

In the High Court at Calcutta
(Civil Revisional Jurisdiction)
Appellate side

S/L No. 15
10.04.2023
Ct-237
(RD)

C.O. 295 of 2023

**Mohammad Javed
Vs
Hazra Zaman & Anr**

Mr. Partha Pratim Roy, Adv.
Mr. Nilofer Siddique Alam, Adv.

.... For the petitioner/appellant

Mr. Sk. Mehhub Hossain, Adv.

... For the opposite party No.1

Mr. Abhijit Ray, Adv.
Mr. Jaydeep Guha, Adv.

... For the opposite party No.2

This revision application is filed challenging the legality the order dated 14.12.2022 passed by the Learned Judge, Chief Bench, City Civil Court, Calcutta in connection with Misc. Appeal No. 110 of 2022.

By the order impugned Misc. Appeal no. 110 of 2022 was dismissed by the Learned Chief Judge, City Civil Court, Calcutta observing, inter alia, that original tenant was evicted so the order of eviction is also binding upon the sub-tenant. It was further observed that Durga Rani Seal that original owner of the property sold the subject property to the present opposite parties Hazra Zaman and Sk. Mohammad Samin after the lease of Sk. Md.

Quasim was surrender in favour of Durga Rani Seal. According to learned Judge there was no tenancy or lease agreement was subsisting at the point of time when the property was purchased by the decree holder.

In fact, the decree holder filed one application under Order 21 Rule 97 of the Civil Procedure Code praying for police help for possession of subject property in Ejectment Execution Case No. 109 of 2015 before the learned Trial Judge, claiming himself to be a sub-tenant in respect of subject property.

In support of sub tenancy learned advocate, Mr. Partha Pratim Roy, appearing on behalf petitioner has referred to the tenancy agreement between owner of the subject property and Moniruz Zaman wherein para 7 of the agreement empowered the second party to sub-let the subject property to any person.

Learned advocate, Mr, Mehhub Hossain, appearing on behalf of the opposite party has referred to Section 26 of the West Bengal Premises Tenancy Act and submitted that no notice was sent to the landlord after creation of alleged sub-tenancy.

Learned advocate, Mr. Roy has relied on a case of ***Silver Line Forum Pvt. Ltd. vs Rajiv Trust and another*** reported in ***(1998) 3 SCC 723*** wherein Hon'ble Apex Court that the executing court can decide where resister or obstructor is a person bound by the decree and a refuses to vacate the property. That question also squarely falls within adjudicatory process contemplated in Order 21 Rule 96 (2) of Code.

In the same line Hon'ble Apex Court in a case of ***Bangalore Development Authority Vs. N. Nanjappa and another*** (unreported decision) observed that obstructor should be impleaded in the execution proceeding and decide all the questions to right of the obstructor under Order 21 Rule 96 read with rule 101 Civil Procedure Code.

Facts and circumstances of this case in hand is totally different.

In our case the original suit being no. EJ. Suit no. 186/2005 was disposed of on contest on 29.04.2015. Appeal being no. TA. No. 27/ 2015 was preferred before learned 5th Bench, City Civil Court which was dismissed. Second appeal being no. SAT No. 345 /2017 was preferred Hon'ble Division Bench of this Court but that was not admitted and judgment and decree passed in title appeal no. 27 of 2015 was affirmed. Thereafter, plaintiff filed an execution no. 109 of 2015. Bailiff went to execute the writ of delivery of possession on 21.11. 2015 and that was resisted. Thereafter, Misc. Case No. 351 of 2015 was registered on receipt of an application under Order 21 Rule 97 of the Civil Procedure Code praying for police help and that was allowed. Again judgement debtor filed an application under Section 47 of the Civil Procedure Code which was registered under Misc Case no. 10 of 2019. Thereafter judgement debtor suppressing all material facts filed one title suit no .578 of 2022 before the learned 9th bench, city civil court, Calcutta and obtained of order of status quo which was

also vacated upon an application filed under Order 39 Rule 4 of the Civil Procedure code by the opposite party/decree holder.

In our case the petitioner was not a party to the suit. He filed application under Order 21 Rule 101 of the Civil procedure Code read with section 151 of the Code before the learned 5th Judge Small Causes Court at Calcutta claiming himself to be a sub tenant for the first time in respect of the subject property. That application was refused by the Executing Court. Being aggrieved an appeal has been preferred before the learned Chief Judge , City Civil Court, and that was disposed of by the order impugned.

From the entire material and record, I find that though original tenant contested the ejctment suit up to second appeal but no steps was taken on behalf of the petitioner though he claimed himself as sub tenant in respect of the subject property. It is also not disputed that though right to sub-let the premises was assigned to the original tenant but no notice of sub tenancy was ever sent to the landlord, which was not waived by the agreement between landlord and original tenant.

Considering all facts and circumstances discussed above, I do not find any illegality or infirmity in the order impugned in this revision application.

With the aforesaid application revision application CO 295 of 2023 stands dismissed.

Let a copy of this order be communicated to the Learned Judge, Chief Bench, City Civil Court, Calcutta.

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

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

(Bibhas Ranjan De)