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Ct-08

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SA 120 of 2021

with

I.A No. CAN 1 of 2021

CAN 2 of 2021

Samir Kumar Nandy

Vs.

Debasish Dutta & Ors.

(Via Video Conference)

Re: CAN 1 of 2021 (Section 5)

The appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

In view of the order of the Hon'ble Supreme Court passed in Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020 on 23rd September, 2021 the appeal is treated as within time and there is no necessity to file application for condonation of delay and the appeal is treated as filed in time. The application for condonation of delay is redundant and the same is accordingly disposed of without, however, any order as to costs. CAN 1 of 2021 is thus disposed of.

Now we take up the appeal for admission hearing.

The second appeal is arising out of the judgement and decree dated 20th February, 2020 passed in Title Appeal No. 11 of 2016 affirming the judgement and decree dated 30.09.2015/11.12.2015 passed by the learned Civil Judge (Junior Division), 1st Court at Barrackpore, in Title Suit No. 70 of 2010.

This case is a clear abuse of process of law. A hard-earned decree is sought to be set at

naught and rendered toothless by filing this unmeritorious second appeal.

The defendant was a tenant under the plaintiff in respect of the property in suit. The plaintiff filed a suit for eviction on the ground of for default in payment of rent and reasonable requirement. The defendant did not deposit rent/occupational charges with the Rent Controller, as required under the West Bengal Premises Tenancy Act, 1997 and the defendant/appellant also did not comply with the order passed in connection with the application filed by the defendant under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 directing the appellant to pay the arrears rent along with the statutory interest thereon within two months from the date of the order. The appellant was also directed to pay the current rent in cash to the plaintiff within 15th day of each succeeding month. In view of failure to comply with the order the defence was struck off.

The said order was challenged by the appellant in a civil revision. The said application was dismissed by a learned single Judge. Thereafter, the suit was taken up for consideration.

Before the trial court the appellant took a plea that the tenanted property has not been properly described. The trial court as well as the first appellate court had rightly observed that so long the defendant understood the nature and extent of the tenancy, no particular form is necessary. A notice will be deemed to be proper if the landlord without uncertainty and ambiguity clearly discloses his intention to terminate the tenancy. It needs to be

ascertained what is conveyed to a tenant, who is

presumably conversant with the relevant facts and circumstances.

In the instant case, there having been no ambiguity with regard to the possession of a shop room by the tenant, as described in the notice to quit and in the schedule of the plaint, which is well-known to the defendant/tenant, the plea, as mis-description of the tenanted premises in the eviction notice, is unsustainable.

On such consideration, we do not find any merit in the second appeal.

The appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

In view of the dismissal of the appeal, nothing remains to be decided in the connected application for stay being CAN 2 of 2021 and the same is accordingly dismissed.

There will be no order as to costs.

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)

