

Item-
8. 13-01-2023

SAT 459 of 2015
CAN 1 of 2015 (old CAN 10098 of 2015)

sg Ct. 8

Subhas Saha
Versus
Abhrangshu Goswami

The matter initially appeared in the warning list on 29th November, 2022 and thereafter transferred to the regular list on 5th December, 2022. There was a clear indication in the list that the matter shall be transferred to the daily cause list on 5th December, 2022 and since then the appeal is appearing in the list.

In spite of having sufficient knowledge, the appellant is not represented.

The revised report of the Stamp Reporter shows that the appeal was filed on 10th September, 2015 with insufficient stamp and on 26th November, 2015 i.e. beyond the period of limitation, the deficit court fee was put in unaccompanied by any application for acceptance of the court fees put in beyond time.

Long seven years have passed within which time, the appellant did not feel it necessary to file an application or approach this Court, even orally, for acceptance of the deficit court fees filed beyond the time.

The appellate judgment and decree dated 3rd July, 2015 affirming the judgment and decree dated 8th September, 2014 in a suit for recovery of khas possession and arrear rents is the subject matter of challenge in this second appeal.

We have read the judgments of the trial court as well as of the first appellate court along with the memorandum of appeal.

The suit was filed on the ground of expiry of the lease period. Both the courts found that the tenancy was governed by the provisions of the Transfer of Property Act as the rent and the occupational charges payable under the tenancy agreement is more than Rs.6500/- per month and it is hence determinable by service of notice under Section 106 of the Transfer of Property Act. Service of notice was proved. The fact that the defendant/appellant was not putting monthly rent from 2012 was also established. In view of Section 3(e)(i) of the West Bengal Premises Tenancy Act, 1997, the relationship between the parties shall be governed by the provisions of the Transfer of Property Act.

The concurrent findings of fact are based on proper interpretation of law and evidence on record.

The appeal stands dismissed at the admission stage both on the ground of non-payment of deficit court fee and also on merits.

In view of the dismissal of the second appeal, the connected application shall also stand dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)