

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

***C.O. 1893 of 2022
Sri Jugal Kisor Das Naskar***

VERSUS

Sri Dilip Das & Anr.

For the petitioner:

Mr. Chiranjib Sinha, Adv.
Mr. Dyutiman Banerjee, Adv.
Mr. Sohini Chakrbaorty, Adv.
Mr. Prajaaini Das, Adv.

for the opposite parties:

Judgment on: April 21, 2023

Biswaroop Chowdhury,J:

The petitioner before this Court is a plaintiff in an Ejectment Suit in the learned Court below and is aggrieved by an order dated 18-06-2022 passed by Learned Civil Judge Senior Division 3rd Court Alipore in Ejectment Suit No. - 26 of 2021 in directing the petition under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 for consideration along with the

preliminary issue of the suit. The petitioner being aggrieved by the said order has come up with the instant application.

The case of the plaintiff/petitioner may be summed up thus:

1. The petitioner has filed a suit for eviction and damages against the opposite parties before the Learned Civil Judge (Senior Division) 3rd Court at Alipore and the same has been registered as ejectment suit No. 26 of 2021.
2. The ground for ejectment in the suit is that the father of the opposite parties died on 25-03-2010, leaving behind his wife and the opposite parties. The opposite parties therefore became the joint tenants in respect of the suit property as the mother of the opposite parties relinquished her right of tenancy. The mother of the petitioner also died and the petitioner become the sole owner of the suit property.
3. According to the petitioners the right of tenancy of the opposite parties subsisted for a period of 5 years from death of their father and as such they have become trespassers in respect of the suit property.
4. The petitioners requested the opposite parties to vacate the suit property but the opposite parties did not do the same. Hence the suit.

5. In the said suit the opposite parties filed an application under Section 7(2) of the West Bengal Premises Tenancy Act 1997 and the petitioner filed objection thereto. In the said application the opposite parties stated that the opposite parties are the tenants under the petitioner in respect of the suit property at the rate of Rs. 600/- per month. It was further contended that the opposite parties paid the rent up-to-October 2019, and the petitioner issued rent receipts and after that the petitioner refused to accept the rent.
6. The petitioner filed an application challenging the maintainability of the petition filed by the opposite parties under Section 7(2) and 7(1) of the West Bengal Premises Tenancy Act 1997, on the ground that since the opposite parties are trespassers in respect of the suit property, the provisions of West Bengal Premises Tenancy Act 1997 would not be applicable in the instant suit. The opposite parties filed objection to the said petition.
7. The Learned Court below by Order dated 18/06/2022 was pleased to observe and direct as follows:

‘On perusal of the materials on record it appears to me that the plaintiff filed this suit claiming the defendant the statutory

trespasser under Section 2(g) of WBPT Act and the defendant are claiming them statutory tenant under the plaintiff on the basis of agreement dated 21-01-2012. Defendant already filed the written statement in this case. So the matter in issue is closely related with the main issue 'whether the defendant is a tenant under the plaintiff or trespasser in respect of the suit premises? This issue is framed as a preliminary issue and will be considered by taking evidence. The present petition of the plaintiff and the petition under Section 7(1) and 7(2) of WBPT Act will be considered with the above issue.

To 19.07.2022 for evidence in respect of preliminary issue.'

The petitioner being aggrieved by the order dated 18-06-2022 passed by the Learned Court below has come up with the instant application.

It is contended by the petitioner/plaintiff that the Learned Trial Court erred in law by not considering that the suit is a suit for eviction of trespassers and the provisions of West Bengal Premises Tenancy Act 1997 do not apply. It is further contended that the Learned Trial Court erred in law by not considering that the opposite parties have filed the application under Section 7(2)

of the West Bengal Premises Tenancy Act 1997 in a mala fide manner.

Heard learned Advocate for the petitioner and Learned Advocate for the opposite parties. Perused the petition filed and materials on record.

Learned advocate for the petitioner submits that the opposite parties are not tenants as per Section 2(g) of the West Bengal Premises Tenancy Act 1997 but are trespassers accordingly suit for eviction is not filed under West Bengal Premises Tenancy Act 1997 Learned Advocate further submits that unless suit is filed under Section 6(1) of the West Bengal Premises Tenancy Act 1997 application for deposit of rent under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 is not maintainable. Learned Advocate for the opposite parties submits that as the opposite parties claim themselves as tenants of suit property they require protection under Section 7 of the West Bengal Premises Tenancy Act 1997.

The following decisions are relied upon by Learned Advocate for the petitioner.

Dipali Halder and ors. VS Chandan Das and ors.

Reported in 2018(1) CHN. (CAL) 545.

C.O. 2374 of 2016. (Apurbo Ghosh Roy VS Uttam).

C.O. 436 of 2020 (Jagat Singh Dugar V Lalit Kumar Agarwal
and ors.

Upon hearing the learned Advocates and upon considering the facts of the case this Court is of the view that as the ground of challenge in the instant application is the maintainability of the application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 it is necessary to consider the relevant provisions contained in the said Sub-Sections of the statute.

Section 7(1) of the West Bengal Premises Tenancy Act 1997 provides as follows:

- a) On a suit being instituted by the landlord for eviction on any of the grounds referred to in Section 6, the tenant shall subject to the provisions of sub-Section (2) of this section pay to the landlord or deposit with [the Civil Judge] all arrears of rent calculated at the rate at which it was last paid and up to the end of the month previous to that in

which the payment is made together with interest at the rate of ten per cent per annum.

