

M/L 31
06.02.2023
Court No.652
SD

CO 496 of 2019

Krishna Singh
Vs.
Anjali Konaj

Mr. Indranath Mukherjee
Ms. Gargi Acharyya

...for the Petitioner.

Mr. Gaurav Purkayastha

...for the Opposite Party.

Being aggrieved and dissatisfied with the order dated 10.4.2018 passed by the learned Additional District Judge, 2nd Bench, City Civil Court at Calcutta passed in Ejectment Suit No.14 of 2016, present revisional application has been preferred.

The petitioner contended that one Mangal Singh, predecessor-in-title was the original lessee in respect of the suit property and after his demise, his five sons and his widow became joint lessee. The said lease expired on January 31, 1998. During continuance of such lease and after demise of widow Basanti Devi, her five sons amicably partitioned their leasehold property and started to collect rent from the respective existing tenants at the said building and/or to induct tenants therein of which the opposite party was inducted originally on April 2011 as a monthly tenant by Omprakash Singh, one of the heirs of Mangal Singh in his allotted partitioned portion of the suit building at a monthly

rent of Rs.6,000/- payable according to English calendar month.

The petitioner herein is the wife of Omprakash Singh. The said Omprakash Singh relinquished his right over the said property in favour of his wife/petitioner herein who subsequently became co-owner of the suit property along with other co-owners as mentioned above but got the absolute right over the said allotted portion of her husband and thereafter the plaintiff issued letter of attornment upon the respondent by sending notice dated 30.10.2014 which was duly served upon the respondent and since then the respondent became monthly tenant under the petitioner in respect of one room being No.1 on the second floor at premises no.5/2, Durga Charan Mitra Street, Kolkata-700006 at a monthly rent of Rs.6,000/- payable according to English calendar month.

Petitioner thereafter filed aforesaid suit for recovery of khas possession against the opposite party/respondent on the ground of default in making payment of rent since September 2005 at the rate of monthly rent of Rs.6,000/-, before the City Civil Court at Calcutta being Ejectment Suit No.14 of 2016. In the said suit, defendant/opposite party filed an application under Section 7(2) of the West Bengal Premises Tenancy Act, claiming the amount of monthly rent of suit property is Rs.400/- annexing a purported rent bill issued by Dinanath Dutta dated 12.10.2015 and prayed to

pass necessary order determining relationship between the parties.

The petitioner filed written objection against such application stating that the respondent became absolute owner of the suit property by way of registered deed dated July 30, 2012 and April 18, 2013 and her predecessor in interest inherited it from Dinanath Dutta and he sent letter of attornment on 30.10.2014 to defendant claiming monthly rent as Rs. 6000/-.

The petitioner further submits that Dinanath Dutta died at least 60 years ago and the monthly rent is not Rs.400/- as claimed by the opposite party. Even the son of Dinanath Dutta, namely Manmatha Nath Dutta died on 29.3.1959 and the other son, Rash Behari Dutta died on 18.02.1967.

It is further submitted that learned court below without adjudicating the amount of actual monthly rent passed an order directing the opposite party/respondent to deposit rent at the rate of Rs.400/- per month from the month of July 2017 with interest at the rate of 9% per annum and to make said payment in Court at her own risk.

Learned counsel appearing on behalf of the petitioner submits that the case may be remanded back to the court below for fresh adjudication.

Learned counsel appearing on behalf of the opposite party/defendant submits that the court below has not disposed of his application under Section 7(2) of the Act on

merit and as such, a direction may be given to the court below for disposal of the said case on merit within a time frame.

It is not clear from the submissions made by the parties as to whether opposite party/petitioner/tenant complied Section 7(1) of the Act or not. Deposit of rent along with an application for determination of dispute is a pre-condition to avoid eviction on the ground of non-payment of arrears of rent. Such provision is mandatory and required to be scrupulously followed by the tenant.

However considering the facts and circumstances of the case it appears that there is a bona fide dispute between the parties in respect of the quantum of rent as well as arrear amount of rent. Accordingly, the learned court below is directed to dispose of the defendant/opposite party's application under Section 7(2) of the West Bengal Premises Tenancy Act afresh on merit preferably within a period of three months from the date of communication of the order, keeping in mind observations made herein in connection with Section 7(1) and 7(2) of the Act. The order impugned is hereby set aside.

However, this order will not prevent the defendant-tenant from paying current admitted rent before the court below without prejudice to the rights and contentions of the parties till disposal of said application. Be it mentioned that I have not gone into the merits of the allegations and counter-allegations.

Since the opposite party was not asked to file any affidavit-in-opposition, the allegations levelled against the opposite party in the revisional application be deemed to have not admitted.

Accordingly, CO 496 of 2019 is disposed of.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)