

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**C.O. 390 of 2022
Susanta Basu & Ors.
versus
Gouri Dasgupta & Anr.**

For the Petitioners : Mr. S. P. Mukherjee, Advocate
Mr. Shuvajit Bose, Advocate

Heard on : 27.04.2023

Judgment on : 17.10.2023

Bivas Pattanayak, J. :-

1. This revisional application has been filed under Article 227 of the Constitution of India challenging the order/judgment dated 20th January, 2022 passed by the learned Additional District Judge, 10th Court at Alipore in Title Appeal No. 151 of 2019 rejecting an application under Order VII Rule 11 of the Code of Civil Procedure (hereinafter referred to as 'the Code') thereby reversing the order for rejection of plaint dated 6th August, 2019 passed in Title Suit No. 675 of 2019 by the learned Civil Judge (Junior Division), 3rd Additional Court at Alipore, South 24 Parganas.

2. The brief fact of the case is that opposite parties-plaintiffs filed a suit for declaration and permanent injunction against the petitioners-defendants being Title Suit No. 675 of 2019. It is contented *inter alia* in the aforesaid suit that one Dilip Kumar Dasgupta was the proprietor of business under the name and style of "M/s Dasgupta Electric Art Studio" and he used to run such business in the tenanted shop room no.1 under

the landlordship of Satyendra Nath Basu (since deceased) comprised within the ground floor of premises no. 238B, Rash Behari Avenue, P.S.-Gariahat, Kolkata-700019. Further said Dilip Kumar Dasgupta, proprietor of the business, died leaving behind his wife, Uma Dasgupta, Gouri Dasgupta (plaintiff no.1 herein), widow of his predeceased eldest son Pradip Kumar Dasgupta and grandson, Siddheswar Dasgupta, Tapan Kumar Dasgupta (son) and Shyamali Halder (daughter). During his lifetime, Dilip Kumar Dasgupta executed and published a registered Will and testament dated 2nd December, 2002 registered before the Additional Registrar of Assurance-III being deed no. 1013 for the year 2002. By dint of such registered Will and testament, Dilip Kumar Dasgupta bequeathed the entire business under the name and style of “*M/s Dasgupta Electric Art Studio*” as well as the tenancy right in favour of his daughter-in-law, Gouri Dasgupta (plaintiff no.1) and his grandson, Siddheswar Dasgupta (plaintiff no.2). After the death of the testator, Dilip Kumar Dasgupta, the opposite parties-plaintiffs have been carrying on the business under the name and style of “*M/s Dasgupta Electric Art Studio*” as per the said registered Will and their names have been duly recorded in the Office of the Kolkata Municipal Corporation in the certificate of enlistment and they have been regularly paying fees and renewing their trade licence. Since the last week of April, 2019, the petitioners-defendants and their men and agents tried to illegally oust the opposite parties-plaintiffs from the said premises. On the aforesaid facts, the opposite parties-plaintiffs prayed for declaration of their tenancy right in the suit property and permanent injunction. The petitioners-defendants filed an application under Order VII Rule 11 of the

Code for rejection of plaint on the ground that the tenancy right cannot be bequeathed by way of Will and that the premises let out is a shop room and in the event of death of the original tenant, the tenancy right does not and cannot pass and/or devolve upon the plaintiffs as they are excluded by the definition of 'tenant' under Section 2(g) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'the said Act'). The learned Trial Court allowed the prayer of the petitioners for rejection of the plaint. However, the order of the learned Trial Court was set aside by the Appellate Court in Title Appeal No. 151 of 2019. Hence, this revisional application.

