

18.7.2023  
ct. 236  
sk,sl. 18

C.O. 3914 of 2014

In the matter of : Lipika Basak

None is appearing on behalf of the petitioner.

This revisional application is awaiting adjudication for last nine years.

The Hon'ble Supreme Court in Robin Thapa Vs Rohit Dora, reported in AIR 2019 S.C.C. 3225 held that:

“8 Ordinarily a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits”.

I am inclined to dispose of the application on merit, based on materials available with the record.

This revisional application challenges the Order No. 71 dated 20<sup>th</sup> September, 2014 passed by learned Judge, 3<sup>rd</sup> Presidency Small Cause Court at Calcutta in Misc. Case No. 56 of 2014.

By the impugned order, the learned trial court was pleased to reject the prayer of the opposite party/land lady for a direction upon the petitioner to pay occupational charges on the ground that without adjudicating the application

under Order 21 Rule 101 of the Code of Civil Procedure and thereby determining the status of the petitioner no such direction could be given as the judgment of Hon'ble Apex Court speaks of the obligation of the tenant to pay occupational charges even in the execution proceeding. The averment made in the petition filed by Debika Mitra and Lipika Dey in the proceeding under Order 21 Rule 101 of the Code of Civil Procedure demonstrates that they are claiming tenancy right over the suit property by inheritance.

It is the specific case that their mother Hasi Das was the original tenant and after her demise they inherited the tenancy right. Therefore, learned trial court appears to have committed jurisdictional error in rejecting the application, when the petitioner in the proceeding under Order 21 Rule 101 of the Code of Civil Procedure is seeking direction claiming to be the legal heirs of original tenant, the learned trial court ought to have allowed the prayer for occupational charges filed by the land-lady, the opposite party in the proceeding before the learned trial court.

The order impugned, as I have already indicated suffers from jurisdictional error and is set aside.

Learned trial court is directed to re-admit the application for direction upon the petitioner of Misc. Case No. 56 of 2014 to pay occupational charges and dispose of the same according to law.

The revisional application is thus, disposed of.

Let a copy of this order be sent down to the learned trial court forthwith.

**(Siddhartha Roy Chowdhury, J)**