

27.01.2021
(S/L-01)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 2287 of 2019

Radio Voice, represented through
Sanat Kumar Pal,
-Vs-
Life Insurance Corporation of India

Mr. Prosenjit Mukherjee,
..... For the Petitioner.

Mr. Kushal Chatterjee,
Mr. Mohanlal Banerjee,
Mr. Saptarshi Kumar Mal,
.... For the Opposite Party.

The revisional application under Article 227 of the Constitution of India is directed against the judgment and order dated April 17, 2019 passed by the learned Judge 5th Bench, City Civil Court at Calcutta in Miscellaneous Appeal No. 23 of 2009.

The petitioner is a proprietorship firm. The present proprietor is claiming the tenancy of the suit shop room being the legal heir of the original proprietor.

The petitioner has suffered an order of eviction dated March 31, 2009 passed by the Estate Officer in Case No. EO/274/0603 under Section 5(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the "said Act" in short).

The Estate Officer in the said order has also passed an order of damages under Section 7 of the said Act.

The petitioner aggrieved by the said order of eviction preferred an appeal under Section 9 of the said Act before the City Civil Court at Calcutta.

The appeal Court below by the impugned judgment and order has dismissed the said appeal.

Mr. Prosenjit Mukherjee learned advocate appearing on behalf of the petitioner submits that the opposite party prior to the present proceeding had initiated another proceeding for eviction of the petitioner from the suit shop room but withdrew the same without the leave of the Estate Officer to file a fresh proceeding on the self-same cause of action and the present proceeding being on the self-same cause of action is barred by law.

He further submits that in the earlier proceeding under Section 7(1) of the said Act issue regarding payment of rent since has been decided, the present proceeding for realization of arrear rent is barred by the principle of the *res judicata*, that apart some portion of arrear rent is not recoverable being barred by limitation.

Mr. Mukherjee places reliance on the decision of the learned Single Judge of this Court in the case of ***Shalimar Paints Ltd. -Vs- The Board of Trustees for the Port of Kolkata*** reported in **2016(1) CLJ (Cal) 441** to contend that the opposite party is entitled only to realize the amount which is not barred by law of limitation.

Mr. Kushal Chatterjee learned advocate appearing on behalf of the opposite party responding to the said argument of Mr. Mukherjee submits that the earlier eviction proceeding was withdrawn after obtaining leave to file afresh on the self-same cause of action.

He further submits that the earlier proceeding under Section 7(1) of the said Act was initiated by the petitioner and the same was dismissed by the Estate Officer. No issue of the present proceeding was directly or indirectly an issue in the said proceeding as such there is no question of this proceeding being barred by the principle of *res judicata*.

Mr. Chatterjee submits that the opposite party issued a notice under Section 7(3) of the said Act for damages together with the interest and the Estate Officer passed an award of damages, therefore, the decision relied on by Mr.

Mukeherjee has got no manner of application in the facts and circumstances of the present case.

Heard learned counsel for the parties, perused the materials on record.

The opposite party on earlier occasion initiated a proceeding for eviction being Case No. EO/148/0995. The Estate Officer on scrutiny of records found that by the order dated June 29, 2000 passed in the said earlier eviction proceeding allowed the opposite party to withdraw the said proceeding with a liberty to file afresh on the self-same cause of action, therefore, the argument of Mr. Mukherjee, on this score fails.

The petitioner had filed an application under Section 7(1) of the said Act for a direction upon the opposite party to accept the current monthly rent which was registered before the Estate Officer being Case No. EO/63/0802/MISC and was dismissed by the order dated September 29, 2003.

On perusal of the said order it appears that the issue involved in the present proceeding is not at all directly and substantially an issue in the said earlier proceeding.

It is rightly pointed out by Mr. Chatterjee that the decision relied on by Mr. Mukherjee has no manner of application in the facts and

circumstances of the present case inasmuch as in the present proceeding the opposite party after issuing a notice under Section 7(3) of the said Act prayed for damages.

The Estate Officer considering the location of the suit shop room has fixed the said damages @ Rs. 20/- per Sqft. per month from June 2003 till it is vacated by the petitioner. Therefore, the question that the arrear rent is barred by limitation has no relevance in deciding the rate of damages and the period for which it is payable.

In view of the discussion made above the revisional application fails.

C.O 2287 of 2019 is dismissed.

There shall be 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.)