

(14)
08.01.2021
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

(Via Video Conference)

CO 1611 of 2020

Krishna Kumar Tekriwal
-versus-
Jagat Mohan Kapur

Mr. Saptangsu Basu, Sr. Adv.,
Mr. Arjun Singh,
Mr. Jasojeet Mukherjee, ... for the petitioner.

Ms. Sohini Chakraborty, ... for the opposite party.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendant in a suit for ejectment.

The suit property which is situated at New Alipore, Kolkata was let out to the petitioner for residential purpose at a monthly rent of Rs. 3000/- per month. The rate of rent was subsequently enhanced to Rs. 4500/-. The opposite party being the landlord applied before the Controller under Section 17 of West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'said Act') for fixation of fair rent of the suit property. The Controller fixed the rent of the suit property at Rs 13200/-.

The said order of the Controller is under challenge in an appeal before The West Bengal Land Reforms and Tenancy Tribunal at the instance of the petitioner.

The rate of rent so fixed by the Controller takes the suit property out of the applicability of the provisions of the said Act as such the opposite party has filed the Ejectment Suit No. 07 of 2018 before the 1st Court of learned Civil Judge (Senior Division), at Alipore, Dist. 24 Parganas (South) seeking eviction of the petitioner from the suit property under the general law i.e. under the provision of Transfer of Property Act, 1882.

The petitioner by filing an application under Section 151 of the Code of Civil Procedure prayed for stay of all further proceedings of the said suit till the disposal of the said appeal before the Tribunal.

The learned Trial Judge by the first order impugned being order dated February 15, 2019 has dismissed the said application holding that since the fair rent has been fixed by the competent authority and there is no order of stay being passed by the Tribunal in the pending appeal against the said order, the suit must be proceeded with.

The petitioner sought review of the aforesaid order registered as Miscellaneous Case No. 43 of 2019 before the learned trial Judge which has been dismissed by the second order impugned being order dated February 14, 2020 on the ground that the application for review does not come within the scope of Order XLVII Rule 1 of the Code.

Mr. Saptangsu Basu, learned Senior Advocate appearing on behalf of the petitioner submits that the nature of the ejectment suit is dependent upon the issue regarding the rate of rent of the suit property as such till the said issue attains finality

the suit for eviction of his client under the general law cannot be proceeded with.

Mrs. Sohini Chakraborty, learned advocate appears on behalf of the opposite party and submits that the right of her client being landlord to recover the possession of the suit property cannot be suspended till the disposal of the appeal before the Tribunal particularly when her client has no control over the carriage of the said proceeding. She further submits that the order of Controller has not been stayed by the Tribunal in appeal as such it is rightly held by the learned trial Judge that there is no difficulty in proceeding with the suit.

Mr. Basu in reply to the argument of Mrs. Chakraborty, submits that the application for stay has been filed in the said appeal which is also pending disposal.

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

Whether the petitioner is entitled to get protection of a tenant under the provisions of the said Act or not is dependent upon the finality of the order of the Controller fixing the rate of rent of the suit property, therefore, prima facie the suit for ejectment cannot be allowed to be proceeded with pending disposal of the said appeal before the Tribunal. At the same time it is not equitable to suspend the right of the opposite party to recover the possession of the suit property in due course of law on the contingency of attainment of finality on the said issue without any check, particularly when the opposite party has little control over the carriage of the said proceeding.

Therefore, in my opinion justice would be subserved if the suit is allowed to proceed but with a rider that no final decision shall be arrived at in the said suit till the final decision on the issue of fair rent in the appeal pending before the Tribunal.

The petitioner to enjoy the protection of this order is required to make all endeavour for expeditious disposal of the appeal pending before the Tribunal, any intentional laxity in this regard shall give the opposite party the right to seek variation/ modification/ recall of this order.

Orders impugned are set aside. C.O 1611 of 2020 is disposed of with the above terms. However, 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 of all requisite formalities.

(Biswajit Basu, J.)