

August 14, 2023
(12) ARDR

C.O. 1168 of 2023

Samir Dey
Vs.
Bhagwati Prasad Saraf & anr.

Adv. Kallol Basu,
Adv. Samik Sarkar,

...for the petitioner.

Adv. Partha Pratim Roy,
Adv. Prasanta Bishal,

...for the opposite party no.1.

This revisional application has been filed challenging the orders dated January 4, 2022 and February 24, 2023 passed by the learned Judge, 2nd Bench, Presidency Small Causes Court, Calcutta in Ejectment Suit no.39 of 2010. By the order dated January 4, 2022, the learned Judge allowed an application filed by the plaintiff under Order XXII Rule 4A of the Code of Civil Procedure thereby substituting the (Administrator General) of the Official Trustee wrongly mentioned as Advocate General of Official Trustee as the defendant.

By the order dated February 24, 2022 the learned Court below rejected an application for addition of party filed by the legal heirs of Sudhanshu Kumar Dey.

It appears from the records that the plaintiff had urged before the learned Court that the tenant was a proprietorship business under the name and style of Bharat Textile. With the death of Sudhanshu Kumar Dey, none survived to represent the defendant and hence the Advocate General of Official Trustee should be substituted

in place of the defendant. Such application was allowed. Thereafter, the heirs of the original defendant including the daughter of the deceased and widow of the son (since deceased) applied for being added in the suit as heirs and the said application was rejected on the ground that the definition of tenant under Section 2(g) of the West Bengal Premises Tenancy Act, 1997 would not include the persons sought to be added in the ejectment suit.

Mr. Bose, learned Advocate appearing on behalf of the petitioner/alleged heirs of the deceased tenant submits that the learned Court below ought not to have rejected the application at the first instance without ascertaining as to whether the said legal heirs were actually living with the original tenant. It was further urged that the factum of 'ordinarily residing with the original tenant' (since deceased) was a mixed question of law and fact which ought to be decided as an issue at the trial.

It is an admitted position that the Bharat Textile was a tenant. Bharat Textile was represented by sole proprietor Sudhanshu Kumar Dey. Sudhanshu Kumar Dey had executed a power of attorney in favour of one his sons Subrata Dey who had also expired. The widow of the tenant expired. The heirs of Sudhanshu Kumar Dey, Samir Dey, Susanta Dey, Rina Dutta and Barnali Dey, wife of Late Subrata Dey wanted to be added as parties in the suit.

Mr. Roy, learned Advocate appearing for the plaintiff submits that when the law did not recognise either the widow of a deceased son of the original tenant or the

married daughter of the original tenant to be considered as a tenant after such demise, they should not be added in the suit for eviction under the West Bengal Premises Tenancy Act. The Court should not pass orders in the vacuum. In the absence of a proper legal right, the persons sought to be added were neither necessary nor proper parties in the suit. Tenants as defined under Section 2(g) of the said Act could be added as parties.

Mr. Roy relies on some decisions and submits that if a single person was carrying on a business under the name and style of a firm and the said single person died during the pendency of a suit, only such person who had connection with the said business of the deceased could be impleaded as a substituted heir. It is further submitted that going by the definition of Section 2(g) of the West Bengal Premises Tenancy Act and the averments made in the application for addition of party, there is not a single pleading as to who were the persons ordinarily residing with the deceased tenant in respect of non-residential tenancy and who had interest in respect of the said tenanted portion. It is further pointed out that the widow of a deceased son was not covered by the definition of tenant, and the daughter was admittedly living elsewhere.

Under such circumstances, this Court is of the view that a fresh chance should be given to the heirs of Sudhanshu Kumar Dey, to file a proper application with proper averments to show how they were necessary parties in the proceeding after the death of the original tenant. The

said application should be filed within ten days from communication of this order. The order impugned dated February 24, 2023 is modified. The order dated January 4, 2022 is set aside. On the outcome of the decision of the learned Court in the application to be filed by the petitioners the question of adding the Administrator General of the Official Trustee as a defendant shall be once again decided.

Accordingly, the revisional application is disposed of.

There shall however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)