In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

F.A. 156 of 2022
CELICA DEVELOPERS (P) LIMITED
Vs.
M/S. WADHWANA
With

COT 33 of 2018
M/S. WADHWANA
Vs.
CELICA DEVELOPERS (P) LIMITED
With

F.A.T 66 of 2017
CELICA DEVELOPERS (P) LIMITED
Vs.
M/S. WADHWANA

For the appellants In F.A. 156 of 2022, F.A.T 66 of 2017 & respondent in COT 33 of 2018.	:	Mr. Aniruddha Chatterjee, Snr. Adv. Mr. Ayan Banerjee Mr. Paritosh Sinha Mr. Amitava Mitra Ms. Sonia Nandy Ms. Urmi Sengupta Mr. Naman Agarwal … Advocates
For the respondent In F.A. 156 of 2022, F.A.T 66 of 2017 & Objector in COT 33 of 2018	:	Mr. Shyamal Sarkar, Snr. Adv. Mr. Kumar Gupta Mr. Sounak Bhattacharjee Mr. Bijan Datta … Advocates
Heard on	:	03.04.2025, 29.04.2025, 01.05.2025 & 19.06.2025

Hearing concluded on : 19.06.2025

Judgment on : 01.07.2025

Sabyasachi Bhattacharyya, J.:-

1. The present first appeals and cross-objection arise out of a common judgement and separate decrees dated January 6, 2017, passed by the learned Judge, Seventh Bench, City Civil Court at Calcutta in Title Suit No. 554 of 2008 and Title Suit No. 1973 of 2008, respectively filed by the appellant Celica Developers (P) Limited and the respondent M/s Wadhwana.

2. The appellant, claiming the respondent to be a lessee under the Transfer of Property Act, filed Title Suit No. 554 of 2008, for eviction of the respondent on the basis of a notice under Section 106 of the Transfer of Property Act, 1882. On the other hand, the respondent filed Title Suit No. 1973 of 2008 for declaration that it is a monthly tenant and for permanent injunction restraining the appellant from interfering with its electricity supply. By the impugned judgment and decree, the appellant's suit for eviction was dismissed and the declaratory suit of the respondent was decreed, thereby holding that the respondent is a premises tenant under the West Bengal Premise Tenancy Act, 1997 (hereinafter referred to as "the 1997 Act") and granting permanent injunction as prayed for by the respondent.

3. FAT No.66 of 2017 has been filed by the plaintiff/appellant against the dismissal of its eviction suit, whereas FA no.156 of 2022 has been

preferred by it against the decree passed in the respondent's suit. A cross-objection, bearing COT No.33 of 2018, has been filed by the respondent in respect of the appeals.

4. The bone of contention in the appeals is whether the respondent is a monthly tenant under the 1997 Act or a lessee under the Transfer of Property Act. The respondent contends that the rent of the suit property, which has been let out for commercial purpose only, falls within the ceiling limit of Rs.10,000/- in terms of Section 3 (f)(i) of the 1997 Act, and, as such governed by the said statute. On the other hand, the appellate claims that the rent includes the total amount payable by the tenant/respondent for enjoyment of the suit premises which, over and above the basic rent of Rs. 2,000/- per month, includes the air-conditioning (for short, "AC") charges amounting to Rs. 11,000/-per month, and the defendant/respondent's share of municipal rates and taxes. Calculated in such manner, the rent goes beyond the ceiling limit and thus, is excluded from the purview of the 1997 Act.

5. The learned Senior Advocate appearing for the appellant argues that whatever amounts are payable for enjoyment of the tenanted premises, including charges for facilities and amenities thereto, are included within the definition of "rent". In support of such contention, counsel cites *Popat & Kotecha Property and Others v. Ashim Kumar Dey* reported at *(2018) 9 SSC 149*.

6. It is argued that D.W.1, in his cross-examination, admitted that the plaintiff/appellant-Company has been supplying electricity to the

respondent. It was further admitted that it is not possible to run the suit shop room without AC and that the AC provided to the suit premises is centrally circulated. Thus, it is argued that the AC charges are an integral part of the rent.

