

25. 21.06.2022
Ct. No.08
Tanmoy

F.M.A. 3183 of 2015

**The Bengal Bonded Warehouse Association
-Versus-
Tarak Nath Mullick**

**With
IA No: C.A.N. 1 of 2015 (Old No: C.A.N. 4602 of 2015)**

None of the parties are represented, nor is any accommodation prayed for on their behalf even in the second call.

The order directing an application under Order VII, Rule 11 of the Code of Civil Procedure is a subject-matter of challenge in this appeal. We have perused the order impugned. It appears that the plaintiff had instituted a suit against the defendant praying, *inter alia*, for the following reliefs:

“(a) Declaration that the plaintiff is a tenant having right to induct sub-tenant in respect of the suit premises described in the schedule below; (b) Declaration that the defendant, his men, agents, servants and associates have no right and/or authority to interfere with possession of the plaintiff over the suit premises described in the schedule by or through himself or sub-tenant; (c) Permanent injunction restraining the defendant, it’s men, agents, servants and associates from ousting and/or dispossessing the plaintiff from the suit premises illegally or forcibly without due process of law and other reliefs.”

In the application for rejection of the plaint it is alleged that the subject-matter of the suit is the alleged tenancy of the plaintiff in respect of the office space at premises no.25, Netaji Subhas Road, P.S. – Hare Street, Kolkata – 700001, which was completely gutted on January 1, 1995. It was alleged that by reason of such extensive damage to the building including the portion once occupied by the plaintiff, the Kolkata Municipal Corporation declared the building ‘unfit’ and issued a notice for demolition under Section 411(4) of the Kolkata Municipal Corporation Act. By reason of the destruction of the building with fire, the office space allowed to be occupied by the plaintiff as a tenant has been completely destroyed and the plaintiff is not in use or occupation of the remaining part of his tenancy. By reason of such complete destruction of the building by fire, the right of the plaintiff, if any, to claim tenancy stood extinguished and/or came to an end on and from January 1, 1995. In view of the extinguishment of tenancy the plaintiff is not entitled to any reliefs and the suit is required to be dismissed as it is barred by law and not maintainable.

The prayer for rejection of the plaint was opposed by the plaintiff. From a perusal of the judgment of the learned trial Court it appears that plaintiff was a tenant in respect of two rooms on the ground floor of the suit building at a monthly rent of Rs.126/- payable

according to English calendar month with right to sublet. Said Singhadas Mullick has been occupying his tenanted portion by and through sub-tenant. Such power of subletting has been confirmed by the defendant through its letter dated 3rd January, 1958 and order dated 11.04.1957 of Additional Rent Controller, Calcutta, passed in Case No. 3243A of 1956 and 3244A of 1956. After demise of Singhadas Mullick the plaintiff become direct tenant under the defendant. The plaintiff surrendered portion of the space out of the said tenancy by letter dated 4th February, 1964 and the rent was reduced to Rs.76/- payable per month. Thus the plaintiff became tenant in respect of two rooms a plinth room on the ground floor of the said premises. The defendant filed ejectment suit No. 518 of 1979 in the City Civil Court, Calcutta which was ultimately dismissed for default on 11.06.1998. Thereafter, the plaintiff started depositing rent in respect of the suit premises in the office of the Rent Controller, Kolkata, due to refusal to accept rent by the defendant. The defendant recently on the plea of building and rebuilding engaged persons claiming themselves as promoters. They tried to dispossess the tenants of the suit premises including the plaintiff therefrom illegally. The schedule of the plaint would reveal that the plaintiffs are tenants of two rooms. However, the boundary of the tenanted room was not properly

described. The learned trial Court has also recorded that in one of the proceedings, the learned Rent Controller recorded that the tenants have verbal consent of the landlord to sublet and on that basis, the tenancy has been created and they have been putting rent. There is admission to that effect, at least in respect of two tenants.

In our view, these issues are required to be decided at the trial and cannot form subject-matter of appeal under Order VII, Rule 11 of the Code of Civil Procedure. The plaint discloses a cause of action whether the plaintiff would succeed ultimately since the consideration on which the application under Order VII, Rule 11 of the Code of Civil Procedure is required to be passed. We also find from record that the parties were not represented even on the earlier occasion, that is, on January 28, 2021 for which the co-ordinate Bench had directed the listing of the appeal along with the connected application on July 5, 2021 with the warning, "Last Chance".

For the reasons recorded above, we do not find any reason to interfere with the order under challenge. The appeal being F.M.A. 3183 of 2015 and the connected application being IA No: C.A.N. 1 of 2015 (Old No: C.A.N. 4602 of 2015) are dismissed.

However, there shall be no order as to costs.

Let urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)