the Full Bench of Punjab and Haryana

High Court, this Court will have to find out as to which one out of the aforesaid two conflicting decisions of this Hon''ble Court has laid down a

reasonable and acceptable principle and which is better in point of law.

68. In my view, Mr. Roy Chowdhury in his eloquent argument rightly pointed out that the dispute as to whether the Munsif and/or the District

Judge, while discharging their function under the West Bengal Land Reforms Act in a preemption proceeding, act as an authority or not within the

meaning of the authority as defined in Section 2(b) of the West Bengal Land Reforms and Tenancy Tribunal Act, was not under consideration

before the Hon''ble Supreme Court in the case of State of West Bengal v. Asish Kr. Roy. Mr. Roy Chowdhury very meticulously pointed out the

points of dispute which were really under consideration before the Hon''ble Supreme Court in the case of Asish Kr. Roy. On perusal of the

decision of the Hon''ble Supreme Court in the case of Asish Kr. Roy, this Court has no hesitation to hold that the reading of Mr. Roy Chowdhury,

as recorded in the preceding paragraphs is absolutely correct and this Court fully agrees with Mr. Roy Chowdhury''s reading to the effect that the

concept of authority was neither under consideration before the Hon''ble Supreme Court in Asish Roy''s case nor the Hon''ble Supreme Court

decided anything with regard to the concept of authority in the said decision. In fact, the vires of the West Bengal Land Reforms and Tenancy

Tribunal Act amongst the other two points as recorded hereinabove were under challenge before the Hon''ble Supreme Court and those three

points were answered by the Hon''ble Supreme Court in Asish Kr. Roy''s case.

69. On the contrary, if the decision of the earlier Division Bench of this Court in PashupatiAdhikary''s case is considered minutely, then nobody can

dispute that the concept of authority as per Section 2(b) of the West Bengal Land Reforms and Tenancy Tribunal Act and further as to whether the

Munsifs and the District Judges are the officers of the State and/or functionaries of the State or not, were not only directly involved in Pashupati

Adhikary"s case but also were answered by the Hon"ble Division Bench of this Court in the said case with a definite conclusion that the Judicial

Officers while considering the preemption proceeding and/or the appeals arising therefrom are class apart as against the employees of the State

Government under Act of 1955 and conferment of additional duty upon the Judicial Officers to adjudicate the issues of preemption will not change

the character of Judicial Officers to that an authority or functionary under the Act of 1955. Their Lordships, thus, ultimately concluded in Pashupati

Adhikary"s case that the order passed by the Munsif or the District Judge cannot be subject to the orders of the Tribunal and it will be only subject

to judicial review by the High Court u/s 115 of the CPC being directly subordinate to high Court. It was further held therein that both the

authorities i.e. the Munsif as well as the District Judge are not the revenue authority while deciding the question of preemption and those authorities

are judicial authorities appointed under the Bengal, Agra and Assam Civil Court"s Act, 1887 and they are exercising their power as judicial

authority and not as a revenue authority.

70. Thus, if those two decisions i.e. the decision of Pashupati Adhikary"s case and Dipak Kr. Singh"s case are considered minutely, then this

Court has no hesitation to hold that with regard to the concept of authority, the Division Bench decision passed in Pashupati Adhikary"s case still

holds good and is operative in the field and it cannot be held that the views expressed in Pashupati Adhikary"s case has been virtually overruled by

the Hon"ble Supreme Court in the case of State of West Bengal v. Asish Kr. Roy for the reasons as indicated above.

71. In my view, if the successive amendments of various provisions of the West Bengal Premises Tenancy Act, 1997 namely Section 6, Section 7.

Section 38 of the said Act are considered minutely, then the only conclusion which can be arrived at is that after amendment of 2005 and 2006

two distinctly different forums were created for adjudication of distinctly different types of disputes between the landlord and the tenant. Though a

uniform forum was initially created for adjudication of any dispute between the landlord and the tenant but subsequently after 2005, eviction

proceeding was taken out of the domain of the Controller and was given to the exclusive jurisdiction of the Civil Court for resolution of disputes.