7. It is next argued by the appellant that the written statement of the respondent contains admissions to the effect that the defendant/respondent tendered cheques to the plaintiff/appellant both in view of the rent and AC as well as electricity charges. Thus, it is the appellant which has been providing such electricity through its agent one M/s Urban Services Pvt. Ltd.

8. The learned Senior Advocate appearing for the respondent controverts such allegations and submits that the P.W.1, in his cross-examination, admitted that the basic rent is Rs. 2,000/- per month and electricity, AC charges and corporation tax are paid separately by separate bills.

9. It is an admitted position that one M/s Urban Services Pvt. Ltd. has been providing the AC to the premises and, as such, in view of such payments being made to a different agency and separate bills being issued, the said charges could not be counted as a part of the rent.

10. Moreover, AC charges, being tied up with electricity bills which are variable month by month, cannot be said to be a fixed amount to come within the purview of 'rent'.

11. The learned Senior Advocate appearing for the respondent next contends that in a previous suit filed by the predecessor-in-interest of the plaintiff/respondent, bearing CS no. 506 of 1988, before this Court, it was pleaded that the rent of the suit premises is Rs. 2,000/-. By

citing *Ranganayakamma and Another v. K.S. Prakash and Others* reported at *(2008) 15 SCC 673*, the learned Senior Advocate submits that the pleadings made in a previous suit by a party are binding in a subsequent proceeding *proprio vigore*.

12. That apart, the appellant had filed an application under Section 17 of the 1997 Act for fixation of fair rent, admitting the rent to be Rs. 2,000/- per month. Such admission cannot be resiled from by the plaintiff/applicant at this stage.

13. Learned senior counsel places reliance on *EIH Limited v. Nadia A. Virji,* reported at *2016 SCC OnLine Cal 431, EIH Ltd. v. Nadia A. Virji* reported at *2019 SCC OnLine Cal 9142* and *EIH Ltd. v. Nadia A. Virji* reported at *2022 SCC Online SC 947*, in support of the proposition that the meaning of "rent" for the purpose of recovery of possession on the ground of default in payment of rent is different from the concept of "rent" for the purpose of Sections 3 and 5(8) of the 1997 Act. It may be noted that the above three judgments were rendered in respect of the same case, which travelled up to the Apex Court of the country, respectively by the learned Single Judge and Division Bench of this Court and the Supreme Court.

14. The learned Senior Advocate appearing for the respondent further cites *Radha Kishan Sao v. Gopal Modi,* reported at *(1977) 2 SCC 656* and *Chhote Lal v. Kewal Krishan Mehta* reported at (*1971) 1 SCC 623* for the argument that the AC charges, being paid by separate bills and emanating from a different facility agreement, payable to a different entity than the appellant, are not a part of the rent. Moreover, AC is

interconnected with electricity charges, which is a variable and cannot be deemed to be a fixed component of the rent, which necessarily has to be a fixed and determinate amount.

15. The learned Senior Advocate relies on the statement made by P.W.1 in his cross-examination in that regard.

16. It is argued that if separate bills, receipts and ledger account are raised for electricity and AC, as in the present case, those charges are independent of rent. In support of the said contention, the learned Senior Advocate cites *Kedar and Others v. State of M.P* reported at (*1982) 2 SCC 112.*

17. The learned Senior Advocate for the respondent, in support of the cross-objection, argues that the suit itself was not maintainable, being barred by Order II Rule 2 of the Code of Civil Procedure.

18. CS No. 506 of1988 was filed by the predecessor-in-interest of the plaintiff/appellant for eviction of the respondent as a monthly tenant. Subsequently the plaintiff/appellant, having acquired the suit property, was impleaded as a party thereto. The said suit was pending when the present suit for eviction, bearing Title Suit No. 554 of 2008, was instituted. Subsequently, the earlier suit was withdrawn, but without any leave to prefer the present suit.

