

C.O. 419 of 2022

Sree Sree Iswar Gopi Mohan Jew Estate.
Vs.
Sri Mukut Kumar Ghosh.

Mr. Rahul Karmakar
Mr. Pradip Kumar Kundu
....for the petitioner.

Mr. Rabindra Narayan Dutta
Mr. Sibasis Ghosh
Mr. Hare Krishna Halder
Mr. Arkaday Mukherjee

....for the opposite party.

This revisional application arises out of an order dated December 7, 2021, passed by the Learned Judge, 2nd Bench, City Civil Court at Calcutta, in Title Suit No. - 845 of 2017.

By the impugned order, an application under Order 12 Rule 6 of code of civil procedure was rejected. The learned Court was of the view that the admission allegedly made in paragraph 6 of written statement, would not take away the right of the defendant to claim tenancy. The new tenancy laws and incorporation of Section 2(g) of the West Bengal Premises Tenancy Act, 1997, would not be applicable in this case.

The petitioner has challenged the aforementioned order on the ground that in the

written statement, the defendant had unequivocally admitted that he was claiming tenancy by way of inheritance from his grandfather (since deceased) and from his uncles, all of whom died as bachelors.

Mr. Karmakar submits that the defendant had admitted that he had inherited the tenancy and had become a tenant under the plaintiff, after the demise of the original tenants. The claim of the defendant was tenancy by inheritance under the provisions of the West Bengal Premises Tenancy Act, 1997. The definition of tenant would not include any heir of the original tenant beyond five years from the death of the original tenant.

Mr. Karmakar places reliance on the provision of Section 2(g) of the West Bengal Premises Tenancy Act, 1997. Mr. Karmakar further contends that all the recorded tenants in respect of the premises no. 10/4 Khudiram Bose Road, died long before. The present defendant was the nephew of the joint tenants and rent receipts were lastly issued in the name of Gopal Chandra Ghose and brothers.

The present plaintiff, by a letter dated April 16, 2014 enquired from one of the brothers, Narayan Chandra Ghosh, the date of death of Gopal Chandra Ghosh and other deceased brothers (sons of the original tenant). Narayan Chandra Ghosh, one of the joint tenants, by a letter dated April 21, 2014

informed the plaintiff that the other joint tenants, namely, Gopal Chandra Ghosh expired on January 22, 2003, Krishna Chandra Ghosh expired on December 19, 2006 and Rabindra Nath Ghosh expired on December 21, 2011. Narayan Chandra Ghosh was the only surviving tenant.

Narayan Chandra Ghosh was a bachelor and his other brothers/joint-tenants namely, Gopal Chandra Ghosh, Krishna Chandra Ghosh and Rabindra Nath Ghosh all died as bachelors. On the basis of the above information, the plaintiff issued rent receipts in the name of Narayan Chandra Ghosh, the sole surviving tenant. The rent payable was Rs. 500/-, per month, according to the Bengali calendar. Thereafter, on January 20, 2015, Narayan Chandra Ghosh died as a bachelor.

Mr Karmakar, relies on the letter dated April 16, 2014, which has been annexed to the revisional application. The reply of Mr. Narayan Chandra Ghose dated April 21, 2014 is also annexed. It appears that Narayan Chandra Ghosh, the only surviving joint tenants, had intimated that as all the brothers had died unmarried and Narayan Chandra Ghosh was also unmarried and had not adopted any children. His nephew Mukut Kumar Ghosh (defendant) was the only legal heir.

According to Mr. Karmakar, the defendant did not fulfill the eligibility criteria to remain in the premises, as a tenant. The defendant was the nephew of the joint tenants. Narayan Chandra Ghosh, Gopal Chandra Ghosh, Krishna Chandra Ghosh and Rabindra Nath Ghosh, all died as bachelors.

By a notice dated April 29, 2015, the Learned Advocate for the plaintiff asked the defendant to hand over the vacant possession of the property. The notice was duly served upon the defendant. In spite of receiving the notice, the defendant did not comply with the notice. The petitioner was constrained to file a suit for eviction and recovery of khas possession, as also and mesne profit.

The plaintiff's case is that the defendant was an unauthorized occupant in the suit property. In terms of Section 2(g) of the West Bengal Premises and Tenancy Act, 1997, the defendant was liable to be evicted, being a trespasser. Thus, prayers were made for recovery of Khas possession by evicting the defendant from the suit property and for other reliefs.

