

11.12.2023
Sl. No.4(DL)
srm

C.O. No. 1612 of 2022
Mita Mukherjee & Ors.
Versus
Raja Roy

Mr. Tarak Nath Halder
...for the Petitioners.

Mr. Wasim Ahmed,
Md. Kashif
...for the Opposite Parties.

The revisional application arises out of an order dated March 4, 2021 passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah, South 24-Parganas, in Ejectment Suit No.161 of 2007.

By the order impugned, the learned court below rejected an application under Order VI Rule 17 of the Code of Civil Procedure, filed by the petitioners, *inter alia*, holding that the amendment by way of incorporation of an additional ground for eviction under Section 2(g) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act) could not be allowed as the same would amount to changing the nature and character of the suit.

The petitioners filed the application, *inter alia*, contending that Smt. Mira Roy, the mother of the defendant

was a tenant in respect of the suit property, who expired in the year 1995. The father also expired. Accordingly, the defendant had inherited the tenancy. The defendant filed a written objection and contended that the suit for eviction was filed against the defendant, treating him as a tenant under the provisions of the said Act. Application under Section 7(2) of the said Act had been filed by the defendant and both the parties adduced evidence in respect thereof. At this stage, the proposed amendment was unwarranted and the same would change the nature and character of the property in question.

Mr. Halder, learned Advocate appearing on behalf of the petitioners submits that the order impugned suffers from the following regularities:-

- (a) With the passage of time and with the pendency of the suit for over 15 years, the right of the opposite party to remain in the premises after 5 years from the death of his mother, extinguished.
- (b) The defendant, in terms of the Section 2(g) of the said Act, was liable to be evicted as he was enjoying the property through inheritance from his mother.
- (c) The cross-examination of PW1 dated August 29, 2017, during hearing of the application under Section

7(2) of the said Act, would indicate that the original tenant was Smt. Mira Roy.

Mr. Halder has relied on the following decisions of this Court in support of his contention:

1. Tapan Ganguly & Anr. Vs. Tarak Nath Dey & Ors. (In Re: SAT 126 of 2021)

2. Sanat Kumar J. Mehta & Ors. Vs. Vinay Kumar Abhani reported in 2022(4) Indian Civil Cases 341 (Cal.).

3. Chhanda Mazumdar vs. Naba Kumar Mazumdar, reported 2019(2) CHN (Cal) 441.

Mr. Halder submits that the amendment, if allowed, would not change the nature and character of the suit property. As a subsequent suit can be filed for eviction of a trespasser, the amendment should be allowed to avoid multiplicity of proceedings. The amendment was necessary for proper adjudication of the dispute between the parties. Mr. Halder also challenges the order on the ground that the learned court had allowed an amendment of the written statement, filed by the defendant, without considering that the facts sought to be incorporated in the written statement, was within the knowledge of the defendant.

Mr. Ahmed, learned Advocate appearing on behalf of the opposite party/defendant/tenant submits that the opposite

party was the sole defendant in the suit. The suit was for eviction under Section 6 of the said Act. The plaintiffs had clearly stated that the defendant was a tenant in respect of one room, one kitchen shed, one common tile shed, bath and privy situated at premises No. 23, North Range, at a monthly rent of Rs.50/-. That the defendant was a defaulter in payment of rent and was liable to be evicted. The plaintiffs required the suit property for their own use and occupation and also for their family members. A notice to quit and vacate the said premises was sent by registered post to the opposite party and his wife, who received the same, but refused to vacate the premises. Hence, upon termination of the tenancy with effect from the last day of February, 2007, the defendant/opposite party, had become a trespasser on and from the 1st day of March, 2007.

In the written objection to the amendment application, the defendant stated that the plaintiffs had accepted the defendant as tenant in respect of the property in question. Thus, the question of incorporation of a ground for eviction under Section 2(g), would be contrary to the pleadings and the plaint case.

Having considered the rival contentions of the parties and the plaint and the written statement, it appears that the plaintiffs filed the suit for eviction against the defendant who

was described as a monthly tenant. The suit for eviction was on the grounds of default and reasonable requirement. In paragraph 7 of the written statement, the defendant had stated that the defendant was a monthly tenant by inheritance from his predecessor. That, the defendant deposited the monthly rent in the office of the learned Rent Controller, Kolkata and was depositing the current rent in the court below. So the question of default could not arise. The factum of reasonable requirement had been categorically denied by the defendant.

During hearing of the application under Section 7(2) of the said Act, evidence was adduced and the opposite party was examined as PW1. It transpires from such evidence that a letter was written by the original tenant (mother of the opposite party) with regard to some repair work.

The application filed under Section 21 of the said Act was also relied upon by Mr. Halder in order to substantiate the claim that the predecessor-in-interest of the applicant, since deceased, was a monthly tenant under the plaintiffs.

