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Ct-08

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SA 66 of 2022
with
I.A No. CAN 2 of 2012(Old CAN No. 6496 of 2012)

Indian Oil Corporation Ltd. (IBP Division)
Vs.
Amal Kumar Mondal & Ors.

Mr. M.S. Yadav
Ms. Satabdi Naskar (Kundu)
... For the Appellant

Mr. Arindam Banerjee
Ms. Arpita Saha
... For the Respondent no. 13

The matter was adjourned on the earlier occasion on the submission made by Mr. Saptangshu Basu, learned senior counsel representing the appellant, that there is a possibility of settlement between the parties. However, having regard to the fact that no settlement has arrived at between the parties. In view of our earlier observation no further adjournment is given today to either of the parties, we propose to take the matter for consideration.

We have heard Mr. M.S. Yadav, learned counsel appearing for the appellant.

We have carefully read the judgment of the trial court as well as the first appellate court.

The suit for eviction was filed after expiry of lease term.

It is an admitted position that the appellant continued to remain in possession of the property in question even after expiry of the lease by efflux of time. The finding of the trial court as well as the first appellate court that the appellant cannot take the benefit of Section 2(h) of the West Bengal Premises Tenancy Act, 1997 or any

protection under Section 3 of West Bengal Premises Tenancy Act is on proper interpretation of law. The defence before the trial court appears to be that although the lease has expired by efflux of time on 15th June, 2003 but the appellant becomes the tenant under the West Bengal Premises Tenancy Act, 1997. The said contention is unacceptable for the reason that the lease was not terminated prior to a date fixed under the lease deed and according to us the trial court and the first appellate court have rightly applied the rationess decedendi of the judgment in ***Pabitra Kumar Roy & Ors. v. Alita D' Souza*** reported in **2006(2)CLJ (SC) 299; 2006(8) SCC 344; AIR 2006 SC 3355** and the decision of our court in ***Prakashwati Chopra v. Sibaji Mitra*** reported in **2007(1) CLJ 47 (Cal); MANU/WB/0734/2006**.

In ***Pabitra Kumar Roy*** (*supra*) it was held that if the lease was allowed to run its full course, both the lease and the conditions contained therein would come to an end and would cease to be operative and the clause for prior determination would no longer be available as a defence against eviction.

The first appellate court partly allowed the appeal to the extent of granting damage to which we feel that the first appellate court was justified in modifying the decree to the extent mentioned in the said judgment.

The concurrent finding of facts arrived at on the basis of cogent evidence and on correct appreciation and interpretation of relevant provision of the Transfer of Property Act and the West Bengal Premises Tenancy Act, 1997, we do not find any reason to admit the second appeal.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage along with CAN 6496 of 2012.

There will be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)