Mr. Dutta, learned advocate appearing on behalf of the opposite party/tenant, submits that the defendant did not admit any of the allegations made in the plaint. The defendant did not admit that he was an unauthorized occupant in respect of the suit

property. The defendant did not admit that the plaintiff was entitled to a decree for recovery of the possession, upon evicting the defendant from the suit property. Rather, the defendant specifically averred in the written statement that one Ramendranath Ghosh was a monthly tenant under Sree Sree Iswar Gopi Mohan Jew Estate. After demise of Ramendranath Ghosh his only son, Bijendra Nath Ghosh, became a monthly tenant. Bijendra Nath Ghosh died intestate, leaving behind him four sons, one grandson (defendant) and two granddaughters, Smt. Situ Roy Chowdhury and Smt. Mala Das. Birendra Nath Ghosh (father of the defendant) and another son of Bijendra Nath Ghosh, predeceased Bijendra Nath Ghosh.

All the other heirs of Bijendra Nath Ghosh died as bachelors and as such the defendant was entitled to remain in the premises in question also an heir and as a monthly tenant by inheritance.

The uncles (joint tenants) recognized the defendant as their heir. That the defendant had requested the plaintiff to accept the rent from him, but the plaintiff refused. The rent was sent by money order. The money order was also refused. The defendant claimed to be a lawful tenant and had every right to stay in the suit property, by inheritance. Only because rent receipts were issued

in the name of the uncles as joint tenants, the status of the defendant as a monthly tenant in terms of West Bengal Premises Tenancy Act, 1956, could not be denied.

On the other hand, the defendant claims that upon the death of his father who predeceased his grandfather, the defendant continued to remain in the premises as an heir of a predeceased son. The rent bills were issued in the name of the uncles as joint tenants, only because the defendant was a minor. Further, provisions of the West Bengal Premises Tenancy Act, 1997 would not apply in case of eviction of the defendant, as the tenancy was created before 1956.

Thus, according to Mr. Dutta, unless there was a clear and unequivocal admission that the defendant was in unauthorized occupation of the premises in question, in terms of Section 2(g) of West Bengal Premises Tenancy Act, 1997, the plaintiff was not entitled to a judgment upon admission in terms of Order 12 Rule 6 of Code of Civil Procedure.

Mr. Dutta relies on following decisions:-

(a) S. M. Asif vs Virender Kumar Bajaj reported in **2015(4) ICC 972 (S.C.)**

(b) Hari Steel and General Industries Ltd. and another vs Daljit Singh and Ors. reported in **2019(3) ICC 83 (S.C.)**

(c) *Ashis Kumar Das & Others vs Mrs. Rekha*

***Mukherjee* reported in 2002 (2) ICC 211**

(d) *Union of India vs Ibrahim Uddin & Anr.*

reported in (2012) 8 SCC 148.

What falls for decision in this revisional application is whether, as per the pleadings and the law applicable in the present case, an application under Order 12 Rule 6 of Code of Civil Procedure should be allowed or not.

The specific plaint case is that the defendant is an unauthorized occupant in respect of the suit premises. All the joint tenants died long before as bachelors and the defendant was the nephew of the joint tenants. That rent receipts were issued in the name of Gopal Chandra Ghosh and his brothers (uncles of the defendant) in respect of the suit property. By a letter dated April 16, 2014, the joint sebaits of the debbotar estate (premises no. 10/4 Khudiram Bose Road Kolkata) asked one of the joint-tenants, Narayan Chandra Ghosh to intimate the names of the legal heirs of the original tenant along with relevant documents, to enable the sebaits to issue rent receipt and collect rent. In reply to the said letter, Narayan chandra Ghosh specifically informed the date on which the other co-tenants expired. It was also stated that only Narayan Chandra Ghosh was the surviving tenant. The defendant was

mentioned as the nephew and the sole legal heir. It has been admitted in the written statement that no rent was collected from the defendant and no rent receipt was granted to the defendant.

Once Narayan Chandra Ghosh died, sometime in January 20, 2015 as a bachelor, the suit for eviction of the defendant was filed in terms of section 2(g) of the West Bengal Premises Tenancy Act, 1997. Plaintiff further stated that the defendant, who was the nephew of the joint-tenants, did not have any right of inheritance in respect of the tenanted premises. Accordingly, a notice to quit and vacate the premises was issued to the defendant which was accepted, but not acted upon by the defendant. Hence, the suit was filed.

It appears from the averments of the plaint that after the death of Bijendra Nath Ghosh (original tenant), a tenancy was created in favour of Gopal Chandra Ghosh and his brothers, namely Narayan Chandra Ghosh, Krishna Chandra Ghosh and Rabindra Nath Ghosh.

