

**(2005) 11 CAL CK 0025**

**Calcutta High Court**

**Case No:** S.A.T. No. 2713 of 2005

Prasanta Ghosh and Another

APPELLANT

Vs

Pushkar Kumar Ash and Others

RESPONDENT

**Date of Decision:** Nov. 9, 2005

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 11, 115A
- Transfer of Property Act, 1882 - Section 106
- West Bengal Premises Tenancy Act, 1956 - Section 17(2)

**Citation:** (2006) 2 CHN 277

**Hon'ble Judges:** Pravendu Narayan Sinha, J; Bhaskar Bhattacharya, J

**Bench:** Division Bench

**Advocate:** Sampad Kumar Ash, for the Plaintiff No. 1 and Mahendra Prasad Gupta, for the Appellant; Debapriya Biswas and Goutam Banerjee, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

1. This second appeal is at the instance of the tenant-defendants in a suit for eviction and is preferred against a judgment of affirmation.
2. The respondents filed a suit for eviction of the present appellants on various grounds including the ground of default.
3. After entering appearance in the suit the present appellants filed an application u/s 17(2) of the West Bengal Premises Tenancy Act, but such application was dismissed on the ground that the same was not maintainable as the West Bengal Premises Tenancy Act has no application to the area where the suit premises are situated.
4. It appears that the present appellants preferred a revisional application u/s 115A of the CPC before the learned Revisional Court below, but the same was found to be not maintainable in view of amendment of Code of Civil Procedure. The appellants

however did not pursue further and came up with an application for amendment of written statement alleging that the tenancy was for manufacturing purpose. Such application for amendment, however, was not pressed.

5. The learned Trial Judge on consideration of the materials on record held that the plaintiffs had proved the grounds of eviction mentioned in the plaint and had also proved before to quit.

6. Being dissatisfied, the appellants preferred an appeal before the learned first Appellate Court below, but the said Court has affirmed the judgment and decree passed by the learned Trial Judge.

7. Being dissatisfied the defendant-tenants have come up before this Court.

8. After hearing the learned advocate for the appellant and after going through the materials on record, we find that the West Bengal Premises Tenancy Act has no application to the area where the suit property is situated. Therefore, apparently the learned Courts below unnecessarily enquired into the question whether the grounds mentioned in the plaint was in existence.

9. It is now well-settled law that in a case where a tenancy is governed by the Transfer of Property Act, all that the landlord is required to prove is that notice in terms of Section 106 of the Transfer of Property Act has been duly served upon the tenant-defendant.

10. We have gone through the copy of the notice placed before us and we find that the said notice complies with the provisions of Section 106 of the Transfer of Property Act by terminating the tenancy with the expiry of Falgun 1406 B. S. and the said notice was given well in advance on February 04, 2000. Therefore, the said notice conforms to the provisions of Section 106 of the Transfer of Property Act and service of such notice has been proved.

11. Once it is established that prior to institution of the suit a valid notice in terms of Section 106 of the Act was duly served upon the tenant-defendants, there was no necessity for the learned Courts below to consider whether the grounds mentioned in the plaint had really existed. Therefore, all those findings on the grounds mentioned in the plaint were superfluous.

12. The learned advocate appearing for the appellants tried to convince us that the suit having been instituted by the plaintiff No. 3 as a constituted attorney of the plaintiff Nos. 1 and 2 the same was not maintainable unless power-of-attorney executed by the plaintiff Nos. 1 and 2 in favour of the plaintiff No. 3 is produced.

13. We find that the defendants in their evidence admitted that the plaintiff Nos. 1 and 2 executed a power-of-attorney in favour of plaintiff No. 3, but their contention was that such power-of-attorney was subsequently cancelled. Once the defendants admitted that the power-of-attorney was executed in favour of the plaintiff No. 3,

there was no necessity of production of the said power-of-attorney at the instance of the plaintiffs and it was for the defendants to prove that such power-of-attorney was really cancelled. No such document was produced on behalf of the defendants.

14. The learned advocate for the appellants lastly tried to impress us that notice to quit was invalid inasmuch as the tenancy was really for manufacturing purpose. We find that the learned Court of Appeal below dealt with such question and rightly came to the conclusion that no such plea was taken in the written statement and the application was not even pressed.

15. We, thus, find that there was no illegality in the ultimate decree for eviction passed against the appellants although the learned Courts below unnecessarily went to consider whether the grounds mentioned in the plaint really existed.

16. We, thus, find that no substantial question of law is involved in this second appeal when it has been well-established that tenancy in question is governed by the Transfer of Property Act and the suit was preceded by service of valid notice to quit u/s 106 of the Transfer of Property Act.

17. We, thus, dismiss the appeal under Order 21 Rule 11 of the Code of Civil Procedure.

18. In view of dismissal of the appeal itself, the application for stay filed in connection with the above appeal being CAN No. 7813 of 2005 has become infructuous and the same is disposed of accordingly.

19. The interim order, if any, shall stand vacated.