

Item No. 13
29.01.2024
Court. No. 19
GB

C.O. 30 of 2024

Lakshmi Kuila & Anr.
Vs.
Surath Chandra Halder & Ors.

Mr. Tarak Nath Halder

...for the Petitioners.

*Mr. Gautam Das,
Ms. Madhumita Patra*

...for the Opposite Parties.

1. The revisional application arises out of two orders dated July 10, 2015 and October 9, 2023, passed by the learned Civil Judge (Junior Division), Sealdah in Ejectment Suit No.67 of 2013.
2. By the order impugned dated July 10, 2015, the learned court rejected an application filed by the defendant challenging the maintainability of the suit before the learned civil court on the ground of the admitted position that the suit property was a thika property.
3. The said order was not challenged by the defendant before any other court or forum.
4. Subsequently, after eight years from the order passed, an application for modification of the said order was filed on August 9, 2023.
5. By the order dated October 9, 2023, the learned court rejected the modification application. The court was of the opinion that the order dated July 10, 2015 could not be modified as the application challenging the maintainability of the suit had been rejected eight years

ago. The learned court found that there was no cogent explanation as to why the modification application was filed at such a belated stage.

6. Mr. Halder, learned advocate appearing on behalf of the petitioners urges this Court to apply the provisions of Section 8(3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 and Rule 13(2) of the Rules of 2004, in support of his contention that the suit should be dismissed as non-maintainable.
7. Mr. Halder further relies on the decisions of the Hon'ble Division Benches of this Court in the matter of ***Krishna Shaw versus Netai Pandit*** reported in ***2016(3) CHN (CAL) 1*** and in the matter of ***Sri Nandalal Jaiswara versus Sri Nil Ratan Ari*** passed in ***S.A.T. 437 of 2011***. In the decision of Krishna Shaw (supra) it was held that the suit for eviction of a Bharatia lies before the controller and in the decision of Sri Nandalal Jaiswara (supra) it was held that the cause of action in the suit for eviction would arise when the notice for eviction under Section 6(4) of the West Bengal Premises Tenancy Act, 1997 was served upon the tenant.
8. Mr. Halder further draws attention of the Court to the reasoning in the order dated July 10, 2015. It was held by the learned court that because the default was pleaded from 1973, even though the suit was filed in 2008, the 2001 Act would not govern the eviction suit. The finding of the Hon'ble Division Bench in Sri Nandalal Jaiswara

(supra) was contrary to the aforementioned finding of the learned trial judge.

9. Mr. Das, learned advocate appears on behalf of the opposite parties. He relies on a decision of a coordinate Bench in the matter of ***Sri Ranjit Sarkar versus Smt. Malati Ghosh*** reported in ***2009 (2) CLJ (Cal) 596*** in support of his contention that if default in payment of rent was from 1973, the cause of action arose in 1973, and the suit would not be governed by the 2001 Act.
10. Having perused the decisions relied upon by the parties, this Court is of the view that in the decision of Sri Ranjit Sarkar (supra), no ratio was laid down as to when a cause of action in an eviction suit would accrue in favour of the landlord. However, in the decision of the Hon'ble Division Bench in Sri Nandalal Jaiswara (supra), the ratio has been laid down categorically.
11. This Court is restrained from exercising superintending jurisdiction as the court does not find any perversity in the order impugned. An order was passed on July 10, 2015, rejecting the application challenging maintainability of the suit. The defendant sat quietly and participated in the suit. After eight years, an application for modification was filed which was not an application for review. Although Mr. Halder's contention that error of law could be corrected in review, the application for modification without any explanation as to the delay was rightly rejected by the learned court below. The said

application cannot be considered to be an application for review.

12. Under such circumstances, this Court is not inclined to pass any orders, but directs the learned court below to decide the issue of maintainability of the suit, as the first issue within a period of two months from date, upon considering the submissions made by the petitioners and the laws applicable. If the learned court holds in favour of the petitioners with regard to the maintainability issue, the suit shall be dismissed on such ground. The other issues shall be accordingly disposed of within the aforementioned period.
13. This Court has not interfered with the order impugned, solely because the application for modification was filed eight years later, without any explanation as to the delay in filing the same.
14. Accordingly, the revisional application is disposed of.
15. However, there will be no order as to costs.
16. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)