Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

BEFORE:
THE HON'BLE JUSTICE OM NARAYAN RAI

C.O. 166 OF 2026

SRI SUBRATA SEN **...PETITIONER**

-VERSUS-

SMT. SHELLY JAISWAL & ANOTHER **...OPPOSITE PARTIES**

For the Petitioner	:	Mr. Rwitendra Banerjee, Adv. Mr. Prasenjit Debnath, Adv.
For the Opposite Parties	:	Mr. Ayan Banerjee, Adv. Mr. Ajeyo Chowdhury, Adv.
Reserved on	:	24.06.2026
Judgment on	:	17.09.2026

OM NARAYAN RAI, J.:-

1. This revisional application is directed against an order dated January 02, 2026 passed by the learned Civil Judge (Junior Division), 1st Court, Chandernagore, Hooghly in Title Suit No. 378 of 2015 whereby the petitioner's application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997[1] has been rejected and the petitioner's defence has been struck out by invoking the provisions of Section 7(3) of the 1997 Act.

FACTUAL MATRIX:

2. Shorn of meticulous details, the facts relevant for adjudication of the present revisional application, as may be gathered from the material on record, are as follows:-

a. The husband of the opposite party no.1 herein instituted Title Suit No.378 of 2015 before the learned Civil Judge (Junior Division), 1st Court, Chandernagore, Hooghly, praying *inter alia* for a decree of eviction of the petitioner on the grounds of default in payment of rent and reasonable requirement.

b. In the said suit, the petitioner entered appearance on January 02, 2016 and filed two applications under Sections 7(1) and 7(2) of the 1997 Act praying for appropriate directions for deposit of current rent as well as arrears thereof.

[1] **Hereafter "the 1997 Act"**

c. In the application under Section 7(2) of the 1997 Act the petitioner asserted that the petitioner was not a defaulter as alleged by the plaintiff. It was contended that since the petitioner and the plaintiff shared a good relationship therefore the petitioner repaired the tenanted premises as per the *"instruction and permission of the plaintiff"* and in the process spent a sum of Rs.2,00,000/-. The petitioner alleged that the plaintiff had assured him that the amount spent by the petitioner for such repairs would be adjusted against the monthly rent payable by him. It was the further case of the petitioner that despite repeated requests the plaintiff did not issue rent receipts to the petitioner on the pretext that there was no blank rent receipt. By the said application, the petitioner ultimately requested the learned Trial Court to determine the rent arrears while stressing that although the plaintiff had assured the petitioner that non-issuance of rent receipts would not be a problem, the plaintiff went ahead and instituted the suit for his eviction.

d. During pendency of the said application Section 7(2) of the 1997 Act, the original plaintiff died and the present opposite parties were substituted in his place and stead as his legal heirs and representatives.

e. The opposite parties opposed the petitioner's application under Section 7(2) of the 1997 Act by filing their written objection.

f. After a contested hearing the learned Trial Court dismissed petitioner's application under Section 7(2) of the 1997 Act by an order dated July 31, 2018. The petitioner challenged the said order dated July 31, 2018 before this Court by filing C.O.4024 of 2018.

g. The said revisional application was disposed of by an order dated July 12, 2023 thereby setting aside the order dated July 31, 2018 passed by the learned Trial Court remanding the matter to the learned Trial Court with a direction to decide the petitioner's application under Section 7(2) of the 1997 Act after affording an opportunity to the parties to lead evidence and to cross-examine each other.

h. Pursuant to the said order, the matter was reheard by the learned Trial Court based on the evidence adduced by the parties. The learned Trial Court ultimately rejected the petitioner's application under Section 7(2) of the 1997 Act by the impugned order while observing that the petitioner had *"stirred up a story of alleged repair to cover up not only for the mistake that was already done but also to avoid paying the due arrear amount as well as to validate such monthly deposits in the garb of such created story"*. Upon rejecting the petitioner's

application under Section 7(2) of the 1997 Act, the learned Trial Court proceeded to strike out the petitioner's defence by invoking Section 7(3) of the 1997 Act.

