

M/L 2
10.6.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 946 of 2024

Smt. Anju Roy & Anr.
Vs.
Haru Makhal & Ors.

Mr. Partha Pratim Roy

...for the Petitioners.

Affidavit of service filed on behalf of the petitioners be kept on record.

None appears on behalf of the opposite parties in spite of service.

The revisional application under Article 227 of the Constitution of India is at the instance of one of the plaintiffs in a suit for eviction and is directed against the orders dated August 29, 2016 and September 11, 2023 passed by the 5th Court of learned Civil Judge (Junior Division), Howrah in the said suit being Title Suit No.38 of 2016.

The learned Trial Judge by the order dated August 29, 2016 had allowed the application under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (the Act of 1997) filed by the tenant/opposite party No.1.

The plaintiffs filed an application for recalling of the said order dated August 29, 2016 on the ground that the said Act of 1997 does not extend to the area where the suit property is situated.

The learned Trial Judge by the order impugned has dismissed the said application *inter alia* on the

ground that the application has been filed after expiry of a long period.

The parties treated the suit as one under section 6 of the said Act of 1997, as such, the applicability of section 7 thereof in such a suit cannot be faulted. However, the lack of jurisdiction of the Court below to entertain a suit under the said Act of 1997 cannot be inferred from the action of the parties.

The fact that the Court below once had entertained an interlocutory application under section 7 of the said Act of 1997 is of no consequence in the event it is demonstrated that the said Act of 1997 does not extend to the area where the suit property is situated.

In view of such position of the matter, there is no necessity to recall the order dated August 29, 2016 as prayed for by the petitioner.

CO 946 of 2024 is disposed of with the above observations without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Biswajit Basu, J.)