3. Mr. S. P. Mukherjee, learned advocate for the petitioners-defendants submitted, at the outset, that the predecessor-in-interest of the petitioners namely Satyendra Nath Basu filed a suit for eviction against the wife of deceased Dilip Kumar Dasgupta being Ejectment Suit No. 239 of 2007 and after her demise, it was pursued against the surviving legal heirs and decree of eviction was passed against them in respect of the suit property. Further, as per the plaint case, the plaintiffs have averred that by dint of a registered Will, they got the right of tenancy as well as the business. However, the tenancy right cannot be bequeathed by way of Will and, therefore, the opposite parties-plaintiffs *prima facie* do not have any tenancy right over the scheduled property and cannot claim such right on the basis of the alleged Will. The provisions of the said Act do not provide for transfer of tenancy by way of Will. In support of his contention, he relied on the decisions of this Court passed in ***Banwarilal Jalan versus***

Pramod Kumar Jalan¹ and in **Lalita Saha versus Arvind Kumar Singh**². Going by the provision of Section 2(g) of the West Bengal Premises Tenancy Act, 1997, the tenancy of Dilip Kumar Dasgupta (since deceased) could have been continued by his wife Uma Dasgupta for a period of five years subject to fulfilling of other conditions but unfortunately she has also died and since the opposite parties-plaintiffs, being the daughter-in-law and grandson, are not included within the definition of ‘tenant’ under Section 2(g) of the said Act, the opposite parties-plaintiffs have no cause of action to claim tenancy right in the suit shop room. To buttress his contention, relied on the decision of this Court passed in **Nasima Naqi versus Todi Tea Company Limited and Others**³. Further he submitted that clever drafting creating illusions of cause of action are not permitted in law and clear right to sue should be shown in the plaint. In the absence of such clear right to sue, the plaint is liable to be rejected. In support of his contention, he relied on the decision of the Hon’ble Supreme Court passed in **I.T.C. Limited versus Debts Recovery Appellate Tribunal and Others**⁴. Further sham and frivolous litigation should be shot down at the earliest stage. In support of his contention, he relied on the decision of the Hon’ble Supreme Court passed in **T. Arivandandam versus T. V. Satyapal and Another**⁵. In light of his aforesaid submissions, he prayed that since the opposite parties-plaintiffs have failed to make out a clear and distinctive right of tenancy in respect of the suit property, the plaint is liable to be rejected.

¹ 2011 (2) CLJ (Cal) 115

² 2014(4) CHN (Cal) 116

³ 2019(2) CLJ (Cal) 232

⁴ AIR 1998 SC 634

⁵ (1997) 4 SCC 467

4. Notice of this application has been delivered to Smt. Saraswati Sen, learned advocate of the opposite parties-plaintiffs before the Trial Court. By letter dated 18th April, 2023, Mr. Basanta Kumar Sen, learned advocate informed learned advocate-on-record for the petitioners that he has been appointed to represent the opposite parties. However, none appeared on behalf of the opposite parties at the time of hearing.

5. Having heard learned advocate for the petitioners-defendants, the only issue which has fallen for consideration is whether the learned Appellate Court was justified in reversing the order of the learned Trial Court rejecting the plaint of the opposite parties-plaintiffs under Order VII Rule 11 of the Code.

6. In order to appreciate the aforesaid issue, it would be apposite to refer to the relevant provisions under Order VII Rule 11 embodied under the Code which is reproduced hereunder:

***“[R 11] Rejection of plaint.*—The plaint shall be rejected in the following cases:—**

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*

(f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

6.1. It is a trite law that the only restriction is that the consideration of the application for rejection of the plaint should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The Court is to consider only plaint as a whole and in case the entire plaint comes under the situations covered by Order VII Rule 11 (a) to (f), the same has to be rejected.

6.2. Bearing in mind the aforesaid provisions, it is found that the opposite parties-plaintiffs have sought for declaration of their tenancy right in the suit shop room precisely on the ground that the business under the name and style of “*M/s Dasgupta Electric Art Studio*” along with tenancy right was bequeathed by way of Will in their favour by their predecessor-in-interest Sri Dilip Kumar Dasgupta (since deceased) who was the original tenant in the suit property. At this juncture, the question arises whether the tenancy right can be bequeathed by the original tenant upon execution of a Will. The West Bengal Premises Tenancy Act, 1997 does not contain provisions by which tenancy right can be created in respect of a premises

by way of bequeath through Will and testament executed by original tenant. The bequeath by way of Will and testament of tenancy right does not confer such right in favour of the transferee. I find substance in the submissions of Mr. Mukherjee, learned advocate for petitioners relying on *Banwarilal Jalan (supra)* and *Lalita Saha (supra)* in this regard.