When Civil Courts were given exclusive jurisdiction to try a suit for eviction filed by the landlord against his tenant and when the Civil Court was

authorized to pass a decree for eviction after adjudication of the civil rights of a party in such a suit, it cannot be held that the Civil Courts are

authority within the meaning of the authority u/s 2(b) of the West Bengal Land Reforms and Tenancy Tribunal Act inasmuch as, such Civil Courts

are not created and/or appointed under the said Act but such authority was vested upon the existing Civil Courts constituted under the Bengal,

Agra and Assam Civil Courts Act.

72. The submission made by Mr. Dasgupta, Mr. Roy Chowdhury, Mr. Sahu, Mr. Bagchi and Mr. Basu as recorded above as to the applicability

of CPC in conduct of trial of the eviction suit and/or pre emption proceeding before the Civil Judge and/or before the Munsif, having territorial

jurisdiction, as the case may be, is accepted by this Court without any hesitation. In my considered view the principle which was laid down in

Pashupati Adhikary''s case, still holds the field and the decision of Pashupati Adhikary''s case cannot be held to be overruled by the decision of the

Hon''ble Supreme Court in the case of State of West Bengal v. Ashish Kumar Roy (supra) as it is rightly pointed out by Mr. Roy Chowdhury that

the concept of ""authority"" within the meaning of ""Authority"" as contemplated u/s 2(b) of the West Bengal Land Reforms and Tenancy Tribunal Act,

was neither a point of consideration before the Hon''ble Supreme Court, nor the said point was decided therein.

73. Thus, this Court holds that the orders passed by the Civil Judge having jurisdiction in connection with any interlocutory proceeding including a

proceeding u/s 7 of the West Bengal Premises Tenancy Act, 1997, are the orders passed by the Civil Judge and, as such, is revisable either u/s

115 of the CPC or under Article 227 of the Constitution of India before the single Judge of the High Court as per the provision of the Appellate

Side Rules. Since such an order passed by the Civil Judge cannot be regarded as an order passed by an authority under the West Bengal Land

Reforms and Tenancy Tribunal Act, such order cannot be challenged either under Articles 226 or under Article 227 before the Tribunal constituted

under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997.

74. Thus, the maintainability point which was raised in the aforesaid Revisional Applications is decided accordingly.

(D) Let me now consider the merit of C.O. No. 4311 of 2007. This revisional application is directed against an order being No. 4 dated 1st

December, 2007 passed by the learned Additional District Judge at Barrackpore in Title Appeal No. 29 of 2007 at the instance of the

defendant/appellant/petitioner.

75. The plaintiff/opposite party filed an application u/s 6 of the West Bengal Land Reforms Act, 1997 praying for eviction of the petitioner herein

from the suit premises on various grounds u/s 6 of the said Act. The said application was filed on 8th September. 2004 before the Court of the

learned Civil Judge (Junior Division), 3rd Court at Sealdah. At the relevant time of filing of the said application u/s 6 of the said Act, the learned

Civil Judge (Junior Division), 3rd Court at Sealdah was discharging the function of the Controller being appointed by the State as per Section 38 of

the West Bengal Premises Tenancy Act.

76. The said suit was ultimately decreed on contest by the learned Civil Judge (Junior Division), 3rd Court at Sealdah on 29th June, 2007. At the

time of disposal of the said suit the learned Civil Judge (Junior Division), 3rd Court at Sealdah ceased to function as a Controller due to change of

law introduced in Section 6 of the West Bengal Premises Tenancy Act, 1997 by two successive amendments. One of such amendments was made

in 2005 and the subsequent amendment was made in 2006. By virtue of such amendment the said suit was ultimately disposed of by the Civil

Judge having jurisdiction as a Civil Court and not as a Controller appointed under the Act u/s 38 thereof.

77. The defendant/petitioner was aggrieved against such a decree passed in the said suit and, as such, he preferred an appeal challenging the said

decree of the learned Trial Judge before the Court of the learned Additional District Judge at Barrackpore. The said appeal was registered as Title

Appeal No. 29 of 2007.

78. A preliminary objection regarding maintainability of the said appeal was raised by the plaintiff/opposite party herein. The plaintiff/opposite party

alleged that in view of the provision contained in Section 43 of the said act, such an appeal can only be maintained before the Tribunal constituted

under the West Bengal Land Reforms and Tenancy Tribunal Act, 1997.

