(2016) 03 CAL CK 0130

CALCUTTA HIGH COURT

Case No: G.A. 218 of 2013 and C.S. 354 of 2012

EIH Limited		APPELLANT
	Vs	
Nadia A. Virji		RESPONDENT

Date of Decision: March 22, 2016

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 13, Section 17 (1), Section 174, Section 194, Section 214, Section 231, Section 3, Section 5(7), Section 6, Section 7
- Civil Procedure Code, 1908 (CPC) - Order 49 Rule 3, Order 7 Rule 11, Secti

Citation: (2016) 2 CalLT 526 : (2016) 1 RCRRent 575 : (2016) 1 RentLR 366

Hon'ble Judges: Harish Tandon, J.

Bench: Single Bench

Advocate: Ravi Kapoor, S. Sarkar, Debdut Mukherjee, Jayanta Mitra, Ld. Adv. Gen., S. Sen and D. Dutta, for the Appellant;

Final Decision: Allowed

Judgement

Harish Tandon, J.

1. G.A. 218 of 2013 is taken out by the defendant for rejection of the plaint primarily on the ground that the suit is barred by law. Essentially this is an application under Order 7 Rule 11 of the Code, though such provision does not apply in stricto sensu to the High Court exercising ordinary original civil jurisdiction in view of Order 49 Rule 3 of the Code of Civil Procedure. Such applications are frequently entertained not under Order 7 Rule 11, but the prevalent practice is to take off the plaint from the file. Principally the application of such nature is dealt with on the principles of Order 7 Rule 11 of the Code and, therefore, the scrutiny should be confined to the averments made in the plaint. Both the learned Advocates have agreed on the above proposition and restricted their arguments on the statements made in the plaint and the documents annexed thereto.

2. Before proceeding to deal with the points agitated by the respective Counsels, the case made out in the plaint is summarised as under:

"(i) The plaintiff is the owner of premises No. 15/2, Jawaharlal Nehru Road, Kolkata-700 013.

(ii) The defendant was inducted as a monthly tenant on the basis of an agreement dated 6th May, 1993 in respect of a shop room/show room measuring 1700 sq.ft. on the ground floor in the Oberoi Grand Hotel Arcade at a rental of Rs. 10,000/- per month payable according to English Calendar and quarterly municipal tax including surcharge and water tax/fees, if any in the said tenancy and the present municipal rates and taxes is Rs. 18,622/- per quarter.

(iii) The said tenancy was created for commercial purposes and was essentially governed by the West Bengal Premises Tenancy Act, 1956.

(iv) The Act of 1956 was subsequently repealed by West Bengal Premises Tenancy Act, 1997 which came into force on and from 10th July, 2001 and by reason of the provisions contained in the later Act, the defendant became a lessee for month to month and such tenancy is terminable by 15 days notice under the provisions of Transfer of Property Act, 1882.

(v) The tenancy of the defendant was terminated by a notice dated 14th June, 2012 issued under Section 106 of the Transfer of Property Act which was sent by registered post with acknowledgement due and the said notice is duly received by the defendant on 16th June, 2012.

(vi) In spite of having received the said notice, the defendant failed and neglected to vacate the suit premises and/or hand over the possession thereof which makes him liable for damages/mesne profit at the rate of Rs. 11,900/- per diem on and from 2nd July, 2012."

3. On the basis of the aforementioned statements, the plaintiff claims for a decree for ''vacate'' and ''khas'' possession of the shop room/show room along with a decree for damages.

4. According to the defendant, the suit for eviction under Transfer of Property Act is not maintainable and still governed by the provision of the West Bengal Premises Tenancy Act, 1997 as the rent fixed for use and enjoyment of the tenanted premises is as Rs. 10,000/-. It is further stated that the petitioner enjoins the protection against the eviction under Section 6 of the later Act and, therefore, the suit based on notice under Transfer of Property Act, 1882 is not maintainable.

