

05.09.2022
Item No.23 & 24
Ct. No.7
CHC
(disposed of)

C.O.1949 of 2022
Sitaram Goenka
Vs.
Sambhu Prasad Agarwal & ors.
With
C.O.1951 of 2022
Sitaram Goenka
Vs.
Sambhu Prasad Agarwal & ors.

Mr. Om Narayan Rai,
Mr. Badal Singh
...for the petitioner

Mr. Shubham Gupta
...for the opposite parties

Affidavit-of-service furnished by the petitioner be taken on record.

On the prayer of both parties, both the revisional applications are taken up together for a common law point being involved in this case.

The subject-matter of challenge in C.O.1951 of 2022 is against the order dated 7th June, 2022, passed in Ejectment Suit No.579 of 2016 of learned Judge, 3rd Bench, Presidency Small Causes Court, at Calcutta, permitting the petitioner/plaintiff to withdraw the suit with liberty to file afresh the suit before the appropriate authority after allowing the petition under Order 7 Rule 10 C.P.C., while rejection of a prayer for review for modification of the order dated 7th June, 2022, passed

by the same court is under challenge in C.O.1949 of 2022.

Previously, there has been a Ejectment Suit instituted before the Presidency Small Causes Court taking grounds, as available under Section 6 of the West Bengal Premises Tenancy Act. During the pendency of the case, defendant no.1 and defendant no.5 died on 19th June, 2020 and 7th August, 2020 respectively. After the demise of the original tenant, namely, Kanhaiya Lal Agarwal and Laxmi Narayan Agarwal, defendants being sons of the original tenant accrued the tenancy right as per provisions available under Section 2(g) of the W.B.P.T. Act.

An application was then filed by the plaintiff praying for incorporating some events happened subsequent to the institution of the suit relatable to the demise of the original tenant, and some of his legal heirs. Such application was allowed permitting amendment.

Attention of this Court is drawn by the learned advocate for the petitioner to the order passed in C.O.2029 of 2021 to submit that the application under Order 7 Rule 10 C.P.C. praying for return of the plaint has been directed to be disposed of subsequent to the disposal of the amendment application.

Adverting to the order dated 7th June, 2022, learned advocate for the petitioner contends that

though the court below has allowed the petition under Order 7 Rule 10 C.P.C., but liberty has been granted to petitioner under an erroneous approach upon misinterpretation of provisions of law to file fresh suit before the appropriate authority.

It is thus contended by learned advocate for the petitioner that petition under Order 7 Rule 10 C.P.C. has been disposed of under a misconception of law, where no question of granting liberty is necessary.

Per contra, Mr. Shubham Gupta, learned advocate appearing for the opposite parties submits that when Order 7 Rule 10 C.P.C. has already been allowed, there lies nothing to be adjudicated further in this case, more so the review application subsequently filed for modification of the order dated 7th June, 2022, has not been made in accordance with the law doing strict adherence to the Rules.

Having considered the submission of both sides, it appears that manner of disposal of an application praying for return of plaint under Order 7 Rule 10 C.P.C. is under dispute in this case.

The allegations raised by the petitioner against the opposite parties are denied by the opposite parties.

It would be profitable here to refer the provisions of Order 7 Rule 10 C.P.C., which enables the court to return a plaint at any stage of the suit for being presented before the appropriate court in an

appropriate case being made out. The only qualification thus imposed, while returning a plaint, is available in Order 7 Rule 10A C.P.C. Such provision in any case cannot be confused with Order 23 Rule 1 C.P.C. Question of granting liberty does not arise, while making consideration of a prayer for return of plaint under Order 7 Rule 10 C.P.C.

For the reasons discussed hereinabove, both the orders dated 7th June, 2022 (in C.O.1951 of 2022) and 10th June, 2022 (in C.O.1949 of 2022) passed by learned Judge, 3rd Bench, Presidency Small Causes Court, at Calcutta, in Ejectment Suit No.579 of 2016 are hereby set aside with a direction upon the court below to hear out the petition under Order 7 Rule 10 C.P.C. afresh doing strict adherence to the provisions of law, providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournment, unless it is extremely unavoidable, preferably, before Puja Vacation of this Court for the year 2022.

This would not however, prevent the learned court remaining in charge of learned Judge, 3rd Bench, Presidency Small Causes Court, at Calcutta to take up such matter subject to his suitability and convenience.

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

Parties are directed to make communication of this order to the learned court below.

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.)