

11 14.03.22

Ct. No. 04

Akd

S.A. 363 of 2009

CAN 4 of 2021

CAN 5 of 2021

Utpal Ghosh

Vs.

Mitali Nath (Daughter)

Mr. Sabyasachi Mukhopadhyay,

Ms. Koushikee Banerjee.

... for the appellant.

Mr. Soumyadeep Biswas.

... for the respondents.

Re: CAN 4 of 2021

This is an application at the behest of the appellant for correction of name of the constituted attorney shown in the cause title of the application being CAN 1 of 2021.

It appears that the name of the constituted attorney was shown as "Soumendranath Nath" instead of "Samarjit Nath". The same is ministerial and typographical error and does not go into the root of the dispute.

Accordingly, the application being CAN 4 of 2021 is allowed.

Let the amendment be carried out accordingly in the said application as also the Memorandum of Appeal.

Re: CAN 5 of 2021

This is an application at the behest of the appellant for correction of name of the constituted attorney shown in the cause title of the application being CAN 3 of 2021.

It appears that the name of the constituted attorney was shown as "Soumendranath Nath" instead of "Samarjit Nath". The same is ministerial and typographical error and does not go into the root

of the dispute.

Accordingly, the application being CAN 5 of 2021 is allowed.

Let the amendment be carried out accordingly.

S.A. 363 of 2009

After disposal of the aforesaid applications the main appeal is taken up for admission under Order XLI Rule 11 of the Code of Civil Procedure.

The concurrent finding of facts has sought to be challenged in the instant appeal under Section 100 of the Code. The plaintiff/respondent filed a suit for eviction of a monthly tenant, i.e. the appellant on the ground of default in payment of rent, reasonable requirement, violation of Clause (m),(o),(p) of Section 108 of the Transfer of Property Act.

It is beyond cavil of doubt that the suit for eviction against the tenant on any or more grounds enumerated under Section 13 of the said Act if instituted by the landlord against the tenant, it is obligatory on the part of the tenant to deposit the arrear rent and if there is any dispute, the same can be raised under Section 17(2) of the West Bengal Premises Tenancy Act, 1956. The said Act further provides that in the event of failure of the tenant to comply with the mandates under Section 17(1) of the said Act or non-compliance of an order passed on an application under Section 17(2) of the Act, the landlord can make an application under Section 17(3) of the Act to strike out the defence of the defendant.

It appears from the record that alleging non-compliance of the aforesaid mandatory provisions an application was taken out by the landlord to strike out the defence of the appellant, which was eventually allowed. The said order striking out the

defence was challenged before the Revisional Court and the appellant could not emerge successful therefrom and, therefore, such order attained finality.

The moment defence of the tenant has been struck off, meaning thereby the written statement is taken off from the file, the zone of defence becomes limited and it is not open to the defendant to project his case or to lead evidence in support of the written statement, but he can cross-examine the plaintiff's witnesses and may contend before the Court that the case of the plaintiff has not been proved.

The matter rolled in the stage of trial and the plaintiff's witness was examined and cross-examined by the appellant. The Trial Court did not find any other ground to have been proved by the plaintiff except the ground of default. The said judgement and decree of the Trial Court was carried to an Appellate Court, which confirmed the findings made therein.

The learned Advocate appearing for the appellant submits that the Court ought to have extended the time to deposit the rent in terms of an order under Section 17(2) of the said Act and having not done so there is palpable illegality committed by both the Courts below.

We are not impressed with the aforesaid submission for the simple reason that such consideration was available when an application under Section 17(3) of the Act was filed by the landlord. Since the said application was ultimately allowed striking out the defence of the appellant and the said order stood affirmed by this Court in revisional jurisdiction, such point cannot be reopened at this stage.

The language employed in Section 13 of the Act exposes a legislative intent that the right is given upon the landlord to seek eviction of a tenant on any

or more grounds enumerated therein. Since the default of payment of rent is one of the grounds enshrined therein and having proved by the plaintiff in trial and the decision of the Trial Court is affirmed by the Appellate Court, we do not find any substantial question of law involved in the instant appeal warranting interference.

The instant Second Appeal is thus dismissed.

In view of dismissal of the appeal at the stage of admission under Order XLI Rule 11 of the Code, the connected application, if thereby any, also stands dismissed.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)