

S/L 10
22.11.2022
Court No.652
SD

CO 1532 of 2019

Syed Robiun Nabi
Vs.
Sk. Forhad Ali Molla

Mr. Debdatta Basu
Mr. Sandip Ghosh

...for the Petitioner.

Mr. Prasanta Kumar Banerjee
Ms. Indrani Nandi

...for the Opposite Party.

Being aggrieved and dissatisfied with the Order No.14 dated 13.12.2018 passed by the learned Civil Judge (Junior Division), 2nd Court, Hooghly in Title Suit No.173 of 2015, present revisional application has been preferred.

The petitioner has contended that the plaintiff and the defendant entered into a registered tenancy agreement dated 04.3.2009 for a shop room specifically mentioned in the schedule to the agreement for a period of 5 years starting from January 2009 upto January 2014 for a monthly rent of Rs.250/- for the year 2009 and Rs.300/- from January 2010 with an option to renew after the expiry of 5 years on certain terms and conditions as agreed by the parties.

The petitioner further submits that after expiry of the period mentioned in the agreement dated 04.3.2009 the plaintiff being the landlord instituted a suit for eviction against the defendant for reasonable requirement and default of payment of rent preceded with a prior notice to quit as alleged in the plaint.

During pendency of the said suit, the defendant/petitioner filed an application under the provisions

of Transfer of Property Act read with Section 151 of the Code of Civil Procedure for a leave to deposit the arrears of the rent in the suit and also to continue depositing the rent for the current months during pendency of the suit. The plaintiff/opposite party herein filed a written objection to the defendant's application for depositing of arrear rent along with current monthly rents in the suit. After contested hearing, learned court below was pleased to reject the defendant/petitioner's aforesaid prayer for deposit of rent before the Court with the following observation:-

“It is clearly provided in the Transfer of Property Act that Section 114 is applicable only in cases where registered lease deed is present between the parties. I have gone through the pleadings of this case carefully. No where I have found it is mentioned that there is any registered lease deed existing and binding the parties of this suit with respect to the present suit property, neither any such document has been produced before me. Being so, this suit for eviction falls under the purview of Section 106 and 107 of Transfer of Property Act. As a result I am of the view that present prayer of the defendant for depositing rent following the provision of Section 114 of T.P. Act is not fit to be entertained. Reliance is placed on this point on the ruling given in Gopinath Mukherjee v Uttam Bharti AIR 2009 Cal 58.”

Mr. Debdutta Basu, learned counsel appearing on behalf of the petitioner, submits that the trial court misconstrued the principle of law in holding that Section 114 of the Transfer of Property Act applied only when there is any lease deed existing and binding the parties to the suit. In this context, he relied upon a judgment of the Hon'ble Apex Court in *Commissioner*

of Income Tax, Bihar and Orissa vs. M/s. Kirkend Coal Co. reported in *AIR 1969 SC 1352* and contended that unless the aforesaid prayer of the defendant/tenant be not allowed, he will not be entitled to get benefit of protection against eviction.

In this context, he also relied upon another judgment of this Court in *Sri Uttam Kayal vs. Sri Sunil Pal* reported in *2008(2) CLJ (Cal) 134*.

Per contra, Mr. Prasanta Kumar Banerjee, learned counsel appearing on behalf of the opposite party, submits that in a suit for eviction of a tenant under the Transfer of Property Act on termination of relationship of landlord and tenant by service of notice under Section 106 of the Transfer of Property Act upon the tenant, there is no provision under which a tenant can be permitted to deposit the arrear rent in such a suit.

Considered the submissions made by the parties.

It is not the case of the defendant/petitioner that the registered deed in question dated 04.3.2009 is a lease deed. Mr. Basu, learned counsel for the petitioner vehemently argued that language and the intention of the parties as reflected in the deed clearly reveals that it is a registered deed of tenancy agreement in respect of a shop room. From the aforesaid registered deed, it also appears that the aforesaid tenancy agreement came to an end with the expiry of December 2014. The plaintiff has admittedly filed the suit for eviction in the year 2015. Since this is not a suit for eviction on termination of lease on the ground of forfeiture due to non-payment of rent. Section 114 does not attract in the present case.

In order to attract under Section 114 of the Transfer of Property Act, there must be a registered lease for a fixed period

between the lessor and the lessee and if the suit is filed for recovery of possession by the lessor on the ground of forfeiture of the lease for non-payment of rent before expiry of the lease then only, the tenant can be permitted to deposit the arrear rent in order to get the relief against forfeiture as per the provisions contained in Section 114 of the Transfer of Property Act.

In the present case, the deed is admittedly not a lease deed and the suit for recovery of possession by the lessor has also not been filed before the expiry of the period mentioned in the deed.

In view of the above, I do not find any merit in this revisional application and I do not find anything to interfere with the impugned order.

Accordingly, C.O. 1532 of 2019 is dismissed.

Learned trial court is directed to make every endeavour to expedite the trial of the suit and to conclude the trial of the proceeding preferably within a period of eight months from the date of communication of the order.

(Ajoy Kumar Mukherjee, J.)