

31.1.2023  
29  
Ct. no. 652  
sb

**CO 2348 of 2021**

**Sri Sailendra Kumar Dhara  
Vs.  
Sri Sandip Kumar Pal & Ors.**

Mr. Gautam Das  
Ms. Madhumita Patra                      ...for the Petitioner

Mr. Tarak Nath Halder              ..for the opposite parties

Being aggrieved and dissatisfied with the Order dated 26.2.2021 passed by the learned Civil Judge (Junior Division), Bidhannagar in Title Suit no. 82 of 2020, the present application under Article 227 of the Constitution of India has been preferred.

The petitioner submits that the opposite parties/plaintiffs filed aforesaid suit for eviction of licensee against defendant/petitioner herein and the defendant after receiving summon has appeared in the said suit and filed written statement along with counter claim and also filed applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997. Learned court below after hearing both the parties, was pleased to dismiss the defendant's application Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997.

Learned counsel for the petitioner submits that he has filed counter claim in the aforesaid suit for declaration of his tenancy right in connection with the 'B'

schedule suit property to the plaintiff and unless his prayer under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 are allowed, his counter claim will become infructuous.

Learned counsel for the opposite parties submits that on perusal of the plaint, it is manifestly clear that the suit has been filed for eviction of licensee and for recovery of khas possession and as such the application under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 is not maintainable.

Considered submissions made by both the parties. Application under Section 7 of the West Bengal Premises Tenancy Act, 1997 Act seeking benefit of protection against eviction arises only when a suit is being instituted under any of the grounds referred to in Section 6 of the Act. So the pre-condition of filing an application under Section 7(1) and 7(2) of the Act by the tenant is that suit must have been filed by the landlord against his tenant under any of the grounds referred to in Section 6 of the Act. Here admittedly suit has been filed for eviction of licensee and recovery of khas possession and accordingly defendant is under no obligation to file any application either under Section 7(1) or under Section 7(2) of the Act of 1997. As such the applications filed by the petitioner under Section 7(1) and 7(2) of the Act of 1997 are not maintainable in view of the fact that the suit has not been

filed under any of the provisions of West Bengal Premises Tenancy Act, 1997.

Accordingly, the order impugned does not call for any interference. C.O. 2348 of 2021 is dismissed. The trial court is directed to make every endeavour for expeditious disposal of the suit.

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.)**