

28.4.2023
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Ct. no. 652
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CO 609 of 2017

Bhupat Rai M Gujar
Vs.
Sri Manoj Singh & Anr.

Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Abhirup halder ...for the petitioner

Mr. Sayan Roy
Mr. Samrat Choudhury
Mr. Anit Dey ...for the O.P. no. 1

This is an application under Article 227 of the Constitution of India against the order no. 155 dated 19.1.2015 and the order dated 10th January, 2017 both passed by the learned Civil Judge, Senior Division, 8th court, Alipore, South 24 parganas in Title suit no. 7 of 1995.

By the impugned order dated 19.1.2015, the court below was pleased to reject the defendant's application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956 and by the impugned order dated 10.1.2017, the plaintiff's application under Section 17(3) was allowed.

Learned counsel for the petitioner contended that the plaintiffs/opposite parties herein filed aforesaid suit for eviction under the West Bengal Premises Tenancy Act, 1956 on the ground of default and reasonable

requirement. The petitioner herein as defendant entered appearance in the said suit and filed an application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956. It is submitted that in the said application, the petitioner prayed for determination of the dispute of landlord-tenant relationship between the parties and for determination of the rent payable by the petitioner and to allow the petitioner to pay the arrears, if any, by way of instalment. The plaintiff/opposite party herein contested the said application under Section 17(2) of the Act.

The landlord-tenant relationship among the parties has not been disputed before this court and it is also not in dispute that the monthly rent in respect of the suit property is Rs. 300/- but the dispute is according to the plaintiff/opposite party, the petitioner/defendant is required to pay monthly rent at the rate of Rs. 300/- but according to the petitioner/defendant, they are liable to pay rent only Rs. 209/- after deducting Rs. 100/- towards adjustment of advance, till the outstanding amount fully adjusted.

Learned court below only considered that the suit for declaration is pending between the parties and as such rejected the petition filed by the defendant/petitioner under Section 17(2) of the West Bengal Premises Tenancy Act, 1956. However, the court below directed to pay an amount of Rs. 300/- per month

as rent in respect of the suit premises for the current months.

The petitioner/defendant thereafter filed review application and the learned court below by his order dated 10th January, 2017 was pleased to reject the review application on the ground that there is non compliance of the order passed on 19.1.2015 and there is failure on the part of the defendant in depositing the amount payable under the provision of Section 17(1) of the West Bengal Premises Tenancy Act, 1956 and accordingly, the court below held that the defendant herein is not entitled to the benefit of protection against eviction and as such, the plaintiff's petition under Section 17(3) of the West Bengal Premises Tenancy Act, 1956 is allowed and defence was struck off.

I have gone through both the orders impugned. Section 17(2) of the Act of 1956 provides where there is a dispute as to the amount of rent payable by the tenant, the tenant is at liberty to pray for determination of rent payable by him. It is submitted that the defendant/petitioner in their application has sought for determination of rent payable by the petitioner and to allow the petitioner to pay the arrears if any. Under such circumstances, when it is the case of the plaintiff that the monthly rent is Rs. 300/- and defendant's contention is that they are liable to pay rent of only Rs. 209/- after adjusting Rs. 100/-, the court below ought to have

decided the arrear amount of rent on the basis of evidence and materials on record and he ought not to have rejected the defendant's application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956 on the ground of pendency of any suit or to allow plaintiff's prayer for striking out defence.

In view of above, both the impugned orders dated 19.1.2015 and 10.1.2017 are hereby set aside. Learned court below is directed to dispose of the defendant's application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956 afresh before proceeding further with the suit, without being influenced by any observation made herein.

Accordingly, C.O. 609 of 2017 is disposed of.

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

(Ajoy Kumar Mukherjee, J.)