

Ct. 22.02
No. 652 2024
96
akb

C.O. 1211 of 2019
Bimal Biswas
Vs.
Ratan Prasad Jaiswal & Ors.

Mr. Subham Gupta
Mr. Tanmoy Kumar Dey
Ms. Nayonika Chakraborty ...For the Petitioner

Affidavit-of-service filed on behalf of the petitioner is taken on record. In spite of service, opposite parties are not represented.

The order under challenge in the present application is Order No. 29 dated 15th February, 2019 passed by the learned Judge, Vth Bench, Small Causes Court, Calcutta in Ejectment Execution Case No. 170 of 2015. By the impugned order learned Executing Court below rejected the petitioner's prayer for restoration of possession made under Section 151 of the Code of Civil Procedure.

Petitioner was inducted as a tenant in the suit premises under the opposite parties, who filed a suit for eviction and obtained decree on the ground of building and re-building. The operative portion of the judgment passed in connection with the said Ejectment Suit runs as follows :-

"ORDERED.

That the suit be and the same is decreed on contest with cost against the defendant.

Plaintiffs do get a decree for recovery of khas possession of the suit premises by evicting the

defendant therefrom.

Defendant is directed to quit and vacate and deliver peaceful possession of the suit premises within 30 days from the date of this order in default plaintiffs will be at liberty to execute the decree in accordance with law. If the defendant vacates and deliver peaceful vacant possession of the suit premises to the plaintiffs within time specified in this order, then the plaintiffs shall cause demolition of the suit premises within two months from the date of taking delivery of possession of the suit premises from the defendant and thereafter, within three months plaintiffs shall deliver vacant possession of the room to the defendant in the building already constructed by them, the area of which shall be the same equivalent to the suit promises as formerly occupied by the defendant in default the defendant shall take effective steps against the Plaintiffs before the appropriate Authority for restoration of possession in accordance with law.”

Being aggrieved and dissatisfied with the said judgment and decree dated 29th September, 2015 the petitioner herein / defendant preferred appeal before the learned Chief Judge, City Civil Court, Calcutta, being Title Appeal No. 44 of 2015 and the said appeal was disposed of by the Appellate Court in favour of the opposite parties/plaintiffs on 15th December, 2016. Opposite parties/plaintiffs filed Ejectment Execution Case, being aforesaid Ej. Ex. No. 170 of 2015 for delivery of possession in terms of the decree.

The petitioner states that as per order of the court,

the judgment debtor is totally out of possession from the tenancy and accordingly judgement debtor/petitioner herein prayed in the same execution proceeding, filed by decree holder, for passing necessary order directing decree holder to restore judgement debtor's possession, which has been vacated since 3rd April, 2017.

Learned Executing Court by the impugned order refused to grant any such relief in favour of judgement debtor/petitioner herein on the ground that the said court is lacking jurisdiction to pass such order of restoration of possession in favour of petitioner herein.

Being aggrieved by that order the petitioner herein submits that the Court below acted illegally and with material irregularity by not taking effective steps upon the opposite parties/plaintiffs regarding restoration of possession. The Court below erred in holding that the executing Court is not empowered to order for restoration of possession. In fact the Court below has not exercised its jurisdiction which has been vested in it. Accordingly, the petitioner has prayed for setting aside the order impugned.

I have considered the submission made on behalf of the petitioner. On perusal of the order I find that the Court below held that he is not authorised to pass any order regarding restoration of possession since the

plaintiffs/petitioners have equal efficacious remedy under the statute before the appropriate Forum.

In fact Section 11 (2) of the West Bengal Premises Tenancy Act, 1997 provides, if the landlord does not put the tenant to possession as per direction made in the decree, the tenant has the right to apply before the Civil Judge to put him to such possession. Said provision makes it clear that on receiving such application from tenant the Civil Judge, having jurisdiction shall give an opportunity to landlord to hear and if he is satisfied that landlord has no valid reason not to allow the tenant to occupy the reconstructed premises or any part thereof, the Civil Judge shall direct the landlord to deliver to such tenant possession of such premises or part thereof and if the landlord fails or neglects to deliver possession of the premises or the part thereof as ordered by Civil Judge under Section 11 (2), within the specified period then only the Civil Judge shall execute the decree under Section 11(3) invoking his power granted under Order XXI, Rule 35 of the Code of Civil Procedure. Accordingly no prayer for restoration is maintainable in the present Execution proceeding being Execution Case no. 170 of 2015.

Accordingly I find nothing illegality or perversity in the order impugned and as such it does not call for any

interference by this Court invoking jurisdiction under Article 227 of the Constitution of India.

The revisional application, being C.O. 1211 of 2019 is thus stands dismissed.

However, this dismissal order will not preclude the petitioner herein to redress his grievance before the appropriate Forum in terms of the judgment and decree passed in Ejectment Suit No. 405 of 2010.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)