

23.06.2022
Item No.1 & 2
Ct. No.7
CHC
(disposed of)

C.O.1392 of 2021

**Dipak Mondal
Vs.
Bikash Dhar & anr.**

With

C.O.1403 of 2021

**Md. Samsuddin
Vs.
Goutam Dhar & ors.**

Mr. Sakya Sen,
Mr. Sunil Gupta,
Mr. Dipanjan Biswas
...for the petitioners

Mr. Rwitendra Banerjee,
Mr. Shibasis Chatterjee
...for the opposite parties

On the prayer of learned advocates for both the parties, both the cases referred above, are taken up together, since common law point is involved in both the cases.

The subject-matter of challenge in both these two revisional applications referred above, is against the mode and manner of disposal of 7(2) petition under W.B.P.T. Act. Petitioner/defendant/tenant, against whom eviction suit has been filed by the opposite parties/plaintiffs, raised disputes challenging the

relationship between landlords and tenant in an application under Section 7(2) of W.B.P.T. Act.

Admittedly, such interlocutory application filed by the tenant under Section 7(2) of the W.B.P.T. Act could not be adjudicated on merits, but upon attracting the technicalities, there by giving precedence to the technicalities by the court below.

Though, there has been a direction of the court below giving liberty to tenant to file appropriate application in the suit to challenge the relationship between landlords and tenant, and the maintainability issue if there be any, but the issue challenging relationship in eviction suit remained undecided.

Mr. Sen, learned advocate appearing for the petitioner/tenant submits that in an application under Section 7(2) of the W.B.P.T. Act, the relationship between landlords and tenant can be very well challenged, apart from raising other issues requiring decision by the Court in terms of the provisions available under Section 7(2) of the W.B.P.T. Act, which is *pari materia* with section 17(2) of the W.B.P.T. Act (Old Act).

It is contended by Mr. Sen that the court below having given precedence to the technicalities proceeded to dispose of the petition under Section 7(2) of the W.B.P.T. Act without adjudicating the issue raising

dispute as to the relationship between the parties in eviction suit brought against the tenant.

Reliance is placed by Mr. Sen on a decision reported in **1998 SCC OnLine Cal 84** delivered in the case of ***Synthetic Plywood Industries (P) Ltd. versus Smt. Manjulika Bhaduri & others***, in support of the stand of the petitioner/tenant that the dispute challenging the relationship between landlord and tenant has to be adjudicated in an application under Section 7(2) of the W.B.P.T. Act, before striking out the defence of the tenant on the ground of non-compliance of Sections 7(1) and 7(2) of the W.B.P.T. Act, if there be any.

Mr. Rwitendra Banerjee, learned advocate appearing for the plaintiffs/landlords supporting the order of the court below submits that though the court below has not decided the issue, raised by the petitioner on merits challenging the relationship between the parties, but simply disposed of the application giving liberty to petitioner to file appropriate application in the suit to challenge such relationship.

It is thus submitted by Mr. Banerjee that in view of such liberty being given by the court below to file an appropriate application in the suit, there lies nothing to claim prejudice, if there be any whatsoever.

Mr. Banerjee thus submits that the impugned order would go uninterfered with.

Having considered the submission of both sides, it appears that court below has not considered the dispute, raised by the tenant challenging the relationship between the parties in eviction suit, but simply disposed of giving liberty to file an appropriate application to the suit for adjudication of such dispute.

There cannot be any controversy on the proposition of law that provisions available under Section 17(2) of the Old Act (1956) is *pari materia* with the provisions available under Section 7(2) of the W.B.P.T. Act, 1997 (New Act). The ratio of the decision, as cited by Mr. Sen, goes to show that the dispute raised by the tenant challenging the relationship is always to be decided in an application under Section 7(2) of W.B.P.T. Act, if necessary upon taking evidence, to be adduced by the parties to this case for the purpose.

It is thus settled proposition of law that unless such issue challenging the relationship between the parties is decided at an interlocutory stage under Section 7(2) of the W.B.P.T. Act neither the defence of tenant may be struck out, nor the tenant will be able to adduce evidence in support of his plea that he is not a tenant under plaintiffs/landlords even in trial. The technicalities, thus considered by the court below,

should not be given precedence, without making adjudication of the real controversy raised by petitioner/defendant disputing with the relationship between the parties, that plaintiffs are not their landlords.

The ratio of such decision, as referred by Mr. Sen would be squarely applied over the facts and circumstances of this case. The impugned order, as such, is not sustainable.

The impugned order dated 9th April, 2021 passed by learned Civil Judge (Junior Division), 1st Court, Jangipur, Murshidabad, recorded in two different eviction suits, relatable to the present two revisional applications referred above, is thus set aside with a direction upon the court below to hear out the same afresh upon making adjudication of the dispute raised by the petitioner/tenant as to the relationship, if necessary upon taking evidence, to be adduced by both the parties to this case, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

It is, however, clarified that such exercise may be concluded within six (06) months from the date of communication of this order.

With this observation/direction, both the revisional applications stand 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.)