19. As such, it is contended that the filing of the second suit during the pendency of the first on the self-same cause of action and for the self-same relief of eviction, is squarely hit by Order II Rule 2 of the Code.

20. Learned senior counsel next relies on *State Bank of Travancore v. Kingston Computers (I) (P) Ltd*. reported at *(2011) 11 SCC 524* in support

of the proposition that the director of a company, duly authorized by the said company, has to institute a legal action on behalf of the company. In the present case, there was no *jurat* portion of the affidavit in the plaint, nor was any resolution of the plaintiff-company authorizing one Naveen Goel, who signed the plaint on behalf of the plaintiff-company, filed on behalf of the plaintiff despite the direction of the Trial Court.

21. The said Naveen Goel also did not adduce evidence on behalf of the plaintiff/appellant-company. Thus, it is argued that the suit is hit by the principles embodied in Order XXIX Rule 1 of the Code and the learned Trial Judge ought to have dismissed the plaintiff's suit on such ground as well.

22. Upon consideration of the respective arguments of the parties and analysing the materials on record, it is seen that there are two distinct parts in which the present adjudication can be divided – the cross objection and the appeal. We mention the cross-objection first because it hits at the maintainability of the suit itself.

23. There are two components of challenge in the cross objection – first, whether the present suit was maintainable during the pendency of the earlier eviction suit, since the reliefs sought and subject property involved in both were the same; and secondly, whether the suit was maintainable, as the competence of the person presenting the plaint on

behalf of the plaintiff/appellant-company was not proved by filing the resolution of the plaintiff-company authorizing him to do so.

24. On the other hand, the moot question involved in the appeals is whether the jural relationship between the defendant/respondent and the plaintiff/appellant is governed by the West Bengal Premises Tenancy Act, 1997 or the Transfer of Property Act, 1882, the nucleus of which issue is the question, whether the 'rent' of the suit premises within the contemplation of Section 3 of the 1997 Act is restricted only to the basic rent or includes the air-conditioning charges which is integral to the enjoyment of the tenancy.

25. Since the cross-objection hits at the root of the maintainability of the suit itself, we proceed to decide the same, under the heads of its sub-issues, first, and then the issue involved in the appeals.

26. Accordingly, we arrive at the following **DECISION**, which has been divided under the appropriate heads based on the issues involved:

Whether the appellant's eviction suit was barred by law in view of the pendency of the earlier suit at the time of its institution

27. CS No.506 of 1988 was instituted by the predecessor-in-interest of the plaintiff and subsequently the plaintiff/appellant was impleaded therein, upon having acquired title in the suit property. The said suit

was pending at the juncture when the current eviction suit bearing Title Suit No. 554 of 2008 was filed, that is, on February 15, 2008.

28. Subsequently, by an order dated March 4, 2008, the earlier suit was dismissed as withdrawn.

29. The question which arises for consideration is whether the later suit is barred by law under such circumstances.

30. Order II Rule 2(1) of the Code of Civil Procedure requires every suit to include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. Rule 2(3) provides that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterward sue for any relief so omitted.

31. Order II Rule 3 provides that the plaintiff may unite in the same suit several causes of action against the same defendant.

32. It is noteworthy that the principal relief of eviction, claimed in both the suits in the present case, are the same and, as such, the matter does not come strictly within the scope of Order II Rule 2 of the Code. It is not that the whole claim (of eviction in the present case) was not prayed for in the first suit.

33. No question of *res judicata* arises, since the previous suit was not decided on merits earlier. At best, an objection could be taken by the defendant/respondent during the pendency of the second suit that the same should be stayed under Section 10 of the Code of Civil Procedure, since the matters in issue are directly and substantially in issue in the

previously instituted suit. However, strictly speaking, the said bar also did not apply, for the simple reason that the previous suit was filed on a different cause of action than the present suit. Whereas the previous suit was filed on the ground that the defendant/respondent was a premises tenant and governed by the then prevailing West Bengal Premises Tenancy Act, 1956, the latter suit was filed on the ground that since the rent, which was increased from time to time, had gone beyond the purview of the 1997 Act, which is the successor statute of the 1956 Act and was in force at the time of filing of the second suit (that is, February 15, 2008), the defendant/respondent was no longer a premises tenant, having gone outside the ambit of the 1997 Act and, as such, governed by the Transfer of Property Act.