i. Feeling aggrieved by such order, the petitioner has approached this Court by way of the present application.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. A brief summary of the submissions made by Mr. Rwitendra Banerjee, learned Advocate appearing for the petitioner, is as follows:-

a. The learned Trial Court has committed a serious error in failing to determine the arrears of rent payable by the petitioner and has struck out the petitioner's defence merely because the petitioner failed to prove the case run by him in the application under Section 7(2) of the 1997 Act.

b. The petitioner had made out a case of having incurred expenses on repair works which were to be adjusted against the rental dues and mere failure of the petitioner to prove his case could not be treated as the petitioner's admission of the rent arrears.

c. The learned Trial Court had earlier rejected the petitioner's application on the basis that although the petitioner had admitted in paragraph 6 of the application under Section 7(2) of the 1997 Act, that he had stopped paying rent to the plaintiff since July 26, 2015, yet he failed to deposit the arrears of rent within the time specified in Section 7(1) of the 1997 Act.

d. This Court had, while disposing of C.O. 4024 of 2018, set aside such order upon being satisfied that there was a dispute as regards rent arrears. Thus, the aspect that a dispute, as regards rent arrears, existed has attained finality.

e. That the learned Trial Court has failed to appreciate that there is a distinction between failure to pay rent arrears upon admission thereof and non-deposit of rent arrears due to a legitimate dispute concerning rent arrears. These two concepts are entirely different and cannot be conflated.

f. The provisions of Section 7(3) of the 1997 Act could be invoked only if the tenant (i.e., the petitioner) had either failed to deposit rent even after admitting that there were rental arrears or failed to deposit the rent arrears as determined under Section 7(2) of the 1997 Act.

g. In the present case, there is no admission of rent arrears by the petitioner and as such, Section 7(3) of the 1997 Act could not be invoked on the ground of failure to deposit admitted arrears.

h. Since the learned Trial Court did not determine the rent arrears therefore there was no occasion for the petitioner to deposit the sum determined under Section

7(2) of the 1997 Act. Accordingly, it could not be held that there has been any failure on the part of the petitioner to deposit the determined arrears and consequently, the stringent provisions of Section 7(3) of the 1997 Act could not have been applied to the present case by the learned Trial Court

i. A judgment of the Hon'ble Supreme Court in the case of ***Bijay Kumar Singh & Others vs. Amit Kumar Chamariya & Another***[2] was relied on to assert that Section 7(2) of the 1997 Act requires deposit of admitted rent arrears and making of an application for determination of the disputed sum. As the petitioner had not admitted any rent arrear so there was no reason for the petitioner to deposit the same and consequentially the provision of Section 7(1) of the 1997 Act could not be applied.

j. The decision of the Hon'ble Division Bench of this Court in the case of ***Makhan Lal Bose vs. Charupama Debi & Others***[3] was placed for the proposition that if the landlord accepts any lawful advance of money from the tenant and it is agreed between the parties to be adjusted against rent, the same would confer a contractual right on the tenant to get such an adjustment done against the rent accruing to the landlord and such right can be asserted under Section 7(2) of the 1997 Act. The petitioner was/is therefore justified in asserting his right for adjustment of the sum expended for repairs of the suit premises against the rent payable by him to the opposite parties.

k. The learned Trial Court relied on the answers given by the petitioner during his cross-examination especially the one given to the question *"Have you filed any document in Court to show that you bore the expenses for the repair of the tenanted premises?"* However, the learned Trial Court failed to appreciate that while answering such question, the petitioner had not only stated that he had not filed any such document in Court but also volunteered that he had given such document regarding expenditure to the landlord.

l. In such situation the learned Trial Court ought to have taken note of the significant aspect that the opposite parties did not face the witness box. If the opposite parties had faced the witness box truth could have been unearthed during cross-examination of the opposite parties.

SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. A brief summary of the submissions made by Mr. Ayan Banerjee, learned Advocate, appearing for the opposite parties, is as follows:-

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[2] **(2019) 10 SCC 660**

[3] **1983 SCC OnLine Cal 97**

a. This Court while disposing of C.O. 4024 of 2018 did not decide the issue as to whether there was a dispute or not. This Court simply remanded the matter to the learned Trial Court for fresh adjudication of the application under Section 7(2) of the 1997 Act on the sole ground that the petitioner had not been afforded an opportunity to lead evidence to prove his case.

b. The case run in the petitioner's application under Section 7(2) of the 1997 Act is clearly false and the petitioner's own conduct shows the same. It is the petitioner's case that he had spent a sum of Rs.2,00,000/- for repairs and the landlord did not issue rent receipt to the petitioner even on request which was *"lastly"* made on July 26, 2015. Given the rate of rent (i.e., Rs.50/- per month) the tenant would not be required to pay any rent at all during his lifetime. In that view of the matter, he was not required to pay any sum to the landlord in future and he ought not to have made an application under Section 7(1) of the 1997 Act seeking permission to deposit current monthly rent.

c. Mere raising of a dispute under Section 7(2) of the 1997 Act would not help a tenant unless the amount admitted in the application under Section 7(2) of the 1997 Act is deposited. Promise of future adjustment of rent would not amount to deposit of rent. The tenant has a duty to pay both the arrear rent as well as the current rent.

d. If a tenant is not required to deposit the rent arrears along with the application under Section 7(2) of the 1997 Act, every tenant would come up with an application under the said provision and would escape the liability to deposit the rent arrears by merely making an averment that the tenant has incurred expenses on repairs which are to be adjusted with the future rents.

e. The petitioner has no case at all. Mere averments in the application without any basis and proof would not be sufficient for a dispute to be treated as genuine. A judgment of the Hon'ble Division Bench of this Court in the case of ***Gujrat Printing Press vs. Naraindas Jewraj***[4] was relied on to contend that if a dispute raised by a tenant is found to be false and sham the Court has enough power to hold that there is no dispute which would take the case out of Section 7(1) and bring the same within Section 7(2) of the 1997 Act. Another judgment of the Hon'ble Division Bench in the case of ***Ruby Banerjee vs. Mechanics Enterprises Private Limited***[5] was also cited for the same purpose.

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[4] **1957 SCC OnLine Cal 83: (1959-60) 64 CWN 157**

[5] **1987 SCC OnLine Cal 68: : AIR 1988 Cal 252 : (1987) 2 CHN 1 : (1987) 1 Cal LT 130 : (1987-88) 92 CWN 152**

f. All arrears of rent must be deposited by a tenant in order to get the benefit protection against eviction. A judgment of the Hon'ble Supreme Court in the case of ***Debasish Paul & Another vs. Amal Boral***[6] was cited to contend that a tenant is required to deposit all arrears of rent even in case of a dispute being raised.

REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONER:-

5. Mr. Banerjee, learned Advocate, appearing for the petitioner made the following rejoinder submissions:-

a. The application under Section 7(1) of the 1997 Act had to be made and the current rent is being deposited in terms of the mandate of the said provision. That does not in any manner weaken the petitioner's case of having incurred expenses on repairs of tenanted premises as made out in the application under Section 7(2) of the said Act.

b. A judgment of a Co-ordinate Bench in the case of ***Surya Publishers, Prop. Nemai Gorai vs. Subir Paul***[7] was pressed into service for the proposition that Section 7(1)(c) of the 1997 Act is independent of Section 7(2) of the 1997 Act and that failure to pay the current rent in terms thereof would have led to striking out the petitioner's defence.

c. Another Co-ordinate Bench judgment in the case of ***Sri Parbati Chorone Roquitte vs. Sri Pawan Agarwal***[8] was placed to assert that the provisions of Section 7(1)(c) of the 1997 Act are mandatory.

ANALYSIS & DECISION:

6. The scope and effect of the provisions of Sections 7(1) and 7(2) of the 1997 Act have been stated and explained by several judgments of this Court as well as the Hon'ble Supreme Court. The provisions of Section 7(2) of the 1997 Act clearly contemplate (i) a dispute (ii) an application for determination of the rent payable by the tenant (iii) determination of the rent by the Court and (iv) deposit of the rent determined by the Court.

