

15.02.2022
Ct. 21
D/L 1
ab

C.O. 971 of 2021
(Via Video Conference)

M/s. H. Designs, represented by its proprietor,
Himadri Basu
-Vs-
Ashok Kumar Singh & Ors.

Mr. Upendra Roy,
Md. Mustafa,
Mr. Sunny Nandy,
Mr. Tamal Singha Roy,

... for the petitioner

Mr. Gopal Ch. Ghosh,
Mr. Rajkrishna Mondal,

...for the opposite parties

The present application under Article 227 of the Constitution of India is at the instance of defendant challenging the order dated 26.02.2021 whereby the learned Civil Judge (Senior Division), 1st Court at Alipore has allowed the amendment petition filed by the plaintiffs and consequently allowed the plaintiff to examine the P.W. 1 on recall.

The Plaintiffs have filed Title Suit No. 1101 of 2017 for eviction of the defendant from the disputed property on determination of the license agreement executed between the parties on 19.01.2012. It is the case of the plaintiffs that defendant was inducted as a licensee in the disputed property for period of 3 years at the monthly rent of rupees 27,500/- per month. The

defendant neither before expiry of the license period nor after expiry approached the plaintiffs for extension or renewal of the same. The defendants has failed to pay the license fee from June 2015 onwards and remain in illegal occupation of the same. Therefore, finding no alternative the plaintiffs have filed the suit for eviction of the defendant.

The defendant contested the case by filling the W.S. where it has taken the defense that on 25th May, 2015 a fresh tenancy agreement was entered into between the parties whereby rent was fixed at rupees 2750/- per month along with maintenance charge of rupees 1100/- per month and it paid lump sum amount of rupees 25,00,000/- as loan/ security deposit to the plaintiffs.

On such defence being taken by the defendant, the learned Court below directed the defendant to produce the original lease agreement dated 25.05.2015 as it is the case of the plaintiff the defendant was inducted in the disputed premises as a licensee on the strength of license agreement dated 19.01.2012.

It is also seen that on the failure of the defendant to produce the agreement dated 25.05.2015 its defense was struck off. Subsequently, on the prayer of the defendant order was recalled.

Being aggrieved by such order of recall, the plaintiff has moved Hon'ble High Court and filed C.O.

19 of 2020. It appears the Hon'ble Coordinate Bench of this Hon'ble High Court did not interfere with the order passed by the learned Court below while exercising the discretionary power, but directed for expeditiously disposal of the suit.

Later, on production of the original lease agreement by the defendant on 25.05.2015. The plaintiffs have alleged the same to be manufactured one containing forged signatures of the plaintiffs wanted to bring such facts in their plaint by way of amendment and examination of P.W. on recall on such proposed amendment. The learned Court below by passing the impugned order has allowed such amendment application and permitted the plaintiff to examine the P.W. 1 on recall.

It has come on record that plaintiff in its original plaint has alleged that it inducted the defendant as a licensee in respect of the disputed tenancy on the strength of a license agreement dated 19.01.2012 at a monthly rent of rupees 27500/- per month. On the other hand the defendants in its W.S. has alleged that it was inducted as a tenant in respect of the disputed tenancy on the strength of a lease agreement 25.05.2015 at a monthly rent of rupees 2750/- per month on payment of lump sum amount of rupees 25,00,000/- in the form of security deposit/loan.

Initially defendant has failed to comply court's

order and produce the original lease agreement dated 25.05.2015 and as such its defense was struck out. Subsequently, on filing the original alleged deed dated 25.05.2015 order striking off defense was recalled.

That on production of original the plaintiffs have alleged the same to be a forged document. Therefore, this Court is also view in order to come to proper finding whether the lease deed produced by the defendant who is facing an eviction suit is genuine or forged proposed amendment as sought by the plaintiff is necessary and consequently examination of P.W. 1 on recall is also necessary. Therefore, this Court does not find any material irregularity or infirmity in the order impugned.

Accordingly, **C.O 971 of 2021 is dismissed.**

Connected applications, if any, are disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

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.**)