34. The cause of action of the previous suit, being a notice under the 1956 Act, was also different from that of the subsequent suit, which was a notice under Section 106 of the Transfer of Property Act.

35. Thus, the core issues involved in the two suits were different. Whereas the question of conflict between the Transfer of Property Act and the 1997 Act did not arise at all in the earlier suit, due to which the same was a non-issue, the said issue has been germane in the second suit.

36. The other arguable provision of law on maintainability, although not specifically urged by the defendant/respondent, but is required to be considered in the present context for the sake of completion, is whether the second suit was barred under Order XXIII Rule 1(4) of the Code of Civil Procedure. Under Order XXIII Rule 1(4)(b), where the plaintiff withdraws a suit or part of a claim without the permission of court as

referred to in sub-rule (3) thereof (liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim), he shall be precluded from instituting any fresh suit in respect of such subject-matter or part of the claim.

37. The expression "subject-matter" is wide in scope and encompasses within its fold not only the suit property or the relief claimed but also the issues involved and cause of action.

38. Considered from such perspective, the entire gamut of the earlier suit's subject-matter was confined to a prayer for eviction of a monthly tenant simpliciter on the premise of a notice of the West Bengal Premises Act, 1956, which was entirely different from that of the second suit, the genesis of which was a notice under Section 106 of the Transfer of Property Act, treating the defendant/respondent to be a lessee under the said Act.

39. Thus, the first limb of the cross-objection on the ground of non maintainability of the second suit cannot be sustained and is thus turned down.

Whether the present eviction suit ought to have been dismissed as not maintainable under Order XXIX Rule 1 of the Code of Civil Procedure

40. Order XXIX Rule 1 of the Code stipulates that in a suit by or against the corporation, any pleading may be signed and verified on behalf of

the corporation *inter alia* by any director of the corporation who is able to depose to the facts of the case.

41. A careful scrutiny of the said provision indicates that it does not mandate that the director who signed and verified the pleading on behalf of the company has to depose during evidence in support of the plaint case. The requirement of Rule 1 of Order XXIX is merely that *at the time of signing and verifying* the pleading of the company, he must be able to depose to the facts of the case.

42. In the present case, the person who signed the verification of the plaint, namely Naveen Goel, pleaded that he was a director of the plaintiff-Company.

43. Another director of the company, who also claimed himself to be so, adduced evidence in support of the plaint case. *Per se*, such deposition cannot be discarded, since anybody having personal knowledge of the facts of a case can depose on behalf of either of the parties. Hence, it was not even necessary that a particular director of a company, all the less so, the particular director who signed the plaint, has to come forward to depose on behalf of the company.

44. The respondent also alleges that no resolution of the plaintiff-company authorizing the director who filed the plaint was produced in the trial court. However, such a technical objection as to maintainability, which is curable in nature, ought to be taken at the inception to enable the plaintiff to cure such defect by filing such resolution if necessary to dispel the doubt of the court. There is nothing in the written statement of the defendant/respondent, its evidence or the arguments advanced

on behalf of the defendant, as recorded in the impugned judgment, indicating that such objection was specifically taken at any point of time throughout the suit. It is well-settled that objections relating to curable defects, which are technical in nature, have to taken at the outset and not for the first time in appeal. In fact, in the event such objection was taken in the suit, it would be well within the means to the plaintiff/appellant to cure such defect, if any, and/or to address the issue in arguments. The appellant cannot be taken by surprise for the first time in appeal on such technical issue.

