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28.01.2021
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

(Via Video Conference)

CO 751 of 2020

**Dhananjoy Singha
-versus-
Sri Ashok Kumar Mukherjee**

Mr. Pinaki Ranjan Mitra, ... for the petitioner.

Mr. Debjit Mukherjee,
Mrs. Susmita Chatterjee,
Mr. Kaustav Bhattacharya, ... for the opposite party.

The defendant in a suit for ejectment is the petitioner of the present revisional application under Article 227 of the Constitution of India which is directed against the order no. 26 dated August 01, 2019 and order no. 31 dated January 08, 2020 passed by the Learned Civil Judge (Junior Division), Second Court, Howrah in Title Suit No. 323 of 2017.

The Learned Trial Judge by the order no. 26 dated August 01, 2019 has disposed of an application filed by the petitioner under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act, in short) and by the order no. 31 dated January 08, 2020 has dismissed an application filed by the petitioner seeking recall of the said order dated August 01, 2019.

The petitioner by the said application under Section 7(2) of the said Act invited the Learned Trial Judge to decide the dispute with regard to the relationship of landlord and tenant

between the plaintiff and the defendant and also to determine the arrear rent, if any, payable.

The Learned Trial Judge by the order dated August 01, 2019 has held that the relationship of landlord and tenant exists between the plaintiff and the defendant and the defendant is defaulter in payment of rent since May, 1995.

The undisputed facts relevant to determine the issue involved in the present revisional application are that the suit property originally belonged to one Kalyani Samanta who filed Title Suit No. 28 of 1996 for eviction of the petitioner from the suit property.

The said Kalyani Samanta during the pendency of the said suit transferred the suit property to the present opposite party with the right to recover arrear rent. The opposite party herein on the strength of his such purchase added himself as the co-plaintiff in the aforesaid suit.

The application of the petitioner under Section 17(2) and (2A) of the West Bengal Premises Tenancy Act, 1956 filed in the aforesaid suit was disposed of by holding that the petitioner is a tenant under the plaintiff no. 2 of the said suit the opposite party herein and the petitioner is defaulter in payment of rent since May, 1995.

The said suit was decreed but the said decree was set aside in appeal on the ground that the notice to quit has not been proved in accordance with law. The opposite party thereafter has filed the instant suit.

Mr. Pinaki Ranjan Mitra, learned counsel appearing on behalf of the petitioner, submits that the Learned Trial Judge on

the basis of the findings of the earlier suit has arrived at a conclusion that the relationship of landlord and tenant does exist between the plaintiff and the defendant but the said suit since was dismissed on the ground of maintainability, the findings of the said earlier suit would not operate as *res judicata*. Mr. Mitra in support of his such submission placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Pawan Kumar Gupta vs. Rochiram Nagdeo***, reported in (1999) 4 SCC 243.

He further submits that the Learned Trial Judge has erroneously held that the petitioner is a defaulter in payment of rent since May, 1995 as the petitioner in the earlier suit has deposited the rent from May, 1995 till the disposal of the said suit.

Mr. Debjit Mukherjee, learned counsel appearing on behalf of the opposite party, on the other hand submits that the record of the earlier suit was called for at the instance of the petitioner and the Learned Trial Judge upon consideration of the pleadings, orders and other materials of the said earlier suit has arrived at the finding that the defendant has admitted that he is a monthly tenant under the plaintiff.

He further submits that the erstwhile owner has sold the suit property to the opposite party with the right to recover the arrear rent and admittedly the defendant did not pay rent to the erstwhile owner since May, 1995 and on the basis of such position of the matter the Learned Trial Judge while disposing the application under Section 17(2) of the said Act, 1956 filed by the petitioner in the earlier suit held that the petitioner is a defaulter in payment of rent since May, 1995 with the finding

that the opposite party herein is the landlord of the petitioner.

The petitioner in spite of such finding went on depositing the rent in the earlier suit to the credit of the erstwhile landlord, therefore, according to him the petitioner is not entitled to the benefit of the deposits made in the said suit.

Having heard the learned counsel for the parties and on perusal of the records, it appears that the learned Trial Judge in course of the hearing of the said application under Section 7(2) of the said Act called for the record of the said earlier suit and upon consideration of the materials available in the said record has come to a finding that the petitioner has admitted that he is a monthly tenant under the opposite party in respect of the suit property.

The petitioner in the present case has not made out any new case requiring the Court to take a fresh look to the dispute raised by him in the application under Section 7(2) of the said Act. In fact the learned Trial Judge did not shut the petitioner to agitate the issues raised in the said application on the ground that those have been decided in the earlier suit. On the contrary, the learned Trial Judge, at the instance of the petitioner brought the record of the earlier suit for consideration of the same in disposing the said application of the petitioner. Therefore, on the facts and circumstances of the present case the decision of the Hon'ble Supreme Court relied on by Mr. Mitra is not applicable.

The petitioner admittedly did not pay rent to the erstwhile landlord since May, 1995. The opposite party has purchased the suit property with the right to recover the arrear rent as such the learned Trial Judge has rightly held that the

petitioner is defaulter in payment of rent since May, 1995. The learned Trial Judge has also rightly refused the prayer of the petitioner to give him the credit of depositing rent in the name of erstwhile landlord in the earlier suit inasmuch as in the said suit even after determination of the existence of relationship of landlord and tenant between the opposite party and the petitioner, he went on depositing the rent in the name of erstwhile landlord.

The Order No. 26 dated August 01, 2019 for the aforesaid reasons does not call for any interference and as a consequence thereof challenge to the Order No. 31 dated January 08, 2020 has become infructuous.

CO 751 of 2020 is thus dismissed.

No order as to costs.

On the prayer of Mr. Mitra time for payment of arrear rent along with the statutory interest is extended for a period of two months from date.

The petitioner is required to pay the said arrear and current rent to the bank account of the opposite party directly and for the said purpose Mr. Mukherjee shall furnish details of the bank account of his client to Mr. Mitra immediately.

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

(Biswajit Basu, J.)