

21.08.2023
Court No. 19
Item No.11
CP

C.O. 642 of 2023

Sri Prabir Mukherjee alias Prabir Kumar
Mukherjee

Vs.

Smt. Chitra Dey & ors.

Mr. Souvik Das
Mr. K. Roy

...for the petitioner.

It is submitted by the petitioner that the Ejectment Suit No. 51 of 2010 had been decreed under Section 2(g) of the West Bengal Premises Tenancy Act by the learned Civil Judge (Junior Division), Bidhannagar. The petitioner contends that the learned court below ought not to have disposed of the suit, during the pendency of the revisional application.

It appears that the revisional application was filed sometime in February 2023 and the matter was pending before the court. However, as there was no stay order granted by the High Court, the learned court proceeded. The petitioner also participated in the proceeding.

The order impugned before this court is an order dated January 19, 2023, passed by the learned Civil Judge (Junior Division), Bidhannagar in Ejectment Suit No. 51 of 2010. By the order

impugned, an application for amendment of the plaint was allowed by incorporating the proposed details in the schedule. The same is set out below:

“piece and parcel of entire ground floor comprising of three bed rooms, one bath room, one dining space, one kitchen with two verandahs of”.

It appears that in paragraph 3 of the plaint, it had already been stated that Debdas Mukherjee, was originally the tenant under Byomkesh Dey, in respect of the entire ground floor comprising of three bedrooms, one bathroom, one dining space, one kitchen with two verandahs attached to a room. Thereafter Anima Mukherjee, his widow was the sole tenant, who died on September 21, 2009, leaving behind the defendants as her only heirs and legal representatives at a monthly rent of Rs.2000/- as per English calendar. The tenanted property was described in the schedule of the plaint. However, the schedule of the plaint went down as such:

“SCHDEULE OF THE PROPERTY

ALL THAT a two storied brick built building of premises No.7/1B, Sri Nath Chakraborty Lane, Kolkata – 700035 and the said premises is butted and bounded as follows:
On the north: 7/IB/1, Sri Nath Chakraborty Land, Kolkata- 700 035.
On the South: 10/C Deshbandhu Road (East), Kolkata – 700035.
On the East: 7/1A Sri Nath Chakraborty Land, Kolkata – 700035.
On the West: 60/5, Nimchand Moitra Street, Kolkata – 700035.”

By the amendment application, the area of occupation by the erstwhile tenant, that is, the entire ground floor comprising of three bed rooms, one bath room, one dining space, one kitchen with two verandahs were sought to be incorporated. Such fact was already pleaded elaborately in paragraph 3 of the plaint. The defendants did not raise any objection with regard to the extent of tenancy.

The amendment did not change the nature and character of the suit property. It was only a better description of the tenanted property which was sought to be incorporated in the schedule as had been stated in paragraph 3 of the plaint. Such omission/mistake was rectified in the schedule.

The learned court below did not either act illegally or with material irregularity in allowing such amendment.

Thus, this court does not find any reason to interfere with the order impugned. However, as the suit has been dismissed, the contention of the petitioner has now become academic.

The petitioner is at liberty to act and proceed in accordance with law.

This court has not expressed any opinion on the merits of the decree.

The revisional application is, accordingly,
disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this
order.

(Shampa Sarkar, J.)