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SK
Ct. No. 18
02.02.2021

**C.O. No. 163 of 2021
(Via Video Conference)**

**Mamata Ghosh
Vs.
Samir Kumar Bhandari & Anr.**

Mr. Saumyen Datta,
Mr. Tapas Maity ... For the petitioner.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendant in a suit for ejectment and is directed against Order No. 111 dated August 16, 2019 passed by the 1st Court of learned Additional Civil Judge, (Junior Division), at Diamond Harbour, District 24 Parganas (South) in Title Suit No. 30 of 2013.

The arrear rent was assessed in the suit on an application under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act' in short) filed by the petitioner. The petitioner has deposited the said assessed arrear rent in Court. The prayer of the plaintiff/opposite party to withdraw the arrear rent so deposited by the petitioner was allowed.

The petitioner filed an application seeking recall of the permission granted to the plaintiff/opposite party to withdraw the deposited rent on the ground that the suit property belongs to Government of West Bengal and the plaintiff/opposite party not being the owner of the suit

property is not entitled to withdraw the arrear rent deposited in Court.

The learned Trial Judge by the order impugned has dismissed the said application of the petitioner.

The amount which has been allowed to be withdrawn by the plaintiff/opposite party is an amount assessed as arrear rent under Section 7(2) of the said Act which the petitioner is required to pay to the plaintiff/opposite party.

The learned Trial Judge, therefore, has rightly refused the prayer of the petitioner to recall the order permitting the plaintiff/opposite party to withdraw the said amount.

The order impugned for the aforesaid reasons does not call for any interference.

However, the dispute sought to be raised by the petitioner can be properly addressed on the basis of the evidence in course of the trial of the suit in accordance with law notwithstanding a tentative finding being arrived at regarding the existence of landlord and tenant relationship between the plaintiff and the defendant on the said application under Section 7(2) of the said Act.

C.O. 163 of 2021 is disposed of with the above terms.

No order as to costs.

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

(Biswajit Basu, J.)