

21.06.2022
Item No.24
Ct. No.7
CHC
(disposed of)

C.O. 1394 of 2022

**Shrimati Sanchayita Bhattacharjee alias Swati
Bhattacharjee
Vs.
Abhishek Kar**

Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray
...for the petitioner

Dr. Madhusudan Saha Ray
...for the opposite party

The subject-matter of challenge in this revisional application is against the order dated 30th March, 2022, passed by learned Civil Judge (Junior Division), Third Additional Court, at Alipore, South 24 Parganas, in Title Suit No.1070 of 2020, rejecting the petition filed by petitioner under Section 7(2) of the W.B.P.T. Act.

Mr. Mahato, learned advocate appearing for the petitioner/defendant submits that opposite party/plaintiff upon filing written objection against the petition under Section 7(2) of the W.B.P.T. Act has disclosed therein that the predecessor of petitioner was accepted to be a tenant by the opposite party/plaintiff, and upon accepting tenancy of the predecessor of petitioner there had been a previous suit being Ejectment Suit No.322 of 2007 instituted before the

learned Civil Judge (Junior Division), 2nd Court, Alipore, for the eviction of the petitioner together with his mother, which was dismissed. The decision of the trial court, according to learned advocate for the petitioner, remained undisturbed even in appeal.

Upon advertng to paragraph-‘4’ of the petition filed under Section 7(2) of the W.B.P.T. Act, learned advocate for the petitioner submits that the narration of facts, supportive of a claim of tenancy could not be gone into by the court below, while making rejection of the prayer under Section 7(2) of the W.B.P.T. Act.

It is also contended by the petitioner that the alleged provisions available under Section 2(g) of the W.B.P.T. Act was very much within the knowledge of the plaintiff, seeking eviction of tenant, being predecessor of defendant in previous eviction suit, not being availed of, earlier the same would not be once again utilized as a weapon of eviction against the petitioner/defendant.

Per contra, Mr. Saha Ray, learned advocate for the opposite party/plaintiff submits that facts narrated in paragraph-‘4’ of the petition referred above need not be gone into by the court below, when it is purely question of law, as available under Section 2(g) of the W.B.P.T. Act.

More so, the prayer proposed in the instant litigation is nothing but an eviction of trespasser, what is not at all a suit for eviction taking the grounds available under Section 6 of the W.B.P.T. Act, learned advocate for the opposite party argues.

Having considered the submission of both sides, it appears that so far as the proposition of law, as available under Section 2(g) of the W.B.P.T. Act is concerned, there is hardly any scope for making any elaboration. But whenever petitioner/defendant filed a petition narrating some facts claiming relief under Section 7(2) of the W.B.P.T. Act, the court below is under obligation to decide the same after addressing the facts raised therein, in accordance with the law, providing opportunity of hearing to the either side.

Fundamentally, the court below has decided the application under Section 7(2) of the W.B.P.T. Act superficially bearing in mind the provisions of law, but without strictly going into the facts narrated in paragraph-‘4’ of the petition filed by the petitioner.

That being the position, the impugned order returning a decision under Section 7(2) of the W.B.P.T. Act, is not according to law.

The impugned order is thus set aside with a direction upon the court below to hear out the same afresh in context with the paragraph-‘4’ of the petition

filed by the petitioner, dated 8th of January, 2022, allegedly under Section 7(2) of the W.B.P.T. Act, providing opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

Such exercise, may be completed within eight (08) weeks from the date of communication of this order to the court below.

With this observation/direction, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)