

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 1177 of 2022

Naseem Ara Begum & Ors.

Vs.

**Qayim Ali Mirza (since deceased) represented by Shadah Jahan
Begum & Ors.**

For the petitioners	:Mr. S.P. Mukherjee, Adv. Mr. Kushal Chatterjee, Adv.
For the Opposite Party no. 1(a)	:Mr. Debanik Banerjee, Adv. Mr. Anadi Chakraborty, Adv.
For the opposite party no. 1 (b)	:Mr. Shamit Sanyal, Adv. Mr. Priyakshi Banerjee, Adv.
For the opposite party no. 1 (c)	:Mr. Partha Pratim Ray, Adv. Ms. Alia Gaffar, Adv. Ms. Syeda Tahera Begum, Adv.
For the opposite party no. 4&5	:Mr. Arif Ali, Adv.
For the opposite party no. 8to 11	:Mr. Arindam Banerjee, Adv.

Heard On	:03.09.2024, 10.09.2024, 18.09.2024, 24.09.2024, 30.09.2024, 03.10.2024
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Judgement On	:05.12.2024
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Bibhas Ranjan De, J. :

1. The instant civil revision application has been preferred under Article 227 of the Constitution of India assailing the Order dated 21.03.2022 passed by Ld. Civil Judge, Senior Division, 6th Court Alipore in connection with Title Suit No. 17 of 1997.

Background:-

2. The petitioners' predecessor-in-interest, Nazim Ali Mirza filed Title Suit No.17 of 1997 before the Court of Ld. Civil Judge (Senior Division), 6th Court at Alipore, seeking for partition and accounts. The suit was decreed in preliminary form and after the death of the original plaintiff, the present petitioners became the plaintiffs in the said suit. The Advocate Commissioner who was appointed by the Trial Court, after inspection filed the report wherein some errors were stated. As the opposite party no. 1 herein did not consider the aforesaid report of the commissioner, another Advocate Commissioner was appointed. Opposite Party No. 1 filed the written statement and also adduced evidence separately. There was a specific mention of the shop rooms which are otherwise there for a long time named as Golden Wear. The main contentions issue

revolves around the one big shop namely 'Golden Wear'. The Petitioners are partners of the said shop and have trade license in the name of the same. Defendant/opposite party no.1 took out a revisional application before the Hon'ble High Court being C.O. No.3029 of 2017 which was duly disposed of. As the shop was not running properly, the petitioners herein made an application to the appropriate departments for grant of fresh trade license which was rejected by the officers working in the concerned department as an objection was filed by the opposite party. Due to such rejection, a writ application was filed before the Hon'ble High Court being WP No.497 of 2019 wherein this Hon'ble Court vide order dated 16.01.2020 was pleased to direct the petitioners to approach the Civil Court to obtain clarifications in respect of the establishment that there is no change in so far as the tenancy of the shop room is concerned which was challenged by the opposite party no. 1 through an appeal registered as APO No.31 of 2020 where GA No. 1 of 2020 along with the Old GA No. 524 of 2020 and the said appeal was dismissed. Thereafter, an application under section 151 of the CPC was filed by the petitioners herein seeking clarification in respect of the order which has been mentioned earlier relating to order dated 2nd July, 1997 wherein the

parties of the property were to maintain status quo in all circumstances till the disposal of the suit. The said application came up for hearing and the order so passed by the trial court was not satisfactory and under such a situation, the instant civil revision application has been preferred.

Arguments advanced:-

3. Ld. Counsel, Mr. S.P. Mukherjee, appearing on behalf of the petitioners has submitted that the **petitioners** have all along been in possession of more or less 600 Sq. ft. of area in respect of the suit premises. In support of this contention learned counsel has relied on the report of the partition commissioner along with the map. Mr. Mukherjee has further submitted that the petitioners are the tenants who intend to change their mode of user from readymade garments store to a “*Doctors Polyclinic*” and in addition to that till the relevant point of time the tenant has not sublet the property to any person and as a result the question of change in context of tenancy does not arise.