According to the plaintiff, all the brothers had become joint tenants in respect of the property in question. The defendant on the other hand claimed a right to continue to remain in the said premises as a tenant by way of inheritance from his grandfather Bijendra Nath Ghosh (as son of pre-deceased son)

and as the only surviving heir of his uncles (sons of Bijendra), all of whom died as bachelors. The father of the defendant died on January 19, 1959, before the original tenant had expired. According to the defendant, the provisions of the West Bengal Premises Tenancy Act, 1956 would govern the tenancy in question and the defendant had every right to stay in the property even if Gopal Chandra Ghosh and his brothers were recognized as joint tenants. The defendant has specifically averred that the possession of the defendant was lawful and he was in settled possession, upon inheritance.

The defendant contended that apart from claiming inheritance through the pre-deceased son of the original tenant Bijendra Nath Ghosh, the defendant and his two sisters were the sole surviving heirs of their deceased uncles. In the written statement, it has been averred that although the rent bills were issued in the name of the uncles, issuance of such rent bills would not deprive the defendant from claiming tenancy by way of inheritance. Secondly, there is a clear statement that the plaintiff did not issue rent receipts to the defendant and also did not accept any rent from the defendant. The fact remains that the defendant was not recognized as a tenant in respect of the property in question and the clear averment in the plaint and also in the written

statement indicate that the uncles of the defendant became joint-tenants after the death of the grandfather of the defendant.

Even assuming that the defendant had a right to remain in possession of the property along with his uncles, after the death of his grandfather in 1959, as the son of pre-deceased son (Birendranth Ghosh), after promulgation of the 1997 Act and demise of the uncles (subsequent joint tenants), the defendant could not be recognized as a tenant. The provisions of Section 2(h) of the West Bengal Premises Tenancy Act, 1956 has been replaced by Section 2(g) of the 1997 Act.

Section 2(g) is quoted below:-

(g) "tenant" means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and 2 [in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family, and were dependant on him or a person authorised by the tenant who is in possession of such premises] but shall not include any

person against whom any decree or order for eviction has been made by a Court of competent jurisdiction: Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises,

Provided further that the son, daughter parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises 1 [on condition of payment of fair rent]. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.

Further, the last of the surviving tenant/uncle died on January 20, 2015. More than 5 years has passed since such death. Under no circumstances can the defendant be treated as a monthly tenant in respect of the property in question. There is clear, categorical and unequivocal statement that the defendant is claiming his right to remain in the premises by way of inheritance of the tenancy from his grandfather and thereafter from his uncles.

In this case, all the co-tenants died. Gopal Chandra Ghosh expired on January 22, 2003, Krishna Chandra Ghosh expired on December 19, 2006, Rabindra Nath Ghosh expired on December 21, 2011 and Narayan Chandra Ghosh died on January 20, 2015. Defendant is their nephew who

remained in the premises for more than 8 years after the death of the last surviving joint tenant. He does not have any legal right to continue in the premises as a tenant.

Thus, this court is of the view that no useful purpose will be served by keeping the suit pending. Eviction is a *fait accompli*.

In ***Sri. Sushil Kumar Jain & Ors. v. Pilani Properties Limited***, reported in **(2018) 1 CHN 396**, a Division Bench of this court clarified the scope of Section 2(g) of the 1997 Act. Only the heirs of the original tenant who were dependent on him and were residing with him at the time of his death, were considered as tenants. The Court was of the view that the umbrella of protection would be removed with the conclusion of the fifth year from the date of death of the original tenant in case the original tenant died after the 1997 Act came into effect, or after five years from coming into effect of the 1997 Act. Significantly, the Division Bench was of the view that merely because the tenancy had been created prior to the 1997 Act, it could not be said that the protection enjoyed under the 1956 Act would continue even after the 1997 Act had come into operation.

In the decision of ***Mrs. Billy Mehra vs Shri Ramesh Chandra Thakkar and Ors.*** decided in ***C.O. 1814 of 2022***, This Court held as follows:-

“Thus, the averments made in the written statement are clear and unambiguous with regard to the devolution of tenancy and the status of the defendants. Even if the defendant no.1 is contesting the suit, the claim on which the defendant no.1 was asserting his tenancy right in the property, is by inheritance from the original tenant. This fact cannot be disregarded and amounts to an admission.

