

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 1045 of 2022

Amit Kumar Das
Vs.
Smt. Sunita Bhattacharyya & Ors.

Mr. Iftekar Munshi
... For the petitioner

Mr. Subhojit Seal
Mr. Anirban Saha Roy
... For the opposite parties

1. This revisional application has been filed assailing the order dated 10th March, 2022 passed in connection with Ej. Suit No.118 of 2021 by the learned Judge, Presidency Small Causes Court, 3rd Bench, Calcutta, whereby the learned Judge refused to entertain the evidence adduced by the petitioner/defendant who has filed one application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 1997 Act).

2. By the impugned order, the learned Judge returned his finding that the evidence is not required at present stage and, therefore, evidence on affidavit was rejected.

3. Mr. Iftekar Munshi, learned counsel appearing on behalf of the petitioner, by referring to the provision of Section 7 of the 1997 Act, has submitted that relationship of landlord and tenant has to be adjudicated at the

threshold of the proceeding and further submitted that the issue of such relationship is a matter of fact which can only be adjudicated by adducing evidence by the parties.

4. In support of the contention, he relied on the judgments of **Biswanath Roy v. Annapurna Roy** reported in **1960 SCC OnLine Cal 168** and **Subhendranath Bhattacharya v. Smt. Ramala Ghosh & Ors.** reported in **1994 SCC OnLine Cal 7: AIR 1995 Cal 184.**

5. Mr. Subhojit Seal, learned counsel appearing on behalf of the opposite parties/plaintiffs has submitted that no evidence is required to adjudicate the issue of relationship of landlord and tenant and that matter can be disposed of at the time of final hearing of the suit.

6. Alternatively, Mr. Seal has submitted, in his usual fairness, that necessary direction may be given to the Court to adjudicate the issue by taking evidence but within a specified time as this suit is pending since 2021.

7. Ratio of the cases as referred to on behalf of the petitioner/defendant, the issue of landlord tenant relationship between the parties shall have to be adjudicated at the time of disposal of the application under Section 7 of the 1997 Act and outright rejection of prayer for adducing evidence in an application under Section 7 of the 1997 Act is not permissible.

8. Given facts and circumstances as well as keeping an eye on the ratio of the cases referred to above, I am of the

view that the order impugned passed by the learned Judge is liable to be set aside.

9. Accordingly, the order dated 10th March, 2022 passed in connection with Ej. Suit No.118 of 2021, stands set aside.

10. The learned Judge, Presidency Small Causes Court, 3rd Bench, Calcutta, is requested to re-hear the application under Section 7(2) of the 1997 Act after giving an opportunity of hearing to both the parties within two months from date of receipt of a copy of this order.

11. The learned Judge is also requested to expedite the trial of the suit, which is pending since 2021, as expeditiously as possible.

12. With the aforesaid observation, the instant revisional application stands disposed of.

13. Interim order, if any, stands vacated.

14. Learned advocate appearing on behalf of the petitioner is at liberty to bring this order to the notice of learned Judge, Presidency Small Causes Court, 3rd Bench, Calcutta, forthwith.

15. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

16. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)