IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Present:
The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

APD 04 of 2025

With

CS No. 317 of 2003
IA No. GA 2 of 2026

Budge Budge Company Limited

Vs.

The Calcutta Gujrati Education Society and Another

For the appellant	:	Mr. Malay Kumar Ghosh, Sr. Adv. Ms. Nilanjana Adhya, Adv. Mr. Tanmoy Sett, Adv. Mr. Atish Ghosh, Adv. Ms. Antara Dey, Adv. Ms. Neha Gupta, Adv.
For the respondents	:	Ms. Noelle Banerjee, Adv. Mr. Ritoban Sarkar, Adv. Mr. Dipanjan Dey, Adv.
Hearing concluded on	:	07.05.2026
Reserved on	:	07.05.2026
Judgment on	:	02.07.2026

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Md. Shabbar Rashidi, J.:-

1. The appeal is in assailment of impugned judgment and decree dated December 13, 2024 passed in C.S. No. 317 of 2023.

2. By the impugned judgment and decree, the learned Trial Judge passed a decree in C.S. No. 317 of 2023 for recovery of possession in favour of the respondent/plaintiff upon eviction of the appellant from the suit premises. By the impugned decree, the appellant/defendant was directed to hand over vacant possession of the suit premises to the plaintiff within the time specified therein. The respondents/plaintiffs were also held to be entitled to mesne profits.

3. It was contended on behalf of the appellant that the lease was created by and between the parties in terms of an agreement dated October 29, 1973. The terms of agreement of lease provided that the tenancy of the appellant was determinable only in case of default in the payment of rent. The learned Trial Judge failed to appreciate that there was no default on the part of the appellant in payment of rent until August 31, 2003. In such view of the facts, a decree for eviction could not have been passed.

4. Learned senior advocate for the appellant further submitted that the learned Single Judge erred in appreciating the scope and effect of Sections 106, 107, 110 and 111 of the Transfer of Property Act, 1882. It was also contended that the learned Trial Judge did not take into account that upon termination of tenancy by notice dated

February 18, 1992 the appellant had partaken the character of statutory tenant in terms of the provisions of the West Bengal Premises Tenancy Act, 1956 and continued to be governed by such Act in view of Section 45 of the West Bengal Premises Tenancy Act, 1997.

5. Learned senior advocate for the appellant further contended that learned Single Judge came to an erroneous finding that the earlier suit between the parties being Ejectment Suit No. 419 of 1992 was dismissed as withdrawn by order dated April 8, 2003 passed in such suit. It was contended that the said order dated April 8, 2003 was set aside by an order dated July 7, 2004 in C.O. No. 542 of 2004 and thereby, the previous suit being Ejectment Suit No. 419 was revived retrospectively with effect from April 8, 2003. In that view of the fact, the learned Single Judge erred in holding that upon receipt of the rent for the month of May 2003 by the respondent/plaintiff, a new tenancy in respect of the suit premises came to be created in view of order dated April 8, 2003. Learned advocate for the appellant also submitted that the learned Single Judge came to an erroneous conclusion that acceptance of rents by the respondent/plaintiff for the months of May, 2003 to August, 2003, amounted to waiver of the earlier notice of eviction dated February 18, 1992 issued under Section 13 (6) of the West Bengal Premises Tenancy Act, 1956.

6. Learned senior advocate for the appellant further submitted that the learned Single Judge failed to appreciate that the earlier Suit being Ejectment Suit No. 419 of 1992 was finally withdrawn by an order dated April 29, 2006. Since the earlier notice of eviction was issued under Section 13 (6) of the Act of 1956, the appellant became a statutory tenant under the provisions of said Act until the suit was finally withdrawn. Acceptance of rents did not create a fresh tenancy.

7. Learned senior advocate for the appellant further argued that although, Ejectment Suit No. 419 of 1992 was dismissed as withdrawn by order dated April 8, 2003, the same revived with the order passed in C.O. No. 542 of 2004 which was finally dismissed as withdrawn by order dated April 29, 2006. The plaintiff/respondent filed the second suit being Ejectment Suit No. 317 of 2003 on December 9, 2003. It was contended that the learned Trial Judge failed to consider that since the earlier suit revived with the order passed in C.O. No. 542 of 2004, for some point of time, there were two suits pending in respect of the suit premises over the selfsame cause of action. However, learned Trial Court came to an erroneous finding that the two suits were based on different cause of actions. Learned advocate also submitted that for the aforesaid reasons, the suit filed by the respondent was barred by limitation. To such contention, the appellant relied upon ***(1976) 4 Supreme Court Cases 634 (The Kerala State Electricity Board Vs. T.P. Kunhaliumma)***.

