

17.8.2023  
12,13  
Ct. no. 652  
sb

**C.O. 3049 of 2018**

**Kesharshyam Construction (P) Ltd.  
Vs.  
Siddheswar Banerjee & Ors.**

**With  
C.O. 3050 of 2018**

**Santosh Banerjee  
Vs.  
Siddheswar Banerjee & Ors.**

Mr. Shuvasish Sengupta  
Mr. Balarko Sen  
Mr. Sourath Dutt  
Ms. Subhra Das                      ...for the petitioner

Mr. Aniruddha Chatterjee  
Mr. Abirlal Chakraborty  
Ms. Madhuchanda Singha  
                                         ...for the Opposite parties

Being aggrieved by the order dated 4<sup>th</sup> August, 2018 passed by learned Civil Judge, Junior Division, 2<sup>nd</sup> Additional Court at Alipore in Misc. Case no. 13 of 2015 arising out of Ejectment Execution Case no. 1 of 2015, in connection with compromise decree passed in Ejectment Suit no. 40 of 2006, the present application under Article 227 of the Constitution of India has been preferred separately by plaintiff and defendant/tenant of said Ejectment Suit no. 40 of 2006. Plaintiff/landlord of Ejectment Suit no. 40 of 2006 namely M/s. Kesharshyam Construction preferred C.O. 3049 of 2018 and

defendant/tenant of aforesaid Ejectment Suit namely Santosh Banerjee preferred C.O. 3050 of 2018 against the self-same order.

The petitioners' case is that in or about 2006, the aforesaid landlord filed suit for eviction of the opposite party no. 2 of C.O. 3049 of 2018 and petitioner of C.O. 3050 of 2018, being Ejectment Suit no. 40 of 2006. During pendency of the said suit, aforesaid parties to the suit made an amicable settlement and in pursuant to that settlement, the suit was disposed of under Order XXIII rule 3 of the Code of Civil Procedure and the suit was decreed on compromise in terms of the compromise petition filed by the parties to the said suit. Subsequently, the landlord i.e. petitioner of C.O. 3049 of 2018 and opposite party no. 2 of C.O. 3050 of 2018 as decree-holder filed execution case before the court below being aforesaid Ejectment Execution case no. 1 of 2015. In or about 2015, the opposite party no. 1 herein in both the applications namely Siddheswar Banerjee filed an application under Order XXI rules 97, 98, 99, 100 and 101 read with Section 151 of the Code of Civil Procedure being Misc. case no. 13 of 2015 arising out of aforesaid Ejectment Execution case no. 1 of 2015. In the said Misc. case, the aforesaid opposite party no. 1 challenged the legality and validity of the decree and contended that the decree passed in Ejectment suit no. 40 of 2006 is not maintainable since the decretal property is under the

possession and occupation of the opposite party no. 1 herein with the status of joint tenant. He further contended in that Misc. case as petitioner that the petitioner being partner of the business of M/s. Café has been possessing and enjoying the decretal property with the status of joint tenant under the landlord who is petitioner of C.O. 3049 of 2018 and opposite party no. 2 in C.O. 3050 of 2018 and accordingly, the decree passed by the court below on 19.1.2015 has no enforceability and is not binding upon the petitioner, since it is a fraudulent and collusive decree.

During pendency of the said Misc. case, the opposite party no. 1 herein filed an application under Order XI rule 14 read with Section 151 of the Code praying for direction upon the petitioners of C.O. 3049 of 2018 and C.O. 3050 of 2018 to allow opposite party no. 1 herein to inspect the counter-part of the rent receipt and also rent receipts issued since 1983 till 2001, since the plaintiff/landlord alleged in the plaint that tenant is defaulter in payment of rent since April, 2001. Be it mentioned that opposite party no. 1 herein contended in his application that landlord became owner of suit property by purchase in the year 1983, when he sent letter of attornment to both tenants.

The petitioners herein filed respective written objections to the said application under Order XI rule 14 of the Code and the learned court below after hearing

both the parties, passed the order impugned wherein the court below directed the petitioners of both the revisional applications to produce the counter part of the rent receipts and rent receipts issued by it since 1983 and fixed the matter on 8<sup>th</sup> September, 2018 for production of documents.