5. It would be profitable to take note of the relevant provisions of West Bengal Premises Tenancy Act, 1997 (said Act) which assume significance on the rival contentions raised before the Court:

"3. Exemption.--Nothing contained in this Act shall apply to-

(f) any premises let out for non-residential purpose, which carries more than-

(i) ten thousand rupees as monthly rent in the areas included within the limits of the Calcutta Municipal Corporation or the Howrah Municipal Corporation, or

(ii) five thousand rupees as monthly rent in other areas to which this Act extends."

5. Obligations of tenant.--(1) Every tenant shall pay rent to the landlord or his authorised agent within the prescribed period.

(2) Every tenant shall use the premises for the purpose for which it was let out to him.

(3) Every tenant shall allow the landlord or his authorised agent to enter upon the premises and inspect the condition thereof after the service of a notice on him by the landlord or his authorised agent in this behalf.

(4) No tenant shall make any addition to, or alteration in, the premises without the written consent of the landlord.

(5) No tenant shall sublet the premises without consent of the landlord in writing.

(6) No tenant shall, without the previous consent in writing of the landlord, transfer or assign his right in the tenancy or any part thereof.

(7) Every tenant shall pay the charges relating to the maintenance and amenities of the premises at the rate of ten per cent of the fair rent or agreed rent, as the case may be.

(8) Every tenant shall pay his share of municipal tax as an occupier of the premises in accordance with the provisions of the Kolkata Municipal Corporation Act, 1980 (West Bengal Act LIX of 1980) or the West Bengal Municipal Act, 1993.

6. Protection of tenant against eviction.--(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract, no order or decree for the recovery of the 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 such landlord on one or more of the following grounds:--

* * * *

7. When a tenant can get the benefit of protection against eviction.--(1) (a) On a suit being instituted by the landlord for eviction on ay of the grounds referred to in section 6, the tenant shall, subject to the provisions of sub-section (2) of this section, pay to the landlord or deposit with the Civil Judge all arrears of rent, calculated at the rate at which it was last paid and upto the end of the month previous to that in which the payment is made together with interest at the rate of ten per cent per annum.

(b) Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the suit without the summons being served upon him, within one month of his appearance.

(c) The tenant shall thereafter continue to pay to the landlord or deposit with the Civil Judge month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

(2) ** * * *

(3)* * * * *

(4)* * * * *"

6. The distinguishing feature between the Act of 1956 and the said Act can be seen as the earlier Act imbibed within itself all monthly tenancies irrespective of the quantum of rent. By virtue of Section 3, the later Act restricts its applicability to the premises let out to the tenant on rental parameter. The intention of the legislature can also be gathered from Sub-section 5 of Section 6 of the Act where the moratorium period was provided for initiation of eviction proceeding against the tenant who was protected by the earlier Act but such protection is not extended under the later Act. It is apparent from Section 3 which is an exemption provision, more particularly, Clause (f) thereof that the tenancy for non-residential purposes if fetches rent more than Rs. 10,000/- per month in respect of the premises situated within the territory of the Kolkata Municipal Corporation Act is taken out from the purview of the said Act. The expression "more than" appearing in said clause from its ordinary meaning does not bring any ambiguity that any premises let out for non-residential purposes where the rent is above Rs. 10,000/- shall not get protection against eviction under the said Act. Both the learned Advocates are ad idem on the meaning of the expression "more than" that the premises where the rent is payable up to Rs. 10,000/- per month in respect of non-residential premises if situated within the area as defined under Kolkata Municipal Corporation Act, the provision of the said Act shall apply.

7. Both the learned Advocates are at variance on the interpretation of the word "rent" as according to the defendant any amount other than the rent which is variable in nature cannot form part of the rent; on the other hand, the plaintiff asserts that whatever amount is payable in lieu of use and enjoyment of the demised premises constitutes rent.

8. The point, which hinges for consideration is whether the Municipal taxes and levies payable on quarterly basis, can form part of the rent.