8. Learned senior advocate for the appellant further submitted that the learned Single Judge erred in not appreciating that the two notices of termination of tenancy issued on February 18, 1992 and on July 5, 2003 effectually terminated the tenancy created in terms of agreement dated October 29, 1973. It was argued on behalf of the appellant that the learned Trial Judge did not appreciate that since, the appellant/defendant was a statutory tenant till April 29, 2006 and not a mere trespasser, issuance of notice under Section 106 of the Transfer of Property Act, 1882 and filing of Ejectment Suit No. 317 of 2003 was bad in law in so far as tenancy of the appellant was already determined by notice dated February 18, 1992. It could not have been determined again by notice under Section 106 of the Act of 1882.

9. Learned senior advocate for the appellant also submitted that the learned Trial Court did not appreciate that by a letter dated November 10, 2010, the respondent/plaintiff demanded rent from the appellant further from April 2006 to August 2010. According to the appellant, such demand of rent amounted to an admission on the part of the respondent with regard to continued possession of the appellant of the suit premises which in effect, renewed the tenancy of the appellant. Besides that, the learned Single Judge also did not appreciate that the respondent did not return the security deposit which was equivalent to the rent for three months. Such action on the part of the respondent also demonstrated the continued possession of

the appellant of the suit properties as well as renewal of the tenancy. It was also contended that the appellant paid rent at the old rates for the months of April 2006 to August 2010 by a letter dated December 2, 2010 which was duly accepted by the respondent.

10. Learned senior advocate for the appellant also submitted that the learned Single Judge did not appreciate that the tenancy of the appellant was renewed from month to month by holding over and the same was never determined by any notice. It was further contended that the learned Trial Judge ought to have held that the purported notice of eviction was waived by the respondent taking into account the provisions contained in Section 113 of the Act of 1882.

11. It was also contended by learned senior advocate for the appellant that the impugned judgment and decree is liable to be set aside on the ground that the same has been passed by a court lacking jurisdiction on the subject matter of the suit in so far as the subject matter was a commercial dispute within the meaning of Commercial Courts Act, 2015. In support of such proposition, learned advocate for the appellant relied upon ***(2019) 3 Supreme Court Cases 594 (Sneh Lata Goel vs. Pushplata and Others)***, ***MANU/WB/0764/2026 (Starlift Services Private Limited Vs. Syama Prasad Mookerjee Port, Kolkata)*** and ***(1954) 1 Supreme Court Cases 710 (Kiran Singh and Others Vs. Chaman Paswan and Others)***.

12. On the other hand, learned advocate for the respondents submitted that although the subject matter of the suit might be commercial in nature but neither the court decided nor the parties raised such issue during the pendency of civil proceeding. Relying upon ***(2022) 18 Supreme Court Cases 122 (Haryana Staff Selection Commission Vs. Priyanka and Others)*** and ***2023 SCC OnLine SC 1378 (Mumtaz Yarud Dowla Wakf Vs. Badam Balkrishna Hotel Pvt. Ltd. And Other)*** learned advocate for the respondent submitted that act of the court should not be to the prejudice of anyone.

13. Learned advocate for the respondents further submitted that the suit was initiated in the year 2003, much prior to the coming into force of the Act of 2015. The suit had substantially advanced before the Act of 2015 came into effect or the Commercial Division was constituted in the High Court and Standard Operating Procedure (SOP) was brought into action in 2021. The decree was passed in 2024. Ouster of jurisdiction cannot operate retrospective. In support of such contention, learned advocate for the respondent relied upon ***MANU/SC/0368/2023 (Ananta Chandrakanta Bhonsule Vs. Trivikram Atmaram Korjuenkar)*** and ***2025 SCC OnLine Cal 9363 (Dipankar Ghosh and Another Vs. CESC Limited)***.

14. Learned advocate for the respondents also relied upon an order dated July 30, 2021 passed by the Hon'ble Supreme Court in

Special Leave to Appeal (C) 11418 of 2021 to contend that the Hon'ble Supreme Court was pleased to extend liberty to continue with the civil suit or to approach a civil court in case for eviction of tenant filed before Commercial Court. Similar principles were laid down in ***2025 SCC OnLine SC 2325 (T.N. Godavearman Thirumulpad Vs. Union of India)***.

15. Relying upon ***2021 SCC OnLine Cal 1457 (Laxmi Polyfab Pvt. Ltd. Vs. Eden Realty Ventures Pvt. Ltd. And Another)***, it was submitted by learned advocate for the respondents that scope and object of the Act of 2015 is to provide speedy relief and not to curtail or delay such relief for mere technicalities. The learned advocate for the respondent stood by the impugned judgment and decree and submitted that the same is based on evidence led at the trial. He submits that the impugned judgment and decree requires to be affirmed.

