In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya

F.A.T. No. 262 of 2026

Saroj Kumar Saraogi @ Saroj Kumar Jain

-Versus-

Om Prakash Srimali and Others

For the appellant	:	Mr. Jishnu Chowdhury, Sr. Adv., Ms. Somali Mukhopadhyay, Mr. Andolan Sarkar, Mr. Subhajit Das, ... Advs.
For the respondent no. 1 & 2	:	Mr. Probal Kumar Mukherjee, Sr. Adv., Ms. Hashnuhana Chakraborty, Mr. Vinay Kumar Purohit, ... Advs.
Heard on	:	21.07.2026, 22.07.2026 & 28.07.2026.
Reserved on	:	28.07.2026.
Judgment on	:	05.08.2026.

Sabyasachi Bhattacharyya, J.:-

1. The present first appeal has been preferred by the lessee/defendant in a suit for eviction on the ground for expiry of the lease and for mesne profits. By the impugned judgment and decree, the said suit was decreed, thereby directing eviction of the lessee/appellant and passing a preliminary decree of mesne profits.

2. The brief facts of the case are that on July 29, 1905, the original owner of the suit property executed a registered lease deed for a period of 35 years with effect from July 1, 1905 in favour of the predecessors-in-interest of the appellant. On December 9, 1907, a further registered lease deed was executed, extending the period of lease for a further period of 65 years with effect from August 1, 1940. Subsequently, the said lease expired by the efflux of time on July 31, 2005.

3. The appellant, in the meantime, had stepped into the shoes of the original lessees and instituted the eviction suit in the year 2006.

4. Learned senior counsel appearing for the appellant argues that the learned Trial Judge erred in law in decreeing the suit on the premise that the jural relationship between the parties was governed by the Transfer of Property Act, 1882 (for short, "the TP Act"), whereas the tenancy between the parties was governed by the West Bengal Premises Tenancy Act, 1997, as amended in 2002 (in brief, "the 1997 Act").

5. As per Section 3(c) of the 1997 Act, as amended in 2002, certain categories of leases are exempted from the operation of the 1997 Act. In particular, Section 3(c) of the 1997 Act exempts any tenancy where the lease has been entered into after the commencement of the 1997 Act by a written instrument has been registered under the Registration Act, 1908 with due consent of the tenant, the fact of such consent being recorded in the instrument so registered.

6. Learned senior counsel for the defendant/appellant argues that, for the 1997 Act to apply, there must be a tenancy created by a lease, entered into with due consent of the tenant, and such consent is to be recorded in the registered instrument of lease. Also, such lease deed must be registered after the commencement of the 1997 Act.

7. Learned senior counsel argues that Section 2(c) of the 1997 Act defines "landlord" as being a person receiving or being entitled to receive rent, whereas Section 2(g) defines a "tenant" essentially as one by whom, or on whose behalf, rent is payable. Section 2(e) of the 1997 Act defines "premises".

8. Section 3 of the 1997 Act, on the other hand, lays down the classes of premises and tenancies exempted from the Act. Thus, all existing tenancies which fit into the definition of Sections 1(3) and 2, Clauses (c), 2(e) and (g), of the 1997 Act are governed by the said Act by default, unless they fall within the exempted categories mentioned in Section 3.

9. Secondly, under Section 6 of the 1997 Act, there are two *non obstante* provisions, giving it overriding effect over all contracts or statutes. Thus, the Legislature consciously gave overriding effect to the 1997 Act over lease deeds and the TP Act.

10. In the present case, none of the exemption clauses apply. Thus, by default, the tenancy between the parties came under the operation of the 1997 Act.

11. Learned senior counsel further argues that Section 45 of the 1997 Act repealed the provisions of its predecessor statute, the West Bengal Premises Tenancy Act, 1956 (for short, "the 1956 Act"), apart from the suits pending thereunder. Tenancies governed by the 1956 Act, however, were not saved.

12. By specific implication, it is contended, in view of the non-inclusion of tenancies of the category as existing between the present parties within the exemption provision, the same had to be governed by the 1997 Act.

13. On the other hand, learned senior counsel appearing for the plaintiffs/respondents argues that the commencement and culmination of a jural relationship are the only legal criteria to ascertain the governing law by and between the parties, unless such rights are expressly ousted by any legislation.

14. Learned senior counsel places reliance on the provisions of Sections 105 and 111 of the TP Act and argues that a lease of immovable property created by a registered deed of lease comes within the purview of the TP Act and, as per Clause (a) of Section 111, is determinable by efflux of time limited thereby.

