

17.12.2021
SL No.15
Court No.3
AJ

***Circuit Bench of Calcutta High Court
At Jalpaiguri***

(Via Video Conference)

C.O. 50 of 2021

**Sri Abhijit Das @ Avijit Das
-Vs-
Cooch Behar Dharmasabha & Anr.**

Mr. Nabankur Paul.
....for the petitioner.
Mr. Bikramaditya Ghosh,
Mr. Hillol Saha Podder.
....for the opposite party no.1.

Affidavit-of-service filed in Court today be
kept with the record.

The present revisional application under
Article 227 of the Constitution of India is at
the instance of the defendant no.2 in a suit for
eviction and is directed against Order No.17
dated February 20, 2021 passed by the
learned Civil Judge (Junior Division), Sadar,
Cooch Behar in the said suit being Title Suit
No. 28 of 2020.

The plaintiff/opposite party No. 1 is
seeking eviction of the petitioner and the
opposite party no.2 from the suit stall on the
grounds of reasonable requirement,
defaulting payment of rent and subletting.

The plaintiff is alleging that the petitioner is the unlawful sub-tenant of the suit stall.

The petitioner in the said suit filed an application under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 praying permission of the learned Trial Judge to deposit the arrear rent with statutory interest thereon.

The learned Trial Judge by the order impugned has dismissed the said application holding that the petitioner being a sub-tenant cannot maintain the said application.

The petitioner is contesting the said suit with a defence that he is the lawful sub-tenant of the suit stall. The suit as it is framed does not oblige the petitioner to deposit the admitted arrear rent as non-deposit of such rent would not entail any consequence for the petitioner.

The order impugned, therefore, does not call for any interference.

However, the finding of the learned Trial Judge in the order impugned regarding creation of the sub-tenant are unwarranted at this stage inasmuch as the said issue would be an issue in the suit to be decided in the trial on evidence.

C.O. 50 of 2021 is disposed of with the above terms without any order for costs.

In view of the disposal of the revisional application, the application for vacating the interim order being CAN 1 of 2021 has become infructuous and is disposed of accordingly.

The petitioner is at liberty to withdraw the arrear rents deposited in the Court below in terms of the order dated March 25, 2021.

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.)