

14.03.2022
Item No.10
Court No.18
AJ.

C.O. 2280 of 2019

Sri Debasish Ghosh

-Vs-

**Smt. Chandana Kundu, (since
Deceased), her heirs and legal
representatives Nibedita Debnath & Anr.**

Mr. Sidhartha Banerjee,
Ms. Aditi Kumar,
Mr. S. N. Ghosh.
....for the petitioner.

Mr. Sabyasachi Mukhopadhyay,
Ms. Koushikee Banerjee.
.....for the opposite parties.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for eviction and is directed against Order No. 45 dated March 27, 2019 passed by the 1st Court of the learned Civil Judge (Junior Division), Katwa, District. Purba Burdwan in the said suit being Title Suit No. 145 of 2013.

The husband of the opposite party (since deceased) was the original tenant of the suit property under the plaintiff and on his death, the said tenancy devolved upon the said opposite party as such the plaintiff has filed the connected suit for her eviction from the suit property.

The learned Trial Judge by the order impugned has disposed of an application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997.

The petitioner questioned the maintainability of the said application on the ground that the tenant

having availed the protection of Section 7(4) of the said Act of 1997 in the earlier suit for eviction is not entitled to maintain an application under Section 7(2) of the said Act of 1997 in the subsequent suit.

The learned Trial Judge by the order impugned has disposed of the said application holding that the said opposite party was a defaulter in payment of rent from the month of August, 2010.

During the pendency of the present revisional application the original opposite party has died and her married daughters have been substituted in the present revisional application without prejudiced to the rights and contention of the parties.

Mr. Sidhartha Banerjee learned advocate for petitioner submits that although the petitioner has assailed the order impugned on the ground that the learned Trial Judge should not have permitted the deceased opposite party to deposit the arrear rent in view of the fact that her husband in earlier suit has availed the benefit of Section 7(4) of the said Act of 1997 but after the death of the original opposite party the said challenge to the order impugned has lost its relevance inasmuch as the substituted heirs of the deceased opposite party not being tenants are not entitled to deposit the assessed arrear rent in the suit in terms of the order impugned.

It appears that the learned Trial Judge in the order impugned has clearly held that there is no relationship of landlord and tenant between the married daughters of the deceased opposite party and

the plaintiff as they are not coming within the definition of tenant defined under Section 2(g) of the said Act of 1997 and the said findings have attained finality.

Therefore, without going into the question as to whether the widow of the original tenant, the deceased opposite party is guilty of second default or not, it can safely be concluded that the substituted opposite parties i.e. the married daughters of the deceased opposite party cannot maintain an application under Section 7 of the said Act of 1997, consequently they are not entitled to any benefit of the order impugned.

C.O. 2280 of 2019 is disposed of with the above observations without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)