9. Mr. Kapoor, the learned Advocate for the defendant vehemently submits that once the plaintiff himself admitted that the rent is Rs. 10,000/- per month, the suit for eviction under Transfer of Property Act is not maintainable. To buttress the aforesaid submission, Mr. Kapoor would first rely upon a judgement of the Supreme

Court in case of Chhotelal v. Kewal Krishan Mehta reported in , AIR 1971 SC 987 wherein the electricity charges payable by the tenant for consumption of the electricity in the tenanted premises was held to be outside the purview of rent. Mr. Kapoor further submits that an identical question came up for consideration before the Division Bench of this Court in case of Smt. Sikha Dutta v. Sir Prosanta Kumar Lahiri reported in 1988 (2) CHN 69 wherein the Municipal Tax was not treated as part of the rent. He further relies upon another Division Bench judgement of this Court in case of Team Consultants Private Ltd.; v. Swapna Lahiri & Ors; reported in , 2006 (3) CHN 689 for the proposition that if the plaintiff himself asserts the rent to be Rs. 10,000/-, the Municipal Tax or the Commercial Surcharge for the purpose of recovery may be treated as if such sum where the rent payable by the tenant but not for the purpose of Section 6 of the said Act.

10. The strong reliance is placed on the agreement dated 6th day of May, 1993, the reference whereof is given in the plaint that the Municipal Corporation Tax including Surcharge and Water Tax/Fees are payable to the corporation and not to the plaintiff and, therefore, it cannot be brought within the purview of the definition of rent. According to Mr. Kapoor, the terms and conditions of the said agreement would manifest that the rent was fixed at Rs. 10,000/- per month and the Municipal Corporation Tax was never intended to be a part of such rent.

11. Mr. Jayanta Kr. Mitra, learned Advocate General appearing for the plaintiff refuted the contention of the defendant by saying that the word ''rent'' is comprehensive enough to include all amount payable by the tenant in lieu of the occupation and placed reliance upon a judgement of the Supreme Court in case of Karnani Properties Ltd. - v- Miss Augustine & Ors; reported in , AIR 1957 SC 309. He further submits that the term "rent" is wide enough to include all payment agreed by the tenant and, therefore, the amount of taxes also form part of the rent as held by the Supreme Court in case of Abdul Kader v. G.D. Govindaraj reported in , (2002) 5 SCC 51. He placed strong reliance on the observation of the Supreme Court in case of Calcutta Gujarati Education Society & Another v. Calcutta Municipal Corpn. & Ors; reported in , (2003) 10 SCC 533 wherein the word "tax" was fictionally treated as rent. It is thus submitted that if the Municipal Corporation Tax is recoverable as rent, there is no ambiguity in treating the tax within the comprehensive definition of rent. The further reliance is placed upon another Division Bench judgement of this Court in case of Mayank Poddar & Ors; v. Development Consultant Private Ltd.; reported in , AIR 2005 Cal 246 wherein somewhat identical point was raised as to whether the payment of Municipal Tax on quarterly basis and not on monthly basis can be treated as a rent and the Division Bench held that it constitutes a part of the rent. Mr. Mitra audaciously submits that though the word ''rent'' is not defined anywhere in the Act or statute but is given a wider meaning to include all payments made by the tenant in respect of the tenancy and, therefore, the contention of the defendant is unsustainable.

12. Indubitably neither the Act of the 1956 nor the Act of 1997 contains the definition of rent though the said word is appearing in different provisions incorporated therein. One of the earlier judgement on the definition of the rent is a Karnani Properties Ltd. (supra) decided by the Supreme Court. The question which fell for consideration before the Supreme Court pertains to standardisation of the rent under the West Bengal Rent Control (Temporary Provisions) Act, 1950. The agreement at the time of letting the premises not only includes the basic rent for use and enjoyment of the tenanted premises but also certain amenities and facilities attached thereto. In the above perspective it was held:--

"The term ''rent'' has not been defined in the Act. Hence, may not be taken to have been used in this ordinary dictionary meaning. If, as party indicated, the term ''rent'' is comprehensive enough to include all payments agreed by tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also of furnishing, electrical installations and other amenities agreed between the parties to be provided by and at the cost of the landlord, the conclusion is irresistible all that is included in the term of rent is within the purview of the Act and the Rent Controller and other authorities have a power to control the same."