16. The respondents let out the suit premises to the appellants by an agreement dated October 29, 1973 at a monthly rental of ₹11,025/–. The appellant used to pay the aforesaid rent together with property tax at the rate of ₹385.88/– per month and surcharge at the rate of ₹1378.38/– per month. According to the case made out, the appellant defaulted on payment of rent for which, the respondent served notice under Section 13 (6) of the West Bengal Premises Tenancy Act, 1956 and determined the tenancy. Following such

notice, the respondent/plaintiff filed Ejectment Suit No. 419 of 1992 before the City Civil Court at Calcutta. It was further case that since the said suit was not heard, the respondent filed an application on March 24, 2003 seeking withdrawal of the suit on the ground that the respondent/ plaintiff was not willing to proceed with the suit under the provisions of West Bengal Premises Tenancy Act, 1956. Accordingly, in terms of an order No. 89 dated April 8, 2003 passed by the learned 7th Bench of City Civil Court, Kolkata, the suit being Ejectment Suit No. 419 of 1992 was dismissed.

17. The respondent/plaintiff also came up with a case that even after dismissal of the suit, the appellant/defendant paid rents at the old rates for the period for the months of April, 2003 to August, 2003. However, the respondent/plaintiff terminated the tenancy of the appellant/defendant by a notice dated July 5, 2003 under Section 106 of the Transfer of Property Act, 1882 and thereby; tenancy of the appellant was terminated with effect from the expiry of the month of August, 2003. The appellant/defendant failed to vacate the suit premises and hand over vacant possession of the same to the respondent in terms of the notice dated July 5, 2003. He continued in possession of the suit premises even after termination of its tenancy and as such became a trespasser on and from September 1, 2003.

18. The suit was contested by the appellant by filing written statement wherein the allegations made in the plaint were denied. The

positive case set out by the defendant/appellant was that the suit filed by the respondent was purposefully overvalued in order to bring it into the pecuniary jurisdiction of the High Court. According to the appellant, the respondent by a letter dated April 24, 2003 called upon the appellant to enhance the monthly rents at the rate of ₹73,500/- with effect from the month of June 2003. In view such enhancement, the plaintiff filed the suit valued at ₹11,02,500/- claiming the same as mesne profit calculated up to November 30, 2003 at the rates ₹50/- per square foot, which according to the appellant had no basis. Whereas, the suit ought to have been valued at the annual rents in terms of the provisions of West Bengal Court Fees Act, 1970. In that view of the facts, according to the appellant/defendant, the High Court on its Original Jurisdiction lacked pecuniary jurisdiction to entertain the suit filed by the respondent/defendant.

19. The defendant also came up with a case that the suit was not framed in terms of the Section 6 of the Societies Registration Act, 1860. It was further contended that in term of provisions of West Bengal Societies Registration Act, 1961, no suit could be filed or defended by a society and therefore, the suit as framed was bad in law. Moreover, the name of the plaintiff No. 2 i.e. Secretary of the society was not disclosed and as such institution of the suit by a society was not proper.

20. It was also contended that the suit was filed in violation of Order XIV, Rule 6 of the Code of Civil Procedure, 1908 in so far as the plaint was neither proved at the trial nor it contained the signature of the plaintiffs. It was further case of the defendant/appellant that by an order dated March 11, 1998 passed in Ejectment Suit No. 419 of 1992, the plaintiff was directed to cause necessary repairs in the suit premises however; such repairing was not done by the respondent for which the appellant got the repairing work done at his cost which is liable to be adjusted against the rents due to the respondents. It was further contended that Ejectment Suit No. 419 of 1992 was finally dismissed for non-prosecution on April 29, 2006. The instant suit being CS Suit No. 317 of 2003 was filed in the year 2003 and for some time there were two suits pending over the selfsame suit property for which the instant suit was bad for multiplicity of the proceeding. The appellant also contended that the earlier suit was withdrawn by the respondent without leave and therefore the present suit was barred in terms of the provisions of Order XXIII, Rule 1 (4) of the Code of Civil Procedure, 1908.

21. The appellant/defendant also came up with a case that the defendant tendered rent and the plaintiff accepted the same till the month of August 2003. The notice to quit dated July 5, 2003 was invalid insofar as the notice was not in accordance with the contract of tenancy. It did not change the cause of action for the suit. The

defendant submitted that his tenancy was not determined by such notice and the defendant was not liable to pay the mesne profit.

