

04.04.2024
Sl. No.23(DL)
srm

C.O. No. 352 of 2024

Shyam Sundar Agarwal @ Gupta & Ors.

Versus

Srinibas Banerjee & Anr.

Mr. Sounak Bhattacharya,
Mr. Sounak Mandal,
Mr. Abhirup Halder,
Mr. Anirban Saha Ray

...for the Petitioners.

Mr. Sudip Palit,
Ms. Sayani Roy Chowdhury,
Mr. Avirup Roy Sanyal

...for the Opposite Parties.

1. The revisional application arises out of an order dated December 18, 2023 passed by the learned Civil Judge (Junior Division), 4th Court at Alipore, South 24-Parganas, in Ejectment Suit No.59 of 2020.
2. By the order impugned, the learned court rejected the applications under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act (hereinafter referred to as the said Act), *inter alia*, holding that the suit for eviction was filed under Section 2(g) of the said Act against the defendant Nos.1, 2 and 3.
3. The court held that Section 7 of the said Act would not be applicable in such a suit. Section 7 would be applicable in

case of a suit for eviction on any of the grounds stated in Section 6 of the said Act.

4. The learned Advocate for the petitioners/defendants submits that the order impugned is contrary to law, as one of the joint tenants, namely Brij Mohan Agarwal @ Gupta is a party to the suit. As admitted in the plaint itself, he was one of the tenants.
5. Secondly, other grounds for eviction, apart from Section 2(g) were under Section 6 of the said Act. The notice to quit and vacate have been relied upon.
6. The learned Advocate for the landlords/plaintiffs submits that upon the death of Dharam Chand Agarwal and his widow, the defendant Nos.2, 3 and 4 were not entitled to remain in the premises. The eviction against them could easily proceed under Section 2(g) of the said Act.
7. Moreover, the defendants were jointly contesting the suit and Brij Mohan had not taken a different set of defence.
8. Having heard rival contention of the parties, it appears that the applications under Sections 7(1) and 7(2) were jointly filed by the defendants. There are averments in the plaint as also in the notice which indicate that the plaintiffs admit that Dharam Chand Agarwal @ Gupta and Brij Mohan Agarwal @ Gupta were inducted as

tenants in respect of the suit property. Paragraph 4 of the plaint is relevant.

9. In paragraphs 5 and 6 of the plaint, the plaintiffs have also stated how the heirs of Dharam Chand were not entitled to continue in the suit property upon demise of Dharam Chand after 2013 and were liable to be evicted under Section 2(g) of the said Act.
10. Having considered such aspects and having taken into consideration the pleadings, this Court is of the view that as Brij Mohan continues to be a tenant and can only be evicted in accordance with the provisions of Section 6 of the said Act, he is entitled to seek protection under Section 7 of the said Act. A notice has already been served. Whether such notice to quit had been received or not, will be decided at the appropriate stage. For Brij Mohan, at least to proceed with the suit, he has to comply with Section 7 of the said Act. Compliance of Section 7 will not result in the waiver of the contention of the plaintiffs that defendant Nos.1 to 3 were liable to be evicted under Section 2 (g) of the said Act. Whether the heirs of a joint-tenant could become tenants and/or were liable to be evicted under the provisions of Section 2(g) will be decided at the final stage of the suit as an issue.

11. Under such circumstances, the order impugned is set aside.

12. The learned court is directed to decide the said applications afresh, in accordance with law.

13. The revisional application is, thus, disposed of.

14. There shall be no order as to costs.

15. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)