45. Furthermore, no issue was framed specifically on such question by the trial court, nor did the parties address any such issue, simply because such specific objection was never raised by the defendant/respondent in pleadings or during arguments.

46. Notably, in the judgment cited on such score by the respondent, *State Bank of Travancore (supra)*, a preliminary objection was taken in the written statement and argued by the defendant therein. As opposed thereto, no such objection was urged in the trial court in the instant case. Thus, the suit cannot be held to have been non-maintainable on such ground and the learned Trial Judge did not commit any error in not holding so.

47. Hence, the second ground of the cross-objection cannot but be turned down as well.

Whether the air conditioning charges were a part of the rent for the purpose of determining whether the jural relationship between the parties was governed by the West Bengal Premises Tenancy Act, 1997 or the Transfer of Property Act, 1882

48. From the facts evinced on the basis of the evidence of the parties, it is found to be an admitted position that for a considerable period of time, separate bills were issued for the rent, AC and electricity charges.

49. The component of municipal taxes is negligible and, as such, is not germane in the facts of the case.

50. Since the AC charges were increased from time to time and lastly was Rs. 11,000/- per month, the same, if clubbed with the basic rent of Rs. 2,000/- per month, would take the rent beyond the purview of the 1997 Act, If the component of AC charges are at all taken to be a part of the rent.

51. In this context, it is to be noted that the plaintiff's predecessor-in-interest had pleaded in the previous suit that Rs. 2,000/- was the monthly rent for the premises. The present plaintiff was impleaded therein and, as such, stepped into the shoes of its predecessor. Also, the plaintiff/appellant had taken out an application for determination of fair rent before the Controller under the 1997 Act, where it had pleaded that the basic rent of the suit premises was Rs. 2,000/- per month.

52. However, we cannot be unmindful of the fact that initially the AC charges, along with the basic rent, combined together, still fell below

the ceiling limit imposed by the 1997 Act. That apart, in Section 17 of the 1997 Act, fair rent has been construed on the basis of various yardsticks, including several factors as stipulated therein, such as the age of the construction, supply of amenities, etc. As such, a mere statement in such an application to the effect that the basic rent was Rs.2,000/- is not fatal for the argument that the rent included other amenities as well.

53. That apart, the said application itself was subsequently dismissed for non-prosecution and there was no adjudication as such to that effect.

54. Thirdly, it is trite law there cannot be any admission against the law. If the law provides that the 'rent', for the purpose of Section 3 of the 1997 Act, would include other components of amenity charges as well, the statement regarding the basic rent of the premises in an application under Section 17 of the 1997 Act cannot be construed to negate such operation of the law.

55. There are certain germane facts which are required to be considered in the present case, even proceeding on the premise that admittedly separate bills were issued for the rent and the AC charges, the latter being in most cases raised by one M/s Urban Services Pvt. Ltd., a third entity and not the plaintiff-landlord.

56. What acquires importance is the evidence led in the suit on the said aspect of the matter. It has come out in the evidence and the pleadings of the parties that the introduction of payment on account of AC charges for the suit premises had its genesis in litigation. The predecessor-in-interest of the plaintiff, namely M/s Calcutta Credit

Corporation, the original landlord, had filed an eviction suit against the respondent which went up to the Supreme Court. The Supreme Court, in its order dated April 24, 1984, recorded that in view of the undertaking given by the counsel for the respondent, the respondent would pay for the AC at the rate of Rs.1/- per square feet, in addition to the rent at the rate of Rs.2/- per square feet, on the basis of which the Special Leave Petition was dismissed. The said order was modified by another order dated November 9, 1984, which fixed the AC charges at Rs.3/- per square feet per month whereas the rent was retained at Rs.2/- per square feet. Since the suit premises is of 1,000 square feet (approximately), the initial AC charges were Rs.1,000/- per month, which was then modified to Rs.3,000/- per month, by the orders of the Supreme Court, which have respectively been marked as Exhibits-C and C/1 in the suit.

