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SK
Ct. No. 18
23.04.2021

(Via Video Conference)
C.O. No. 953 of 2021

Firoz Alam & Ors.
Vs.
Jamila Khatun

Mr. Dyutiman Banerjee,
Mr. Krishnendu De ... For the petitioners.

The petitioners are the defendants in a suit for eviction of licensee being Title Suit No. 216 of 2014, pending before the Additional Court of learned Civil Judge, (Junior Division) at Serampore, District - Hooghly.

The petitioners in the said suit filed an application under Section 35 of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act' in short) seeking repair of the suit property. The petitioners subsequently filed another application under Section 151 of the Code of Civil Procedure for the selfsame relief and they also filed an application under Order XXXIX Rule 7 of the Code seeking inspection of the suit property to demonstrate the condition of the suit property.

The learned trial Judge by the order impugned being Order No. 90 dated February 5, 2021 has dismissed all the aforesaid applications.

The learned Trial Judge while dealing with the said application of the petitioners under Section 35 of the

said Act of 1997, by Order No. 80 dated January 24, 2020 granted liberty to the petitioners take appropriate steps for demonstrating the condition of the suit property before the Court but the petitioners did not take the said appropriate steps immediately and the said delay is one of the grounds for rejection of the said applications of the petitioners.

An application under Section 35 of the said Act of 1997 in a suit for eviction of licensee is misconceived albeit the petitioners are contesting the said suit with the defence of tenancy.

The suit is pending for nine years and has reached the stage of witness action, this is another ground for rejection of the aforesaid applications of the petitioners.

In view of the said matured stage of the suit this Court does not find any illegality and/or infirmity in the approach of the learned Trial Judge in rejecting the said applications.

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

C.O. 953 of 2021 is dismissed without any 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.)