15. Again, under Section 5 of the Specific Relief Act, 1963, a person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908.

16. It is argued that Section 3(c) of the 1997 Act applies to pre-existing tenancies, essentially under the 1956 Act (since Section 105 of the TP Act defines lease, lessor and lessee), which, after commencement of the 1997 Act, culminated in a registered lease with recorded consent of the tenant. The phrase "after the commencement of this Act" in Section 3(c) is the key to understand the context.

17. Learned senior counsel places reliance on the Preamble of the 1997 Act which stipulates that the 1997 Act is to provide for the regulation of certain incidents of tenancy of premises in Kolkata, Howrah and some other areas in West Bengal, whereas it was expedient to provide for the regulation of such incidents. Section 3(c) of the 1997 Act does not even, by necessary implication, bring "lease" within the fold of "any tenancy" and such interpretation cannot be read into the 1997 Act to nullify the rights conferred under the TP Act. The words "tenancy" or "any tenancy" in Section 3 of the 1997 Act are used as generic terms in the 1997 Act and do not mean to include within their fold "lease" as defined in Section 105 of the TP Act.

18. Learned senior counsel relies on *Prakashwati Chopra v. Sibaji Mitra*, reported at *2006 SCC OnLine Cal 441*, for the proposition that in those cases where the lease expired by efflux of time but the lessee is continuing in possession, he/she would not come within the purview of the definition of "tenant" under Section 2(g) of the 1997 Act.

19. Learned senior counsel next places reliance on *Charu Diesels LLP v. E.L. Properties (P) Ltd.*, reported at *2025 SCC OnLine Cal 4255*, where the same proposition was reiterated and it was held that once a lease commences under the Transfer of Property Act, it cannot automatically change its character and partake the nature of a tenancy under the Rent Control Act, merely because such Rent Control Act came into force, unless specifically provided therein.

20. Learned senior counsel for the respondents also cites *Ashwin Bhanulal Desai v. Bijay Kumar Manish Kumar HUF*, reported at *2019 SCC OnLine Cal 9423*, for the proposition that in those cases where the lease expired by efflux of time but the lessee is continuing in possession, he/she would not come within the purview of the definition of "tenant" under Section 2(g) of the 1997 Act.

21. The crux of the proposition laid down therein, it is argued, is that in cases where the tenants were not enjoying the benefit of the 1956 Act and the 1882 Act operated, the benefits of the 1997 Act would not be extended to such tenants. Taking the said ratio to its logical conclusion, the Division Bench held that where a lease expired by efflux of time, or despite there being a sooner determination clause, such clause merely remained on paper and was not exercised by an actual sooner determination of the lease, the lease ran its full course and as such, fell within the exemption as contemplated in the 1956 Act and was governed by the TP Act.

22. In the present case, it is argued, the lease ran its full course and expired by efflux of time prior to the institution of the suit. In the case of *Rajesh Mitra alias Rajesh Mumar Mitra and Another v. Karnani Properties Ltd.*, reported at *2024 SCC OnLine SC 2607*, also relied on by the respondents, it was held that a new statute which touches upon the existing rights cannot be retrospective, without an express provision or necessary implication expressing such clear intent of the Legislature. Thus, it is submitted that pre-existing rights conferred under the TP Act cannot be deemed to be taken away retrospectively by operation of the 1997 Act.

23. Learned senior counsel appearing for the respondents also relies on *Indian Oil Corporation Ltd. (IBP Division) v. Amal Kumar Mondal & Ors. [SA 66 of 2022 with IA No. CAN 2 of 2012 (Old CAN 6496 of 2012)]*, where it was held that the defence that although the lease expired by efflux of time, the appellant becomes a tenant under the 1997 Act, was not accepted, since if the lease was allowed to run its full course, both the lease and the conditions contained therein could come to an end and would cease to be operative and the clause for prior determination would no longer be available as a defence against eviction.

24. Thus, it is argued that the learned Trial Judge was justified in passing an eviction decree under the provision of the TP Act.

25. Lastly, learned senior counsel for the respondents submits that the issue now raised before this Court for the first time was never urged in the Trial Court and, as such, the appellant ought not to be permitted to raise the same.

26. While adjudicating the present appeal, the moot question which falls for consideration is whether the jural relationship between the parties is a 'lease' falling under the TP Act or a 'tenancy' coming within the purview of the 1997 Act.