13. The Co-ordinate Bench in case of Usha Ranjan Bhattacharya - Vs- Mahalakshmi Thakkar & Anr. reported in , (1975)1 CLJ 204 interpreted the term ''rent'' to include any amount agreed to be paid by the tenant as consideration for occupation in the premises. A distress proceeding was initiated in the Court of Small Causes, Calcutta for recovery of the arrear rent. In the said proceeding the landlord claimed the rent at Rs. 110/- per month which includes a basic rent at Rs. 99/- plus Rs. 11/- on account of lift, scavenging charges, water and other services. The order passed therein was challenged before this Court in an application under Section 115 of the Code of Civil Procedure primarily on the ground that the landlord have wrongly claimed the rent at Rs. 110/- per month when the rent for the premises was fixed at Rs. 99/- per month. After considering the various judgement rendered by the English Court and by this Court, it was held on the basis of letter marked exhibit ''A'' therein that the tenant agreed and accepted the rent at Rs. 110/- per month which includes the other charges as aforesaid and, therefore, constitutes rent.

14. The Division Bench in case of Sikha Dutta v. Prasanta Kumar Lahiri reported in 1988 (2) CHN 69 was considering a point whether the Municipal Tax can be treated as a component of the rent. In the said report, the suit for eviction was filed under Section 13 of the West Bengal Premises Tenancy Act, 1956 against the tenant. An application under Section 17 (2) and (2A) of the Act was filed by the tenant raising dispute as to the rate of rent. The Trial Court disposed of the aforesaid application directing the tenant to pay arrear municipal taxes and arrear rents amounting to Rs. 17,920/- and Rs. 4,380/- respectively together with a statutory interest in ten equal monthly instalments. The said order was challenged before this Court. It was sought to be contended that the written agreement governing the said tenancy provides

that the tenant shall bay a monthly sum of Rs. 1,230/- as rent and bear municipal taxes. It was thus contended that though the tenant is liable to pay the municipal taxes under the said agreement but that cannot be said to be rent liability and, therefore, cannot form part of the rent. Another point was sought to be canvassed before the Court that the municipal rates and taxes are variable in nature, and cannot partake the character of a rent. On the side of the landlord, it was contended that whatever agreed by the tenant to pay for the demised premises shall form part of the rent and the reliance was placed upon the judgement of the Supreme Court rendered in case of Karnani Properties Ltd.; (supra). A judgement of the Supreme Court in case of Chhotelal (supra) was cited for the proposition that anything agreed to be paid separately cannot constitute rent. In Chhotelal (supra), the tenant agreed to pay the electric charges separately than rent and in that perspective, it was held that since the agreement provides separate payment of electricity charges and not along with the rent, such electricity charges cannot be brought within the purview of rent. Incidentally it was also held by the Supreme Court that an amount which is variable in nature if brings within the purview of rent, there would be a different rent every month as the electric charges is dependent upon the consumption of electricity. The Division Bench held that the municipal taxes cannot be treated as a part of the rent as the clauses in the agreement does not specify that the same is required to be paid along with the rent. The Division Bench further found a special facts that the landlord while valuing the reliefs claimed in the suit computed the Court fees treating the rent component only as basis thereof and does not include the municipal taxes.

