

6.9.2023
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Ct. no. 652
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CO 1077 of 2019

**Asit Baran Saha
Vs.
Smt. Annapurna Saha & Ors.**

Mr. Souradipta Banerjee
Ms. Fatima Hassan ...for the Petitioner

Mr. Rahul Karmakar ... for the opposite parties

Affidavit of service filed by the petitioner is taken on record.

This is an application under Article 227 of the Constitution of India against the order no. 12 dated 27.11.2018 and Order no. 13 dated 14.1.2019 passed by the learned Judge, 4th Bench, Small Causes Court, at Calcutta, in Ejectment Suit no. 371 of 2017.

The opposite parties herein as plaintiffs filed aforesaid suit for eviction in respect of Shop no. 2 at premises no. 145, Butto Kristo Pal Avenue, Kolkata-5 against the petitioner herein inter alia on the ground of default, nuisance, annoyance and reasonable requirement. The petitioner as defendant appeared in the aforesaid suit after receiving summon and filed application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (in short Act of 1997). The petitioner also filed another application for depositing

admitted rent month by month under Section 7(1) (c) of the Act of 1997.

Mr. Banerjee, learned counsel for the petitioner submits that in the said application under Section 7(2) of the Act of 1997, the defendant petitioner has formulated several questions for adjudication which includes dispute regarding landlord-tenant relationship as well as the amount of arrear rent. The defendant petitioner also filed written statement in connection with aforesaid matter highlighting all the aforesaid issues before the learned court below. The plaintiff/opposite parties herein filed written objection against the said application. When the said application under Section 7(2) of the Act of 1997 was taken up for hearing on 27.11.2018, learned court below fixed for passing order in respect of said application. The petitioners/defendant by filing a recalling application pointed out that he has already formulated some points in paragraph 21 of the application and such points needs to be adjudicated by taking evidence of the parties. In the said application, it was also contended that the petitioner was not represented when application under Section 7(2) of the Act of 1997 was taken up for hearing as his lawyer was engaged in another court. But the court below rejected the petitioner's prayer for recalling the said order dated 27.11.2018, by the other impugned order dated 14.1.2019.

Being aggrieved by that order, the petitioner contended that the court below ought to have considered that there would be gross miscarriage of justice unless the petitioner is given an opportunity to place his evidence in support of his denial of relationship before the court below. He further contended that the court below failed to consider that unless the documents relating to either the leasehold right of the plaintiffs or the ownership right of the plaintiffs are considered by the court below, the question of adjudication of the right of the petitioner would remain unsettled. He further contended that the petitioner/defendant cannot be punished for non-appearance of conducting Advocate and accordingly, he has prayed for setting aside both the orders impugned and to make a direction upon the court below for adjudication of all the issues raised in the application under Section 7(2) of the Act of 1997.

Mr. Karmakar, learned counsel for the opposite parties submits that order impugned is not at all prejudicial to the petitioner herein and in this context, he referred order XVII rule 2 of the Code of Civil Procedure and contended that by the subsequent order dated 14.1.2019, the court below has given liberty to the petitioner to file challans and rent receipts to support their contentions that they are not defaulter in paying rent and as such there is nothing wrong in the orders

impugned and for which the orders impugned do not call for interference.

I have considered submissions made by both the parties. On perusal of the application filed under Section 7(2) of the Act of 1997, it appears that the petitioner/defendant has raised dispute about the landlord-tenant relationship in paragraph 4 onwards and he has also formulated certain points for adjudication in paragraph 21 of the application. It is true that by the impugned order dated 14.1.2019, the court below has given opportunity to the defendant/petitioner to file challan or rent receipts in support of their contentions that they are not defaulters. But on perusal of the application under Section 7(2) of the Act of 1997, it appears that the arrear rent is not only the subject matter of the application under Section 7(2) of the Act of 1997 but relationship between the parties as landlord and tenant is also under challenge on some grounds including the ground of valid attornment.

Learned court below while dealt with the question of landlord-tenant relationship has decided to kept it open in the suit as defendant failed to take steps and none appeared on behalf of defendant on 27.11.2018. If a serious dispute on question of fact as to the existence of the relationship of landlord and tenant between the parties has been raised, the same has to be decided by the court before it passes any other order under Section

7(2) of the Act of 1997. In fact, existence of landlord and tenant relationship is the foundation of an eviction suit. such denial of relationship, if not evasive or formal in nature, has to be enquired by the court below and if required under the provisions of the Code of Civil Procedure applicable to such enquiry.

In such view of the matter, the court below was not justified in taking a short-cut procedure to dispose of the application under Section 7(2) of the Act of 1997 on the basis of challans when the petitioner/defendant has raised substantial questions regarding landlord-tenant relationship.

In such view of the matter, the impugned orders being order no. 12 dated 27.11.2018 and Order no. 13 dated 14.1.2019 are hereby set aside. The court below or the Court-in-charge of the court below is directed to dispose of the defendant's application under Section 7(2) of the Act of 1997 within a period of twelve weeks from the date of communication of the order after giving an opportunity to both the parties to place their case before the court below without being influenced by any observations made herein and to adjudicate all the issues raised in the application under Section 7(2) of the Act of 1997.

Accordingly, C.O. 1077 of 2019 is disposed of. Connected application, if any, also stands 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.)