

30-11.2021
Court No.1
FB/gsd
(10).

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION
(Via Video Conference)**

CO 43 of 2021

Loden Tenzin Bhutia

Vs.

Rup Narayan Prasad.

Mr. Hasang Bhutia

Mr. D. Kundu

... For the Petitioner.

Mr. B. Ghosh

. . . For the O.P.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

Under challenge in this application is order no. 22 dated 7th of December, 2020 in O.C. Suit No. 13 of 2018.

The petitioner herein is the plaintiff and the O.P. to this application is the defendant to the suit.

The suit is for eviction of the defendant/tenant and for a decree of payment of arrear rents and *mesne profits*.

Such position taken by the defendant/tenant in the OC suit is disputed by the petitioner on the ground that the materials on record placed on behalf of the defendant itself would show that the plaintiff is the *bona fide* landlord of the suit premises.

By the order impugned dated 7th December, 2020, the Learned Trial Court being the Learned Civil Court (Junior Division), Kurseong was pleased to consider

the application of the defendant under Sections 7(1)(a) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (for short, the WBPT Act).

The Trial Court after considering the detailed evidence produced by the parties for and against the said application was pleased to, *inter alia*, hold that there is a *bona fide* dispute *inter se* the parties regarding the rate of rent payable by the defendant.

The Learned Trial Court also noted that the rent, including the Municipal taxes and charges payable by the defendant, has fallen into arrears since the plaintiff had not intimated the rate of charges.

Accordingly, in exercise of powers under Section 7 of the WBPT Act, the Trial Court permitted the defendant to deposit the fixed arrear rents along with the interest as well as the fixed current rent to be deposited within the 15th of each succeeding English Calendar month.

Since it was claimed by the defendant that the present plaintiff has not adduced any evidence connected to his status as landlord following a purported Letter of Attornment by the alleged erstwhile landlord, the relationship of plaintiff and the defendant respectively as landlord and tenant was left open to be determined at the subsequent stages of the trial.

The Learned Trial Court concluded by holding the defendant not to be a defaulter.

Being aggrieved, the plaintiff/the present petitioner relies on the authority of **2018 (1) CHN (CAL) 458; In re: Anwar**

Hussain vs. Raja Mohammed Amin & Ors.

and submits that on non-compliance of the mandatory provisions of Section 7 of the WBPT Act regarding deposit of rent, the defence of the tenant is automatically liable to be struck off.

To the contrary, Learned Counsel for the defendants, the present O.P. relies upon an order of the Concurrent Hon'ble Single Bench of this Court dated 9.2.2021 in CO 20 of 2021.

Heard.

Considered.

This Court finds the reported judgment *In Re: Anwar Hussain* not to be *apropo* in the present facts since the facts *In Re: Anwar Hussain* involves the issue of deposit the admitted rent.

In the present facts the rate of rent is disputed and therefore the Learned Trial Court has committed no error by re-computing the rent payable along with the Municipal Tax and charges to be so intimated by the plaintiff plus applicable interest and permitted the defendant to deposit both the arrears and current rent.

Such exercise by the Learned Trial Court does not appear to the mind of this Court lacking in infirmity with the provisions of Section 7 of the WBPT Act.

Equally, this Court does not find any infirmity in the order of the Learned Trial Court keeping the question of relationship between the landlord and tenant respectively as plaintiff and defendant on the basis of the Letter of Atornment cited by the defendant to

be adjudicated during the subsequent stages of the trial.

Accordingly, the order of the Learned Trial Court under challenge in this application requires no intervention.

CO 43 of 2021 stands accordingly **disposed of**.

However, the Learned Trial Court is requested to expedite the hearing of O.C. Suit No. 13 of 2018, subject to its board and, preferably not later than a period of eight weeks from the date of communication of this order.

All parties to act on the server copy of this order duly obtained from the official website of the Hon'ble High Court Calcutta.

(SUBRATA TALUKDAR, J.)