15. In case of Pushpa Devi Gourisariya v. Sudhera Enterprise Pvt. Ltd. reported in 1990 (2) CLJ 310, an identical point was raised and almost all the judgement as indicated above was considered on determination of the term ''rent''. The said case also originated from an order passed in a distress proceeding initiated by the landlord in the Presidency Small Causes Court, Calcutta. The premises in question was a shop room in an Air Condition Market, Kolkata. There were various components which could be deciphered from the agreement that the tenant was liable to pay the consolidated monthly rent of Rs. 1,350/- which comprises of Rs. 200/- towards basic rent Rs. 100/-for service charges and Rs. 1,050/- for Air Conditioning Charges on or before first day of each and every calendar month for the month immediately preceeding. In addition to the same, the tenant further agreed to pay the owners and occupiers shares of municipal rates and taxes the then existing at the time of creation of the tenancy and shall also pay of future increase or increases in the municipal rates and taxes and other taxes, charges, cesses, levies & imposition to the landlord. It is held that all payments agreed to be made by the tenant to the landlord for enjoyment of the demised premises shall constitute rent and it is immaterial whether such levy is termed as rent or otherwise. The Co-ordinate Bench did not agree with the ratio laid down in Sikha Dutta (supra) that the municipal rates and taxes shall not form part of the rent and held the said

judgement per incuriam.

16. In contemporaneous time, the Apex Court in case of Pushpa Sengupta v. Sushama Ghosh reported in , (1990) 2 SCC 651 also defined the expression ''rent'' to include not only what is strictly understood as rent but also payments in respect of amenities or services provided by landlord under the terms of the tenancy.

17. In case of Abdul Kader v. G.D. Govindaraj reported in , (2002) 5 SCC 51, the Apex Court accepted and applied the observations made in Karnani Properties Ltd. (supra) and held that there is no doubt that the amount of taxes which was agreed by the tenant to be paid to the landlord is a part of the rent.

18. The judgement of the Supreme Court in case of Calcutta Gujrati Education Society v. Kolkata Municipal Corporation reported in , (2003) 10 SCC 533 may be looked into for a limited purposes that the tax under the Municipal Act is fictionally treated as a rent and is recoverable as such. It would be apt to quote the observations recorded in Paragraph 46 of the said report which runs thus:

"46. The provisions of the Tenancy Act merely enable the landlord to make a demand of arrears of rent and in default of the payment of the same, sue the tenant for recovery of rent or eviction on the ground of non-payment of rent despite demand. The tenant can get protection against eviction on the ground of arrears of rent only if he makes requisite deposit of the arrears in the manner laid down in the provisions of the Tenancy Act. A provision to fictionally treat "tax" as "rent" is necessitated because in the absence of such a fiction in Section 231 of the Act, the landlord would be compelled to pay the whole amount of tax which is recoverable from him under the Act and would be left to an expensive and cumbersome remedy of filing a civil suit for recovery of such tax paid on behalf of the tenant, sub-tenant or occupant. Such a fiction is required to be incorporated under Section 231 of the Act because a private party cannot recover tax. If a lessor is obliged to pay a portion of tax leviable on the tenant, the landlord can recover the same not as "tax" but only as part of "rent". The fiction created by the legislation in Section 231 to treat "tax" as "rent" has to be taken to its logical conclusion. The Act under consideration and the Tenancy Act, both are State legislations. No question arises of legislative incompetence. There does not appear any inter se conflict between the two Acts. Both have to be read and applied harmoniously to achieve the legislative intent in the two enactments. The contention based on Section 231 of the Act, therefore, also does not commend to us and is rejected."

