

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 776 of 2023

**Shrimati Sanchayita Bhattacharjee alias
Swati bhattacharjee
Vs.
Abhishek Kar**

Mr. Rabindranath Mahato
Mr. Aritra Shankar Ray

... For the petitioner.

Dr. Madhusudan Saha Ray
Mr. Partha Pratim Roy

...For the opposite party.

The order dated 16th January, 2023 passed in connection with Title Suit No. 1070 of 2020 is under challenged.

Learned Civil Judge, Junior Division, 3rd Additional Court at Alipore, South 24 Parganas, rejected both the applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 filed on behalf of the defendant. Learned Judge rejected both the applications filed by the defendant applying the provisions under Section 2(g) of West Bengal Premises Tenancy Act, 1997 and also on the ground of the nature of the suit, i.e., suit for eviction of trespasser.

Mr. Rabindra Nath Mahato learned Advocate appearing on behalf of the petitioner/defendant has submitted that plaintiff/opposite party filed a suit previously under Section 6(1)(j) of the West Bengal

Premises Tenancy Act, 2007 against the present petitioner/defendant and his mother without taking any plea of Section 2(g) of the West Bengal Premises Tenancy Act, 1997.

According to Mr. Mahato, learned Advocate appearing on behalf of the petitioner submitted that the plea under Section 2(g) not being availed in the earlier suit cannot be taken in the instant suit. Accordingly, Mr. Mahato, has submitted that order impugned is not sustainable in law.

Mr. Partha Pratim Roy, learned Advocate appearing on behalf of the plaintiff/opposite party has submitted that in the instant suit filed against the defendant/petitioner for eviction of trespasser under the provisions of Section 7 has no role to play giving right to the petitioner/defendant to invoke the provision of Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997.

I find merit in the submission advanced on behalf of the opposite party/plaintiff. In fact, the instant suit was filed with the prayer for eviction of trespasser not on any of the grounds mentioned in Section 6 of the West Bengal Premises Tenancy Act. In this situation Section 7 has no application.

Learned Advocate appearing on behalf of the petitioner/defendant has referred to the contents of the plaint particularly in Paras 3, 4, 5 and 6 and contended that opposite party/plaintiff took the plea of Section 2(g)

of the West Bengal Premises Tenancy Act, 1997 in the pleading. From that point of view, according to Mr. Mahato, learned Advocate appearing for the petitioner/defendant, provision of Section 7 of the West Bengal Premises Tenancy Act, 1997 may be invoked.

I am not agreeable with Mr. Mahato. This is a suit for eviction of trespasser and not any of the grounds mentioned in Section 6 of the West Bengal Premises Tenancy Act. Therefore, petitioner/ defendant has got hardly any right to invoke the provision of Section 7(1) or 7(2) of the West Bengal Premises Tenancy Act, 1997.

In view of the pleadings of the plaintiff in the suit, defendant has agreed to take the issue at the time of trial.

With the aforesaid observation, I am unable to interfere with the order impugned.

Thus, the revisional application, being CO 776 of 2023, is considered and dismissed.

All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

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

(Bibhas Ranjan De, J.)