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AKG 16-02-2022
Ct.21

C.O. 2034 of 2021
Sri Rabin Adak
Versus
M/s. Balak Ram Engineering Works
(VIA VIDEO CONFERENCE)

Mr. Nilanjan Bhattacharjee,
Mr. Sanjoy Karar
...for the Petitioner

Mr. Souri Ghosal,
Mr. Prabhat Kumar Singh
...for the Opposite Party

Parties are represented by their respective lawyers.

Revisional application is taken up for hearing.

At the time of hearing, it has been admitted by the learned advocate for the opposite party/tenant that the tenant has already purchased a property near the tenanted premises and such fact was well within the knowledge of the plaintiff and there is reflection of such fact in Para-6 of the plaint.

However, learned trial court below dismissed the eviction suit filed by the petitioner only on the ground that the petitioner/plaintiff has failed to produce documents to substantiate his claim as made in Para-6 of the plaint.

The plaintiff preferred an appeal being no. 169 of 2015, challenging the decree of dismissal of Title Suit No. 132/2006 (renumbered as Title Suit No. 3302/14).

During the pendency of the appeal, the plaintiff

has been able to obtain certified copy of the deed of the defendant's property situated near disputed tenancy and record of right of another property standing in the name of the defendant. Therefore, the plaintiff wanted to incorporate such facts in the plaint by way of amendment before the appellate Court. The learned appellate court by passing the impugned order rejected the amendment application.

Since the plaintiff has sought eviction of the defendant on the ground of reasonable requirement. It has also come on record that the defendant has his own alternative accommodation to run his business near the disputed tenancy as per the submission made by the learned advocate for the petitioner and admitted by learned lawyer for the opposite party.

Therefore, this Court is of the view that proposed amendment as sought by the plaintiff is necessary for proper determination of the dispute.

The case is sent back on remand to consider the amendment application on production of the certified copy of the deed of the property of the defendant situated near the disputed tenancy and record of rights of another property of the defendant which has also claimed to be situated near the disputed tenancy.

The learned Court below while deciding the application under 6 Rule 17 C.P.C. will take into consideration that the tenancy of the defendant is not

for residential purpose but for commercial purpose.

Interim order granted earlier, if any, stands vacated.

Accordingly, the revisional application being **C.O. 2034 of 2021** is disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities.

(Kesang Doma Bhutia, J.)