

5.9.2023  
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Ct. no. 652  
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**CO 1423 of 2018**

**Gravity Vinimay Private Limited  
Vs.  
Harihar Senapati & ors.**

Mr. Arijit Bardhan  
Mr. Rishav Dutta Gupta      ...for the Petitioner

Affidavit of service filed by the petitioner is taken on record. Opposite parties are not represented.

This is an application under Article 227 of the Constitution of India against the order dated 5<sup>th</sup> December, 2017 passed by the learned Civil Judge, (Junior Division), 2<sup>nd</sup> Court, Alipore in Title Suit no. 75 of 2016.

Mr. Arijit Bardhan, learned counsel, on behalf of the petitioner contended that the opposite parties herein as plaintiffs filed aforesaid suit seeking permanent injunction. In the said suit, the plaintiff contended that they are tenants in respect of the suit property and defendants are trying to dispossess them forcibly without taking due course of law.

During pendency of the said proceeding, the petitioner herein filed an application under Order XII rule 6 of the Code of Civil Procedure, contending that on the basis of admission made by the plaintiffs in the plaint

that the original tenant, Janardhan Senapati predecessor-in-interest of the plaintiffs died on 29.5.2003, leaving behind his wife, two daughters and two sons as his legal heirs and the spouse of the Janardhan Senapati also died, so in view of definition of tenant under section 2(g) of the West Bengal Premises Tenancy Act, 1997, defendants are no longer tenants and are not entitled to get any relief and the suit is liable to be dismissed under Order XII rule 6 of the Code on admission.

Learned court below after contested hearing, came to a finding that the plaintiff has not made any such admission which can persuade the court to pass a judgment on admission and accordingly, the court below rejected the application of the defendant no. 1 under Order XII rule 6 of the Code dated 12.5.2016 with a cost of Rs.1000/-.

Being aggrieved by the said order, learned counsel for the petitioner submits that the court below failed to consider the cause title as well as paragraphs 4 and 6 of the plaint and came to an erroneous finding that the plaintiff of the suit did not make any admission and also has erred in law in holding that such admission is not sufficient to pass any decree on admission under Order XII rule 6 of the Code.

Having considered the facts and circumstances of the case, let C.O. 1423 of 2018 be disposed of by giving

liberty to the petitioner/defendant no. 1 to file appropriate application challenging maintainability of the suit before the court below within a period of seven days from the date of communication of the order. In the event of filing such application by the petitioner/defendant no. 1 in the court below, the court below will give opportunity to plaintiffs to contest said application and will dispose of such application as preliminary issue on the next date of hearing i.e. on 6.10.2023, without being influenced by any observation made herein or by the order impugned. The cost imposed by the court below while passing impugned order, is hereby set aside, since such order is not based on cogent reason.

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.)**