79. The learned Appeal Court by relying upon a decision of this Hon''ble Court in the case of Ram Sakal Roy v. Sambhu Nath Joyswal reported

in 2007(1) WBLR(Cal) 333 held that this appeal is not maintainable before the said Appellate Court. The learned Appeal Court, thus, held that

such an appeal is maintainable only before the Tribunal. Accordingly, a direction was passed for return of the memorandum of appeal to the

learned Advocate of the appellant for filing the same before the appropriate forum.

80. The propriety of the said order is under challenge in this revisional application.

81. Since the submission of Mr. Bidyut Kr. Banerjee, learned senior counsel of the petitioner, has already been recorded hereinabove, this Court

does not want to record his submission separately herein. In short, it is recorded herein that Mr. Banerjee challenged the propriety of the impugned

order by placing strong reliance on Pasupati Adhikary''s case which, according to Mr. Banerjee, still holds the filed.

82. Mr. S.P. Ghosh, learned Advocate, appearing for the opposite party supported the judgment of the Appeal Court by placing strong reliance

on the decision of Ram Sakal Roy v. Sambhu Nath Joyswal (supra).

83. Mr. Ghosh ultimately submitted by relying upon another decision of this Hon''ble Court in the case of Ramesh Goel Vs. Dwinderpal Singh and

Others, that if this Court differs in opinion from the view taken by the other Bench of similar strength in the case of Ram Sakal Roy v. Sambhu

Nath Jaiswal (supra), then this Court, instead of deciding the issue finally, should refer this matter to the Hon''ble Chief Justice for a reference to a

larger Bench.

84. Mr. Ghosh further submitted that since at the time of institution of the said proceeding before the Trial Judge, a right of appeal was vested in

the parties thereto u/s 43 of the said Act, such right of appeal cannot be taken away by any subsequent amendment. As such, Mr. Ghosh

submitted that even though Section 43 was not amended either in 2005 or in 2006 but, still then, the right of appeal which was available to the

unsuccessful party in the said proceeding at the time of institution thereof, cannot be taken away. Thus, Mr. Ghosh did not, in effect, challenge the

petitioner''s right of appeal against the decree passed in the suit but he contended that the forum of appeal should also be chosen as per the law

relating to such appeal which was prevalent at the time of institution of the original proceeding for eviction. Mr. Ghosh, thus, wanted to suggest that

forum of appeal is also a vested right as that of the right of appeal and none can be taken away without any subsequent enactment.

85. In support of the aforesaid submission Mr. Ghosh also relied upon the following two decisions of the Hon''ble Supreme Court:

1. In the case of Garikapatti Veeraya Vs. N. Subbiah Choudhury, .

2. In the case of Jose Da Costa and Another Vs. Bascora Sadasiva Sinai Narcornim and Others, .

86. Mr. Ghosh, thus, contended that such an appeal can only be entertained by the Tribunal constituted under the West Bengal Land Reforms and

Tenancy Tribunal Act, 1997.

87. Let me now consider the substance of such submission of Mr. Ghosh herein.

88. The first phase of the submission of Mr. Ghosh as recorded hereinabove does not commence to me at all as it is not a case where a different

view is taken by this Court by deviating from the view which had already been taken by another learned Single Judge of this Court in the case of

Ram Sakal Roy v. Sambhu Nath Jaiswal (supra) in a similar set of facts. I have already indicated above that the West Bengal Premises Tenancy

Act, 1997 was amended twice; once in 2005 and subsequently in 2006. The judgment which was passed in the case of Ram Sakal Roy v.

Sambhu Nath Jaiswal (supra), considered the effect of the amendment of 2005. The amendment of 2006 came into the light after delivery of

judgment in the case of Ram Sakal Roy v. Sambhu Nath Jaiswal (supra). As such, at the time of delivering the judgment, the learned single Judge

of this Hon''ble Court had no occasion to consider the effect of the amendment of 2006.

89. Here is the case where this Court is required to take note of both the amendments of 2005 and 2006 as the suit was decreed by the learned

trial Judge in 2007 after the amendment of 2006 came into effect.

