

28. 03. 2023

BP
Sl. 281
Court No. 652

C.O. 2194 of 2021
With
CAN 1 of 2023

Ram Chandra Jana
Vs.
Bijoli Dutta & Anr.

Mr. Kajal Mukherjee
Mr. Bikash Chakraborty
..for the petitioner

Mr. Sajal Kumar Ghosh
Mr. Arindam Chatterjee
..for the Opposite Parties

This is an application under Article 227 of the Constitution of India challenging the order dated 1st October, 2021 passed by the learned Civil Judge (Junior Division), 2nd Court, Sealdah in Title Suit No. 121 of 2014.

The petitioner contends that the petitioner as plaintiff filed the aforesaid suit praying for a decree of declaration of his tenancy right and permanent injunction against the defendants/landladies in connection with the suit property. The plaintiff also filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure praying temporary injunction and the learned Court below was pleased to pass an interim order for maintaining status quo as regards possession in the suit property. The defendants are contesting the said suit by filing written statement.

The petitioner states that in course of time the tenanted portion of the suit premises has become

damaged on account of non-maintenance on the part of the defendants/landladies and as such the damaged portions are required to be repaired. Accordingly the petitioner filed an application under Section 151 of the Code of Civil Procedure before the learned Court below praying for an order for giving necessary permission to make repair as per schedule of repairing work.

The defendants/opposite parties resisted the said application by filing written objection and the learned Court below by the impugned order dated 1st October, 2021 was pleased to reject the prayer for giving them permission to make necessary repairs of the tenanted portion of the plaintiff.

Being aggrieved by the said order, learned counsel appearing on behalf of the petitioner submits that the learned Trial Court had acted illegally with material irregularity in passing the order impugned and the learned Trial Court exceeded its jurisdiction in passing the impugned order by not considering that such order may give birth to multiplicity of proceedings. Learned Court below ought to have allowed the plaintiff's prayer for repairing.

Learned counsel appearing on behalf of the opposite parties Mr. Sajal Kumar Ghosh contends that the learned Court below was justified in passing the order impugned and the same does not call for any interference.

Admittedly the suit has been filed by the plaintiff

under Section 34 of the Specific Relief Act for a declaration that the plaintiff is a monthly tenant in respect of the suit property. Section 35 of the West Bengal Premises Tenancy Act deals with such situation which provides making of repair and taking of measures for maintenance of essential service and Section 36 provides for taking of measures by tenant in case of emergency. When efficacious relief is available to the plaintiff/petitioner before the Rent Controller under the aforesaid provisions of the Premises Tenancy Act, I find that the learned Court below has committed no wrong in rejecting the plaintiff/petitioner's application for repairing of the tenanted premises and as such the order impugned does not call for any interference.

C.O. 2194 of 2021 is accordingly disposed of. The application being CAN 1 of 2023 is also disposed of.

However, this order will not preclude the plaintiff/petitioner from taking recourse before the appropriate authority under the relevant provisions of law for his redressal.

It is made clear that the order of status quo which is continuing in connection with the suit property will not create any hindrance upon the plaintiff/petitioner for preferring the said application before the appropriate authority.

(Ajoy Kumar Mukherjee, J.)