19. On somewhat similar facts and circumstances the Division Bench judgement of this Court in case of Mayank Poddar & Ors. v. Development Consultant Private Ltd. reported in , AIR 2005 CALCUTTA 246 can be noticed it is manifest from the observations recorded in Paragraph 2 thereof that the subject matter of challenge against the judgement and order of the learned Single Judge was basically founded on the point whether the municipal rates and taxes as well as the commercial

surcharge and parking charges do form part of the rent and are the responsibility of the tenant to pay the same with the rent. The agreement entered into between the landlord and the tenant at the time of creation of the tenancy contained a clause that the lessee shall pay the occupier''s share of consolidated rates and municipal taxes in respect of the demised premises within 7 (seven) days of every quarter against the bills raised by the lessor. Though the lease was executed but it was agreed by the parties that the case would be governed by the provision of the West Bengal Premises Tenancy Act, 1956 on interpreting the different clauses contained in the said lease agreement and an admission made by the tenant in the letter dated 24.04.2001 that the municipal taxes were paid by the tenant to the landlord. It was factually found that the tenant principally agree to pay the municipal rates and taxes to be included within the payment of the rent. It was further observed that even if the corporation taxes are paid on quarterly basis and not on monthly basis, it hardly changes the character of the rent in view of the special facts and circumstances involved therein. The relevant observation made in Paragraph 31 and 32 of the said report is reproduced below:--

"31. The argument of the learned Counsel for the Respondent that as the Respondent''s share of municipal rates and taxes is a variable levy which is to be paid quarterly and not monthly and so it cannot form part of the rent, is not a tenable proposition. Since everything which is agreed to be payable for occupation of the tenanted premises comes under the concept of rent, merely because the amount can be varied or the mode of payment is not monthly are not decisive factors at all. A mode of payment is hardly relevant in deciding the character of the levy and that amount may vary as the quantum of rent may also vary. But these are not material consideration in deciding the nature of the levy.

32. For the reasons aforesaid, both the appeals succeed, the orders of the learned Judge are set aside. The Respondent, in both these appeals is to pay the rent by including in the same its share of municipal rates and taxes and surcharge. The Court does not pass any order for payment of parking charges as part of the rent in view of the fact that the same is not mentioned in the tenancy agreement. This Court is not called upon to make any calculation of the quantum of rent payable on this basis. The learned Judge of the 1st Court is at liberty to do the same in the light of the conclusions reached in this judgment."

20. Though the earlier Division Bench judgment rendered in Mayank Poddar (Supra) was not cited before the subsequent Division Bench who delivered the judgement in Team Consultants Pvt. Ltd. (Supra) but distinguishing feature can be noticed therefrom. In Mayank Poddar (Supra) there was no argument advanced before the Division Bench relating to obligation of a tenant under the Kolkata Municipal Corporation Act when relates to the payment of municipal taxes and the commercial surcharge. Before the subsequent Division Bench an argument was advanced that the meaningful reading of Section 194 of the Kolkata Municipal Corporation Act and

Section 231 thereof make abundantly clear that the tax is recoverable as rent and therefore should be treated as part thereof. The later Division Bench made a distinction that the property tax and the commercial surcharge may assume character of a rent for the purpose of recovery only but cannot be used as a weapon against the tenant for eviction on the ground of non-payment of rent. It would be profitable to quote the following observations which run thus:--

"28. As laid down in section 174 of the Kolkata Municipal Corporation Act, 1980, for the purpose of assessment of the property tax of a building, the annual value of the building shall be deemed to be the gross annual rent including the service charges, if any, at which such building might at the time of assessment be reasonably expected to let from year to year, less an amount of ten per cent for the cost of repairs and other expenses necessary to maintain such building in a State to command such gross rent and the word ''rent'' used therein is not the contractual rent or the fair rent fixed by the Rent Controller as would appear from the opening phrase of the said section that the mode of assessment is ''notwithstanding the provisions contained in the West Bengal Premises Tenancy Act or any other law for the time being in force''.'' According to the provisions of the said Municipal Act, although the owner of the building is primarily liable to pay the amount but the same is recoverable from the tenant according to the proportionate occupation of the tenant in the building as indicated in section 194 of the said Act and the mode of recovery is provided in section 231 which is quoted below:

"Mode of recovery- If any person primarily liable to pay any property tax on any land or building and is entitled to recover any sum from an occupier of such land or building, he shall have, for recovery thereof, the same right and remedies as if such sum were rent payable to him by the person from whom, he is entitled to recover such sum. (Emphasis given by us)

