

1 **23.06.2022**

SMA 2 of 2021

M/s. P. C. Bose & Brothers
VS
M/s. Viswamitra Ramkumar & anr.

The appellant is not represented, nor any accommodation is prayed for. The appellant was not represented on the earlier occasion also. In view of our earlier order, we propose to dispose of the appeal on the basis of the materials on record.

The present appeal is arising out of a judgment and order dated November 16, 2011 passed in Misc. Appeal No. 41 of 2010 arising out of judgment and order dated November 30, 2010 passed by the learned Judge, Sixth Bench, Small Causes Court at Calcutta in Misc. Case No. 20 of 2009 filed by the appellant under Order XXI Rule 101 of the Code of Civil Procedure.

The appellant claimed to be the original tenant in respect of the suit premises. The appellant further claimed that the decree passed against it in Ejectment Suit No. 410 of 1988 is defective and not binding upon the appellant.

The appellant being a partnership firm raised issue before the trial court with regard to legality and validity of filing of the suit by the plaintiffs/respondents. However, exhibits 15 and 16

would show that M/s. P. C. Bose and Brothers is a partnership firm, which did not challenge the eviction decree passed in Ejectment Suit No. 410 of 1988. On the contrary, the evidence of one of the partners, namely, Ashim Kumar Ghosh, would show that he was willing to obey the directions passed by the Hon'ble Supreme Court with regard to the premises in suit and that the stand of the partnership firm was that if a plan is sanctioned by the Kolkata Municipal Corporation before allotment to his portion, he would have no objection to the same.

In view of the fact that the partnership firm is a tenant, the proceeding initiated by the appellant claiming individual tenancy could not have been accepted and, in our view, rightly not accepted either by the trial court or by the first appellate court.

On such consideration, we do not find any substantial question of law involved in this appeal and the same is summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

In view of dismissal of the appeal, nothing remains to be decided in the application filed under CAN 2595 of 2012 and the same is also dismissed.

There will be no order as to costs.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)

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