

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

CO 245 of 2022

Dr. Sipra Guha

....Petitioner

Vs

Arambag Solvent Extraction Private Ltd*Opposite Party*

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Mr. Gopal Chandra Ghosh, Adv.

Ms. Jayeta Kaundra Mitra, Adv.

..... for the petitioner

Mr. Shiv Shankar Banerjee, Adv.

Mr. Sanchita Barman Roy, Adv.

Mr. Sk. Selilm Malik, Adv.

..... for the Opposite Party

Heard On : 04.08.2022

Judgment on : 05.09.2022

Rabindranath Samanta, J:-

1. The petitioner by preferring this revisional application under Section 24 of the Code of Civil Procedure seeks for transfer of Title Appeal No. 52 of 2017 and Title Appeal No. 53 of 2017 from the Court of the learned Additional District Judge, 5th Court, Barasat, North 24 Parganas to this Court.
2. The petitioner states that she filed a suit being Title Suit No. 150 of 2012 in the Court of the learned Civil Judge (Senior Division), 2nd Court at Barasat for eviction of the opposite party Arambag Solvent Extraction Private Ltd. from the ground floor flat at the entrance, left hand portion of the premises having separate entrance and egress together with a toilet at plot No. 628 in

Block- AE, Salt Lake City (Bidhannagar), Kolkata- 700064 as licensee at the monthly licence fee of Rs.9,900/- payable according to English Calendar. The suit was contested by the opposite party by filing a written statement wherein it denied all the material allegations in the plaint. The opposite party made a counter claim seeking a declaration to the effect that the opposite party was not a licensee, but a tenant and accordingly it could not be evicted from the premises without taking recourse to the tenancy laws. The petitioner filed written statement against the counter claim.

3. The learned Trial Court upon trial on evidence decreed the suit brought by the petitioner, but dismissed the counter claim of the opposite party by the judgment dated 29th June, 2017.
4. Aggrieved by the judgment of the learned Trial Court, the opposite party preferred two appeals – one being Title Appeal No. 52 of 2017 against the decree of eviction and the another being Title Appeal No. 53 of 2017 against the dismissal of the counter claim. Both the appeals were filed in the Court of the learned District Judge, North 24 Parganas at Barasat in view of the valuation of the suit being lesser attracts the jurisdiction of the learned District Judge. Now, both the appeals are pending for final disposal in the Court of the learned Additional District Judge, 5th Court at Barasat.
5. The petitioner as plaintiff also filed an another suit being Title Suit No. 151 of 2012 in the same Court of learned Civil Judge (Senior Division), 2nd Court at Barasat against the opposite party for its eviction from the premises i.e. the front portion of the ground floor flat excepting one room adjacent to the stair case having separate entrance with one toilet at plot No.628 of Block-AE, Salt Lake City (Bidhannagar) Kolkata- 700064 as particularised in the schedule to the plaint as licensee at the monthly licence fee of Rs.15,400/-. The petitioner filed the suit upon revocation of the licence. The opposite party contested the suit by filing a written statement. The suit brought by the petitioner was decreed in her favour by the learned Trial Court vide judgment dated 31.05.2018. Challenging the judgment and decree the opposite party has preferred an appeal being FAT No. 444 of 2018 in this Court and which is pending for final disposal.

6. The petitioner avers that the judgments of the Title Suit No. 150 of 2012 and Title Suit no. 151 of 2012 have been decided and decreed by the same learned Trial Court in favour of the petitioner and the directors of the defendant company of both the two suits are the same. The property involved in both the two suits are portions of the same premises and of the same floor. Such being the factual matrix, if the two appeals being Title Appeal No. 52 of 2017 and Title Appeal no. 53 of 2017 are heard by this Court along with FAT No. 444 of 2018, the time, costs of suit and suffering of the litigants would be reduced. Under these circumstances, the petitioner seeks for transfer of the aforesaid two Title Appeals from the Court of learned Additional District Judge, 5th Court, Barasat to this Court.
7. Learned Counsel appearing for the petitioner submits that since the suits being Title Suit No. 150 of 2012 and Title Suit No. 151 of 2012 have been decided and decreed by the same learned Court below, the directors of the defendant of both the suits are the same and the properties involved in both the two suits are the portions of the same premises and of the same floor, the appeals being T.A No. 52 of 2017 and T.A No. 53 of 2017 should be heard by this High Court along with the appeal being FAT 444 of 2018 arising out of the judgment and decree passed in TS No. 151 of 2012 in order to avoid conflicting decisions. In support of his contention learned counsel has cited a decision in the case of ***M/s. Engineering Investments P. Ltd.-Vs- M/s. Bharat Heavy Electricals Ltd, Madras and another*** reported in ***AIR 1983 Madras 1***.
8. On the other hand, learned counsel appearing for the opposite party argues that if the appeals being TA No. 52 of 2017 and TA No. 53 of 2017 pending in the Court of learned Additional District Judge, 5th Court, Barasat, North 24 Parganas are withdrawn and transferred to this Court, the opposite party will be deprived of a right of second appeal before this Court. To counter the submission of the learned counsel appearing for the petitioner that the subject matter of both the suits is identical and the parties are identical, learned counsel submits that the averments of the revisional application indicate that the premises as described therein in respect of both the two suits are different from each other. Learned Counsel points out that Title

Suit No. 150 of 2012 was brought by the petitioner against the defendant Arambag Solvent Extraction Private Ltd whereas Title Suit No. 151 of 2012 was brought against the defendant Aram Bag Hatcheries Ltd. On such score, learned counsel submits that the subject matter and parties of both the two suits cannot be termed as identical and the revisional application is accordingly liable to be dismissed.

