

17.05.2022
(D/L-30)
Ct.-18
(Susanta)

C.O. 1483 of 2019

Smt. Santi Devi Jha
-Vs-
Sri Tapal Gorai & Ors.

Mr. Biswarup Biswas,
Ms. Atryee De (Ganguly),
... For the Petitioner.

Leave is granted to the learned advocate for the petitioner to delete the name of the deceased opposite party no. 1 from the Cause Title.

Affidavits-of-service filed on behalf of the petitioner, be kept with the record.

None appears on behalf of the opposite parties in spite of service.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for eviction and is directed against the order dated March 12, 2019 passed by the learned Additional Civil Judge (Junior Division), Sealdah in the said suit being Ejectment Suit No. 30 of 2013.

The ejectment suit has been filed against the widow and sons and daughters of the original deceased tenant. The said widow died immediately after filing of the said suit. The plaintiff claims that she was not aware of the said death. However, the plaintiff took out an

application seeking amendment of the plaint to incorporate the fact that after the death of the original tenant and his widow, five years have elapsed, as such, the defendants are no longer tenants within the meaning of Section 2(g) of the West Bengal Premises Tenancy Act, 1997.

The learned Trial Judge by the order impugned has dismissed the said application holding that the trial of the suit has commenced, the plaintiff has failed to demonstrate due diligence in seeking such amendment.

Mr. Biswarup Biswas submits that only the date for recording evidence of P.W.₁ has been fixed. In the order impugned, April 24, 2019 was fixed for evidence of P.W.₁ which in the absence of any contrary evidence, supports the contention of Mr. Biswas.

To constitute commencement of trial for the purpose of Order VI Rule 17 of the Code, something more than mere fixation of a date for recording of evidence of a witness, such as tender of documentary evidence etc., is necessary. Therefore, the dismissal of the said application for amendment of plaint on the ground of commencement of the trial of the suit is not justified, particularly when the proposed amendment is necessary to ascertain the status of the defendants in respect of the suit property

in the light of the definition of “tenant” defined under the aforementioned Section 2(g) of the said Act of 1997.

The order impugned, for the aforesaid reason, is set aside.

The application for amendment of plaint is allowed.

The plaintiff is required to file the amended plaint within two weeks after reopening of the Trial Court following the ensuing Summer Vacation.

The defendants are at liberty to file additional written statement within two weeks from the date of the receipt of the copy of the amended plaint.

C.O. 1483 of 2019 is allowed with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)