22. The appellant/defendant also made out a case that after withdrawal of the Ejectment Suit No. 419 of 1992, by a letter dated April 24, 2003 the plaintiff demanded enhancement of rent at the rate of ₹73,500/– per month. The appellant/defendant responded to the said letter stating that it was ready to consider the enhancement of rent provided the plaintiff executes necessary repair works and provide essential services and maintenance in terms of the tenancy agreement. However the plaintiff continued to accept rents at the old rate up to the month of August 2003. The defendant further contended in the written statement that the notice dated July 5, 2003 was invalid and not in accordance with the terms and conditions of the agreement between the parties. According to the defendant, the tenancy was terminable only in the event of default in payment of rent. The defendant never defaulted in payment of rent and as such, no notice under Section 106 of Transfer of Property Act, 1882 would have been issued.

23. The defendant also submitted that the earlier suit was filed in terms of the provisions of West Bengal Premises Tenancy Act, 1956 which was subsequently withdrawn. In the meantime a new act West Bengal Premises Tenancy Act, 1997 came into force with effect from July 10, 2001. The new act provided that all the suits and proceedings

under the old Act of 1956 pending at the time of commencement of the Act of 1997 would continue and be disposed of in accordance with the provisions of the Act of 1956 as if the said Act continued to be in force and the new Act of 1997 had not been passed. For such reason, according to the appellant/defendant, the plaintiff could not have taken recourse to the Act of 1997.

24. On the basis of the pleadings put in by the parties, the learned Trial Court framed as many as 9 issues for proper adjudication of the disputes involved in the suit. The issues framed by learned Trial Court are reproduced here under namely,

1. *Whether the Suit is maintainable under the law and fact?*
2. *Whether the suit discloses any cause of action?*
3. *Whether the notice under Section 106 of the Transfer of Property Act was properly served by the plaintiff upon the defendant?*
4. *Whether the determination/termination of tenancy of the defendant is valid and proper? What is the status of the defendant at present?*
5. *Whether plaintiff waived its contention contained in the later dated April 24, 2003 by demanding and accepting monthly rent at the old rate from the defendant?*
6. *Whether the defendant is liable to be evicted?*
7. *Whether the plaintiff is entitled to the decree prayed for?*
8. *Whether the plaintiff is entitled to any mesne profit? If so, to what extent?*

9. Whether the plaintiff is entitled to any other relief/reliefs?

25. As noted above, the respondent/plaintiff initially filed Ejectment Suit No. 419 of 1992 under the provisions of West Bengal Premises Tenancy Act, 1956. Subsequently, the said suit was withdrawn by the respondent and a fresh suit being CS No. Suit No. 317 of 2003 was filed under the provisions of Transfer of Property Act, 1882 following a notice served under Section 106 of the said Act. It was contended that the order of withdrawal of the earlier suit was set aside by the High Court by an order dated July 7, 2004 passed in C.O. No. 542 of 2004. In the meantime, the respondent filed the second suit. According to the appellant, with the setting aside of the order of dismissal of the suit on withdrawal, the suit revived and therefore, there were two suits pending at some point of time, both seeking eviction of the appellant from the suit premises. The appellant raised an objection as to the maintainability of the second suit. Such issue was decided by learned Trial Judge as issue No. 1.

26. While deciding Issue No. 1, the learned Trial Court observed that when the earlier suit was finally withdrawn by the respondent, it claimed rent for the suit premises at old rates. Such rent was actually paid by the appellant and was duly accepted by the respondent. Such an action on the part of the respondent amounted to waiver of earlier notice to quit and the appellants partaken the character of tenant by

holding over, with the creation of a new tenancy. The learned Trial Judge held to the following, that's to say:

> *"After determination of the earlier tenancy and acceptance of rent from the tenant subsequent to such determination establish consent of the Plaintiff in the Defendant's continued possession. This is tantamount to waiver of the earlier notice and the doctrine of holding over contemplated in Section 106 of the Transfer of Property Act, 1882 comes into play. A subsequent notice to quit issued under Section 106 of the Transfer of Property Act, 1882 dated 5th July, 2003, is a notice determining the fresh tenancy post withdrawal of the suit. The instant suit is based on determination of that tenancy. This cause of action is, of course, not the earlier cause of action. It is a different cause of action arose out of determination of the tenancy by holding over.*
>
> *As stated above, the instant suit is based on the separate cause of action. Absence of liberty, contemplated in Order XXIII Rule 1 put an embargo on the Plaintiff to file a fresh suit on the self-same cause of action. But here cause of action is different.*
>
> *Once the suit was withdrawn and new tenancy was created, the Plaintiff determined the same and instituted the instant suit for recovery of possession. Thereafter, as evident from record, the Defendant moved an application before the City Civil Court for setting aside the order. Matter came up to this Court and was again remanded to the City Civil Court for hearing a fresh withdrawal application. At that time, the instant suit had already been instituted on a different cause of action, as stated above, the Defendant pursuing the earlier suit based on a different cause of action. In view of this Conspectus of facts, neither it can be said that the suit is*

barred under Order XXIII Rule 1 or bad for multiplicity of proceedings."