Learned counsel for the petitioner submits that learned court below has exceeded its jurisdiction in passing the order impugned and has caused grave irregularity in passing the said order which suffers from perversity. In fact, learned court below has no jurisdiction in allowing the application and to direct the petitioners to produce the counter part of the rent receipt or the rent receipts issued by it since 1983. Learned court below failed to appreciate that the burden of proof of the allegation made in the Misc. case is upon the opposite party no. 1 and not upon the petitioners herein. He strenuously argued that the power under Order XI rule 14 can be exercised only where the documents are in possession of any of the parties. Here, the petitioners have specifically denied that the petitioners are not in possession of the counter part of the rent receipt or the rent receipt issued by it since 1983 and as such, the court below should not have directed the petitioners to produce those documents. Accordingly, the petitioners have prayed for setting aside the impugned order by filing aforesaid two separate applications. In this context, they

relied upon a judgment passed by a coordinate Bench of this court in **India Foils Ltd. Vs. The 5<sup>th</sup> Industrial Tribunal, West Bengal and Others.** reported in **AIR 1972 Cal 308.**

Learned counsel for the opposite party no. 1 of both the applications submits that the petitioner/plaintiff/decreed-holder in his objection against the application under Order VII rule 14 admitted that the documents relied on by the plaintiff in the said suit, was under the custody of Kunjbehari Tibrewala, Ex Director of the company who passed away on 31.12.2010 and said Kunjbehari Tibrewala used to keep all original documents in his custody and after his death, the present director of the company could not be able to trace out old documents in spite of their best effort. Furthermore, due to shifting of office of company at a different address, it is not possible for the landlord to produce the counter part of rent receipts from 1983 onwards. The petitioner of C.O. 3050 of 2018 in his objection has only stated that since long period has already been passed and the petitioner became aged and suffering from various old age ailments could not trace old documents in spite of his best effort and as such it is not possible for him to produce rent receipt since 1983.

It is further submitted that Order XI rule 14 prescribes two things that the documents must be relevant for the adjudication of the real dispute between

the parties and the petitioners herein were in possession or power of those documents. Since the petitioners herein have admitted in their objection that concerned documents were in their possession so the court below has committed no mistake in directing the petitioners herein of both C.O. 3049 of 2018 and C.O. 3050 of 2018 to produce those documents and there is no perversity in finding that those documents are relevant for the purpose of adjudication of the present dispute. In such view of the matter, opposite party no. 1 of both the applications prayed that the order impugned does not call for interference.

I have considered the submissions made by both the parties. In view of the wordings of order XI, Rule 14 and also ratio laid down in ***India Foils Ltd. (supra)***, the position of law is very clear that the order XI rule 14 can be made applicable only if two pre-conditions as contemplated by Rule 14 are satisfied that the documents must be in possession or power of the party against whom the order is made and secondly, the documents must relate to the matter in question in the dispute. In the order impugned, the court below has specifically observed that the question raised by opposite party no. 1 herein regarding his right and interest over the decretal property and whether or not that was a joint tenancy of partnership firm and therefore, the rent receipts are the only documents which are to be looked into. He further

held that as per provision under Order XI rule 14, it is deemed necessary to bring those rent receipts in the record.

The petitioners herein in their written objections have nowhere denied that those counterfoil rent receipts or rent receipts were never in their possession but they have only submitted that since a long period has already been passed and/or since Ex director who used to keep all original documents in his custody, passed away on 31.12.2010 and/or due to shifting of office room and/or due to old age, they could not able to trace out old documents and it is not possible for either of them to produce the documents as sought for.

In such view of the matter, since it is not the case of either of the petitioners that the counter part of the rent receipts or rent receipts from 1983 and onwards were never in their possession nor they have denied anywhere about existence of such documents at any point of time, I find no perversity in the order impugned nor it can be said that court below has exceeded his jurisdiction in passing the order impugned, which calls for interference by this court while exercising supervisory jurisdiction under Article 227 of the Constitution of India.

In view of above, the prayer made by the petitioner is lacking merit. C.O. 3049 of 2018 and C.O. 3050 of 2018 are accordingly, dismissed.

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.)**