

16.11.2021

Sl. No.

Court No.25

B.M.

C.O. 3992 of 2018

Subarna Banik Samaj of Calcutta Trust

Vs.

M/s. Navina Printing Works Pvt. Ltd.

(Via Video Conference)

Mr. A. Bagchi

Mr. S. Chandra

... for the petitioner

Affidavit of service filed in court be kept on record which shows that the service has been effected upon the opposite party.

Since none appears on behalf of the opposite party, the revisional application is taken up for hearing.

The petitioner submits that the petitioner/plaintiff of Ejectment Suit No.5 of 2018 has assailed the order no.4 dated 4th October, 2018 passed in the said suit, inter alia, on the ground that the learned trial court did not consider the objection raised by the petitioner against the application under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 filed by the opposite party in respect of the contention that the opposite party tenant is liable to pay maintenance charges @ 10%, commercial surcharge @ 20% and property tax @ 20% as per the fact admitted by the opposite party/tenant in their letter dated 5th April, 2018(Annexure 'C').

Admittedly, at the tenanted premises at 47, Ganesh Chandra Avenue, Kolkata-700013 a printing press business is being run by the opposite party/tenant for commercial purpose. The opposite party was inducted at the said premises at a monthly rental of Rs.6,000/- per month payable according to the English calendar month fixed from the month of September, 2010 without proportionate municipal tax and municipal charges. It is submitted that the plaintiff by letter dated 17.9.2010 claimed for payment of rent @Rs.6,000/- per month and proportionate Kolkata Municipal Corporation taxes extra to be paid by the tenant as per Kolkata Municipal Corporation Act and the defendant by the said letter dated 18.10.2010 had duly agreed to pay proportionate municipal taxes in respect of the tenancy. There does not appear to be any dispute to all such fact.

The submission made on behalf of the petitioner is that the learned trial court while dealing with the application under Section 7(1) ought to have taken consideration of the facts as made in the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 whereunder the opposite party/tenant by admitting the quantum of rent submitted for an order for further payment on account of rent towards taxes etc. Both the application ought to have been decided in one go taking into consideration the provision of Section 5 of the

West Bengal Premises Tenancy Act, 1997 relating to obligation of tenant which provides that every tenant shall pay rent to the landlord or his authorised agent within the prescribed period and every tenant shall pay the charges relating to maintenance and amenities of the premises at the rate of 10% of the fair rent or agreed rent, as the case may be and also pay his share of municipal tax as an occupier of the premises in accordance with provision of the Kolkata Municipal Corporation Act, 1980 (West Bengal Act LIX of 1980) or the West Bengal Municipal Act, 1993 (West Ben. Act XXII of 1993).

Taking cue from the decision in M/s. Popat & Kotecha Property & Ors. v. Ashim Kumar Dey reported in 2018(4) ICC 173(S.C) I hold that defendant/opposite party as a tenant is under legal obligation to pay municipal taxes and maintenance charges at the rate of ten per cent over and above the obligation to pay agreed rent by virtue of the provision of Section 5 (7) and (8) of the West Bengal Premises Tenancy Act, 1997.

In the context of the above the revisional application is decided and disposed of with the direction upon the learned trial court to dispose of the application pending under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 pending in the suit within one month from the date of communication of the above in the light of the discussion made in this order and further to

proceed to dispose of the suit as expeditiously as possible preferably within one year.

Accordingly, application being CO 3992 of 2018 is disposed of.

All parties shall act in terms of copy of this order downloaded from the Official Website of this Hon'ble Court.

(Shivakant Prasad, J.)