In the decision of Mangalic Enterprise (supra) the Co-ordinate Bench has specifically held that on the factual aspects of a particular case, the jural relationship between the landlord as tenant would be assessed and judgment on admission could be passed, by applying the tests laid down.

Hence, on the strength of the admissions made by the defendant no.1 in the written statement, that the defendants were residing in the premises by devolution of tenancy from the original tenant, there is no reason as to why a judgment on admission cannot be passed. The defendant no.1 has stated in the application under Section 7(1) of the said Act that the other defendants had left the premises and they were not residing there.

Under such circumstances, this is a fit case for a judgment on admission with regard to a decree of recovery of khas and vacant possession. The finding of the learned court below is factually incorrect. The defendant No.2 is not the widow of the original tenant. The learned court below erred in holding that the defendant no.2 was the widow of the original tenant.”

The learned trial court erred in holding that the provisions of West Bengal Premises Tenancy Act, 1997 and Section 2(g) of the said Act would not apply, as the defendant was in possession of premises in question on the basis of the 1956 Act.

The judgments relied upon by the defendant/opposite party would not apply in this case. The categorical statement of the defendant that he was a lawful tenant in respect of the property in question, through inheritance from his grandfather and his uncles would amount to an admission of possession of the premises in question by way of inheritance. Once such admission is available, the question would be whether by virtue of Section 2(g) of 1997 Act, the defendant would be entitled to remain in the property in question. There remains no further scope to contest the suit in view of the aforementioned categorical averments in paragraph Nos. 6,9,10,11 and 12 of the written statement, which are quoted below:-

“6. That admittedly Smt. Nalini Bala Dashi, Haralal Sadhukhan, Savojit Kumar Pramanick were the sevatis of Sri Sri Gopi Mohan Jew Estate, a Public Trust and the said Trust are the owner of premises no.10/3 and 10/4 of Principal Khudiram Bose Road, P.S. Burtala, Kolkata-700006 and one Ramendra Nath Ghosh was the monthly Tenant under the Sri Sri Ishwar Gopi Mohan Jew Estate long 100 years before and after demise of the said Ramendra Nath Ghosh his only son Dwijendra Nathe Ghosh became the monthly Tenannt under the aforesaid Deity when Smt. Nalini Bala Dasi, Horolal Sadhukhan and Saraju Pramanik being the sebatis used to collect rent from the aforesaid Dwijendra Nath Ghosh and used to issue rent bills in favour of the aforesaid Dwijendra Nath Ghosh in respect of the suit flat.

9. That the aforesaid Dwijendra Nath Ghosh died intestate leaving behind him surviving four sons and one grandson and two-granddaughters namely, Mukut Kumar Ghosh,

Smt. Sithi Roy Chowdhury, Smt. Mala Das, the son and the daughters of the deceased Barindra Nath Ghosh, the elder Son of the aforesaid deceased Dwijendra Nath Ghosh. The aforesaid Barindra Nath, Ghosh the elder son of the aforesaid deceased Dwijendra Nath Ghosh died on 19.01.1959 leaving behind his one son and two daughters as stated hereinbefore who by inheritance became the joint tenants along with uncles of the present defendant and his other two sisters and living five sons of the deceased Dwijendra Nath Ghosh but during the relevant period in January, 1959 the defendant Mukut Kumar Ghosh and his other sisters were minors and as such the rent bills in respect of the present suit property was issued in the names of the aforesaid living five sons and the defendant and his other two sisters used to reside jointly with the aforesaid Rabindra Nath Ghosh and others the five living sons of the deceased Dwijendra Nath Ghosh who were the trustees of the present defendants and his other two sisters. It is stated that the original tenant Ramendra Nath Ghosh died intestate and after his death, his son, Dwijendra Nath Ghosh became the monthly tenant in respect of the suit premises under the plaintiff Sri Sri Ishwar Gopi Mohan Jew Estate.

The aforesaid Dwijendra Nath Ghosh got his six sons, namely, Barindra Nath Ghosh, Rabindra Nath Ghosh, Gopal Chandra, Govindo Chandra, Naryan Chandra and Krishna Chandra and six daughters namely, Usha Bose, Sandhya Rani Bose, Nisha Nath Sarkar, Deba Rani Ghosh, Dipa Rani Ghosh and Rina Ghosh.

