

15.02.2022
Ct. 21
D/L 21
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C.O. 437 of 2020
(Via Video Conference)

Sri Jagat Singh Dugar
-Vs-
Sajjan Kumar Agarwal.

Mr. Falguni Bandyopadhyay,
... for the petitioner

Mr. Rahul Karmakar
Mr. Abir Lal Chakravorty for the opposite party

The petitioner is represented by his lawyer Mr. Falguni Bandyopadhyay. Mr. Rahul Karmakar learned advocate appears for the opposite party.

The revisional application is taken up for hearing.

The plaintiff petitioner being the tenant under the landlords Sri Pradeep Kumar Saha and others in respect of disputed room which he used to use as a caretaker room had permitted the defendant, his sub tenant to use same to keep his merchandise sometime on or about 3.6.2016 without any license fees or occupational charge.

When he was in need of the room requested the defendant to remove the merchandise and hand over vacant possession to him but which the defendant failed to do so. Then he served a notice of eviction

through his lawyer upon the defendant, but defendant did not pay heed to such notice. Therefore, the plaintiff has filed Title Suit No. 258 of 2018 for recovery of possession of disputed room after evicting the defendant opposite party alleged trespasser.

However, the defendant after putting his appearance before the learned Court below has filed applications under section 7(1) and 7 (2) of the West Bengal Premises Tenancy Act, 1997 seeking leave of the Court to deposit admitted rent and for determination of the amount of rent, if any, payable by the defendant to the plaintiff.

The learned Judge VII Bench City Civil Court at Kolkata, where the suit is pending by passing impugned order dated 10.4.2018 has allowed the defendant to deposit rent of Rs.484/- from the month of March 2018 onwards and adjourned the hearing of the application under section 7(2) of the West Bengal Premises Tenancy Act.

Being aggrieved by such order the plaintiff has filed a petition under section 151 C.P.C praying for recall and modification of the above order dated 10.4.2018 and has alleged the plaintiff has filed the suit for recovery of possession against the defendant a permissive occupier without any license fee and for remaining in possession of the disputed room even after revocation of permission.

That learned Court below by passing impugned order dated 5.12.2019 rejected the application under section 151 C.P.C with the finding that prior to completion of trail it is not possible to determine and adjudicate the right, title and interest of the defendant as tenant over the suit property.

Being aggrieved by such impugned orders the plaintiff has filed the present application.

It has been contended that the plaintiff has filed the suit for recovery of possession of the disputed room on revocation of permission to occupy granted by him to the defendant in the year 2016 and not on any of the grounds mentioned in section 6 of WBPT Act, 1997. Therefore, the defendant has no locus to file applications under section 7(1) and 7(2) of the Act of 1997. By impugned order dated 10.4.2018 learned Court below has treated the defendant to be monthly tenant under the plaintiff and which is illegal.

On the other hand learned advocate for the opposite party contended that he is a sub-tenant under the plaintiff governed by WBPT Act, 1997 and as such the defendant is entitled to get protection under section 7(1) and 7(2) of WBPT Act, 1997.

The plaint prima facie shows the petitioner has sought of recovery of small room which he had allowed the defendant to occupy for purpose of storing merchandise of later without any license fee or

occupational charges. It also appears the plaintiff has revoked such permission by sending a notice to the defendant through his lawyer. Therefore, this Court is of view the plaintiff appears to have filed the said suit against the defendant a permissive occupier without license fee.

More so the plaint nowhere reflects the plaintiff has sought eviction of the defendant on the grounds mentioned in section 6 of the WBPT Act, treating him a monthly tenant under him in respect of suit room. So it is not known how the learned Court below could treat the eviction of the defendant from the disputed room to be under WBPT Act, and allow the defendant to file petitions under section 7(1) and 7(2) of WBPT Act, and allow petition under section 7(1) of WBPT Act, and give the status of monthly tenant in respect of a store room under the plaintiff.

Therefore, in view of the above discussion this Court holds the order 10.4.2018 bad in law and liable to be set aside. Consequently, the order dated 15.12.2019 is also set aside.

Accordingly **C.O. 437 of 2020 is allowed.**

Connected application, if any, is disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)