90. Thus, since the law has changed after the passing of the judgment in the case of Ram Sakal Roy v. Sambhu Nath Jaiswal (supra), this Court

can assess the merit of the impugned order independently and even if a contrary view is taken by this Court than the view taken in the earlier

decision in the case of Ram Sakal Roy v. Sambhu Nath Jaiswal (supra), as aforesaid, this Court need not refer this matter to the Hon''ble Chief

Justice for a reference to a larger Bench.

91. Accordingly I hold that the principles laid down in the case of Ramesh Goyel v. Dwinderpal Singh and Ors. (supra) has no application in the

facts of the instant case.

92. Let me now consider the other part of the submission of Mr. Ghosh wherein he contended that forum of appeal is also a vested right as that of

the right of appeal. The decisions which were cited by Mr. Ghosh to support his said contention, make it abundantly clear that the right of appeal is

a vested right of the parties and, as such, if right of appeal is granted under the Act and if such right was available to a party on the date of initiation

of the proceeding, such right cannot be taken away unless that right is taken away expressly or by necessary intendment by any subsequent

enactment.

93. In fact, Mr. Dasgupta, Mr. Roy Chowdhury and Mr. Banerjee in their uniform voice submitted in the same tune by borrowing the said

principle of law which was laid down in the aforesaid decisions of the Hon''ble Supreme Court, cited by Mr. Ghosh and they submitted confidently

that the right of appeal is a vested right of the parties which cannot be taken away without subsequent legislation.

94. On careful perusal of those decisions, this Court, however, fails to find out that the Hon''ble Supreme Court decided in those decisions that

even the forum of appeal is also a vested right which cannot be changed. In fact, the decision which were cited by Mr. Dasgupta in the case of the

Colonial Sugar Refining Co. Ltd. v. Irving reported in 1905 AC 369 and also in the case of Ittavira Mathai Vs. Varkey Varkey and Another,

clearly laid down that no party has a vested right to have his appeal heard by a specified forum. Those decisions are the authorities on the issue

wherein it was clearly laid down that though right of appeal cannot be taken away but the forum of appeal can be; changed as no party has any

vested right with regard to the forum of appeal.

95. Thus, taking into consideration the aforesaid decisions, this Court has no hesitation to hold that though the right of appeal cannot be taken

away but the forum of appeal can be changed. As such, this Court cannot support the order impugned in view of the general discussion made

hereinabove as well as the discussion made in Notes ""A"" and ""B"" hereinabove. The impugned order, thus, stands set aside. The learned Appeal

Court is, thus, directed to decide the said appeal on merit.

96. The revisional application, thus, stands allowed.

(E) Re: CO. No. 3665 of 2007

97. Let me now consider the merit of CO. No. 3665 of 2007. The facts leading to the filing of the said revisional application are as follows:

An application praying for an order of eviction was filed by the landlord u/s 6 of the West Bengal Premises Tenancy Act, 1997 before the learned

3rd Bench, Presidency Small Causes Court, Kolkata on 19th September, 2003. The said application was filed before the 3rd Bench, Presidency

Small Causes Court, Kolkata as by virtue of a notification issued u/s 38(2) of the West Bengal Premises Tenancy Act, 1997, published on 1lth

March, 2003, the Presiding Officer of the 3rd Bench, Presidency Small Causes Court, Kolkata was appointed by name as Additional Controller

under sub-section 2 of Section 38 of the said Act in respect of the area under Shampukur Police Station wherein the suit premises is located, for

the purpose of chapter 3 of the said Act.

98. However, during the pendency of the said proceeding Section 6 of the said Act was amended with effect from 19th March, 2005 and by

virtue of such amendment, the jurisdiction of the controller to try such dispute was taken away and such jurisdiction was vested with the Civil Judge

having jurisdiction. Subsequently the said provision was again amended on 20th April, 2006 whereby the expression ""proceeding"" was replaced by

the ""suit"". By virtue of the said amendment Controller ceased to have jurisdiction to try any dispute between the landlord and tenant arising out of a

suit for eviction. As such, the said proceeding and/or the suit was ultimately decided by the 3rd Judge, Presidency Small Causes Court, Kolkata

not by virtue of his additional assignment as that of ant Additional Controller. In fact, a decree of eviction was passed in such a suit by the 3rd

Bench, Presidency Small Causes Court, Kolkata and not by a persona designata on 28th February, 2007.

