

15-12-2023
Item no.50
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO No.4021 of 2023
M/s Adhikari Surgical
-vs-
Shilpasree Kundu & Anr.

Mr. Anupam Kumar Bhattacharya
Mr. Mrityunjay Saha ...for the petitioner

Mr. S. Chandra ...for the opposite parties

Heard learned advocates for the petitioner and the opposite parties.

This application under Article 227 of the Constitution of India is directed against an order dated September 25, 2023 passed by the learned Judge, Bench XIII, City Civil Court, Calcutta in connection with Title Suit No.47 of 2020 whereby the petitioner-defendant's application under Order XIV Rule 2 read with section 151 CPC was rejected by the learned trial court. The petitioner being aggrieved by the order has approached this court by way of this revisional application.

It was the contention of the petitioner-defendant before the learned trial court that considering the nature of the suit, it was necessary to frame issues as to whether the plaintiffs are entitled to decree for declaration and recovery of khas possession.

Upon hearing learned advocate, learned trial court was pleased to pass the following order: –

“Perused the case record and on perusal of the same, I find that the Defendant has already admitted in the written statement that the Plaintiffs issued rent receipt in favour of Ruby Adhikari, the earlier proprietor and such incorporation of the issue as stated by the Defendant does not arise. Hence, the application under Order 14

Rule 2 read with Section 151 of CPC is misconceived and hence the same is stands rejected.”

It appears from the aforesaid order that the learned trial court has come to the conclusion on the grounds that the defendant-petitioner has already admitted in the written statement that the plaintiffs issued rent receipt in favour of Ruby Adikhari, the earlier proprietor, and such incorporation of the issue as stated by the defendant does not arise.

Upon considering the nature of the disputes between the petitioner-defendant and the opposite parties-plaintiffs, it appears that in order to get relief under the said suit, the issue whether the plaintiffs are entitled to declaration and recovery of khas possession is required to be framed and the same is necessary.

Thus, although the court has wide power to recast the issues at any stage of the trial, however, in the interest of justice, it would be reasonable to frame the issue at this stage.

Therefore, the impugned order dated September 25, 2023 is hereby set aside. The learned trial court is directed to frame the issue as to whether the plaintiffs are entitled to get decree for declaration and recovery of khas possession of the suit property along with other issues.

As the suit is pending since 2020, learned trial court is requested to proceed with the suit as expeditiously as possible.

CO No.4021 of 2023 is thus disposed of.

All parties are to act on the server copy of this order duly downloaded from the official website of this order.

Certified copy of this order, if applied for, shall be made available to the parties.

[Biswaroop Chowdhury, J]