4. Therefore, Mr. Mukherjee has tried to make this Court understand that there is no change in the nature of tenancy at all and the extent of tenancy is 640 Sq. ft. of area. There is no sub-tenancy in any bodies favour and only the nature of

business done by the tenant is intended to be changed by the petitioners to a “*Doctors Polyclinic*” instead of sale of readymade garments.

5. Ld. Counsel, Mr. Debanik Banerjee, appearing on behalf of the **opposite party no. 1 (a)** has contended that it was never the case of the petitioners that the tenancy was in respect of more or less 600 Sq. ft. of area instead of 240 Sq. ft. In support of his contention Mr. Banerjee has relied on the ‘Certificate of Enlistment’ rendered by the Kolkata Municipal Corporation (hereinafter referred to as ‘KMC’ in short) wherein it is clearly stated that the area denoted therein is 240 Sq. ft.
6. Mr. Banerjee has further stated that a change of business of selling readymade garments under the name and style of M/s. Golden Wear to “*Golden Wear Doctors Polyclinic*” would tantamount to change of tenancy which in turn would be in violation of the existing order of injunction promulgated by order dated 02.07.1997.
7. In support of his contention, Mr. Banerjee has taken assistance of the following cases:

- ***Canara Bank, Bombay Vs. Yusuf Abdulhussein Arsiwala (Deceased By Lrs)*** reported in **AIR 2000 Bombay 71.**
- ***Dashrath Baburao Sangale And Others Vs. Kashimth Bhaskar Data*** reported in **AIR 1993 Supreme Court 2646.**

8. Through the above referred cases Mr. Banerjee has tried to take assistance of the following ratios:-

- In the case of ***Canara Bank*** (supra) the Hon'ble Bombay High Court came across a dispute wherein suit premises was let out to the bank for operating banking business. But, afterwards the bank stopped its operations and shifted to another place and started using the suit premises as godown. As there was no specific agreement between the Bank and the landlord for usage of the suit premises for banking business as well as for the purpose of godown, it shall definitely come under the purview of 'change of user'. Therefore, eviction can be ordered particularly when premises was required bonafide by the landlord.

- In ***Dashrath Baburao*** (supra) The Hon'ble Apex Court dealt with an issue where the tenant was using the premises for selling readymade clothes instead of Sugarcane Juice Business. It was held by the Hon'ble Supreme Court that as the said premises was taken on lease for doing a certain business, the tenant is not entitled to do any business he chooses and accordingly the tenant was evicted.

9. Ld. Counsel, Mr. Samit Sanyal, appearing on behalf of the **opposite party no. 1 (b)** has argued that there is no supporting evidence to suggest that the petitioners were enjoying 600 Sq. ft. of area in the suit premises. In this regard he has contended that the initial map relied upon by the petitioners is not in accordance with law and as such the map prepared by the survey commissioner is under challenge. Mr. Sanyal has further added that the certificate of enlistment of Golden Wear expired on 31.03.2019. Thereafter, the petitioner applied for a fresh certificate which was rejected by the Municipal authority.

10. Before parting with, Mr. Sanyal has vociferously contended that the initial tenancy was by and between the

Estate and Golden Wear whereas the new proposed tenancy is between “*Golden Wear Doctors Polyclinic*” and the Estate. Moreover, there is nothing on record to show that the constituent are identical and as a sequel the change in the nature of tenancy involves a modification in the terms, conditions or structure of the tenancy agreement itself. It could be a change in the type of tenancy, the purpose of the rental terms like amount, duration or rights of the tenants. These alterations can indeed change the nature of the existing tenancy without change in landlord or tenant.

11. Mr. Sanyal has also relied on the same set of cases with that of Mr. Debanik Banerjee, which have been duly discussed above.