9. Learned Counsel for the petitioner further argues that deprivation of a right of a second appeal as strenuously urged by learned counsel for the opposite party cannot be a ground for rejection of the revisional application. In support of his contention learned counsel has cited a decision in the case of **Mst. Aysha Bai-Vs- Daleep Singh** reported in **AIR 1961 RAJ 186**.
10. In such context it will be apposite to refer to Section 24 of the Code of Civil Procedure which reads as under:

“(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage-

- a) Transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or***
- b) Withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; and***
 - i) Try or dispose of the same;or***
 - ii) Transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same;or***
 - iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.***

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section-

(a) Court of Additional and Assistant Judges shall be deemed to be subordinate to the District Courts;

(b) “proceeding” includes a proceeding for the execution of a decree or order.]

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]”

12. As the aforesaid section enjoins, this Court, in appropriate case, may withdraw any suit or appeal from any Court subordinate to it and dispose of the same.

13. As the uncontroverted averments in the revisional application supported by affidavit reveal, the properties involved in both the two suits are the portions of the same premises and of the same floor at plot no. 628 of Block –AE , Salt Lake City (Bidhannagar), Kolkata- 700064. The petitioner is the plaintiff of both the two suits and the directors of the defendant company of both the two suits are the same.

14. What it further transpires from the averments in the revisional application and the materials on record, title suit No. 150 of 2012 was decreed in favour of the petitioner by the learned Civil Judge (Senior Division), 2nd Court, Barasat, North 24 Parganas on 29th June, 2017 and the counter claim brought by the opposite party in the suit was dismissed. Admittedly, T.A No.52 of 2017 and T.A No. 53 of 2017 have been preferred by the opposite party before the learned District Judge, North 24 Parganas at Barasat aggrieved by the decree of the suit and order of dismissal of the counter claim and the appeals are now pending in the Court of the learned Additional District Judge, 5th Court, Barasat. As it appears, as against the decree passed by the same Court at Barasat in Title Suit No. 151 of 2012,

the opposite party has preferred an appeal being FAT No.444 of 2018. Undisputedly since the valuation of the suit being No. TS 150 of 2012 was lesser than that of the valuation of the suit being No. TS 151 of 2012, the appeals being Title Appeal No. 52 of 2017 and Title Appeal No. 53 of 2017 were preferred before the learned District Judge, North 24 Parganas in terms of Section 21 of the Bengal, Agra and Assam Civil Courts Act, 1887.

15. As stated above, the parties to the suit are the same and the properties involved in both the two suits are of the same premises and of the same floor at the aforesaid plot No.628.

16. In the decision in the case of ***M/s. Engineering Investments P. Ltd.-Vs- M/s. Bharat Heavy Electricals Ltd, Madras and another*** reported in ***AIR 1983 Madras 1***, the Hon'ble Madras High Court withdrew an appeal pending in the Court of the learned Principal Judge, City Civil Court, Madras and directed that the appeal be heard along with a suit pending in the Original Side of the Madras High Court to avoid conflicting decisions on the reason that the issues involved in the appeal and the suit were identical. In the decision in the case of ***Mst. Aysha Bai-Vs- Daleep Singh*** reported in ***AIR 1961 RAJ 186*** the Hon'ble Rajasthan High Court has held at paragraph 6 that a right of second appeal to the High Court is limited merely to errors of law and since the petitioners had the advantage of the entire evidence being reviewed by two judges of a superior Court and after careful examination of the matter pronounced the judgment in the appeal, no review is permissible merely on the ground that the appeal ought to have been filed in the learned Court below considering the lesser value of the suit.

17. If the aforesaid two appeals are withdrawn and taken to this Court, the appeals being the first appeal will be heard by a Division Bench comprising two Hon'ble Judges. Bearing in mind the legal principle enunciated in the decision in ***Mst. Aysha Bai*** (supra), the contention of the learned counsel for the opposite party that the opposite party will be deprived of a right of second appeal in the event the aforesaid two appeals are transferred to this Court is not acceptable.

18. Therefore, in view of the observation as above, the revisional application merits success and accordingly the revisional application is allowed.

19. Let Title Appeal No. 52 of 2017 and Title Appeal No. 53 of 2017 be withdrawn from the Court of the learned Additional District Judge, 5th Court, Barasat, North 24 Parganas and the appeals be transferred to this Court for disposal.

20. The learned Additional District Judge, 5th Court, Barasat, North 24 Parganas is directed to transmit the case records of the aforesaid appeals to this Court immediately after receipt of a copy of this order.

21. The learned Registrar Administration (Lawzima & Office Management), High Court, Appellate Side, is directed to communicate a copy of this order to the learned Court below immediately.

22. After the case records of the appeals are received, learned Registrar Administration(Lawzima & Office Management) shall place the appeals before the appropriate Bench which will take up the appeal being FAT 444 of 2018.

23. With the aforesaid direction the revisional application stands disposed of.

24. No order as to costs.

25. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)