

S/L 34
12.04.2023
Court. No. 12
Suwayan

CO 3004 of 2022

**Vijay Anand Rao Khandekar alias
V.A. Khandekar
Vs.
Md. Shamim & Ors.**

*Mr. Suti kamal
Ms. Shireen Hossain*

...for the petitioner.

Mr. K. D. Poddar

...for the opposite party.

Affidavit-of-service as filed today be taken on record.

Both the parties are represented by their respective learned Advocates.

In this revisional application as filed under Article 227 of the Constitution of India, the Order No. 83 dated 05.09.2022 as passed in Ejectment Suit No. 562 of 2004 passed by learned 3rd Bench, Presidency Small Causes Court, Kolkata has been assailed.

By the impugned order learned Trial Court rejected the petition under Section 14(2)(2) of the Code of Civil Procedure for framing a preliminary issue. The defendant felt aggrieved and preferred the instant revisional application.

In support of the instant revisional application it is contended on behalf of the revisionist/defendant that since the suit property is a tikha property, learned Trial Court ought to have allowed the petition under Order 14 (2)(2) of the Code of Civil Procedure as filed by the revisionist/defendant by framing a preliminary issue and

in not doing so a serious miscarriage of justice has been caused.

Mr. Poddar, learned Advocate for the plaintiff/opposite party, however, contended that there is no justification in framing a preliminary issue in a suit for eviction of a tenant under the West Bengal Premises Tenancy Act, 1997.

On perusal of the entire materials as placed before this Court and after hearing the learned Advocates of both sides this Court is convinced that before the learned Trial Court the suit for eviction of the defendant is pending under the West Bengal Premises Tenancy Act, 1997. This Court also finds no justification in framing a preliminary issue in the said eviction suit.

In view of such, this Court no merit in the instant revisional application.

Accordingly, the instant revisional application being CO 3004 of 2022 is dismissed.

The impugned Order No. 83 dated 05.09.2022 as passed in Ejectment Suit No. 562 of 2004 passed by learned 3rd Bench, Presidency Small Causes Court, Kolkata is hereby affirmed.

Parties to act on the server copies of this order.

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

(Partha Sarathi Sen, J.)