

08.12.2022
Item No.16
Ct. No.7
CHC
(disposed of)

C.O.2839 of 2022

Sri Sampath Pillai
Vs.
Sri Sandeep Raychaudhuri

Mr. Prantick Ghosh,
Ms. Shabana Hasin,
Mr. Mobaidur Hossain
...for the petitioner

Mr. Sounak Bhattacharya,
Mr. Arindam Kundu
...for the opposite party

Subject-matter of challenge in this case is against an amendment being allowed by the impugned order dated 9th March, 2022, passed by learned 5th Civil Judge (Senior Division), Alipore, South 24 Parganas, in Title Suit No.1038 of 2019.

Adverting to paragraph-‘2’ of the plaint, Mr. Prantick Ghosh being assisted by Ms. Shabana Hasin submits that acceptance of the rent on two successive periods would offer the petitioner to the status of a tenant, and the proposed amendment will lead to cause withdrawal of the admission, which the opposite party/plaintiff admittedly made in his pleadings vide paragraph-‘2’ of the plaint.

Mr. Ghosh clarifies submitting that admittedly, the petitioner was allowed to stay in the subject property upon execution of a leave and licence agreement,

which continued for two successive periods, valid for eleven (11) months only each.

It is thus submitted that when opposite party, after the expiry of period of renewal of leave and licence agreement, accepted rent from the petitioner, there has been developed a relationship of landlord and tenant.

The admission disclosed in the paragraph '2' of the plaint, according to Mr. Ghosh, would be inevitable withdrawal of such admission of tenancy of petitioner causing prejudice to the valuable rights of the petitioner.

It is also submitted by Mr. Ghosh that there has been eviction notice served upon the petitioner, which must be incidentally looked into in aid of the admission disclosed in paragraph-'2' of the plaint.

Mr. Bhattacharya, learned advocate appearing for the opposite party adverting to Section 3(e) of the West Bengal Premises Tenancy Act, 1997 submits that in a suit for eviction of a licensee, the provision of claim of tenancy is not available.

According to Mr. Bhattacharya, paragraph-'2' of the plaint is neither relatable to admission of tenancy nor withdrawal of admission of tenancy in any manner whatsoever.

It is further contended by Mr. Bhattacharya that by reason of Section 3(e) of West Bengal Premises Tenancy Act, the claim of tenancy would not be applicable in a

case of simpliciter eviction of a licensee, and for which a prior notice was served under Section 106 of the T.P. Act.

Having considered the submission of both sides, it appears that the petitioner is aggrieved with the amendment being allowed. The pending suit is for eviction, describing the petitioner to be licensee.

Mr. Ghosh has disclosed that Rs.8,000/- per month was paid by the petitioner in lieu of his stay in the subject property pursuant to his leave and licence agreement, which was extended for two successive periods.

The extension of leave and licence agreement would hardly leave any chance for accrual of any interest to the suit property so as to claim the status of a tenancy in the subject property. More so, the provisions of Section 3(e) of the W.B.P.T. Act would come in the way against the claim of tenancy of petitioner, describing him to be a tenant.

For the reasons disclosed hereinabove, the impugned order does not call for any interference.

When interlocutory application under Section 7(1) and 7(2) is pending, the same may be disposed of in accordance with law with utmost expedition.

The maintainability of such petition will be decided by the court below in accordance with law.

Parties are directed to make communication of this order to the 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.)