

(14)
24.11.2023
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO No. 2354 of 2023

Smt. Chhaya Chatterjee & ors.
-versus-
Madhuri Dutta & anr.

Mr. Amal Krishna Saha,
Mr. Pritam Majumdar,
Mr. Rahul Deb Goenka,
Mr. Mainak Singha Barma,
... for the petitioners.

Mr. Arnab Dutt, ...for the opposite parties.

Affidavit of service filed on behalf of the petitioners be kept with the record.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendants in a suit for ejectment and is directed against the order no. 99 dated July 10, 2023 passed by the learned 3rd Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 1786 of 2001.

The petitioners caused issuance of witness summons on one Sri Rabi Gobinda Ghosh and Smt. Chaiti Som alleging that during the pendency of the suit, on surrender of tenancy by Mr. Ghosh, the existing tenant, the plaintiffs/landlords have inducted Smt. Som as new tenant in the suit property. The said persons, however did not respond to the said notices.

The defendants, to secure the attendance of the said persons, filed applications under Order XVI Rule 10 of the Code of Civil Procedure praying issuance of warrant.

The learned Trial Judge by the order impugned has dismissed the said applications holding that existence of Sri Rabi Gobinda Ghosh as the tenant of the suit property is an admitted position and the defendants since have discharged their initial burden of proving

the existence of Smt. Chaiti Som in the suit premises by presenting documentary evidence, citation of the said Smt. Som as witness in the suit would not be necessary.

The plaintiffs are seeking eviction of the defendants from the suit property *inter alia* on the grounds that they require it for their own use and occupation, obviously burden is upon the plaintiffs to prove the *bone fide* of such requirement.

The opinion of the learned Trial Judge that when the materials are available on record to establish the fact of induction of a new tenant in the suit premises upon surrender of tenancy by an existing tenant during the pendency of the suit, presence of the erstwhile tenant or the new tenant as witness in the suit is not necessary, cannot be faulted.

This Court therefore does not find any reason to interfere with the order impugned.

CO 2354 of 2023 is dismissed without any order as to costs.

The suit is pending since 2021, the learned Trial Judge is requested to expedite the disposal of the suit.

Parties to act on the server copy of this order duly downloaded from the official website of this Court.

Urgent certified photostat copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Biswajit Basu, J.)