29. Therefore, it is clear that the amount of the property tax or the commercial surcharge payable by the tenant should be treated to be rent only for the purpose of recovery thereof but not for the purpose evicting the tenant on the ground of default of payment of such amount because of the non-obstante clause in the beginning of the section 13 of the Act, the prescribed period of default for eviction of a tenant is two months within a period of twelve months or for two successive periods in cases where the rent is not payable monthly, whereas, the property tax or the surcharge is due and payable quarterly and only on presentation of a bill as provided in section 214 of the Kolkata Municipal Corporation Act. Therefore, if the rent of the premises is payable monthly, there is no scope of evicting the tenant on the ground of non-payment of property tax for any one or more quarter by treating the same as default for any specified month or months. Similarly, the provisions contained in the last part of section 17 (1) of the Act cannot be effectively complied with by a tenant if the property tax is treated to be part of rent because such tax is not payable within 15th of the succeeding month even according to the provisions

contained in the Kolkata Municipal Corporation Act. Therefore, it was never the intention of the legislature to include the amount of property tax within the meaning of the word "rent" appearing in section 13 or section 17 of the West Bengal Premises Tenancy Act."

21. The aforesaid observations further lend support from the judgment of the Supreme Court in case of Gujarati Education Society (Supra) where the provision of Section 231 of the Kolkata Municipal Corporation Act was noticed and it was held that if the landlord is subjected to an expensive and cumbersome remedy of filing Civil Suit for recovery of the tax separately than the rent, it would be burdensome for every landlord to go on paying the tax and it will be a premium to a tenant to pay the rent only to avail the protection provided under the welfare legislation.

22. The definition of ''rent'' in its wider sense not only includes the basic rent but also the other amount payable by the tenant in lieu of amenities and facilities attached to the tenancy and may further include the maintenance/service charges and municipal tax and commercial surcharge which is a statutory obligation. Any amount, which is variable in nature and depends upon certain contingencies cannot be characterised as rent. There is no ambiguity in case the landlord intends to recover the other amount along with the basic rent treating all constituents within the wide definition of rent but the question still begging an answer whether other constituents than the basic rent can be included within the definition of the rent when the statute provides the protection up to certain limits. Section 3 of the Act is a newly inserted provision which was absent in the predecessor Act. The Act of 1956 did not contain any ceiling limit that the premises fetching a rent up to certain limit shall be kept outside the purview of the said Act. Section 3 kept certain premises let out for residential or non-residential purposes to be exempted from the operation of the said Act if it carries rent more than Rs. 6500/- as monthly rent in an area within the limits of Calcutta Municipal Corporation or Howrah Municipal Corporation or Rs. 3000/- as monthly rents in other areas to which the said Acts extend and Rs. 10,000/- as monthly rent in the areas including within the limits of Calcutta Municipal Corporation and Howrah Municipal Corporation and Rs. 5,000/- as monthly rent in other areas which as it stands respectively.

23. The explanation appended thereto explicits that where the premises is let out partly for residential and partly for non-residential purposes it would be governed by a provision applicable to non-residential premises and the exemption provision would thus be applicable. The Rent Restrictions Act is a welfare legislation protecting the tenant from unfair eviction by the unscrupulous landlord. Though Section 6 of the Act entitles the landlord to evict the tenant from the tenanted premises on any or more grounds envisaged therein, Section 7 provides protection against such eviction to the tenant. The intention of the legislature can be gathered from the non-obstante clause used in Section 6 of the Act, which clearly provides that notwithstanding anything contained in any other law or the contract the tenant

cannot be evicted unless the Civil Court having jurisdiction passed an order or a decree on one or more of such grounds.