57. It is of extreme importance that the AC charges were included as part of the amount payable by the defendant/respondent, in addition to rent, for enjoyment of the suit premises on the basis of an undertaking given by the defendant/respondent itself.

58. The next relevant document is Exhibit-D, which is a letter dated November 12, 1984 written on behalf of the original landlord, the predecessor-in-interest of the present appellant, to the defendant/respondent, stating *inter alia* that the defendant/respondent was to open the new accommodation to enable connection of electricity and AC services from the following day, that is, November 13, 1984. It was stated in the said letter, issued by the predecessor-in-interest of

the plaintiff, that it was one M/s Urban Services Private Limited which would be providing such AC services to the new accommodation.

59. The orders of the Supreme Court mentioned above, taken in conjunction with the said letter, unerringly indicate that it was the plaintiff's predecessor, in the shoes of which the plaintiff/appellant stepped in, which was to provide the electricity through the agency of a third party, namely, M/s Urban Services Private Limited, and that the defendant was to pay to the landlord the charges of AC in addition to the basic rent. Hence, both the liabilities to pay for and provide the AC were restricted between the plaintiff and the respondent, as per the agreement between the parties, as sanctioned by the orders of the Supreme Court.

60. Coming to the cross-examination of D.W.1 dated December 3, 2014, it was admitted by the said witness of the defendant/respondent that since the plaintiff-company took over, it used to supply electricity and that it was not possible to run the suit shop without AC, which was provided in a centrally circulated manner.

61. What emanates from the above is that AC has been an essential amenity for use and enjoyment of the tenancy.

62. In in clauses (xiv), (xvii) and (xviii) of paragraph no. 2 of the written statement, it is admitted by the defendant/respondent that the defendant, through its advocate, wrote to the plaintiff's advocate for issuance of bills in respect of AC and electricity charges for the months of March to May 2007 and thereafter July and August 2007. It was also admitted that cheques of Rs.11,000/- and Rs.3,000/- per month were

issued for different months by the defendant to the plaintiff directly, for which bills were sought.

63. The cumulative effect of the above is that although, admittedly, separate bills were issued for the AC, the same was an essential amenity necessary for use and enjoyment of the tenanted premises. Thus, the AC service, since its introduction on the basis ofthe undertaking of the defendant/respondent before the Supreme Court, has been admittedly an integral part of the tenancy.

64. It is also evinced from the above that it is the liability of the landlord, and the right of the tenant to get from the landlord, the AC services. It is immaterial that the landlord provided such AC through its agent, M/s Urban Services Pvt. Ltd. The facility agreement in respect of supply of AC is an offshoot and corollary of the main tenancy agreement between the parties. There is no independent *jural* relationship between the defendant and the AC service provider, nor is the latter providing such services of its own, at the behest of the defendant-tenant. All along, it is the plaintiff which, albeit through the said agency, has been providing AC services to the defendant pursuant to the obligation arising initially out of the Supreme Court orders, the genesis of which was the undertaking of the defendant itself to the effect that the AC charges would essentially have to be paid along with the basic rent.

65. Let us now explore the legal position in this context which emerges from the judgments cited by both the parties.

66. In *EIH Limited (supra)*, authored by the Division Bench of this Court, it was observed that if the rent component expressly includes the

municipal rates and taxes, it is the landlord's obligation to pay the rates and taxes from out of the rent received by the landlord. If the rent component is separately mentioned and the obligation of the tenant to pay is also otherwise indicated (as in the said case), the rent does not include the rates and taxes.

67. As opposed to the same, in the present case, seen from the undertaking given by the tenant before the Supreme Court, as sanctified by the orders of the Supreme Court and the subsequent conduct of the parties, the rent integrally includes the AC charges.

