

16.8.2023

ct. 236

sk,sl. 44

C.O. 1457 of 2011

Art reeves Exim(I) Pvt. Ltd.-vs-Chairman, WBSEDC Ltd. & Ors.

Mr. Sujit Sankar Koley
...for the petitioner.

None is appearing on behalf of the petitioner.

Mr. Sujit Sankar Koley, learned counsel is
representing the opposite parties.

It is submitted by Mr. Koley that since the
petitioner is not interested, this application may be
dismissed for default.

The Hon'ble Supreme Court in Robin Thapa
Vs Rohit Dora, reported in AIR 2019 S.C.C. 3225
held that:

“8 Ordinarily a litigation is based on
adjudication on the merits of the contentions of the
parties. Litigation should not be terminated by
default, either of the plaintiff or the defendant. The
cause of justice does require that as far as
possible, adjudication be done on merits”.

Therefore, I am inclined to dispose of the
application on merit based on materials available
with the records.

The petitioner Art Reeves Exim(I) Pvt. Ltd.,
the company registered under the Companies Act,
1956 claimed to have purchased the property
where the West Bengal State Electricity
Distribution Company was inducted as tenant in

respect of an area measuring about 3345 sq. ft. on the first floor of a building situated on the plot No. 9187, Khatian No. 126 under Mouza-Siliguri, District-Darjeeling under Sri Chandan Moitra and Bhola Nath Moitra. Subsequently, the property devolved upon Smt. Bela Moitra, Smt. Bani Moitra and Siddhartha Moitra by way of inheritance and rate of rent was revived and fixed at Rs. 2435 per month.

Pursuant to an argument dated 30th July, 2001 by and between the landlords and the Divisional Engineer, Siliguri (O & M) Division, subsequently, Smt. Bela Moitra and Bani Moitra and Siddhartha Moitra sold and transferred the said property to the petitioner, Art Reeves Exim(I) Pvt. Ltd. Despite attornment the tenants, the opposite parties herein did not pay rent. The tenancy was thereafter terminated by a notice under Section 6(4) of the West Bengal Premises Tenancy Act, 1997. Since the opposite parties failed to act in terms of the notice of eviction, Title Suit No. 226 of 2008 was filed for recovery of possession and during pendency of such suit, the defendant started construction over the vacant portion of the property without consent of the learned trial court and in the written statement

the defendants not only denied the title of the plaintiff/petitioner, in their pleadings but also made State of West Bengal as the owner of the landlord. Thereafter, an application under Order 1 Rule 10(2) of the Code of Civil Procedure was filed by the defendants to implead the Collector, Darjeeling and O.C. and SRO(ii) Land & Land Reforms Officer of Siliguri Municipal area. Learned trial court was pleased to allow the prayer of the defendants/opposite parties and by the order impugned State of West Bengal has been impleaded as party defendant. In a suit for eviction learned trial court had no reason to impleade the State of West Bengal. State cannot be held to be proper party, far to speak necessary party in a suit for eviction.

The order impugned shows that learned trial court has failed to exercise jurisdiction vested in it and the impugned order should not be allowed to remain in force and should be set aside which I accordingly do.

The revisional application is thus disposed of.

The order of stay, if any, stands vacated.

Learned trial court is directed to proceed

with the suit for eviction of premises tenant according to law as expeditiously as possible.

Since the defendant/tenant was not inducted by the present plaintiff/petitioner, the defendant will be at liberty to prove in course of trial that the plaintiff/petitioner is not the landlord of the defendants/opposite parties.

(Siddhartha Roy Chowdhury, J)