99. Mr. Bagchi''s client being the judgment debtor challenged the said decree for eviction in appeal before the Chief Judge, City Civil Court at

Calcutta. The said appeal was registered as Title Appeal No. 47 of 2007.

100. In the said appeal the landlord/decree holder raised a preliminary objection regarding its maintainability, as according to the landlord/decree

holder, since the 3rd Judge, Presidency Small Causes Court, Kolkata is an authority being functionary u/s 2(b) of the West Bengal land Reforms

and Tenancy Tribunal Act and further since the order of eviction was passed by such a functionary, the ultimate order passed by such functionary

can only be assailed before the Tribunal constituted under the West Bengal Land Reforms and Tenancy Tribunal Act and not before the City Civil

Court.

101. The learned Appeal Court ultimately held that such an appeal is not maintainable before the City Civil Court and as such, liberty was given to

the appellant therein to challenge the said decree for eviction before appropriate forum in accordance with law. The propriety of the said order is

under challenge in this Revisional Application.

102. Mr. Bagchi, learned Advocate, appearing on behalf of the appellant/judgment debtor submitted that since decree was ultimately passed by

the 3rd Bench, Presidency Small Causes Court, Kolkata as a Judge and not as Additional Controller being persona designata, such a decree for

eviction is assailable as per Section 96 of the CPC before the next appellate forum i.e. the City Civil Court.

Thus, Mr. Bagchi invited this Court to interfere with the order impugned.

103. Mr. Mondal, learned Advocate, appearing for the opposite party submitted that in view of the provision contained in Section 19(d) of the -

Presidency Small Causes Court Act, the jurisdiction of the Presidency Small Causes Court to try a suit for recovery of possession of any

immovable property is barred. Mr. Mondal, thus, submitted that suit for eviction against a tenant was not entertainable by the Presidency Small

Causes Court but since by the notification issued on 1lth March, 2003, the Judicial Officer of the 3rd Bench Presidency Small Causes Court,

Kolkata was designated by name as Additional Controller under sub-Section 2 of Section 38 of the said Act, the proceeding for eviction was

entertained by such Additional Controller in 2003 but ultimately when the said Additional Controller ceased to have any jurisdiction to try such a

suit after the amendment came into operation in 2005, the 3rd Judge, Presidency Small Causes Court decreed the suit as a presiding officer of the

said Court and not as persona designate. By referring to Section 9 of the Presidency Small Causes Court Act and Section 8 of the CPC Mr.

Mondal contended that the proceeding before the Presidency Small Causes Court''s Act are not conducted by the provision contained in the CPC

and as such, appeal against such an order of eviction cannot lie u/s 96 of the Civil Procedure Code. In short Mr. Mondal submitted that since the

Judge of the Presidency Small Causes Court, Kolkata is an authority being functionary as per Section 2(b) of the West Bengal Land Reforms and

Tenancy Tribunal Act, an order of eviction passed by such an authority can only be assailed under Articles 226 and 227 of the Constitution of

India before the Tribunal constituted under the West Bengal Land Reforms and Tenancy Tribunal Act. Thus, Mr. Mondal supported the order

impugned in the said Revisional Application.

104. On consideration of the aforesaid submission of the learned Advocate for the parties, this Court is of the view that though such a proceeding

was validly instituted before the 3rd Bench, Presidency Small Causes Court, Kolkata who was the Additional Controller at the relevant time but

because of subsequent amendment of the West Bengal Premises Tenancy Act, 1997 in 2005, the Additional Controller ceased to have any

jurisdiction to try such proceeding and after amendment of Section 6 of the said Act in 2005, the Civil Judge having Jurisdiction only could have

tried such suit for eviction. Since the Presidency Small Causes Court lost its jurisdiction to try an eviction suit filed by the landlord against his

tenant, as a Additional Controller under the said Act and further since the pending suits before the Additional Controller were not saved by the said

amendments, this Court holds that the judgment and decree which was ultimately passed in the said suit in 2007 by the Presidency Small Causes

Court cannot be regarded as a decree passed by Additional Controller appointed under the said Act.

105. Now a question may crop up as to whether such a decree which was passed in the said eviction suit can be declared as a nullity as after the

amendment of the West Bengal Premises Tenancy Act, 1997, in 2005 the Additional Controller had no jurisdiction to try the said suit.

