

19.03.2021
Court No. 19
Item No.26
CP

C.O. 4195 of 2019
with
CAN 1 of 2020

Hasina Bibi
vs.
Sri Sibuprasad Das & anr.

Mr. Sourav Chatterjee

....for the petitioner/defendant.

Mr. Tanmoy Mukherjee
Mr. Amal Kumar Saha
Mr. I Paul

....for the opposite parties/
applicants.

Re: CAN 1 of 2020

The application being CAN 1 of 2020 has been filed for vacating the order passed by this court in C.O. 4195 of 2019 dated January 13, 2020. By the interim order dated January 13, 2020, the order of repair passed in favour of the plaintiffs/opposite parties in the revisional application and applicants in this application was stayed. At the behest of the defendant/petitioner the civil revisional application was admitted. An interim order was passed on the prima facie satisfaction of the court that during the pendency of an eviction suit against the plaintiffs/applicants on the ground of clauses (m), (o), (p), repairing of the premises could not be allowed.

This application has been filed for vacating the order passed by this court on the ground that the eviction suit filed by the defendant/landlord, i.e., the petitioner in the revisional application was on the ground of building, rebuilding and reasonable requirement along with the ground of default.

It is contended by the applicants/plaintiffs that a plain reading of the plaint as a whole would not indicate that there was any allegation of destruction or damage caused to the property and the ground for eviction was not (m), (o), (p).

I have considered the plaint and find that there are averments that the suit property is in a dilapidated condition and was in need of urgent building and rebuilding. There are also other grounds for eviction as per the West Bengal Premises Tenancy Act, 1997. But (m), (o), (p) is not one of the grounds for eviction. Thus, even if the repair as directed by the learned court below is allowed, the suit filed by the defendant/petitioner for eviction shall not be impacted in any way.

The plaintiffs/applicants herein are allowed to repair the premises in question as per the direction of the learned court below with a further condition that the said repair will be carried out in the presence of and under the supervision of an Advocate commissioner to be appointed by the learned court

below or the learned Advocate commissioner who was already appointed by the learned court below for inspection of the premises and to file a report. The cost of the learned commissioner for supervising the repair will be borne by the plaintiffs. Except repairing as directed by the learned court below, no further repair or alteration and addition will be allowed. The plaintiffs will not claim any equity in respect of such repair in this suit and such repair shall in no way prejudice the contentions of these defendants in their eviction suit and the ground building and rebuilding will be available for decision on merits despite such repair.

The learned court below shall act on the server copy of this order. The parties will be at liberty to approach the learned court below for fixing a date for causing the repair and also for appointment of the learned Advocate commissioner.

The revisional application is disposed of. Connected application being CAN 1 of 2020 is also disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)