

20.07.2022

Court No.32
rpan/01

MAT 399 of 2018

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IA No.: CAN 3 of 2020 [Old No.: CAN 934 of 2020]

And

IA No.: CAN 1 of 2018 [Old No.: CAN 2784 of 2018] (Sec. 5)

And

IA No.: CAN 2 of 2018 [Old No.: CAN 2786 of 2018] (Stay)

Sri Judhajit Sen

- Versus -

The State of West Bengal & Others

Mr. Tarapada Das,

Ms. Jonaki Khan,

Ms. Soma Chakrabarty

... for the Appellant.

Mr. Soumitra Bandyopadhyay,

Mr. Aniruddha Sen

... for the State.

As we have invited Mr. Das, learned advocate appearing for the appellant to advance his arguments on merits of the appeal, the delay of 42 days in preferring the appeal is condoned and the application for condonation of delay, being CAN 1 of 2018 (Old No.: CAN 2784 of 2018) is disposed of, treating the same as on day's list.

The present appeal has been preferred challenging an order dated 15th February, 2018 passed in the writ petition, being W. P. No.3086 (W) of 2018.

Mr. Das, learned advocate appearing for the appellant submits that the appellant was residing along with his grand-mother, namely, Namita Sen, who was a tenant in respect of a Government flat, being Flat No. 5 on the 2nd Floor of Block – C, Dum Dum LIG Housing Estate, 59, Dum Dum Road, Kolkata – 700 074 [in short, the said flat]. After the death of his grand-mother on 7th June, 2008, the

appellant was evicted from the said flat. The appellant challenged such eviction and the writ court in an earlier writ petition, being W.P. No.13196 (W) of 2011, rejected the appellant's claim observing that the appellant had no occasion to inherit the estate as the appellant's father was alive at that juncture.

He further submits that thereafter the appellant's father expired on 18th September, 2012 and on 7th September, 2017 the appellant submitted a representation for restoration of possession. As the said representation was not considered, the appellant approached this Court again but his prayer was turned down by the order impugned in the present appeal.

According to Mr. Das, after the demise of his father, the appellant became entitled to restoration of possession of the said flat on the strength of the provisions of Section 2(f) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 (in short, the said Act). Such fact was not taken into consideration by the learned Single Judge and as such, the impugned order is not sustainable in law.

Mr. Bandyopadhyay, learned advocate appearing for the State, however, disputes such contention of the appellant and submits that the appellant's father never resided with the original tenant being the appellant's grand-mother. Thus, upon the demise of the appellant's father, the appellant cannot claim to be a tenant and restoration of possession, as a matter of right.

Indisputably, the appellant's father was not residing along with his mother, who was the original tenant of the

said flat and as such he could not have claimed tenancy in respect of the said flat. In view thereof, the appellant also could not have claimed restoration of tenancy on the strength of Section 2(f) of the said Act after his father's demise. The appellant's father expired on 18th September, 2012. In the representations dated 7th September, 2017 submitted by the appellant about five years after the demise of his father, he claimed restoration of possession. There was no prayer for grant of fresh tenancy in the said representations. There is also no explanation as regards the delay of about five years in submitting the said representations.

In the said conspectus, we are of the opinion that there had been no violation of any obligation on the part of the respondents and no legal right of the appellant has been infringed. In view thereof, no interference is called for in the present appeal.

The appeal and the application for stay application, being IA No.: CAN 2 of 2018 [Old No.: CAN 2786 of 2018], treating the same as on day's list, are disposed of.

The application being IA No.: CAN 3 of 2020 [Old No.: CAN 934 of 2020] has already been disposed of by an order dated 27th June, 2022. The registry is directed to record such disposal of the said application.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)