106. In this regard reference may be made to the Presidency Small Causes Court (West Bengal Amendment) Act XIII of 1999 by which Section

18 thereof amended. Sub-section 2 of Section 18 of such amended provision is relevant for the present purpose. As such, sub-section 2 of

Section 18 of the said West Bengal Act XIII of 1999 is set out hereunder:

Section 18(2) Notwithstanding anything contained in Section 19 or Sub-section (1) of this Section, but subject to the provisions of Sub-clause (iii)

of Clause (I) of the First Schedule to the West Bengal Premises Tenancy Act, 1956, the Small Cause Court shall have jurisdiction to try all suits

and proceedings for eviction of a tenant under Chapter III of the said Act as a Civil Court of ordinary original Jurisdiction.

107. Thus, the said amended provision makes it clear that all suits for eviction under the West Bengal Premises Tenancy Act, 1956 within the

Original Side Jurisdiction of this Hon''ble High Court are now triable by the Presidency Small Causes Court subject to its pecuniary limit.

108. Though such provision was made for trial of the eviction suit under the 1956 Act by the Presidency Small Causes Court, but under the

amended provision of West Bengal Act XIII of 1999, no such provision has been made for trial of the eviction suit under the West Bengal

Premises Tenancy Act, 1997, by the Presidency Small Causes Court. In such view of the fact, this Court holds that the 3rd Bench of the

Presidency Small Causes Court ought not to have proceeded with the trial of the said suit after Section 6 of the said Act was amended in 2005. As

such, the decree which was passed by the 3rd Bench, Small Causes Court in 2007 is a nullity as the said Court was lacking jurisdiction inherently

to try such suit after Section 6 of the said Act was amended in 2005.

109. Accordingly, this Court holds that the plaint of the said suit should have been returned to Mr. Mondal''s client by the Presidency Small

Causes Court so that the said plaint could have been presented before the competent Civil Judge having jurisdiction to try such suit.

110. The impugned order as well as the decree for eviction passed in the said eviction suit, thus, stands set aside and as a consequence thereof, the

appeal being Title Appeal No. 47 of 2007 filed by Mr. Bagchi''s client, should be regarded as nan est. The learned Appeal Court is directed to

send the records of the Title Suit to the Court of learned 3rd Judge, Presidency Small Causes Court immediately.

111. The opposite party, thus, may approach the learned 3rd Judge, Presidency Small Causes Court. Kolkata for return of the plaint so that the

said plaint can be presented by the opposite party before the competent Court having jurisdiction.

112. This Revisional Application, thus, stands disposed of.

(F) Re: CAN 9447 of 2008 filed in CO. No. 3665 of 2007

113. In course of hearing of these revisional applications, this Application was filed by Mr. Mondal''s client.

114. In view of the conclusion arrived by this Court as above, this Court holds that this application deserves no merit for consideration. The Court

which passed the impugned order, cannot be regarded as an authority as contemplated u/s 2(b) of the West Bengal Land Reforms and Tenancy

Tribunal Acts, 1997, and as such, the competence of a Single Judge of the High Court to consider the propriety of the order impugned in an

application under Article 227 of the Constitution of India, cannot be challenged.

115. This application, thus, stands rejected. V

(G) Re: C.O. No. 264 of 2008

C.O. No. 1264 of 2008

C.O. No. 2638 of 2004

C.O. No. 2640 of 2004

116. Different types of interlocutory orders passed in different suits and/or proceedings either under the West Bengal Premises Tenancy Act, 1997

or under the West Bengal Land Reforms Act, 1955 are the subject matter of challenge in the aforesaid revisional applications. Preliminary

objection which was raised against the maintainability of these applications has been discussed in Note ""C"". This Court holds that the said

discussion will govern the fate of these applications regarding their maintainability before the Court.

117. Since presently this Court has no determination to hear out the Revisional Application, let the aforesaid Revisional Application be released

from this Court with liberty to the learned Advocate of the respective parties to mention the aforesaid Revisional Applications before the learned

Judge having jurisdiction to consider the Revisional Application on merit.

118. Let these revisional applications be not treated as heard-in-part by this Court. Urgent xerox certified copy of this judgment, if applied for, be

given to the parties, as expeditiously as possible.