27. At the threshold, the respondents have objected to the issue being raised for the first time in the appeal. However, it is well-settled that a pure question of law not dealt with by the Trial Court can also be raised for the first time before a superior forum, if the same can be adjudicated on the basis of the facts and materials already on record. Proceeding on the said premise, we entertain the said issue and proceed to adjudicate the same, it being a pure question of law which can be decided on the basis of the admitted facts and the materials on record.

28. Before embarking on the enquiry in respect of the question posed above, we are required to look into the effect of the 2002 Amendment to the 1997 Act, coming into force with effect from July 10, 2001 (that is, from the date of coming into force of the 1997 Act). Section 3(c) of the 1997 Act, prior to such amendment, read as follows:

> "*(c) any tenancy where the lease has been registered under the Registration Act, 1908 (16 of 1908), before or after the commencement of this Act.*"

29. In its amended form, the Clause reads as follows:

> "*(c) any tenancy where the lease with due consent of the tenant has been registered under the Registration Act, 1908 (16 of 1908), after the commencement of this Act, and the fact of such consent has been recorded in the instrument so registered.*"

30. Thus, what was altered in the provision was essentially that the exemption relating to registered leases entered into prior to the commencement of the 1997 Act was removed and consent of the tenant, to be recorded in the lease deed itself, was included as a necessary pre-condition for application of the exemption.

31. The appellant seeks to interpret such amendment in the manner that the Legislature consciously removed the exemption of the 1997 Act in respect of pre-1997 Act registered lease deeds, with or without the tenant's consent, necessarily implying that such prior leases were also brought within the fold of the 1997 Act.

32. However, the object of the amendment can also be read to the effect that the consent of the tenant, to be reflected in the deed, was sought to be incorporated as the key factor for the exemption to apply. The reason for the same is obvious. Since the 1997 Act (as did its predecessor statute, the 1956 Act) provides an additional cloak of protection to tenants, which is absent in the TP Act, a conscious choice was given to tenants by the 2002

Amendment of the 1997 Act, to opt out of the beneficial provisions of the 1997 Act by incorporating their consent to registration in the lease deed itself. Hence, the key ingredient of the amendment was to ensure that, to opt out of the protections of the 1997 Act, such consent has to be reflected specifically in the lease deed.

33. However, the said amendment does not necessarily mean that the pre-1997 Act registered lease deeds were automatically included within the purview of the 1997 Act with the 2002 amendment to the said Act. The pre-amendment leases would necessarily continue to be governed by the previously existing legal framework, under which the lease deeds were entered into and continuing till then.

34. In the said backdrop, we are to look at the existing legal position prior to the enactment of the 1997 Act.

35. Two classes of leases/tenancies were prevailing at that juncture, one governed by the Rent Control Act, that is, the 1956 Act, and the other, by the TP Act.

36. The exemptions enumerated in 1956 Act were provided in the dual provisions of Sections 1 and 3 thereof. Whereas the proviso to Section 1 exempted premises owned, requisitioned or taken on lease by the Government and local authorities, thus providing a blanket bar in respect of such premises, the bar stipulated in Section 3 was more nuanced.

37. As per the said provision, only Sections 31 and 36 of the said Act, relating to penalty for disturbances of easement and the tenant getting supply of electricity to the premises without permission of landlord, were applicable to registered residential leases entered into on or after December 1, 1948 but before the commencement of the 1965 Ordinance, if such leases were for a period between 15 and 20 years.

38. On the other hand, in respect of leases entered into after the 1965 Ordinance and if such leases were for 20 years and above, without any sooner determination clause, Sections 31 and 36 of the 1956 Act as well as the provisions in the said Act relating to rent were applicable. In case of other leases entered into after the commencement of the 1965 Ordinance, the 1956 Act was applicable to its full extent.

39. The necessary fall-out of the said provision was that if a pre-1965 Ordinance lease deed was entered into for a period above 20 years, by dint of a registered lease deed, the 1956 Act would not be applicable. At best, in the case of 15-20 years leases entered into between December 1, 1948 and the 1965 Ordinance commencement, only Sections 31 and 36 and/or the provisions relating to rent in the 1956 Act would be applicable, and nothing more.

40. During the same statutory regime, a different paradigm simultaneously existed under the TP Act. Whereas Section 105 of the said statute defines lease, Section 106 thereof stipulates that if no written contract or local law/usage exists to the contrary and the lease is not for either agricultural or manufacturing purpose, the same would be deemed to be a monthly tenancy.