24. The broad heading of Section 7 clearly indicates the object and purpose underlining the incorporation of the Act and giving protection to the tenant against eviction on fulfilment of the conditions laid down therein. The intention can further be gathered from Section 5(7) and (8) of the Act creating obligation on the tenant to pay charges relating to maintenance and amenities at a rate of 10% of the FAIR RENT or AGREED RENT and shall also pay his share of municipal tax as an occupier in accordance with the provisions of the Municipal Act.

25. As indicated by the Division Bench in Team Consultants (Supra) that Section 174 of the Kolkata Municipal Corporation Act, 1980 contains provisions relating to assessment of property tax of a building for the purpose of determining the gross annual rent in juxtaposition with the contractual or fair rent. The provisions under Section 231 of the Kolkata Municipal Corporation Act entitles the person primarily liable to pay the property tax to recover under the same right and remedies as if such sum were rent payable to him by the person from whom he is entitled to recover. It is held that the amount of property tax or the commercial surcharge payable by the tenant though treated as rent but only for the purpose of recovery thereof and therefore cannot be used as a tool for eviction of a tenant under Section 6 of the West Bengal Premises Tenancy Act, 1997. The Division Bench further noticed the non-obstante clause appearing in Section 6 of the said Act and held that there is no scope to evict the tenant on the ground of non-payment of property tax for any one or more quarter on the ground of default which is one of the grounds embodied under Section 6 of the Act.

26. Normally the exemption provision in the statute is to be construed strictly on the touchstone of legislative intention. Any interpretation which gives rise to anomaly or absurdity should be avoided. The aforesaid principles are not free from exception which may be seen in case of a taxing statute. The exemption clause is really in the nature of an exception and true interpretation should be given after reading the different provisions of the said Act and predominant object for which the Act is enacted. The true and correct meaning of the ''rent'' under Section 3 of the Act can be attributed to all payments required by the tenant to be paid to the landlord in lieu of his use, enjoyment and occupation and further includes the facilities and amenities provided by the landlord at his cost. Any payment which is unconnected with the facilities and amenities for which the landlord has to bear though recoverable as the rent cannot be brought within the definition of ''rent'' for the purpose of Section 3 of the Act.

27. In view of the law laid down in by the Division Bench in Team Consultants (Supra) the position emerged inescapable that the corporation tax or the commercial surcharge though falls within the obligation of the tenant under Section 5 thereof cannot constitute rent for the purpose of Section 3. However, the position would be

different when the tenant seeks protection against eviction under Section 7 and required to deposit the rent at the rate at which it was last paid which may definitely include all payments including corporation tax and commercial surcharge.

28. In the instant case there is no averment in the plaint that the tenant at any point of time was paying any amount other than the basic rent of Rs. 10,000/- to keep the premises outside the purview of the said Act under the exemption provision. It is profitable to quote paragraph 2 of the plaint which runs thus:

"2. By an agreement dated 6th May, 1993 the plaintiff had inducted the defendant as a monthly tenant in respect of a shop room/showroom containing an area of 1700 Sq. ft. on the ground floor in The Oberoi Grand Hotel Arcade at premises No. 15/2, Jawaharlal Nehru Road, Kolkata- 700 013 within the aforesaid jurisdiction (hereinafter referred to as the said showroom) at and for a rent of Rs. 10,000/- per month payable according to English Calendar and the quarterly municipal tax including surcharge and water tax/fees, if any for the said tenancy. The present municipal rates and taxes is Rs. 18,622/- per quarter."

29. Mere statement that the corporation tax leviable quarterly on the premises is Rs. 18,622/- does not keep the premises outside the purview of the said Act.

30. For the reasons stated above, the suit under Section 106 of the Transfer of Property Act is impliedly barred by the provisions of the West Bengal Tenancy Act.

31. The application is thus allowed.

32. The plaint be taken off the file.

33. There shall be no order as to costs.

LATER

After the judgement is delivered, the learned Advocate appearing for the plaintiff prays for stay of the operation of the judgement. This Court does not find that this is a fit case to pass an order of stay. The prayer is refused.