68. Also, it would be comparing "apples and oranges" if we proceed on the premise of the Division Bench judgment indicated above, since in the said case, the interplay between Section 231 of the Kolkata Municipal Corporation Act, 1980 and Sections 5(8) and 3(f) of the 1997 Act was under the scanner. The entire context of the judgment was whether municipal taxes are a part of the rent. As opposed thereto, the present consideration is not as to whether municipal taxes, which is a variable amount, is part of the rent, but whether fixed charges payable for enjoyment of an amenity, which is necessary for enjoyment of the tenancy and an integral part of such enjoyment, will also come within the purview of the term "rent" under Section 3 of the 1997 Act.

69. Again, in the judgment of the Supreme Court in the self-same matter, delivered on August 1, 2022, the Supreme Court took into consideration the fact that the 1997 Act does not define the term "rent". The Supreme Court considered in paragraph 27 of the judgment that in the case of *Popat & Kotecha Property* (supra) the Court took into

consideration only paragraph 45 of the decision in *Calcutta Gujarati Education Society v. Calcutta Municipal Corpn* reported *at (2003) 10 SCC 533* and not para 46, which was germane in the case. In *Popat & Kotecha Property (supra)* the parties had agreed that rent would include municipal taxes, as opposed to the case before the Supreme Court in *EIH(supra)*, and the said proposition was distinguished on such line.

70. The entire premise of consideration, both by the Division Bench as well as the Supreme Court, in *EIH Limited (supra)* was whether municipal taxes would be a part of rent, from the perspective of interplay between Section 5 (8) and 3 (f) of the 1997 Act.

71. In fact, the said question has not fallen for consideration before us at all. As opposed to Municipal Taxes, which is negligible in the present case and does not have a germane bearing on the issue at hand, we are concerned with whether the charges payable for essential amenities for enjoyment of a tenancy come within the broader purview of "rent" as contemplated in Section (3)(f) of the 1997 Act.

72. In fact, the said issue was categorically considered by the learned Single Judge, who had initially taken up *EIH Limited (supra*), and not by the Division Bench or by the Supreme Court, up to which the said *lis* travelled ultimately. In paragraph 22 of the learned Single Judge's decision, it was considered that the definition of rent, in its wider sense, not only includes the basic rent but also the other amounts payable by the tenant in lieu of amenities and facilities attached to the tenancy and may further include the maintenance/service charges. *Sans* municipal taxes, which was held in the said case not to be a part

of the rent, the proposition recognised by the learned Single Judge, that the charges for amenities of the tenancy is also a part of the rent, was never set aside by either the Division Bench or the Supreme Court. The Supreme Court in *EIH (supra)* clearly distinguished *Popat & Kotecha Property* in view of the latter having considered paragraph 45 and not paragraph 46 of *Calcutta Gujarati Education Society (supra)*. Such distinction was made since the bone of contention there was the inclusivity of the municipal taxes within rent.

73. As opposed thereto, paragraph 45 of *Calcutta Gujarati Education Societyiii* (*supra*) is more germane in the present context. Here the consideration is not whether the municipal taxes are a part of the rent but whether the charges payable for AC, an admittedly essential facility of the enjoyment of the tenancy, is a part of the rent.

74. The Supreme Court, in paragraph 45 of *Calcutta Gujarati Education Society (supra)* had relied on an earlier Supreme Court judgment in the matter of *Puspa Sen Gupta v. Susma Ghose,* reported *at (1990) 2 SC 651*, which arose out of the provision of the Rent Control Law in West Bengal, that is, the predecessor Act of the 1997 Act. It was held in the said judgment that 'rent' is a compendious expression which may include lease money with service charges for water, electricity and other taxes leviable on the tenanted premises. Thus, the Supreme Court, while relying on *Pushpa Sengupta (supra)*, held in *Popat & Kotecha Property (supra)* that the expression "rent" includes lease money with service charges for water and electricity, which are essential amenities for enjoyment of the premises. Drawing from the said principle, the

payment in lieu of amenities and facilities attached to the tenancy were included in the wider connotation of "rent" by the learned Single Judge in *EIH (supra*), which proposition was not distinguished by the Division Bench or the Supreme Court, both of which confined themselves to the question of inclusivity of municipal taxes within the ambit of 'rent' and the comparative study of Section 5(8), which speaks about municipal rates and taxes (and not essential amenity charges), and Section 3(f) of the 1997 Act, which carries the expression "rent".