7. Although the expression *"dispute"* has not been defined in the 1997 Act, there are high authorities including ***Gujrat Printing Press*** (supra) and ***Ruby Banerjee*** (supra) that instruct that a dispute for the purposes of Section 7(2) of the 1997 Act should be *bona fide* and genuine and that if the Court finds that the dispute is not *bona fide* then the case will not fall under Section 7(2) of the 1997 Act and the

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[6] **(2024) 2 SCC 169**
[7] **2025 SCC OnLine Cal 10805**
[8] **2024 SCC OnLine Cal 3779**

provisions of Section 7(1) of the said Act *would have full play*[9]. That being so, the need for determination of rent by the Court would not arise at all in case of sham disputes.

8. It is therefore required to be tested whether the dispute raised by the petitioner was genuine or not. The learned Trial Court has found that it was not. The learned Trial Court has taken note of the evidence adduced by the petitioner in support of his case and has pointedly referred to the answers given by the petitioner to the questions posed to him during cross-examination before arriving at the ultimate conclusion with the following observations:-

> *"Thus, defendant has admitted that he has not complied with the statutory obligations & have only started to deposit the monthly rent from December 2015 after entering appearance.* ***Exhibit-A*** *(reply letter by defendant dated 15.04.10) marked during cross examination reveal that two eviction notices were previously sent by the plaintiff against which this reply was given & in the said reply though the defendant denied the relationship between the current plaintiff & defendant, he was ready to pay the monthly rent of Rs. 50/- invariably accepting the tenancy relationship between them. The fact is further strengthened from the admission made by defendant that he became conversant with the ownership of Shib Chand Jaiswal over the suit premises way back in 2010 when the eviction notice was served upon him. Thus, the grounds of ignorance or attornment as raised are inapt in the current scenario.*
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> *Furthermore, the foundation of defendant's assertion seems to be vague in nature on the face of the facts that defendant was unable to furnish any document which would affirm that he has incurred the expense for the alleged repair or taken any permission either from the landlord or the Rent Controller to initiate such repair work. It appears that the defendant has stirred up a story of alleged repair to cover up not only for the mistake that was already done but also to avoid paying the due arrear amount as well as to validate such monthly deposits-in-the garb of such created story. From the preceding discussion it is not absolutely clear that defendant already had knowledge of the plaintiff's capacity as landlord & he accepted the same not only during his oral deposition but also in his 7(2) petition as well as in his W.S. wherein the defendant has clearly streamlined the transfer of interest from the original owner Jaya Ahir to the present plaintiff Shib Chand Jaiswal. Thus, there remains no contention regarding the existing jural relationship between the plaintiff & the defendant.*
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> *It is also no more a secret that defendant did not show any inclination to deposit the admitted arrear under Section 7(1)(a) after entering appearance. The defendant had clear knowledge about the status of the plaintiff as landlord and he even showed interest in paying the rent, which ultimately accumulated into an arrear as the arrear was never admitted to have been tendered in form of money order or H.R.C. deposit. Since the defendant is very well aware of the procedural nitty-gritty of initial compliance required from a tenant under Section 7 of the W.B.P.T Act of 1997, he partly fulfilled his statutory obligation by depositing the monthly rent under Section 7(1)(c) & not the admitted rent under Section 7(1)(a). On bare reading of the aforementioned provisions under Section 7, it is quite apparent to state that the mandate of law is very clear and the provisions as laid down under Section 7 are obligatory in nature. Section 7 is a code in itself & the statute has fixed the time frame within which the defendant has to deposit the admitted arrears*

[9] **Tarak Nath Gupta vs. Lt. Col Karuna Kumar Chatterjee & Others, 1958 SCC OnLine Cal 200 : (1957-58) 62 CWN 830**

as well as prefer the monthly rent after entering appearance and the prescribed period of limitation cannot be extended for depositing the same. The subsequent deposits made by the defendant under Section 7(1)(c) are rendered invalid in view of the fact that defendant did not act in accordance with stipulation under Section 7(1)(a) in consonance with Section 7(1)(b) of the W.B.P.T Act. In consequence of such default, the petition under Section 7(2) becomes squarely infructuous as the same becomes applicable when petitions under Section 7(1) are valid & tenable in law."