27. On the basis of above discussions learned Trial Judge proceeded to decide the issue in favor of the respondent/plaintiff holding that the suit as framed by the respondent was quite maintainable. We have noted hereinabove that the lease in respect of the suit premises was created in terms of an agreement dated October 29, 1973. Fair rent for the suit premises was never determined in terms of the provisions of the Act of 1956. Much time had elapsed since the induction of the appellant for which the appellant demanded enhancement of rent from the earlier rate of rent at ₹11,02,500/- per month to ₹73,500/- per month. The suit was valued taking into account the enhanced rent claimed as mesne profit calculated up to November 30, 2003 at the rate ₹50/- per square foot. The earlier suit was filed under the provisions of West Bengal Premises Tenancy Act, 1956 taking into consideration the old rate of rent. However, when the respondent claimed enhanced rate of rent as mesne profit, the amount of rent went out of the purview of the Act of 1956 or the Act of 1997.

28. Similarly, on the point of admissibility of the suit before the High Court, the learned Trial Court noted that,

"The issue of pecuniary jurisdiction along with sufficiency or insufficiency of Court fees was agitated before this Court. The issue was decided by a Co-Ordinate Bench of this Court in terms of the Order dated 19th July, 2005. A Co-Ordinate

Bench of this Court observed that suit was undervalued and deficit Court fees was to be paid. It was further observed that the Plaintiff failed to pay Court fees in respect of annual rent although Court fees was paid in respect of the claim mesne profit. In terms of the said order the Plaintiff was directed to put additional Court Fees of a sum of Rs.1,53,394/- over and above the sum of Rs.11,02,500/-. There was no appeal from that order. Firstly, the Plaintiff paid court fees in terms of Section 7 (xiii) (b) of the West Bengal Court Fees Act, 1970, since valuation included annual rent.

.....

.....

In the case in hand I am of opinion that firstly, court fees was paid in accordance with section 7 (xiii) (d) of the W.B.C.F Act and secondly that the issue was finally decided by the Co-Ordinate Bench, leaving no space for re-agitation.

This issue is decided in favour of the Plaintiff holding that this Court has pecuniary jurisdiction to entertain the suit."

29. In such view of the facts, we find no infirmity with the filing of the second suit under the provisions of Transfer of Property Act, 1882 and that the High Court on its Original Side has had the pecuniary jurisdiction to entertain the suit as framed under the provisions of the Transfer of Property Act, 1882.

30. In respect of the other issues involved in the suit, it was argued on behalf of the appellant/defendant that even after issuance of notice to quit dated July 5, 2003, the respondent/ plaintiff demanded and accepted rents for the suit premises at old rates. Such an action on the part of the plaintiff amounted to waiver of notice in

terms of Section 113 of the Act of 1882. The tenancy of the appellant was not determined by such notice and therefore, the suit seeking eviction was bad in law. The learned Trial Judge, on the basis of evidence led at the trial, came to a conclusion that the lease in respect of the suit premises was determined on the basis of notice to quit dated July 5, 2003, in terms of the provisions of Section 111 (h) of the said Act.

31. The learned Trial Court also held in the impugned judgment and decree that there was no challenge to issuance and receipt of the notice to quit by the appellant. It was also noted by learned Trial Court that in terms of the provision of Section 116 of the Transfer of Property Act, 1882, since after determination of tenancy by notice served in the year 1992, the appellant continued in possession of the suit premises and paid rent which was accepted by the respondent, the tenancy was renewed from month to month. Such renewed tenancy was determined by the second notice to quit dated July 5, 2003. In consideration of such facts, we are not in a position to hold that the second suit being CS 317 of 2003 does not disclose a valid cause of action for the suit. It would be apposite to set out Section 116 of the Act of 1882 for the sake of convenience, which runs as follows:

> *"116. Effect of holding over*
> *If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the*

lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

Illustrations

(a) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A.C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C.C dies, but B continues in possession with A's assent. B's lease is renewed from year to year."