6.3. Now it is to be seen whether any tenancy right has actually been created in favour of the opposite parties-plaintiffs under the law after the demise of the predecessor-in-interest Dilip Kumar Dasgupta (since deceased) who was the original tenant in respect of the suit shop room. In order to decide such issue, it would be apposite to reproduce the definition of “tenant” under Section 2(g) of the said Act as hereunder:

“2.(g) “tenant” means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family, and were dependant on him or a person authorised by the tenant who

is in possession of such premises but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction:

Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependant on him and who does not own or occupy any residential premises:

Provided further that the son, daughter parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises on condition of payment of fair rent. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.”

6.4. The suit premises is a shop room and, therefore, it goes without saying that such premises was let out for non-residential purpose. Section 2(g) of the said Act as quoted above provides that in respect of premises let out for non-residential purpose, the spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family, and were dependant on him or a person authorised by the tenant who is in possession of such premises shall be included as tenant. Needless to state that the opposite parties-plaintiffs are the daughter-in-law (widow of predeceased eldest son) and grandson. Thus under the said Act, the opposite parties-plaintiffs cannot be included as

tenant in respect of the premises let out for non-residential purpose. Accordingly, the opposite parties-plaintiffs cannot claim themselves to be tenant under the said Act in view of definition contained under Section 2(g) of the said Act. Mr. Mukherjee, learned advocate for the petitioner relying on *Nasima Naqi (supra)* rightly argued that in respect of the premises let out for non-residential purpose, the wife of the deceased original tenant could have continued with the tenancy, subject to fulfilling the other conditions, for a period of five years after the death of the tenant if the tenant has died after coming into force of the said Act.

7. Mr. Mukherjee, learned advocate for petitioners although has argued on the aspect that previously a suit for eviction was filed by the original landlord Sri Satyendra Nath Basu against Smt. Uma Dasgupta, the wife of late Dilip Kumar Dasgupta in respect of the suit premises and in the said suit decree for eviction was passed in favour of the petitioners, yet it is placed on record that such ground has never been taken before the learned Trial Court or the Appellate Court. Further while deciding an application under VII Rule 11 of the Code, the Court is to look to the averments in the plaint to find out whether it is covered by the clauses of Order VII Rule 11 of the Code. Therefore, such argument advanced on behalf of the petitioners-defendants is inconsequential.

8. In *T. Arivandandam (supra)*, the Hon'ble Supreme Court held as follows:

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the

judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful – not formal – reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. . . .”

9. In *I.T.C. Limited (supra)*, the Hon'ble Supreme Court held as follows:

“16. Question is whether a real cause of action has been set out in the complaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11, CPC. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the complaint. See T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467 : (AIR 1977 SC 2421).”

9.1. Bearing in mind the aforesaid, since no right of tenancy could be established by opposite parties-plaintiffs under law in respect of the suit shop room and no clear right to sue is shown in the complaint, hence the complaint is liable to be rejected.

10. In light of the aforesaid discussion, the civil revisional application being no. **C.O. 390 of 2022** is hereby allowed. The impugned judgment/order dated 20th January, 2022 passed by the learned Additional District Judge, 10th Court at Alipore in Title Appeal No. 151 of

2019 is set aside. The order of rejection of plaint dated 6th August, 2019 passed in Title Suit No. 675 of 2019 by the learned Civil Judge (Junior Division), 3rd Additional Court at Alipore, South 24 Parganas is affirmed.

11. All connected applications, if any, stand disposed of.

12. Interim order, if any, stands vacated.

13. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)