9. The aforesaid observations must be seen in the light of the material on record. The pleadings of the petitioner are too bald and too bold to inspire confidence of the Court. To wit, on the one hand the petitioner has asserted that he spent a sum of Rs.2,00,000/- (Rupees Two Lakh) towards repairs of the tenanted premises albeit without any particulars even as regards the approximate date or even period when such expenditure was incurred, on the other hand the petitioner has stated that he is a poor man who cannot bear the thrust of the rent arrears in one go. There is no iota of evidence in support of the pleadings. After all pleadings by themselves do not amount to proof[10].

10. Upon examining the order impugned in the context of the pleadings of the petitioner and the evidence on record, this Court finds no scope for interference. The learned Trial Court has rendered a factual finding that is neither impossible nor implausible. The same should not be upset in revision under Article 227 of the Constitution of India. The following observations of the Hon'ble Division bench in the case of ***Ruby Banerjee*** (supra) clearly support the petitioner in the facts of the present case:-

*"**6.** But the trial court has rejected the application on merits also and on a consideration of the provisions of the Deed of Lease between the parties and the evidence adduced by the petitioner-tenant, the court has held that "the case as introduced by the defendant is false and concocted for the purpose of delaying the suit" and for retaining the occupation of the premises without any payment. This finding obviously based on facts is unassailable in revision as we find no jurisdictional issue to be involved in the shape of non-exercise, or illegal or irregular exercise, or illegal assumption of jurisdiction. It now stands settled by a weighty catena of Division Bench decisions of this Court in Gujarat Printing Press, (1960) 64 Cal WN 157, in Tarak Nath Gupta, (1958) 62 Cal WN 830, in Biswanath Roy, (1961) 65 Cal WN 149) and in Nazrul Islam, ILR (1968) 1 Cal 170, that if the dispute posed under S. 17(2) is sham, false, frivolous and purposive and raised mala fide only to gain time, the court must hold that there is no dispute to attract the operation of S. 17(2) and the application thereunder must be dismissed. We would, therefore, hold that the impugned order dismissing the application under S. 17(2) on the finding that the dispute raised thereby was false, frivolous and purposive does not warrant interference in revision."*

11. The petitioner had contended that the issue as regards the existence of a dispute had been decided by this Court while disposing of C.O. 4024 of 2018 and as such

[10] **RBI vs. S. Mani, (2005) 5 SCC 100**

the learned Trial Court was duty bound to determine the arrears of rent after the petitioner failed to prove his case. The argument lacks merit. Firstly, this Court did not determine the issue as regards existence of a dispute as conceptualised by the petitioner. In that case it had been argued that although the petitioner had *raised a dispute* no opportunity to adduce evidence was afforded to the petitioner. The arguments recorded at concluding portion of page 3 of the order dated July 12, 2023 clearly reveal so. It was in such context that this Court remanded the matter to the learned Trial Court to allow the petitioner an opportunity to prove his case.

12. Secondly, even if it is assumed that this Court had found that there was a dispute, this Court had swept the slate clean by observing that the learned Trail Court would decide the matter *"uninfluenced by observation made herein"*.

13. Thirdly, as already indicated hereinabove on the basis of the weighty dicta of several Hon'ble Division Benches of this Court in the cases of ***Tarak Nath Gupta*** (supra), ***Gujrat Printing Press*** (supra) and ***Ruby Banerjee*** (supra), mere existence of a dispute would not be sufficient for the tenant to get into the protective ambit of Section 7(2) of the 1997 Act. The dispute raised must pass muster of genuineness and must stand the touchstone of *bona fides*.

14. While it is true that a dispute which is ultimately not proved, or is attempted to be proved by evidence which the Court finds inadequate, does not thereby become a sham dispute but where the factual assertion of the dispute is wholly unsupported by any evidence at all, such total absence of evidence would most often than not warrant an inference that the dispute is sham. Once it is so held, the shield of Section 7(2) would wither away and the tenant would get exposed to the consequences of default under Section 7(1) since by the time such an inference would be drawn the time specified in Section 7(1) of the 1997 Act would have already elapsed. Resultantly the tenant would have to face the inevitable striking out of his defence under the provisions of Section 7(3) of the 1997 Act.