75. As such, the crux which emerges upon distilling the propositions laid down in all the above judgments is that the service charges and other charges payable in view of amenities and facilities provided for the enjoyment of a tenancy, which are essential and integral to such enjoyment, come within the broader purview of "rent".

76. Deviating a bit, since no definition of 'rent' has been provided in the 1997 Act, Section 105 of the Transfer of Property Act, which is a *pari materia* statute, can be looked into, which defines a "lease" of immovable property as a transfer of a right "to enjoy such property". Under the said Section, the money, share, service or other things to be rendered for such enjoyment is called "rent".

77. Thus, at the end of the day, 'rent' is the money payable for enjoyment of a property which is given in tenancy.

78. In view of the above discussions, we have no manner of hesitation to hold that the fixed monthly AC charges, which were compulsorily payable and undertaken to be paid by the defendant in respect of the tenancy for its enjoyment, and is integral and essential part of such

tenancy, as admitted by D.W.1 in his cross-examination, must be held to be an essential component of "rent", which is the money payable for enjoyment of the tenancy. Thus, borrowing from the above reports and the definition given in the Transfer of Property Act 1882, the term "rent" as is used in Section 3(f) of the 1997 Act has to be construed as the total money payable for enjoyment of a premises, provided, of course, that the same is not a variable amount, and include the basic rental amount plus the charges of the essential amenities and facilities provided to the tenanted premises.

79. In the present case, since the monthly AC charges of Rs.11,000/-, added to the basic rent of Rs. 2000/- per month, take the quantum of monthly rent beyond the ceiling limit of Rs.10,000/- as stipulated in Section 3(f) of the 1997 Act, the tenancy of the defendant/respondent under the plaintiff/appellant in respect of the suit premises falls beyond the purview of the 1997 Act. Thus, the residuary and universal background provisions of the Transfer of Property Act 1882 are applicable to the tenancy-in-question and govern the jural relationship between the parties.

CONCLUSION

80. The learned Trial Judge erred in law and in fact in holding that the tenancy between the parties is governed by the West Bengal Premises Tenancy Act, 1997 and consequentially dismissing the eviction suit of the plaintiff/appellant and decreeing the suit of the respondent. On the contrary, the jural relationship between the parties to the instant *lis* is governed by the Transfer of Property Act, 1882 and the same has been

duly terminated by the notice under Section 106 of the said Act. Hence the plaintiff / appellant is entitled to a decree of eviction.

81. We further conclude, on the basis of the above discussions, that both the grounds taken in the cross-objection of the respondent are not tenable in the eye of law and, as such, are hereby turned down.

82. Accordingly, FAT 66 of 2017 and FA 156 of 2022 are allowed on contest, thereby setting aside the impugned judgment and decrees dated January 6, 2017 passed by the learned Single Judge, Seventh Bench, City Civil Court at Calcutta in Title Suit no.554 of 2008 and Title Suit no.1973 of 2008. Consequentially, Title Suit no.554 of 2008 is decreed, thereby granting a decree of eviction to the plaintiff/appellant against the defendant/respondent, and Title Suit no.1973 of 2008 is dismissed.

83. COT No.33 of 2018 is also dismissed on contest.

84. There will be no order as to costs.

85. Separate decrees be drawn up accordingly.

86. Consequentially, CAN 2 of 2024 is disposed of in the light of the above observations.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

Later

Learned senior counsel appearing for the respondent seeks a limited stay of the above judgment after the judgment is pronounced.

Learned counsel appearing for the appellant assures the Court that for a period of one month from date, no steps for evicting and/or disturbing the possession of the respondent in any manner shall be taken by the appellant.

In view of such assurance given by the appellant, the prayer of stay is refused.

(Uday Kumar, J.) **(Sabyasachi Bhattacharyya, J.)**