

S/L 25
22.02.2023
Court. No. 12
Suwayan

CO 649 of 2022

**Jagannath Pramanik & Ors.
Vs.
Sandhya Rani Jana**

*Mr. Purbangshu Chandra Mitra
Ms. Piyali Mitra
Mr. Bitan Das*

...for the petitioners.

Mr. Sovan Mukherjee

...for the opposite party.

Both the parties are represented by their respective learned Advocates.

I have heard learned Advocates at length. The present revisional application is now taken up for passing appropriate order.

In this revisional application as filed under Article 227 of the Constitution of India the revisionists/defendants has assailed the order dated 21.02.2022 as passed in Ejectment Suit No. 140 of 2004 by the learned Civil Judge (Junior Division) at Bidhannagar whereby and whereunder the said Trial Court dismissed a petition under Section 151 of the Code of Civil Procedure as filed by the defendants in the said suit.

The defendants felt aggrieved and, thus, preferred the instant revisional application.

Mr. Mitra, learned Advocate for the revisionists/defendants at the very outset draws attention of this Court to the Annexure – E to the petition under consideration at Page No. 69 as well as to the Annexure –

P7 at Page No. 73. It is contended by Mr. Mitra, learned Advocate for the revisionists/defendants that the learned Trial Court in the said suit for eviction of a tenant under the West Bengal Premises Tenancy Act, 1997 hereinafter referred to as the 'said Act' disposed of a petition as filed under Section 7 (2) of the said Act by the defendants by its orders dated 3rd February, 2016 and 10th June, 2016. It is submitted that challenging the said two orders dated 3rd February, 2016 and 10th June, 2016 a revisional application was preferred before this Court being CO 2708 of 2016 and in the said CO 2708 of 2016 this Hon'ble Court set aside the said two orders as passed by the learned Trial Court with a direction to the learned Trial Court to revisit and dispose of the said application under Section 7 (2) of the said Act by appropriately adjudicating the same within the time fixed. It is contended further that though the said order of the Hon'ble Court was communicated to the learned Trial Court, learned Trial Court disposed of the said application under Section 7 (2) of the said Act for the second time without giving due adherence to the order dated 27.04.2017 as passed in CO 2708 of 2016. It is submitted further that thereafter, the present revisionists being the defendant before the learned Trial Court filed an application under Section 151 of the Code of Civil Procedure requesting the learned Trial Court to comply with the order of the Hon'b'e Court but the said petition was kept pending as evident from the order dated 30th July, 2019 but by the impugned order learned Trial Court

came to a finding that the said application under Section 151 of the Code of Civil Procedure has been disposed of and accordingly learned Trial Court by the self-same impugned order rejected the application under Section 151 of the Code of Civil Procedure as filed by the present revisionists/defendants before the learned Trial Court. It is, thus, submitted that it is fit case for allowing the instant revisional application and an appropriate direction may be passed upon the learned Trial Court to rehear the petition under Section 151 of the Code of Civil Procedure in accordance with law.

Per contra Mr. Mukherjee, learned Advocate for the opposite party/plaintiff draws attention of this Court to the affidavit-in-opposition as filed by his client in this case. It is contended that after communication of the order dated 27.04.2017 as passed in CO 2708 of 2016 learned Trial Court by its order dated 28.02.2018 disposed of the petition under Section 7 (2) of the said Act with a finding that the present defendants/revisionists are defaulters in payment of arrears of rent. It is further submitted by Mr. Mukherjee that since the order dated 28.02.2018 as passed by the learned Trial Court while disposing of the petition under Section 7 (2) of the said Act for the second time has not been assailed before any higher forum, the said order has reached its finality and, therefore, learned Trial Court is very much justified in passing the impugned order since under Section 151 of the Code of Civil Procedure the self-same Trial Court cannot revisit its own order.

On perusal of the entire materials as placed before this Court and after hearing the learned Advocates for both sides it appears to this Court that sufficient materials have been placed before this Court to substantiate that after communication of the earlier order dated 27.04.2017 as passed in CO 2708 of 2016 by a co-ordinate Bench of this Court, learned Trial Court by its order 28.02.2018 heard the petition under Section 7 (2) of the said Act as filed by the defendants/revisionists herein afresh and on the self-same day, that is, on 28.02.2018 disposed of the said petition under Section 7 (2) of the said Act.

Though, it is argued by Mr. Mitra that while disposing of the petition under Section 7 (2) of the said Act vide order dated 28.02.2018 learned Trial Court did not revisit the said petition under Section 7 (2) of the said Act that is to say the said petition was disposed of without adjudicating the arrears of rent, in considered view of this Court for not challenging the said order dated 28.02.2018 as passed by the learned Trial Court before the higher forum, the said order has reached its finality. Since the said order dated 28.02.2018 has already reached its finality for not challenging the same before any higher forum, in considered view of this Court, the same cannot be reopened by filing an application under Section 151 of the Code of Civil Procedure.

In view of the discussion made hereinabove, this Court finds no merit in the instant revisional application and accordingly, the instant revisional application being CO 649 of 2022 is hereby dismissed on contest.

The impugned order dated 21.02.2022 as passed by the learned Civil Judge (Junior Division) at Bidhannagar in Ejectment Suit No. 140 of 2004 is hereby affirmed.

It reveals that the aforementioned suit is pending before the learned Trial Court since 2004 and in view of such long pendency, this Court directs the learned Trial Court to proceed with the said ejectment suit in *de die in diem* manner without granting any unnecessary adjournments to either sides with a further direction to the learned Trial Court to dispose of the said suit within a period of three months from the date of communication of this order.

Parties to act on the server copies of this order.

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

(Partha Sarathi Sen, J.)