

04
22.12.2021
Ct.21
AB

C.O. 1637 of 2021
Shankar Shaw & Ors.
Versus
Navin Shaw & Ors.

(VIA VIDEO CONFERENCE)

Mr. Arif Ali,
Mr. Sarban Bhattacharjee
...for the Petitioners

Mr. Arnab Dutt
...for the Opposite Parties

Aggrieved by the order of granting permission to amend plaint by learned Judge, 5th Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 285 of 2010 on 14.01.2021, the defendants have preferred this application under Article 227 of the Constitution.

Facts giving rise to this revision is in gist is that that the plaintiffs/ opposite parties have filed Ejectment Suit against the defendants/tenants on the ground of default and reasonable requirements. The said suit was decreed on 25.01.2017.

Being aggrieved the defendants preferred Title Appeal No. 23 of 2017 and learned Judge, 4th Bench, City Civil Court at Calcutta set aside the decree and remanded the suit with a direction to re-hear issue nos. 4,10, 8 and 9 after giving reasonable opportunities to the parties to file amendment petition, if any, and also to adduce evidence.

Being aggrieved by the order of the First Appellate Court, the defendants/tenants preferred FMAT No. 357 of 2020 before the Hon'ble High Court. Hon'ble Division Bench of this High Court on 08.03.2021 modified the order passed by the First Appellate Court and directed the Learned Trial Court to rehear issue nos.8, 9, 10 after giving sufficient opportunities to either of the parties to file amendment petition, if any, and also to adduce evidence.

By filling disputed amendment petition the plaintiffs want to incorporate the facts about the death of original tenant and in view of provision of Section 2(g) of West Bengal Premises Tenancy Act, the present defendants being the legal heirs of original deceased tenant Faken Shaw and after the death of his widow the defendant no. 1 are possessing the disputed tenancy as trespassers. The learned Court below by passing the impugned order has been pleased to allow such amendment in the plaint.

The defendants by filling the present application has challenged such order and alleged the present defendants had tendered rent to the plaintiffs after the demise of their parents and thereby accepted the defendants as their tenants and if the proposed amendment is not set aside then the status of the present defendants would be changed from tenants to trespasser and the entire nature and character of the

suit will be changed from a regular eviction suit to a suit for eviction of a trespasser under the general law. The amendment sought by the plaintiffs is beyond the scope of remand as there was no such issue for declaring defendants as trespassers. There is a delay in filling the amendment petition also as cause of action arose much before 2010.

On the other hand the learned Advocate for the opposite parties submits that amendment can be allowed at any stage of the proceeding and proposed amendment if allowed is not going to cause any injustice to the other side and necessary for the purpose of determining the real question in controversy between the parties. He in support of his submission referred to North Eastern Railway Administration Gorakhpur vs. Bhagwan Das (D) by L.Rs. reported in AIR 2008 SCC 2139.

From the order passed by Hon'ble Division Bench of this High Court in FMAT 357 of 2020 it appears both the parties have been given opportunities not only to amend their pleadings to adduce evidence while rehearing on issue nos. 8,9 and 10. Issue nos. 8 and 9 relates to whether the plaintiffs are entitled to get decree as prayed for and to what other reliefs the plaintiffs are entitled.

Form the materials in record it is seen the plaintiffs have filed suit for eviction of the father of the

present defendants, the original tenant from disputed property and on his demise, his wife and children were substituted. During the pendency of the suit the widow of original tenant too had died leaving behind other defendants as her legal heirs. In view of provision of Section 2(g) of the Tenancy Act, the children cannot be deemed to be tenants of the tenancy of their parents until and unless the children by adducing evidence fulfills the conditions laid down in the above section.

Therefore, in order to decide the issue nos. 8 and 9 and to come to the proper finding whether the defendants are occupying the disputed tenancy as tenants or trespassers the proposed amendment is necessary and also to decide the real question in controversy between the parties. More so, parties have been given liberty to amend their pleadings and adduce further evidence as prayed by them by filling separate application under Order 41 Rule 27 Civil Procedure Code by the Hon'ble Division Bench of this Court in FMAT 357 of 2020.

Therefore, this Court finds no illegality or material irregularity in the order impugned.

The revisional application stands dismissed.

Accordingly **C.O. 1637 of 2021 is disposed of.** Connected applications, if any, are disposed of.

Interim order, if any, stands discharged.

In view of the order made above Affidavits are not

invited. Allegations made shall be deemed to be denied.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Kesang Doma Bhutia, J.)

Later

The learned advocate for the petitioners prays that he may be granted liberty to file additional written statement against the amended plaint.

The prayer is considered and allowed.

Liberty is granted to the petitioners to file additional written statement against the amended plaint before the learned Court below within the first of week of January, 2022.

(Kesang Doma Bhutia, J)

