

January 2, 2024
Sl. No.6
Court No.19
s.biswas

CO 564 of 2022

Basant Kumar Khaitan

vs.

M/s. Ashoka Industries and another

Mr. Sounak Bhattacharya

Mr. Sounak Mondal

Mr. Abhirup Halder

... for the petitioner

Mr. Satadeep Bhattacharyya

Mr. Uttam Sharma

Ms. Vrinda Kedia

... for the opposite party no.1

Mr. Bhattacharya, learned advocate for the plaintiff/petitioner, submits that the order dated December 22, 2021 passed by the learned Civil Judge (Senior Division) at Sealdah in Ejectment Suit No.16 of 2021, is erroneous.

According to Mr. Bhattacharya, the learned court failed to appreciate that an application under Section 7(1) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'the said Act') is maintainable at the instance of a tenant who seeks protection from eviction in a suit filed by the landlord under any of the grounds in Section 6 of the said Act. The definition of landlord includes a person who is entitled to receive rent or who is receiving rent from the tenant. Thus, the fact that the petitioner had inducted the defendant as a tenant and had accepted rent for a while is an admitted position and the tenant can neither question the title of the landlord nor his right to

receive rent. In this case the tenant has questioned the title of the landlord. The learned court failed to take into account that allowing the application under Section 7(1) of the Act as per the prayer therein, amounts to recognising the proforma defendant as the landlord of the tenant and not the plaintiff/petitioner. The tenant had categorically stated that on an impression that the plaintiff was the landlord, they entered into the tenancy agreement, but thereafter surrendered the tenancy and expressed a desire to be a direct tenant under the defendant/opposite party no.2. Thus, the order passed, would amount to deposit of rent to the credit of the proforma defendant.

Admittedly, the arrears of rent along with 10% statutory deposit was deposited by the tenant within the time prescribed by law and the applications under Sections 7(1) and 7(2) of the Act were filed upon fulfilling the pre-conditions. The issue as to whether the plaintiff is the landlord and whether there had been any surrender of tenancy and the proforma defendant started accepting rent directly from the defendant no.1 have not been decided. The application under Section 7 (2) of the said Act is pending. The relationship of landlord and tenant will be decided in the said application.

As of now, the tenant has been allowed to deposit admitted arrears along with current rent. The tenant is depositing the rent in court. Such order is to be treated as an order passed in compliance of Section 7(1) of the said Act.

Whether the deposit made in the civil court will be treated as a deposit to the credit of the plaintiff/landlord on the proforma defendant shall be subject to the decision in the application under Section 7(2) of the said Act, in which the relationship between and landlord and tenant will be decided, upon hearing both the parties. The application filed under Section 7(2) of the said Act, shall be disposed of within six weeks from the date of communication of this order.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)