In the plaint, the categorical averments of the petitioners were that the petitioners were the absolute owners of the suit property at 23, North Range, Kolkata. The opposite party was a tenant under the petitioners in respect of the one room, one kitchen shed, one common tiles shed, separate bath and privy

and common water facility. The opposite party was a defaulter since January, 2000. That the premises was required for own use and occupation of the petitioners and their family members. The opposite party had also done some addition and alternation and raised a new construction in the tenanted premises. That the eviction notice was served upon the opposite party asking him to quit and vacate the premises.

In paragraph 6 of the written statement, the defendant claims to be a tenant at a monthly rent of Rs.50/-. The defendant claims the tenancy suit consisted of three rooms and a kitchen bath and privy. The defendant filed an application under Section 7(2) of the said Act for determination of the extent of tenancy. In paragraph 7, however, defendant states that the defendant became a tenant by inheritance from his predecessor. The tenancy was created in respect of a self-contained flat consisting of three rooms and kitchen, bath and privy with common facility of water connection. Furthermore, the defendant was depositing the rent month by month, in the office of the learned Rent Controller and thereafter before the learned court. The defendant filed an application for amendment of the written statement to further elaborate and incorporate the fact that a letter dated September 4, 2003 was issued by the learned Advocate for the plaintiffs Nilmadhab

Ganguly under Section 20 of the said Act, claiming eight times enhancement of the rent along with 10% maintenance charges with occupier's share of corporation tax per quarter, etc. An amount of Rs.547/- was claimed from July 10, 2001 by the plaintiffs. The letter was sent by registered post which was received by the defendant and the defendant gave a reply through his learned Advocate dated September 23, 2003, expressing willingness to pay. Such fact was sought to be incorporated by way of an amendment and the amendment was allowed by the trial judge as the same were relevant information, to be incorporated, for effective disposal of the suit.

From the evidence, it appears that the mother was the original tenant, but such evidence does not indicate that the defendant admits that the tenancy was not created in his favour. The plaint case and defence case clearly indicate that both parties claimed that the opposite party was a tenant. The reference to a letter written by the defendant's mother seeking permission from the landlords to repair the tenanted rooms would not change the pleadings of the plaintiffs.

Only because there is a passing reference to inheritance in the written statement, one such sentence cannot be segregated from the entire written statement to assume that

the defendant was claiming tenancy through inheritance. The plaint case was totally contradictory to the plea in the amendment application. There is a clear and unequivocal admission in the plaint that the defendant was a tenant who became a defaulter since December 2000 and the notice of eviction was addressed to the defendant/tenant. In the application under Section 7(2) of the said Act, the defendant had already claimed to be a monthly tenant and there has been an adjudication thereon, upon evidence. The amendment filed by the defendant with regard to the claim of the plaintiffs to pay enhanced monthly rate of rent at Rs.547/- has been allowed by the court, which is now a part of the written statement. The willingness of the defendant to pay the said money has also been incorporated by way of amendment. In the application under Section 21 of the said Act, the opposite party claimed to be a tenant in respect of the property after the death of his mother who was the original tenant.

Under such circumstances, the order impugned does not call for any interference.

The decision of Sanat Kumar J. Mehta & Ors. (supra), will not apply in this case. During the pendency of an eviction suit, the original tenant (defendant no. 1) died. The issue was whether the other defendants could continue as joint tenants

or could be evicted by operation of law. Thus the amendment was allowed.

In the instant case, the mother of the defendant is not a party. She died in 1995. The suit was filed in 2007. There are admissions galore in the plaint, which clearly indicate that the plaintiffs treated the defendant to be a monthly tenant in respect of the property in question and accordingly filed the suit for eviction under 6 of the said Act.

In the decision of Chhanda Mazumdar (supra), the defendant wanted to incorporate Section 2(g), by way of an amendment as the original tenant passed away during the pendency of the suit.

In the appeal being SAT 126 of 2021, in the matter of Tapan Ganguly & Anr. vs. Tarak Nath Dey & Ors, the Hon'ble Division Bench held that unless Section 2(g) of the said Act was a ground for eviction, neither the suit court nor the lower appellate court could have granted the decree on such ground. The challenge to such decree was by the tenant who was aggrieved by the decree of eviction on the ground of Section 2(g) of the said Act as the said ground was not taken in the suit. Hence, the Division Bench allowed amendment of the plaint and rehearing of the suit.

Under such circumstances, and on the admitted case of the plaintiffs, the question of incorporation of Section 2(g) of the said Act would not arise. Allowing the same, would amount to withdrawal of the admissions in the plaint case. Further, contradictory pleas cannot be introduced in the plaint. Such amendment would amount to causing serious prejudice to the defendant as the benefit of the admission in the plaint, that the defendant was a tenant, would not be available to him.

The contention of Mr. Halder that the amendment of the written statement was filed belatedly, is not accepted as the said application was filed when the hearing of the application under Sections 7(1) and 7(2) was going.

The order impugned, does not require any interference, the revisional application is dismissed.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)