32. It has been submitted that rents for the months of September 2003 to June 2004 were deposited in pursuance to the order passed by the City Civil Court dated 05/08/2004 and deposits were made at its own risk. From the month of July 2004 onwards rents had been deposited on the basis of the order passed by the City Civil Court dated 05/08/2004. From the months of April, 2006 to August 2010, amount had been paid by four pay orders, which was recorded in the order dated 15/12/2010 in GA No. 2107 of 2010. That for the month of September 2010 onwards payments were made pursuant to the order passed by this Court dated 14/09/2010. It was clarified in the order dated 15/12/2010 passed in GA No. 2107 of 2010 that payments were made without prejudice to the rights and contentions of the parties. It was ordered that rate at which rent was to be paid

was ₹30,000/- and the order was not passed noting consent of the parties. It was also argued that the letter issued by the Plaintiff's advocate dated 10/11/2010 contained mere request to the Defendant to pay the amount in terms of the order passed by this Court without intending to allow the Defendant to continue possession. According to Ms. Banerjee, the whole gamut of argument is an afterthought without having any space in the pleading, hence should be discarded. In that view of the facts, deposit of rents cannot be construed as waiver of the second of notice to quit dated July 5, 2003.

33. The learned Trial Court held in the impugned judgment and decree that,

> *"It was further observed that mere acceptance of rent did not by itself constitute on act of the nature envisaged by Section 113 of the Act showing the intention to treat the lease as subsisting. The fact remains that even after accepting the rent tendered, the landlord did file a suit for eviction and even while prosecuting the suit accepted rent which was being paid to him by the tenant. It cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and treat the lease as subsisting. Further observation of the Court is that to avoid controversy, in the event of termination of lease the practice followed by the courts is to permit the landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent payable by tenant. It cannot be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so intended. It is also relevant, in this context, to*

consider the observations made by three Judges' Bench of the Supreme Court of India in Calcutta Credit Corporation Ltd. & Anr. Vs. Happy Homes (P) Ltd. [AIR 1968 SC 471]. It was observed that clearly Section 113 contemplates waiver of notice by an act on the part of the person giving it, if such act shows an intention to treat the lease as subsisting and the other party gives consent express or implied thereto. Once a notice is served determining the tenancy or showing an intention to quit on the expiry of the period of notice, the tenancy is at an end, unless the consent of the other party to whom the notice is given is agreed to be treated as subsisting. The principle of law was reiterated by the Supreme Court of India in C. Albert Morris Vs. K. Chandrasekaran & Ors. [(2006) 1 SCC 228]:

> *"We are, therefore, of the opinion that mere acceptance of rent by the landlord, the first respondent herein, from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit would not create a tenancy so as to confer on the erstwhile tenant the status of a tenant or a right to be in possession. We answer this issue accordingly."*

The underlying principle of law in Section 113 of the Act was explained and elucidated by the three Judges' Bench of the Supreme Court of India in Calcutta Credit Corporation's case (supra). It was explained that intention, either express or implied is necessary for waiver of notice to quit. The subsequent decisions, as mentioned above, clarified that mere acceptance of rent after service of notice to quit and determination of tenancy does not establish such intent or is tantamount to express or implied waiver of notice.

In the instant suit, the Defendant filed written statement. No plea of waiver of notice, as argued, under Section 113 of the Transfer of property Act, 1882 is taken. Intent of waiver of

notice to quit is a mixed question of law and fact. But the fact of waiver and intention to waive the notice to quit must be or should be in the pleading, namely, in the written statement. No plea is taken in the written statement that security deposit has been adjusted against rents payable for three months immediately preceding the institution of the suit. However, in course of cross examination, it was put to PW 1 that the Plaintiff is holding the security deposit for three months which is equivalent to Rs.33,075/- i.e. three months' rent in terms of Clause 4 of the agreement dated 29/10/1973 (Ext.B) to which PW 1 answered positive. PW 1 refuted and answered negative to the suggestion put to him that the Plaintiff had accepted rent from the Defendant for the period after 31st August, 2003 or that the Plaintiff has otherwise assented to the Defendant in continuation of possession of the suit premises after expiry of 31st August, 2003. DW 1, in course of examination-on-chief, admitted that the Plaintiff refused to accept rent after issuance of notice of eviction dated 5th July, 2003. Co-Ordinate Bench of this Court, in terms of Order dated 14th September, 2010, directed the Defendant to pay a lump sum amount Rs.30, 000/- per month from the month of September, 2010 until disposal of the suit till further order. This order was passed without prejudice to the rights and contentions of the Plaintiff regarding mesne profit.

The conspectus of facts, as stated shortly herein above, do not disclose any evidence by which intention of waiver of the notice to quit dated 5th July, 2003 (Ext.D) is manifest. Rather, as discussed above, evidence indicates to the contrary. Rent was paid without deciding or without prejudice to the rights and interests of the parties as directed by this Court and acceptance of such rent without anything else is not tantamount to waiver of notice. Though the argument of Mr.

