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SK
Ct. No. 18
03.02.2021

**C.O. No. 507 of 2020
(Via Video Conference)**

**Shree Gopal Bhoutika
Vs.
Dr. Sudip Kumar Sett & Ors.**

Mr. Jahar Chakraborty,
Mr. Biswajit Mazumder,
Mrs. Sabita Mukherjee Roy Chowdhury
... For the petitioner.

Mr. Kaushik Dey ... For the opposite parties.

The present application under Article 227 of the Constitution of India is at the instance of the defendant no. 1 of the Ejectment Suit no. 543 of 2012 pending before the learned 4th Judge, Presidency Small Causes Court at Calcutta and is directed against Order No. 22 dated January 28, 2016 and Order No. 42 dated August 13, 2019 passed in the said suit.

The petitioner in the said suit filed an application filed under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint of the said suit on the ground that the suit is barred under Section 21 of the West Bengal Thika Tenancy (Acquisition and Requisition) Act, 2001.

The learned trial Judge by the Order No. 22 dated January 28, 2016 has dismissed the said application.

On perusal of the plaint averments which are germane in deciding an application under Order VII Rule 11 of the Code, it does not appear that the suit is apparently barred under the said provision of the said Act, therefore, the

order No. 22 dated January 28, 2016 does not call for any interference.

However, the issue regarding the maintainability of the said suit is kept open to be decided in course of the trial of the said suit.

The learned trial Judge by the Order No. 42 dated August 13, 2019 has dismissed an application filed by the petitioner seeking amendment of his application under Section 7 (2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act' in short) on the ground that the petitioner by the proposed amendment is seeking to withdraw his earlier admission made in the said application.

Mr. Jahar Chakraborty, learned counsel appearing on behalf of the petitioner submits that similar amendment has been carried out in the written statement. He draws my attention to the paragraph no. 5 of the said application, wherefrom it appears that the petitioner has already claimed that he is a thika tenant in respect of the suit property and on the said ground has raised a dispute that there exists no relationship of landlord and tenant relationship between the plaintiffs and the defendant no. 1. It appears that the petitioner by the proposed amendment is elucidating his said ground.

The learned trial Judge, therefore, is not justified in dismissing the said application on the said ground that by the proposed amendment the petitioner is seeking to withdraw his earlier admission, particularly when the similar type of amendment has already been allowed to be carried out in the written statement of the petitioner.

The Order No. 42 dated August 13, 2019 for the aforesaid reason is not sustainable and is accordingly set aside.

The application filed by the petitioner for amendment of the application under Section 7(2) of the said Act is allowed.

The petitioner is required to file amended application within a period of three weeks from date. The plaintiffs/opposite parties are entitled to file additional written objection to the said amended application within two weeks from the date of receipt of the copy thereof.

The suit is pending since 2012. The learned trial Judge is requested to dispose of the said application within a period of six weeks from the date of filing of the said amended application.

C.O. 507 of 2020 is thus disposed of.

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.)