15. It was argued on behalf of the petitioner that while he acknowledged in his cross-examination that he did not file documents in Court in support of his claim of having incurred expenditure, at the same time, he also volunteered that he had handed them to the landlord. It was asserted that had the opposite parties testified, the truth would have come out during their cross-examination. This argument lacks merit. The relevant questions and answers are as follows:-

- *Q. Have you filed any document in Court to show that you bore the expenses for the repair of the tenanted premises?*

  A. No not in Court.

• *Witness volunteers to say that I have given such document for expenditure to the landlord. (with objection)*

• *Q. Do you have any document to show that the document for expenditure has been received by the landlord?*

A. No.

16. As already stated hereinabove, the pleadings are bereft of particulars and hyperbolic. The tenant who in the application under Section 7(2) of the 1997 Act claims to be too poor to bear the burden of the rent-arrears (for rent of Rs.50/- per month) has asserted to have spent a sum of Rs.2,00,000/- at some-time definitely before the year 2015. He has no evidence at all in support of the case run. It is not a case of inadequate or insufficient evidence but of zero evidence.

17. It is well settled that a party seeking relief must establish its case on the strength of its own evidence. In the present case the petitioner could not even discharge his initial onus for the opposite parties to be even required to answer in defence. In such connection the following observations of the Hon'ble Supreme Court in the case of ***Anil Rishi vs. Gurbaksh Singh***[11] deserve notice:-

*"**19.** There is another aspect of the matter which should be borne in mind. A distinction exists between burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is, which party is to begin. Burden of proof is used in three ways: (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter-evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule in Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same."*

(Emphasis supplied)

18. Going a step further, if at all the petitioner genuinely believed that he had parted with the expenditure documents in favour of the landlord there was sufficient scope for the tenant to call upon the opposite parties to produce the same. Law is well settled that if the party is not called upon to produce the relevant document no adverse inference can be drawn against such party for non-production thereof.[12]

19. ***Bijay Kumar Singh & Others*** (supra) is an authority for the proposition that Section 7(2) of the 1997 Act requires deposit of arrears of admitted rent along with an application for determination of the rent payable and that if the aforesaid two condition are satisfied then the Court would determine the amount of rent payable. The proposition is salutary, however, the same does not aid the petitioner. In the

[11] **(2006) 5 SCC 558**

[12] **The Apcar Collieries Limited vs. Radha Gobinda Roy & Others : 1953 SCC OnLine Cal 85 (Paragraph 19)**

present case, the learned Trial Court has found that there was no dispute at all. A sham dispute is indeed equal to no dispute. In such case, the rent arrears would immediately partake the character of admitted arrears. Therefore, the case is taken out of the bracket of Section 7(2) of the 1997 Act.

20. ***Makhan Lal Bose*** (supra) again does not support the petitioner because the proposition that money lawfully spent or advanced by the tenant on behalf of the landlord upon an agreement with the landlord to adjust the same against future rents would apply to cases where the factum of advance of such money or expenditure thereof is proved. Such is not the case here.

21. ***Surya Publishers, Prop. Nemai Gorai*** (supra) and ***Sri Parbati Chorone Roquitte*** (supra) had been cited to assert that the provisions of Section 7(1)(c) are mandatory and independent. The proposition is clear but does not help the tenant in the present case since the tenant has not deposited the rent arrears which, as aforesaid, have been found to be admitted by the tenant but sought to be evaded by raising a moonshine dispute.

22. ***Debasish Paul & Another*** (supra) instructs that an application under Section 7(2) of the 1997 Act must be accompanied by the admitted arrears of rent.

CONCLUSION:

23. For all the reasons aforesaid, no interference is called for with the order impugned. C.O. 166 of 2026 stands dismissed. No costs.

24. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(Om Narayan Rai, J.)