

THE HON'BLE JUSTICE Kesang Doma Bhutia.

Sri Siby Prasad Das & Anr.

Judgment on :- 03.02.2022

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Title Suit No. 319 of 2018 on 29.11.2021, in compliance of the direction given by the Hon'ble High Court in C.O. No. 4195 of 2019 on 19.03.2021 has filed the present application under Article 227 of the Constitution of India.

The facts necessary for determination of present revisional application is that the opposite parties being the tenants of the disputed structure have filed Title Suit being No. 319 of 2018 for declaration and permanent injunction. The petitioner/landlord too has filed an Eviction Suit against the present opposite parties and which is also pending before the same Court. That in Title Suit No. 318 of 2018 the plaintiffs/tenants had filed an application for repair of the tenanted structure based on local inspection report and which was allowed, but due to resistance put by the landlord/defendant no repair work could be carried out and as such the learned Court below had to direct police to help the tenants to execute the repair works of the tenanted structure by passing an order on 02.01.2020.

Being aggrieved by such order, the defendant/landlord preferred a revision before the Hon'ble High Court being No. 4195 of 2019. The Hon'ble coordinate bench of this High Court was pleased to allow the repair work of the premises in question with a direction to the learned Court below to get the repair work done in presence of advocate commissioner to be appointed by the learned Court below or in

presence of learned Advocate Commissioner who had already done local inspection of the disputed tenanted structure. Learned Court below as per the direction of the Hon'ble High Court and also keeping in view the local inspection report of the commissioner allowed the plaintiffs/tenants to carry out the repair works. Learned Court below by passing the impugned order has allowed replacement of 200 pieces of roof tiles with 25 pieces of motka, replacement of 50 tiles supporting bamboo sticks, plastering of western side room with verandah and also repair of the floor.

Now by filling the present revisional application the landlord had alleged in the garb of repair the learned Court below has allowed the tenant to carry out a new construction. He further submitted if the tenant is allowed to carry out the nature of repair work as mentioned in the impugned order then the eviction suit filed by the petitioner on the ground the suit property is in dilapidated condition would be infructuous. Therefore, the petitioner has prayed for setting aside the impugned order.

The institution of an eviction suit against opposite parties by the present petitioner ipso facto prove that present petitioner admits that opposite parties to be her tenants in respect of the disputed structure. It is settled principle of law a tenant cannot be evicted from the tenanted premises without due process of law. Therefore, this Court is

of view so long the tenant is not evicted from the tenanted structure, the tenant has every right to live in the tenanted structure suitable for human habitation and with dignity.

From the report of the commissioner and impugned order it is seen that photographs were produced by the Advocate Commissioner who was appointed to hold local inspection of the disputed tenanted premises and which show tiles are missing from some portion of the roof and plastic sheet being used to cover the ceiling. The bamboos supporting the ceiling are in rotten condition. There is a gap in between the roof and the brick wall and tiles being stacked at the verandah. Two pillars supporting the western wall are in tilted condition, the walls are in cracked and in poor condition being aggravated by cyclone Amphan and cyclone Yaas and there is immediate need of repair of the disputed structure to make it habitable.

Therefore, keeping in view the condition of the disputed structure, the nature of repair works which are required to be effected in the disputed structure as ordered by the learned Court below do not appear to be in the nature of a new construction as alleged by the learned Advocate for the petitioner. Therefore, this Court does not find any material irregularities in the impugned order. This Court does not find any merit in the revisional application. Therefore, the same is dismissed.

Accordingly, **C.O. No. 2163 of 2021 is dismissed.** Connected applications, if any, are disposed of.

Interim order, if any, stands discharged.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

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

(Kesang Doma Bhutia, J.)