10. That Barindra Nath Ghosh and Gobindo Chandra Ghosh first and fourth son of the aforesaid that Dwijendra Nath Ghosh died before the death of their father, Dwijendra Nath Ghosh. It is stated that the eldest son Barindranth Ghosh died on 19.01.1959, intestate leaving behind him surviving Mukut Kumar Ghosh (son) and two daughters Smt. Sithu Ray Chowdhury and Smt. Mala Das. The fourth son Gobindo Chnadra Ghosh died before the death of his father Dwijendra Nath Ghosh and the said son Gobindo was bachelor. The second son Rabindranath Ghosh was deaf and dumb and as such after the demise of the father of original tenant under the plaintiff but

not under alleged the sebaits as mentioned in the Cause Title to the plaint, being Karta of the other family members, heirs of the deceased Dwijendranth Ghosh and the original sebaits Nalinibala Dasi and Sarojit Kumar Pramanick and the rent bill was issued in the name of the said Gopal Chandra Ghosh and other sons.

11. That the uncles of the present defendants since deceased informed the status of the defendant and his other two sisters. The aforesaid five uncles, namely, Rabindra Nath Ghosh, Gopal Chandra Ghosh, Gobindo Chandra Ghosh, Naryana Chandra Ghosh and Krishna Chandra Ghosh were all bachelors and the present defendant and his other two sisters are the heirs and representatives of the said Rabindra Nath Ghosh and others and thus the defendant his other two sisters also are the tenants under the plaintiff by their father and grandfather Barindra Nath Ghosh and Dwijendra Nath Ghosh, since deceased and also as heirs and representatives of their bachelor uncles namely Rabindra Nath Ghosh and others.

The defendant on several occasions intimated and requested the plaintiff through their erstwhile sebaits to accept monthly last paid rent of Rs. 500/- per month and when they refused, the defendant sent the said last paid rent by money order which the present alleged sebaits of the plaintiff refused and thus the money orders towards monthly rent of Rs. 500/- returned with the postal endorsement "refused". The defendant to show his bonafide as per legal advice started depositing the said monthly rent in Bank A/c.

12. That the present suit for declaration and recovery of possession is not maintainable both in law and in its facts and the present defendant and his other two sisters are the monthly tenants under the plaintiff and without determining the tenancy of the defendant and his other two sisters, no suit for eviction can be filled and/or entertained and such ejection suit is to be filed before the Learned Small Causes Court at Calcutta and as such the present suit is not maintainable in law as this Court having lack of inherent jurisdiction in deciding the matter for eviction of the defendant/ monthly tenant. Apart from

this, the present plaintiff being a Public Trust any legal proceeding after said trust is required to file before the Ld. Judge, Principal Judge, City Civil Court at Calcutta.”

In ***Shivani Properties Pvt. Ltd. vs. Rama Shankar Pandey and others*** reported in **2021 SCC OnLine Cal 4284**, a learned Co-ordinate Judge discussed the scope of Order 12 Rule 6 as hereunder:-

“12. A case under Order XII Rule 6 of the Code of Civil Procedure presumes that the factual admissions which have been made by a party in its pleadings or in writing or by way of oral submissions or otherwise, are such that the Court would be persuaded to pronounce judgment without having to wait for the adjudication on the other issues to be completed.”

The contention of the defendants that the suit premises should be governed by the West Bengal Premises Tenancy Act, 1956, is also not correct. The suit was filed sometime in 2017 after the promulgation of the 1997 Act. Certain classes of heirs of the original tenant have been protected in terms of Section 2(g) of 1997 Act, for a period of five years from the death. Recognition of such persons as tenants, expires upon completion of five years from the death of original tenant or five years from the date of coming into force of 1997 Act, whichever is later. In other words 1997 Act itself provides a protection to the family members or specified

relatives of the original tenant, both in respect of residential and non-residential tenancy for a particular period, in order to give such persons adequate time to make alternative arrangements. After the expiry of the period, the protection under the Act of 1997, will no longer be available.

Section 6 of the 1997 Act need not be invoked by the landlord to seek eviction of a person who is regarded as a trespasser after the death of the original tenant. The issue canvassed by the defendant is that he inherited the tenancy through his pre-deceased father, from his grandfather and uncles. Thus, by operation of Section 2(h) of the 1956 Act he was entitled to remain in possession of the property in question. This is not the correct proposition of law. Section 2(g) of the 1997 Act is a departure from Section 2(h) of the 1956 Act. There is a change of policy. Only if a person claiming to be a tenant conforms to the definition in Section 2(g) of the 1997 Act, will he be regarded as a tenant.

