

12.10.2023
Item No. 30
Ct. No. 7
PG

C.O. 3245 of 2023
Smt. Mita Saha & Anr.
Vs.
Sri Sankar Saha & Ors.

Mr. Animesh Paul.....for the petitioners

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
Ms. Dipanwita Ganguly
Mr. Kaustav Bhattacharya
Ms. Sinjini Chakraborty
Ms. Priyanka Jana.....for the opposite party nos.
2, 3 & 5

The petitioners, who have been transposed to the category of proforma defendant nos. 2 and 3 in the suit have filed this application challenging the order no. 61 dated 18th August, 2023 passed by the learned Civil Judge (Junior Division), 1st Court at Howrah in Title Suit No. 707 of 2018.

By the order impugned, the petitioners' prayer for an opportunity to file the written statement was rejected.

The learned advocate appearing for the petitioners submits that the petitioners herein along with seven others jointly filed a suit for eviction against the opposite party no. 8 herein. However, during the pendency of the suit, the petitioners filed an application under Order 15 Rule 1 of the Code of Civil Procedure, which was rejected by the learned trial Judge by an order dated 3rd February, 2023.

Challenging such order, the petitioners filed a C.O. No. 948 of 2023, which was dismissed by a coordinate Bench by order dated 26th July, 2023.

The learned advocate for the petitioners draws the attention of the Court to an observation made by the coordinate Bench in the order dated 26th July, 2023 that the dismissal of such application will not prevent the petitioners from raising the issues at the trial and they may take recourse to the other provisions of law. He further submits that pursuant to such observation, the petitioners filed an application praying for an opportunity to file written statement, which stood dismissed by the order impugned.

Mr. Mukherjee, learned advocate appearing for the opposite parties submits that the petitioners do not have any right to contest the suit as they have been impleaded as proforma defendants and no relief has been claimed against them.

Learned advocate for the petitioners submits that the petitioners are in possession of the suit property and unless they are afforded an opportunity to contest the suit by filing a written statement, their possession in the suit property may be affected. Mr. Mukherjee, learned advocate appearing for the opposite parties disputes the said submission of the

learned advocate for the petitioners that they are in possession of the suit property.

Heard the learned advocates for the parties and perused the materials placed.

After going through the plaint, this Court finds that the prayer in the suit is for eviction against the defendant viz. Manik Kangsabanik i.e. the opposite party no. 8 in this revisional application from the 'B' schedule property. No relief has been claimed against the petitioners herein in the said suit. The learned advocate for the petitioners also could not satisfy this Court that any relief has been claimed by the present plaintiffs/opposite party nos. 1 to 7 herein against the petitioners herein.

In view thereof, this Court is of the considered view that the learned trial Judge was right in rejecting the prayer of the petitioners to file the written statement. C.O. 3245 of 2023 accordingly, stands dismissed.

There shall be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties expeditiously upon usual formalities.

(Hiranmay Bhattacharyya, J.)