

17.2.2023
58
Ct. no. 652
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CO 733 of 2020

Ratna Dasgupta
Vs.
Dr. Subir Anand Chaklader

Mr. Rabiuddin Ahmed
Md. Afsar ...for the Petitioner

Mr. Krishna Kishore Ganguly
..for the Opposite party

Being aggrieved and dissatisfied with the order no. 37 dated 13.11.2019 passed by the learned Civil Judge, Junior Division, 3rd Court, Alipore in Title Suit no. 18 of 2016, present revisional application under Article 227 of the Constitution of India has been preferred.

Petitioner contended that the opposite party/plaintiff was enjoying the suit flat as a licensee and leave licensee agreement was also executed by and between the parties in the suit and the opposite party/plaintiff, since 2007 has been occupying the suit flat and all his stay is backed by several leave licensee agreement with a stipulated tenure of 11 months only and time to time after expiry of licensee term, fresh leave and licensee agreement was executed. The opposite party/plaintiff in his plaint, has sought for declaration of his tenancy right which, however has been denied by the defendant in the written statement. During pendency of

the said suit, the defendant filed an application under Section 151 of the Code of Civil Procedure contending that the plaintiff claims under the suit that he may be declared as tenant, but the said plaintiff had not opted to pay the rent before the Controller of rent or never made any application before this learned court for depositing the monthly amount that stands due for possessing the suit flat. In the said application, it is further submitted that the said accruals out of leave licence is the only means for the survival of the defendant. It is alleged in the application that the plaintiff is possessing the suit flat for a period of 25 months till February, 2018 outside the scope of the agreement dated 23.3.2015 and accordingly, direction was sought for in the said application upon the plaintiff to pay the sum as had offered last by way of letter dated 1.5.2016.

Learned court below after hearing of both the parties, was pleased to reject the said application observing that the suit has attained at the stage of framing issue and the main issue involved for adjudication in the present case is whether the plaintiff is a tenant or he is a licensee in respect of the suit flat. Learned court below held that the defendant, not being a maker of the suit and having not filed any counter claim, has no right to make any such demand where the relationship between the parties is under controversy and

the defendant have had opportunity to take appropriate steps for such type of conduct on the part of the plaintiff.

Learned counsel for the opposite party has drawn my attention to a letter dated 5.5.2016 which was given in reply to the letter dated 1.5.2016 where the defendant/petitioner has categorically stated that since the matter has been pending before the learned court, he had refrained the opposite party/plaintiff from writing to him or to send him any cheque and also requested not to disturb his peace otherwise he has threatened to institute proceeding against the opposite party/plaintiff.

I have perused the defendant/petitioner's application under Section 151 of Civil Procedure Code, wherefrom it appears that defendant specifically averred that plaintiff has made attempt to pay licence fee by way of cheque for an amount of Rs. 14,000/- along with covering letter dated 1.2.2016, 1.3.2016, 1.5.2016, which were refused as the same can be received with the leave of the court and further prayed that considering the date of continued stay after the lapse/expiry of last leave licence i.e. 31.1.2016, the total period outside the scope of agreement dated 23.3.2015 stands 25 months till February, 2018, which the defendant may be directed to pay subject to adjustment to the result of the suit.

Now from the defendant's letter dated 4th April, 2016, it appears that defendant/petitioner has terminated all legal relationship with the

plaintiff/opposite party on and from 31st January, 2016. It further appears from opposite party/plaintiff's letter dated 1.2.2016, 1.3.2016, 1.4.2016 and 1.5.2016 that plaintiff sent cheque towards advance payment of rent for the month of February, 2016, March, 2016, April, 2016 and May, 2016 respectively and not towards licence fee. If according to plaintiff, defendant is a licensee and if said licence terminated with effect from 31st January, 2016, then the question of demand of licence fee in the absence of licence, for the month of February, 2016 onwards may not arise unless said licence is renewed. Surprisingly, defendant in his said applications has not made it clear as to what is actual accrual arrear amount that he is claiming from plaintiff and that too whether by way of licence fee or towards occupational charges or for some other reason, because plaintiff's case is that he has tendered rent for the aforesaid months, which defendant/petitioner has admittedly refused to accept. Learned lawyer for the opposite party declined to deposit any amount either to the court or to the petitioner/defendant unless it is accepted towards rent and he further submits, in case of direction for anomalous deposit, his client has cause to prejudice since petitioner's definite case is, he is a tenant.

Under the aforesaid anomalous perplexed situation, and considering unspecified, unexplained claim of the defendant/opposite party, the court below was not

unjustified in rejecting defendant/petitioner's prayer under Section 151 of the Code and under such circumstances, what I feel really needed is for a direction to settle the controversy between the parties, as regards relationship, at the earliest.

Accordingly, I find nothing to interfere with the observations made by the court below and as such the application is liable to be dismissed.

In view of above, C.O. 733 of 2020 is dismissed.

However, this rejection order will not preclude the defendant/petitioner to make fresh application for interim relief before the court below, mentioning specific nature of claim and total accrual amount before the court below and in the event of filing such application by defendant, the court below will decide such prayer in accordance with merit, without causing prejudice to rights and contentions of the parties.

The suit is pending since 2016, and since a very short issue involved in the suit, court below is directed to make every endeavour for expeditious disposal of the suit and to conclude the entire proceeding within a period of ten months from the date of communication of the order by making day to day trial as far as possible taking aid from order XVII, rule 1,2 & 3 of the Code of Civil Procedure.

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

(Ajoy Kumar Mukherjee, J.)