41. On the other hand, Section 107 of the TP Act provides that if the lease is for year to year or for a term exceeding one year (or reserves yearly rent), the same can only be made by a registered instrument.

42. Hence, within the eco-system prevailing between Sections 106 and 107 of the TP Act, if the lease is not for agricultural or manufacturing purpose (in the present case, it is nobody's contention that either of the two are satisfied), the lease would be deemed to be a monthly tenancy, if there is no written contract, whereas, if it is created a registered lease deed and is for a period of more than one year, it would come within the purview of the TP Act.

43. The net effect thereof is that monthly tenancies contemplated under Section 106 of the TP Act, if otherwise not falling under the exemption clause of Sections 1 and 3 of the 1956 Act, would be governed by the 1956 Act, whereas registered lease deeds of more than one year would be governed by the TP Act, except to the limited extent that under situations provided in Section 3 of the 1956 Act, there would be limited application of the 1956 Act insofar as Sections 31, 36 and the rent provisions therein contained were concerned.

44. With the advent of the 1997 Act, the exemption clause was condensed into a single provision, being Section 3 thereof.

45. It is to be noted that absence of specific exemption in respect of a particular class of leases does not automatically imply their inclusion in the 1997 statute, unless such inclusion is specifically and expressly provided for in the 1997 Act.

46. Even otherwise, the argument of the appellant in the present case, to the effect that there is no inclusion clause and as such, unless the non-exempted leases are deemed to be included within the operation of the 1997 Act, no lease deed would come within its purview at all, cannot be accepted.

47. There cannot be any automatic inference of inclusion, if a particular category of leases is not provided in the exemption clause. What is to be seen in such case is the interplay of the pre-existing statutes vis-à-vis the jural relationship of the parties, which would form the plinth of the legal framework before coming into force of the 1997 Act.

48. To ascertain the governing statute before the promulgation of the 1997 Act,, one has to look at the point of time when the jural relationship was entered into in the first place. The statute prevalent at that juncture would be the determinant of the governing law between the parties.

49. As held by the Hon'ble Supreme Court in *Rajesh Mitra alias Rajesh Mumar Mitra (supra)*[1], even if the actual date when eviction would happen is post the 1997 Act, it does not have a retrospective effect to take away the rights of the parties to a lease, given to them under the old statute. Even otherwise, it is well-settled that accrued substantive rights cannot be retrospectively taken away by a subsequent piece of legislation, unless it specifically provides so.

50. In *Prakashwati Chopra (supra)*[2], a co-ordinate Bench of this Court categorically opined that in those cases where the lease expired by efflux of time but the lessee continued in possession, such lessee would not come

---

[1] ***Rajesh Mitra alias Rajesh Mumar Mitra and Another v. Karnani Properties Ltd.*, reported at *2024 SCC OnLine SC 2607***

[2] ***Prakashwati Chopra v. Sibaji Mitra, reported at 2006 SCC OnLine Cal 441***

within the purview of the definition of "tenant" under Section 2(g) of the 1997 Act.

51. In *Charu Diesels LLP (supra)*[3], a co-ordinate Bench of this Court held that once a lease commences under the TP Act, it cannot automatically change its character and partake the nature of a tenancy under the Rent Control Act, merely because such Rent Control Act came into force, unless specifically provided therein.

52. Again, a learned Single Judge of this Court, in *Ashwin Bhanulal Desai (supra)*[4], considered two possible interpretations of Section 3(c) of the 1997 Act (as amended in 2002); one being the literal interpretation that leases which were registered prior to the commencement of the 1997 Act universally fall within the purview of the 1997 Act, since not exempted by Section 3(c) of the said Act, the second being that Section 3(c) only restricts the exemption to post-1997 registered deeds with consent of the tenant recorded but is silent about other categories of pre-1997 Act registered lease deeds. The judgment was rendered in the context of *Prakashwati Chopra (supra)*[5], where it was held that only in cases where the lease is permitted to run its full life, the same would be governed by the TP Act; but if an option was exercised for sooner determination of the lease than its normal tenure, the protection of the 1997 Act would be attracted.