- b) Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the suit without the summons being served upon him, within one month of his appearance.
- c) The tenant shall thereafter continue to pay to the Landlord or deposit with [the Civil Judge] month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate.

As per sub-Section 2 of Section 7 of the West Bengal Premises Tenancy Act if in any suit referred to in sub-Section (1) there is any dispute as to the amount of the rent payable by the tenant the tenant shall within the time specified in that sub-Section deposit with [the Civil Judge] the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of the application [the Civil Judge] shall having regard to the rate at which rent was last paid and the period for which default may have been made

by the tenant make as soon as possible within a period not exceeding one year an order specifying the amount if any due from the tenant and thereupon the tenant shall within one month of the date of such order pay to the landlord the amount so specified in the order.

Provided that having regard to the circumstances of the case an extension of time may be granted by [the Civil Judge] only once and the period of such extension shall not exceed two months.

Thus upon reading the provisions contained in Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 it will be clear that the said sub-Sections provides the liability of tenant in depositing rent to get the benefit of protection against eviction.

However, the provision of Section 7 of the West Bengal Premises Tenancy Act 1997 provides that the condition laid down in the said section is to be complied in the event a suit for eviction is instituted by a landlord against a tenant on any of the grounds referred to in Section 6. Thus when a suit is not instituted under Section 6 of the West Bengal Premises Tenancy Act 1997 by a landlord against a tenant the compliance of

condition under Section 7 of the West Bengal Premises Tenancy Act does not and cannot arise. It will also not be open to the plaintiff to allege that the defendant has not complied the condition as provided under Section 7 of the West Bengal Premises Tenancy Act 1997, where suit is not instituted under Section 6 of the West Bengal Premises Tenancy Act 1997.

In the instant suit the plaintiff has alleged that the defendants/opposite parties are the trespassers in the suit property, on the other hand the defendants/opposite parties have claimed themselves to be tenants of the suit property. Now in the event the defendants can establish themselves as tenants of the suit property the suit will become 'not maintainable' and will fail as because a tenant under West Bengal Premises Tenancy Act 1997 can be evicted only on the grounds as provided under Section 6 of the said statute. In such a case the maintainability of the suit should be decided first in accordance with law. In the event suit becomes non-maintainable it shall fail. On the other hand if the suit is maintainable it has to be proceeded and decided in accordance with law.

In the case of Ramkrishna Poddar and ors VS Sudhanshu Saha being CO 915, 917 and 918 of 2019, a Learned Single Bench of this Court observed as follows:

‘13. Learned Advocate for the plaintiff referring decision reported in MANU/WB/1047/2017 : 2018 (1) CHN (Cal) 545 delivered in the case of Dipali Halder VS. Chandan Das submitted that Section 7 of the West Bengal Premises Tenancy Act, 1997 would be attracted only, when the grounds available under Section 6 of the Act were invoked for eviction of tenant. The opposite party/defendant had nothing to controvert the settled proposition of law, as already referred by the petitioner that the protections available under Section 7(1) and 7(2) of West Bengal Premises Tenancy Act, 1997 would be attracted only in cases where grounds shown in Section 6 of the Act were made use for eviction of tenant under the Act.

14. Admittedly, no notice was issued before the institution of the suit on the ground that the suit was not framed on the basis of cause of action arose following service of notice under Section 6(4) West Bengal Premises Tenancy Act. The proposition of law is that notice under Section 6(4) of the Act will be served upon the defendant/tenant mandatorily before filing of such suit

after expiry of the notice period provided under Section 6(4) of the Act, if the tenant does not vacate the tenanted premises after expiry of the notice period. But here in this case neither the suit was founded, nor framed on the basis of cause of action following service of notice under Section 6(4) of the West Bengal Premises Tenancy Act, 1997. The instant suit not being against the tenant within the meaning of tenant as defined under West Bengal Premises Tenancy Act, 1997, the defendant/O.P.is not entitled to get any protection under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act. The present suit essentially being a suit for eviction of a trespasser, which is very much maintainable in the manner in which it was framed or rather founded where there is no scope of application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act.’

Upon considering the nature of the suit and the judicial decisions relied it will appear that the Learned Trial Judge erred in keeping the application under Section 7(1) and 7(2) of West Bengal Premises Tenancy Act 1997 for consideration with the preliminary issue when the said applications are not maintainable. Thus the order passed by the Learned Civil Judge (Senior Division) 3rd Court at Alipore in Ejectment Suit no-26 of

2021 should be modified. Hence the applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act 1997 filed in Ejectment Suit No-26 of 2021 before Learned Civil Judge Senior Division 3rd Court at Alipore stands dismissed as not maintainable. However, the order of Learned Trial Judge in framing the issue as to whether the defendant is a tenant under the plaintiff or trespasser in respect of the suit premises is affirmed. The said issue shall be decided in accordance with law.

Learned Trial Judge is thus directed to consider the preliminary issue in Ejectment Suit No-26 of 2021 in accordance with the above mentioned observation.

This Revisional Application stands disposed.

Learned Trial Court is requested to expedite the hearing of the suit.

Biswaroop Chowdhury,J