

10.01.2023
SL No.25
Court No.8
(gc)

SAT 486 of 2014
CAN 2 of 2014 (Old No: CAN 10947 of 2014)
CAN 3 of 2016 (Old No: CAN 2251 of 2016)

Mira Sarkar & Ors.

Vs.

Amar Kumar Dutta

This matter appeared in the Warning List of 29th November, 2022 with a clear indication that this matter shall be transferred to the Regular List on 5th December, 2022. Since then the matter is appearing in the list. The appellants have due notice of the matter. The appellants are not represented. The appeal is defective.

The Section Officer in its report dated 03/01/2023 has stated that the defects pointed by the Additional Stamp Reporter in its report dated 18/11/2014 have not been removed. In spite of having due notice of the matter, the appellant is not represented.

The appellate decree dated 4th July, 2014 affirming the judgment and decree of the Trial Court dated 28th September, 2012 in a suit for eviction and recovery of khas possession is a subject matter of challenge in this second appeal. We have carefully read the judgment of the Trial Court as well as the First Appellate Court. The suit was filed for eviction on the ground of expiry of the lease. The plaintiff was able to establish service of notice under Section 106 of the Transfer of Property Act. The

relationship is determinable by service a notice under Section 106 of the Transfer of Property Act. The learned Trial Judge has considered the Exhibit-1 describing the nature and extent of the tenancy. On such finding, the suit was decreed. The First Appellate Court considered the evidence afresh and found that the lease had expired on 31st August, 1996 but on expiry of the lease, the defendant did not handover possession. The plaintiff sent a notice on 6th December, 1996. Even after receipt of the said notice, the defendant failed to handover possession of the property in question with the expiry of the notice period.

On such concurrent findings of fact, the second appeal is not admitted.

Accordingly, the second appeal stands dismissed at the admission stage.

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

(Uday Kumar, J.)

(Soumen Sen, J.)