53. The issue involved in the present suit is covered by the first-abovementioned scenario, in view of the lease between the parties having already stood determined by efflux of time prior to the institution of the suit. The second

---

[3] ***Charu Diesels LLP v. E.L. Properties (P) Ltd., reported at 2025 SCC OnLine Cal 4255***
[4] ***Ashwin Bhanulal Desai v. Bijay Kumar Manish Kumar HUF, reported at 2019 SCC OnLine Cal 9423***
[5] ***Prakashwati Chopra v. Sibaji Mitra, reported at 2006 SCC OnLine Cal 441***

interpretation noted in *Ashwin Bhanulal Desai (supra)*[6] is more apt in the context of the case, since the categories of registered lease deeds not specifically exempted under Section 3(c) come within the silent zone of the 1997 statute and necessarily, have to be governed by the legal framework existing prior to the commencement of the 1997 Act.

54. *Indian Oil Corporation Ltd. (supra)*[7] is cited by the respondents, where the earlier judgments holding the field were followed and it was held that if the lease was allowed to run its full course, both the lease and the conditions contained therein could come to an end and would cease to be operative and the clause for prior determination would no longer be available as a defence against eviction.

55. It is to be noted that in the present case, the first registered deed was entered in the year 1905 and the second in 1907, both at a time much prior to the commencement, even the 1956 Act or the 1965 Ordinance, let alone the 1997 Act.

56. Thus, the relationship between the parties in the instant case came to be governed by the TP Act.

57. As held in *Charu Diesels LLP (supra)*[8], once a lease commences under the TP Act, it cannot automatically change its character and partake the nature of a tenancy under the Rent Control Act, unless there is an specific provision in the subsequent Rent Control Act to that effect.

---

[6] ***Ashwin Bhanulal Desai v. Bijay Kumar Manish Kumar HUF, reported at 2019 SCC OnLine Cal 9423***
[7] ***Indian Oil Corporation Ltd. (IBP Division) v. Amal Kumar Mondal & Ors. [SA 66 of 2022 with IA No. CAN 2 of 2012 (Old CAN 6496 of 2012)]***
[8] ***Charu Diesels LLP v. E.L. Properties (P) Ltd., reported at 2025 SCC OnLine Cal 4255***

58. There is no such specific/express provision within the four corners of the 1997 Act to include registered lease deeds, which were all along governed under the TP Act, to be brought within the fold of the 1997 Act.

59. Hence, the argument of the appellant to that effect cannot be accepted.

60. Even otherwise, upon expiry of the tenure of the lease in the present case on July 31, 2005, prior to the institution of the suit on June 9, 2006, the status of the appellant was converted from a lessee to a 'tenant-at-sufferance'. Going by the proposition laid down in *Prakashwati Chopra (supra)*[9] and *Rajesh Mitra alias Rajesh Kumar Mitra (supra)*[10], such 'tenant-at-sufferance' could not automatically be construed to come within the ambit of the 1997 Act.

61. Section 111(a) of the TP Act categorically provides that a lease of immovable property determines by efflux of the time limited thereby. Under Section 108(B)(q) of the TP Act, on the determination of the lease, the lessee is bound to put the lessor into possession of the property. The effect of the said provision kicked in as soon as the lease expired by efflux of time on July 31, 2005, thus denuding the legality of the appellant's possession over the suit property.

62. As such, from every possible perspective, the obvious conclusion is that the appellant could not take shelter under the provisions of the 1997 Act.

63. In such view of the matter, we do not find any merit in the appeal.

64. Accordingly, F.A.T. No. 262 of 2026 is dismissed on contest, thereby affirming the impugned judgment and decree dated July 24, 2025, passed

---

[9] ***Prakashwati Chopra v. Sibaji Mitra, reported at 2006 SCC OnLine Cal 441***

[10] ***Rajesh Mitra alias Rajesh Mumar Mitra and Another v. Karnani Properties Ltd.*****, reported at** ***2024 SCC OnLine SC 2607***

by the learned Judge, Fourth Bench, City Civil Court at Calcutta, in Title Suit No. 695 of 2006, and affirming the decree of eviction and mesne profits passed against the appellant.

65. However, in view of the pendency of the appeal till date, we hereby extend the time for the defendant/appellant to quit, vacate and deliver up peaceful and vacant possession of the suit premises in favour of the plaintiff/respondent for a further period of three months from this date. In default, the plaintiff/respondents shall be at liberty to put the decree into execution, if execution has not already been levied; in the alternative, to proceed with the execution case after the expiry of the said three months' period.

66. We make it clear that the other portion of the impugned judgment and decree, pertaining to mesne profits, is not interfered with.

67. Interim orders, if any, stand vacated.

68. There will be no order as to costs.

69. A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)