

16.8.2023  
73  
Ct. no. 652  
sb

**CO 1515 of 2019**

**Monoranjana Halder  
Vs.  
Shibani Chakraborty**

Mr. Partha Pratim Roy  
Mr. Anirban Das ...for the Petitioner

Learned counsel for the petitioner undertakes to file affidavit of service in the course of the day.

Opposite party is not represented.

This is an application against order 83 dated 18.3.2019 passed by the learned Civil Judge (Junior Division), 1st Court, Baruipur, South 24 Parganas in Title Suit no. 137 of 2012.

The petitioner contended that the opposite party herein as plaintiff filed aforesaid suit for eviction against the present petitioner and in the said suit, the plaintiff has contended that the opposite party is a tenant in respect of the suit property at a monthly rental of Rs. 200/-. It was further alleged that the defendant is a defaulter in payment of rent. The petitioner herein as defendant appeared in the said suit and filed applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 wherein he has specifically contended that the plaintiff is not his landlord and as such the

question of default in payment of rent does not arise. Learned court below by the impugned order, disposed of the said application under Section 7(2) of the Act of 1997 by directing the petitioner/defendant to pay Rs. 13,100/- towards arrear rent by the next date.

Learned counsel for the petitioner submits that the court below passed the order impugned, which is contrary to the statute and he has made out a third case for disposal of the application under Section 7(2) of the Act of 1997. Learned court below without considering the relationship between the parties, have adjudicated the issue. The plaintiff has failed to prove his relationship with the defendant/petitioner herein. In fact, the finding of the court below is perverse and not legally tenable. Accordingly, the petitioner has prayed for setting aside the order impugned.

I have considered the submissions made by the petitioner. From the application filed under section 7(1) by the petitioner/tenant/defendant herein, it appears that in paragraph 2, the tenant/defendant has specifically denied the landlord-tenant relationship with the plaintiff in respect of the suit premises. In his application, under Section 7(2) of the Act of 1997, the defendant has specifically stated in paragraph 6 that one Himanish Purkait is his landlord. Accordingly, in the said application, the petitioner/defendant has prayed for

determination of relationship in between the plaintiff and the defendant in respect of the suit property.

It further appears that the plaintiff when filed his written objection against the defendant's application filed under Section 7(2) of the Act of 1997, has contended that the defendant is monthly tenant under the plaintiff at a rental of Rs. 200/- per month and he has paid rent up to December, 2002, though court below held plaintiff failed to file any document in support of same. It appears that learned court below, while disposing the said application, did not make any observation regarding the relationship of landlord and tenant between the parties though relationship has been seriously disputed by the petitioner/defendant herein in his application under Section 7(1) and 7(2). At the same time the court below also held that, the plaintiff could not file an iota of document to prove that the defendant is a tenant at a rental of Rs. 200/- per month.

Having considered the facts and circumstances of the case, when the defendant/tenant has specifically denied that the plaintiff is his landlord, the court below ought to have decided the said issue first before entering into other issues. Accordingly the order impugned dated 18.03.2019 is hereby set aside.

In such view of the matter, C.O. 1515 of 2019 is disposed of with a direction upon the court below to adjudicate the defendant's application under Section 7(1)

and 7(2) of the Act of 1997 along with its objection filed by the opposite party afresh within a period of twelve weeks from the date of communication of the order. The court below will first decide the issue of landlord-tenant relationship between the parties and if required, he will be at liberty to give an opportunity to both the parties to recall the earlier witnesses and/or call fresh witnesses to adduce evidence, if any, to prove or disprove the relationship between the parties.

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.)**