

**IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ORIGINAL SIDE**

BEFORE:

**The Hon'ble Justice Ravi Krishan Kapur**

GA 1 of 2019  
(Old GA/462/2019)  
In CS/257/2018

T.E. THOMSON & COMPANY LIMITED  
Vs  
RAJSHRI PRODUCTIONS PRIVATE LIMITED

For the petitioner	: Mr. S. N. Mookerjee, Senior Advocate Mr. Rupak Ghose, Advocate Mr. Chayan Gupta, Advocate Mr. R. Chowdhury, Advocate Mr. Dwip Raj Basu, Advocate
For the respondent	: Mr. Malay Kumar Ghosh, Senior Advocate Mr. Rajarshi Dutta, Advocate Mr. A. P. Agarwalla, Advocate
Reserved on	: 18.07.2022
Judgment on	: 13.12.2022

**Ravi Krishan Kapur, J.**

1. This is a suit for eviction and mesne profits.
2. In this suit, the petitioner has filed an application under Chapter XIII A of the Original Side Rules inter-alia, seeking a summary decree of eviction.
3. Briefly, the suit premises comprises of one-half of the first floor measuring approximately 4,000 sq.ft. of the front main building alongwith a staff quarter on the first floor of the rear building being premises no.9A, Sidhu Kanu Dahar [previously known as Esplanade

Row (East)], opposite to the portion occupied by 'Musical Films Private Limited', P.S.-Hare Street, Kolkata-700069 (the suit premises).

4. The question which arises for consideration is whether the respondent is entitled to protection under the West Bengal Premises Tenancy Act, 1997 or whether the relationship between the parties is governed by the Transfer of Property Act, 1882.
5. It is contended on behalf of the petitioner that the last paid rent for the month of November 2017 was Rs.10,080/- per month. In this connection, the petitioner relies on rent receipts and cheques issued by the respondent. By a notice dated 13 February 2018, issued under section 106 read with section 111(h) of the Transfer of Property Act 1882, the petitioner duly determined the arrangement by and between the parties and sought for recovery of possession of the suit premises and mesne profits.
6. On behalf of the respondent it is contended that, the respondent has been making an aggregate payment of a sum of Rs.10,080/- per month comprising of rent of Rs.7,200/- per month, Rs.1,440/- per month as the respondent's share of property taxes and a further sum of Rs.1,440/- per month as commercial surcharge. The respondent also relies on the rent receipts evidencing such payments. Hence, inasmuch as the rent in respect of the suit premises which has been let out for commercial purposes is below Rs.10,000/- per month, the relationship between the parties is governed by the West Bengal Premises Tenancy Act, 1997 and not the Transfer of Property Act,

1882. Thus, this Court does not have the jurisdiction to entertain this suit and the same is liable to be dismissed. The respondent also relies on an unregistered lease deed between the petitioner and one Rajshri Pictures Private Limited. Even though the said lease deed was unregistered, the same evidences that the rent as agreed upon by the parties conforms to the threshold of rent for the purposes of the Act of 1997.

7. Section 3(f) of the Act of 1997 provides as follows:

*“S. 3. Exemption. – Nothing contained in this Act shall apply to –*

*(a) ... ..*

*(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.*

*Explanation. – Where any premises is let out partly for residential purpose and partly for non-residential purpose, the provisions of clause (f) shall apply to such premises in proportion to respective areas.”*

8. Ordinarily, the term rent is comprehensive enough to include all payments agreed to be paid by the tenant to the landlord for use and occupation not only of the building and its appurtenances but also includes furnishing, electrical installations and other amenities agreed between the parties to be provided by and at the cost of the landlord. Thus, rent is the consideration or price paid for enjoyment of the suit premises. [*Karnani Properties Limited vs. Augustin*, AIR 1957 SC 309, paras 7, 8, 9, 11 and 12 to 15; *Abdul Kader Vs. G.D. Govindaraj*, AIR 2002 SC 2442, paras 24 to 33; *Mayank Poddar vs.*

*Development Consultant Ltd.*, AIR 2005 Cal 246, paras 38 and 41 to 50; *Apollo Zipper India Limited vs. W. Newman & Co. Limited*, (2018) 6 SCC 744, paras 28, 39, 66, 67, 70 & 74 and *Municipal Corporation of the City of Ahmedabad vs. Canara Bank* 1996 (7) SCC 298].

9. From the documents annexed to the application and the Affidavit-in-Opposition filed by the respondent, I find that the last paid rent by the respondent was Rs.10,080/- which is above the threshold limit of Rs.10,000/-. The respondent has also executed documents recording this fact inter-alia by letters dated 12 March 2018 whereby the rent has been tendered by the respondent. Significantly, all the payments have been made by the respondent by way of a single cheque. The payments towards a fixed non variable amount of Rs.1,440/- per month each on account of commercial surcharge and municipal taxes respectively does not in my view appear to be in accordance with the provisions of the Kolkata Municipal Corporation Act 1980. In any event, neither of these payments are unconnected or unrelated to the suit premises. This fact has also been admitted in the Affidavit-in-Opposition filed on behalf of the respondent. The reference to previous rent receipts is erroneous and misleading. On the contrary, the respondent has made a deliberate attempt to bifurcate the rent only after receipt of the notice dated 13 February 2018. The reference to sections 3 and 5 of the West Bengal Premises Tenancy Act, 1997 is irrelevant. The relevant expression in section 3(f) (i) of the Act of 1997 is “.....which carries more than Rs.10,000/- as monthly rent”.

Accordingly, I find that the agreed rent last paid by the respondent is more than Rs.10,000/- and this takes the matter beyond the purview of the 1997 Act. Hence, I find no substance in the contention of the defendant.

10. The document dated 25 March 2009 is also of little assistance to the respondent. In any event, the said document is inadequately stamped and unregistered. The document has also been executed by a separate legal entity and not the respondent. (*Avinash Kumar Chauhan vs. Vijay Krishna Mishra, (2009) 2 SCC 532.*)
11. In *IDBI Trusteeship Services Ltd. vs. Hubtown Ltd. (2017) 1 SCC 568* it has been held as follows:

“17. Accordingly, the principles stated in para 8 of *Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687]* will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in *Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36]*, as follows:

*17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.*

*17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.*

*17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.*

*17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.*

*If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.*

*17.5. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”*

12. The judgment relied on by the respondent in *EIH Limited vs. Ms. Nadia A. Virji* (Unreported decision dated 22 March, 2016 passed in G.A. No. 218 of 2013 in C.S. No. 354 of 2012) is distinguishable and inapposite. In that case, the agreement between the parties recorded that the monthly rent was Rs.10,000/- and on that ground the suit premises was held to fall within the ambit of the West Bengal Premises Tenancy Act, 1997.
13. In view of the above, I find that the relationship between the parties is governed by the provisions of the Transfer of Property Act, 1882. I also find that the tenancy of the respondent has been duly determined by issuance of the notice dated 13 February 2018. The respondent has received the same. I find no infirmity with the notice. The reply of the respondent does not disclose any triable issue involving even an arguable defence justifying leave to defend.

Accordingly, there shall be a decree in terms of prayer (a) of the Master's Summons.

14. Insofar as the claim for mesne profits is concerned, Mr. Vivek Basu, a Member of the Bar Library Club is appointed as a Special Referee to ascertain the mesne profits. The Special Referee shall be paid a consolidated remuneration of 3000 gms. which is to be shared equally by both the parties and shall file a Report within a period of three months from date. With the aforesaid directions, GA No. 462 of 2019 in CS 257 of 2018 stands allowed.

**(Ravi Krishan Kapur, J.)**