

IN THE HIGH COURT AT CALCUTTA**(Civil Revisional Jurisdiction)****Appellate Side**

Present:

The Hon'ble Justice Bibhas Ranjan De**C.O. 307 of 2023****Mr. Sohan Lal Mohta****Vs.****Sri Anil Kumar Soni & Anr.**

For the Petitioner	:Mr. Shubham Gupta, Adv. Mr. Rajiv Kumar, Adv. Mr. Raunak Shah, Adv.
For the Opposite parties	:Mr. Krishna Das Poddar Adv.

Heard on : March 28, 2023

Judgment on : April 17, 2023

Bibhas Ranjan De, J.

1. The order dated 22.07.2022 passed in connection with EJ 186 of 2021 is challenged. Both the learned counsel appearing on behalf of the parties to this petition are present.

2. Learned Chief Judge, Presidency Small Causes Court at Calcutta passed the impugned order on an application with a prayer for rejection of plaint filed by the defendant, on the ground that the property in question is an open space not coming under the purview of the West Bengal Premises Tenancy Act, 1997. Learned Judge returned that defendant received notice under Section 6 (4) of the West Bengal Premises Tenancy Act, 1997 and the schedule property was admittedly given to the defendant as a monthly tenant. It was further returned that the defendant filed a title suit no. 684 of 2021 where he admitted the tenancy at a monthly rent. Ultimately, Learned Judge rejected the application dated 05.03.2022 with a prayer for rejection of plaint.

3. Ld. Advocate, Mr. Shubham Gupta, appearing on behalf of the petitioner/defendant has advanced his argument on two scores that the property in question is an open space and therefore it will not come within the purview of the premises under Section 2(e) of the West Bengal Premises Tenancy Act, 1997. In addition, Mr. Gupta also contended that the Learned Chief Judge, Presidency Small Causes Court, can not hear

any contested matter save and except transferring to the same to the other bench.

4. In support of his contention Mr. Gupta has referred to a case of ***Umika Agencies Vs Suresh Tanwar*** reported in ***1993 RLR 623***.
5. Per contra, Ld. Advocate, Mr. Krishna Das Poddar has referred to the Provision of Section 2(e) of the West Bengal Premises Tenancy Act, 1997 and submitted that schedule property falls within the purview of 'premises'. That apart, Mr. Poddar has submitted that Learned Chief Judge, Presidency Small Causes Court, has jurisdiction to dispose of the application under Section 7 Rule 11 of the Civil Procedure Code before transferring the suit to the other bench for disposal.
6. In support of his contention, Mr. Poddar has referred to a judgement passed by the Hon'ble Court in connection with CO 275 of 2010 wherein Hon'ble Court dealt with an issue of calling for a suit before the commencement of the trial by the Learned Chief Judge, Presidency Small Causes Court, Calcutta. In that case, Hon'ble Court directed Learned Chief Judge, Presidency Small Causes Court, to send the records to the Transferee Court.

- 7.** Now, I propose to deal with the first issue of the jurisdiction in terms of Section 2(e) of the West Bengal Premises Tenancy Act, 1997 which runs as follows:-

“ 2.(e) "premises" means any building or part of a building or any hut or part of a hut let separately, and includes— (i) the gardens, grounds and out-houses, if any, appertaining thereto, and (ii) any furniture supplied by the landlord or any fittings or fixtures affixed, for the use of the tenant in such building or part of a building or hut or part of a hut, but does not include a room in a hotel or a lodging house;”

- 8.** Therefore, ‘premises’ includes the gardens, grounds and outhouses, if any, appertaining thereto. Only exception is a room in a hotel and lodging house.
- 9.** According to agreement between the parties, it appears that a space measuring about 20 s.q. f.t. facing road side, lying and situated in the frontal portion of the ground floor of the premises no. 18, Sir Hariram Goenka Street, Kolkata 700007 PS Posta.

10. It is not disputed that petitioner/ defendant filed another title suit for declaration and permanent injunction against the landlord in respect of the same premises described in paragraph 1 of the plaint at the monthly rental of Rs. 50/-. On perusal of the Provision of Section 2(e) of the West Bengal Premises Tenancy Act, 1997, I find that even a grounds appertaining to the building can be considered as premises.

11. Hon'ble Delhi Court in **Umika Agencies** (supra) dealt with a vacant land letting out as per lease agreement. In that case Hon'ble Court relied on a case **Krishna Pasuba vs. Duttatreya** reported in **(1966)1 SCJC-601** wherein Hon'ble Supreme Court observed

“ THE building belonged to the tenant and was not the subject-matter of the letting. The land only was the subject-matter of the letting. Consequently the premises are land.”

12. But, in our case a space in the frontal portion of the ground floor of the premises in question was let out to the petitioner/ defendant and that can not be considered as a land which was subject matter of **Umika Agencies** (supra). In that view of the matter, the suit property surely comes within the

meaning of 'premises' under Provision of Section 2(e) of the West Bengal Premises Tenancy Act, 1997.

13. Now, I come to the issue of jurisdiction of the Learned Chief Judge, Presidency Small Causes Court, in dealing with an application under Order 7 Rule 11 of the Civil Procedure Code.

14. On careful perusal of the entire material on record particularly the impugned order dated 22.07.2022 it comes to my view that before filing a written statement petitioner/defendant raised the issue of maintainability by filing an application under Order 7 Rule 11 of the Civil procedure Code. Learned Chief Judge, Presidency Small Causes Court, is duty bound to transfer the suit for disposal and from the record it is found that written statement was not filed on 22.07.2022 when impugned order was passed. From that point of view, the suit was not ready for trial in absence of written statement.

15. Thus, I find neither any irregularity nor any infirmity in the order impugned to invoke the power under Article 227 of the Constitution of India.

- 16.** The revision application being no.CO 307 of 2023 stands disposed of. The order dated 22.07.2022 passed in EJ 186 of 2021 stands affirmed.
- 17.** Let a copy of this order be communicated to the Learned Chief Judge, Presidency Small Causes Court, Calcutta for information.
- 18.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 19.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]