Ghosh, the Learned Senior Counsel is impressive but the same lacks any support of substantial evidence to stand."

34. It was also contended on behalf of the appellant that the tenancy could not have been determined except on the ground of the default. The appellant did not default in payment of rents. The learned Single Judge observed that acceptance of rent, after determination of the earlier tenancy brought the doctrine of holding over was pressed into service and a new tenancy was created which by virtue of Section 116 of the Act of 1882 which ran from month to month, determinable by fifteen days' notice. There is no evidence that a notice was not served on the Defendant. Therefore, the learned Single Judge rightly held that tenancy of the appellant in respect of the subject premises was validly determined in terms of the notice to quit dated July 5, 2003. Moreover, from the materials placed before us, it transpires that the appellants paid rents for several months at a time. If that be so, the appellant cannot claim that there was no default in payment of rent and notice to quit could not have been issued.

35. In so far as the objection with regard to the frame of suit is concerned, it is trite law that Section 6 of the Societies Registration Act, 1860 or Section 19 of the West Bengal Societies Registration Act 1961 uses the word 'may' and in numerous judicial pronouncements the same has been held to be permissive and not mandatory in nature. A society may sue and be sued in the name of the society

itself. Incidentally, the Secretary of the Society has been arrayed as plaintiff No. 2. At the same time, it is also established principle that substantive rights should not be allowed to be defeated on technical grounds of procedural irregularity so as to ensure that no injustice is done to any party. In view of such propositions of law, we find no force in the objection raised by the appellant concerning the frame of the suit.

36. The appellant relied upon ***The Kerala State Electricity Board*** (supra) to contend that the suit being CS No. 317 of 2003 was barred by limitation. As noted above, after the earlier suit of 1992 was withdrawn by the respondent, the respondent served notice under Section 106 of the Act of 1882 on July 5, 2003 and, thereafter, filed the second suit being CS No. 317 of 2003. In such view of the matter, Limitation Act, 1963 has got no role to play in the facts of the present case and, therefore, the ratio laid down in ***The Kerala State Electricity Board*** (supra) is not attracted in the facts of the present case.

37. In ***Sneh Lata Goel*** (supra), it was observed by the Hon'ble Supreme Court that an objection to the territorial jurisdiction of a Court must not by entertained unless and until such objection was taken in the Court of first instance at the earliest possible opportunity. The Hon'ble Supreme Court laid down that,

> *"13. Sub-section (1) of Section 21 provides that before raising an objection to territorial jurisdiction before an appellate or revisional court, two conditions precedent must be fulfilled:*
> *(i) The objection must be taken in the court of first instance at the earliest possible opportunity; and*
> *(ii) There has been a consequent failure of justice.*
> *This provision which the legislature has designedly adopted would make it abundantly clear that an objection to the want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit. Hence, it has to be raised before the court of first instance at the earliest opportunity, and in all cases where issues are settled, on or before such settlement. Moreover, it is only where there is a consequent failure of justice that an objection as to the place of suing can be entertained. Both these conditions have to be satisfied."*

38. From the perusal of the impugned judgment and decree, it transpires that no such objection with regard to the territorial jurisdiction was ever raised before the learned Trial Court. Besides that, the appellant has not made out a case that there was a consequent failure of his justice meted out to the appellant by the impugned judgment and decree. We have considered the case at hand that the case being CS No. 317 of 2003 remains pending before the learned Single Judge for a considerable period between 2003 and 2004. During such period, no objection as to the jurisdiction of the learned Trial Judge appears to have been raised by the appellant.

39. ***Starlift Services Private Limited*** (supra) was rendered in the context of an application under Section 34 of the Arbitration and Conciliation Act. Whereas the instant appeal emanates out of a civil suit seeking eviction of a tenant. In view of the ratio laid down in ***Sneh Lata Goel*** (supra), the ratio laid down in ***Starlift Services Private Limited*** (supra) cannot be applied in the facts of the present appeal.

