

30.08.2022
SL No.11
Court No.8
(gc)

SAT 176 of 2019
CAN 1 of 2019 (Old No: CAN 5238 of 2019)
CAN 2 of 2019 (Old No: CAN 9932 of 2019)

Smt. Juthika Bhawal & Ors.
Vs.
Smt. Mamta Majumder & Ors.

Ms. Shila Sarkar,
Mr. Sibasis Ghosh,
Mr. Nirmalya Roy,
...for the Appellants.
Mr. Aniruddha Chatterjee,
Mr. Subhojit Seal,
Ms. Chaitali Chatterjee,
...for the Respondents.

Re: CAN 2 of 2019
(Old No: CAN 9932 of 2019)

In view of the order passed by the Hon'ble Justice Biswajit Basu on 25th August, 2022, the application for condonation of delay in filing the memorandum of appeal is taken up for consideration. Sufficient cause being shown for not being able to prefer the memorandum of appeal within the period of limitation. The delay of 53 days in filing the memorandum of appeal is condoned.

Accordingly, the application being CAN 2 of 2019 (Old No: CAN 9932 of 2019) stands disposed of.

Re: SAT 176 of 2019
with
CAN 1 of 2019
(Old No: CAN 5238 of 2019)

The second appeal has come up for admission. We have heard the learned Counsel for the parties.

Ms. Shila Sarkar, learned Counsel appearing on behalf of the appellants has urged that both the Courts below have clearly erred in arriving at a finding that the suit premises was sublet.

We have gone through the judgments of both the Courts. The eviction was sought on the ground of building and rebuilding, subletting and by the time the appeal was heard, the issue with regard the appellants' right to continue as tenant became an issue. Needless to mention that the findings of fact by both the Courts below with regard to building and rebuilding has been conclusively proved and we do not find any perversity in the concurrent findings of fact arrived at by both the Courts below. Insofar as the claim of the sub-tenancy is concerned, the appellants although had the opportunity to deny the specific case made out by the plaintiffs/respondents did not traverse the specific statements made in this regard by the plaintiffs. Moreover, the evidence of the PW-1 and DW-1 would establish that the elements of sub-tenancy were present. PW-1 had established in his evidence that the presence of two parties result in parting with possession, onus shifts upon the defendants to rebut such presumption. The DW-1 and the other witnesses had failed to rebut the said presumption. That they were not in possession was clearly established in the trial. The original tenant in respect of the ten rooms was Manoranjan. In terms of the additional written statement filed on 4th April, 2012,

Manoranjan died on 23rd November, 1992. The defendants acquired the tenancy by inheritance. In terms of Section 2(g), the inherited tenancy would continue only till 10th July, 2006. By reason of the clear findings of fact and having regard to the judgments of both the Courts below, the appellants have no right to occupy the suit premises as tenant and is clearly evictable under the provisions of the West Bengal Premises Tenancy Act, 1956.

On such consideration, we do not find any reason to interfere with the order passed by the learned First Appellate Court affirming the judgment and decree passed by the Trial Court. No substantial question of law is involved in this appeal.

The second appeal being SAT 176 of 2019, accordingly, stands dismissed at the admission stage.

In view of dismissal of the second appeal, the application being CAN 1 of 2019 (Old No: CAN 5238 of 2019) also stands dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)