In the decision of this court is **Sri. Sushil Kumar Jain & Ors. v. Pilani Properties Limited** reported in **(2018) 1 CHN 396 (Cal)**, the issue sought to be canvassed by the defendant was put to rest. Relevant paragraphs of **Sushil kumar jain (supra)** are quoted below:-

“**12.** The 1997 statute replaced the 1956 legislation and changed the fundamental bases in certain cases. Just as certain classes of tenants have been given protection under the 1997 statute, the landlords of certain classes of tenants have been freed from the claustrophobic clutches of the 1956 Act.

13. Though the present matter primarily hinges on the quantum of rent paid for the residential tenancy by the appellants herein or their predecessor-in-interest, the appellants insist that since the death of father K.C. Jain, the original tenant, in the year 2000 was anterior to the 1997 Act coming into effect on July 10, 2001, a right vested in the joint tenants under the 1956 Act which could not have been taken away by the 1997 Act. Such contention amounts to suggesting that when a rent control legislation creates or confer right, it cannot be curtailed by a subsequent legislation. Such contention is exceptionable and cannot be countenanced. In a sense, the contention amounts to this : that if the original tenant died prior to the 1997 Act coming into force, the heirs of the original tenant who were covered by the definition of “tenant” in Section 2(h) of the 1956 Act would have to be regarded as original tenants within the meaning of the expression in Section 2(g) of the 1997 Act. Clearly, such an interpretation is impermissible and absurd.”

The Hon’ble Division Bench in **Sushil Kumar (Supra)** held that the restriction of Section 2(g) of West Bengal Premises Tenancy Act, 1997 would apply even in respect of a tenant who had been in the possession by virtue of 2(h) of West Bengal Premises Tenancy Act, 1956 Act.

In this case, after the death of the original tenant (grandfather), the uncles were accepted as co-tenant/joint-tenant. Rent receipts were issued in favour of the uncles. All the uncles died. The

defendant is the grandchild of the original defendant, nephew of the subsequent joint tenants and cannot remain in possession of the tenanted premises. The plaintiff never accepted any rent from the tenant. The question of creation of a new jural relationship of landlord and tenant between plaintiff and defendant, did not arise.

The conclusion is that the defendant has clearly admitted that he was in possession of the suit premises through inheritance and the plaintiff had neither accepted rent from him nor granted any rent bill.

Order 12 Rule 6 of Code of Civil Procedure is to be read with facts and circumstances of each case and in the case in hand, the averments in the written statement has been elaborately discussed above. It is clearly available that the only right asserted by the defendant is tenancy by way of inheritance. The defendant cannot remain in the premises as tenant. A nephew is not protected as a tenant under Section 2(g) of the West Bengal Premises Tenancy Act, 1997, in any circumstances.

There cannot be a straitjacket formula to apply the provision of Order 12 Rule 6 of Code of Civil Procedure. Each case has to be decided on the basis of facts, averments and nature of admission. The admission has to be categorical and unconditional.

The same cannot be an inference drawn from any document or statements or averments. Such was the decision of the Hon'ble Apex Court in ***Hari steel and General Industries Ltd. (Supra)***. In this case, as has already been discussed, repeated averments had been made by the defendant that he was entitled to remain in the suit premises as a lawful tenant by way of inheritance from his deceased grandfather and his uncles.

In the decision of ***S. M. Asif (Supra)***, the Hon'ble Apex Court held that mere admission of a relationship of landlord and tenant cannot be an unequivocal admission to a decree for eviction. The decision of ***Asish Kumar and other (supra)*** will also not help the opposite party, inasmuch as, the issues decided in the decision were not similar to the case in hand. Rather, the court held that Order 12 Rule 6 of Code of Civil Procedure must be read having regard to the facts and circumstances of each case and in the context in which the alleged admission was to be construed. In this case the averments in the written statements are such that it will be impossible to conclude otherwise and the attending circumstances surrounding such admission, clearly indicate that the defendant only claims his right to remain in the property on the basis of inheritance.

The decision of *Union of India vs Ibrahim Uddin & Anr.* reported in **(2012) 8 SCC 148** does not apply to this case.

Under such circumstances, the revisional application is allowed.

This court is of the view that the inevitable result in the suit, by application of Section 2(g) of the said Act, would be eviction. No useful purpose would be served by keeping the litigation pending. Litigation must be shortened. Thus, the application under Order 12 Rule 6 is allowed. The learned court below shall pass necessary judgment in terms of prayer (a) and (b) in the plaint and decide the other prayers with regard to mesne profits, costs etc., in accordance with law.

The order impugned is set aside.

There will be no order as to costs.

Parties are directed to act on the server copy of this order.

(Shampa Sarkar, J.)