40. In ***Kiran Singh And Others*** (supra) it was held by the Hon'ble Supreme Court that,

> *"17. there is considerable authority in the Indian courts that clauses (a) and (b) of Section 11 of the Suits Valuation Act should be read conjunctively, notwithstanding the use of the word "or". If that is the correct interpretation, the plaintiffs would be precluded from raising the objection about jurisdiction in an appellate court. But even if the two provisions are to be construed disjunctively, and the parties held entitled under Section 11(1)(b) to raise the objection for the first time in the appellate court, even then, the requirement as to prejudice has to be satisfied, and the party who has resorted to a forum of his own choice on his own valuation cannot himself be heard to complain of any prejudice. Prejudice can be a ground for relief only when it is due to the action of another party and not when it results from one's own act. Courts cannot recognise that as prejudice which flows from the action of the very party who complains about it. Even apart from this, we are satisfied that no prejudice was caused to the appellants by their appeal having been heard by the District Court. There was a fair and full hearing of the appeal by that court; it gave its decision on the merits on a consideration of the entire evidence in the case, and no*

injustice is shown to have resulted in its disposal of the matter. The decision of the learned Judges that there were no grounds for interference under Section 11 of the Suits Valuation Act is correct."

41. In the case at hand, the learned Single Judge has noted that additional court fee was required to be paid by the respondents in terms of an order passed by another Single Bench, which the respondent/appellant paid in due course in compliance of such order. It was further noted that such order directing payment of additional court fee was never challenged and thereby the learned Single Judge held that it had jurisdiction to entertain it.

42. ***Haryana Staff Selection Commission*** (supra) noted that it remains fundamental in dispensation of justice that the act of the court should not be to the prejudice of anyone.

43. In ***Mumtaz Yarud Dowla Wakf*** (supra) the Hon'ble Supreme Court held that the powers of the Civil Court are plenary in nature, the onus lies on the party who contends that it lacks jurisdiction. "*However, this does not take away the duty of the civil court to check its own jurisdiction, more so when a specialized forum has come into being as a creature of a statute. Of course, there may be certain exceptions when fundamental principles governing common law, including the one pertaining to the principle of natural justice, stand violated. To deal with the said issue one has to take into consideration the objective behind the enactment, along with the provisions contained thereunder."*

44. In the said decision of ***Mumtaz Yarud Dowla Wakf*** (supra), the Hon'ble Supreme Court also held that,

> "*33. We would like to consider one more issue by drawing a distinction between institution and adjudication. Institution of a suit before a forum where an adjudication process is the same as the other, insofar as the rights and liabilities are concerned, has got no relevancy when subsequently either an act or amendment has been brought forth conferring the jurisdiction to some other forum. In other words, the issue for consideration is the forum to adjudicate. This principle is subject to the rider that it may not have an application when there is already a decree where a party has not raised the issue of jurisdiction at any point before."*

45. In ***Ananta Chandrakanta Bhonsule*** (supra), it was held that ouster of jurisdiction of civil court can be expressed or implied, but it cannot have retrospective effect annulling a decree validly passed by the civil court. In the case at hand, apparently, no objection with regard to the jurisdiction of the Court both pecuniary and territorially was ever taken by the appellant in course of the trial. The suit was filed in the year 2003 when there was no existence of the Commercial Courts Act. The suit had substantially advanced when the Act came into force in 2015. The Standard Operating Procedure (SOP) came into being in 2021 whereas the impugned judgment was delivered in 2024. No case of prejudice has been made out by the appellant at the point of time. The materials on record demonstrates that the appellants, by taking such objection at this stage, are trying

to prejudice the case of the plaintiff/respondent by holding on to the subject premises for a paltry amount of rent.

46. In ***Dipankar Ghosh*** (supra), a Single Bench of this Court noted that the judgment of the Court must always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively. The ratio laid down in ***Dipankar Ghosh*** (supra) has no manner of application in the facts of the present case. Likewise, we find that the ratio laid down in ***T.N. Godavearman Thirumulpad*** (supra) has no manner of application in the facts of the present case.

47. In ***Laxmi Polyfab Pvt. Ltd.*** (supra), one of us noted the aim and objects of the Commercial Courts Act, 2015 and observed that the Act of 2015 came into force to provide a mechanism for speedy disposal of high value commercial disputes. It was held in the said decision that,

> *"24. As the statement of objects and reasons of the Act of 2015 has stated, the Act of 2015 came into being to provide a mechanism for speedy disposal of high-value commercial disputes. According to the government high-value commercial disputes involve complex facts and questions of law. Therefore, the government has felt the need to provide for an independent mechanism for their early resolution. Early resolution of commercial dispute has been conceived to create a positive image to the investor world about the independent and responsive legal system of the country. The Act of 2015 has been brought about to accelerate economic growth,*

improve the international image of the Indian Justice delivery system and repose the faith of the investor world in the legal culture of the nation."

48. Therefore, in view of the discussions made hereinabove, we find no reason to interfere with the impugned judgment and decree. The same is hereby affirmed. Accordingly, the instant appeal being **APD 4 of 2025** is hereby dismissed. Connected applications, if any, shall also stand disposed of.

49. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

50. I agree.

[DEBANGSU BASAK, J.]