12. Ld. Counsel, Mr. Arindam Banerjee, appearing on behalf of the **opposite party nos. 8 to 11** has vehemently contended that they are co-sharers of the entire suit property along with the petitioners and they duly support the contention of the petitioners in connection with the instant revisional application. In this regard the learned counsel has submitted that since there is nothing on record to show that there was any fetter to the nature of business being changed to a Doctors Polyclinic from the existing business of garment business,

trade license could have been easily given for such proposed changed business as at all material times the shop has been used for commercial purpose.

13. Mr. Banerjee, in his conclusive argument has highlighted the fact that the partition suit itself is pending from the year 1997 and proceedings relating to the drawing up of final decree are pending since 1999. Therefore, interference of this Hon'ble Court is sought for in order to modify the impugned order which suffers from severe irregularity.

14. In support of the respective contentions the opposite parties have relied on the following cases:-

- ***Ravi Maharia Vs. Reliance Petroleum Limited And Ors.*** reported in **2000 SCC OnLine Cal 28.**
- ***Flowmore Private Limited Vs. Keshav Kumar Swarup*** reported in **1988 2 RCJ 191.**
- ***Piari Mohan Kapoor Vs. Sudhindra Nath Saha*** reported in **1988 0 Supreme Court (Cal) 361.**
- ***Delhi Administration Vs. Gurdip Singh Uban And Others*** reported in **(2000) 7 Supreme Court Cases 296.**

15. After careful scrutiny of the above referred cases following ratios have come up for consideration.

- It was held that the lease agreement by and between the parties should be interpreted liberally so as to allow the subject premises to be used for residential and commercial purpose in compliance with the clause permitting the usage of the premises for the company.
- The predominant purpose of tenancy, rather than the extent of usage for a particular purpose is the determining factor in deciding whether there has been any change of purpose of tenancy which in turn would be sufficient to support a claim for eviction.
- The Hon'ble Apex Court sternly opined that by describing an application as one for 'clarification' or 'modification' whereas it is really one of a review, a party cannot be permitted to circumvent or bypass the circulation procedure and indirectly obtain a hearing in the open Court using disguise. What cannot be done directly should not be permitted to be done indirectly.

Analysis:-

- 16.** At the very outset, it would be pertinent to clarify that the main subject matter of this revision application does not have any nexus what so ever with the merit of the partition suit

which is awaiting final decree. The main contentious dispute of this revision application cropped up when the petitioner herein made an application for enlistment to the KMC under the name and style of M/s. Golden Wear Doctors Polyclinic which was rejected as KMC did not issue trade license or certificate of enlistment in their favour. Being aggrieved, a writ petition was preferred by the petitioners herein against the KMC wherein this Hon'ble Court vide Order dated 16.01.2020 directed the petitioner to approach the Trial Court in order to obtain a clarification on the issue that whether there is any change of tenancy in respect of the said shop room.

- 17.** Against this Order an appeal was filed by the opposite party no. 1 before the Hon'ble Division Bench of this Court wherein this Court was pleased to dismiss the same. Afterwards, an application under Section 151 of the CPC was preferred seeking clarification in respect of the Order dated 02.07.1997. When the said application came up for hearing, the Ld. Trial Judge recorded his observation to the effect that application for enlistment was made for a different business than the business for which admittedly tenancy was created and there is no conclusive material regarding either

enhancement of tenancy area or change in tenancy by making any transaction.

18. Therefore, the main issue which is to be adjudicated in this revision application is whether the clarification made by the Ld. Trial Judge is suffering from any infirmity, irregularity or not.

19. A careful scrutiny of the sequence of events in connection with the instant case makes it clear that the application for enlistment to the KMC by the petitioners initially was made for readymade garments under the name and style of **M/s. Golden Wear** in respect of **240 sq.ft.** of area which was renewed from time to time till 2019. But subsequently when the petitioners approached the KMC for enlistment there was an averment that they are trying to start a business of Doctors Polyclinic under the name and style of Golden Wear Doctors Polyclinic.

20. It is settled proposition that change in nature and character of tenancy will only be constituted after change in nature of business for which initially the tenancy was made. If the premises is merely used for the purpose ancillary to the specific original purpose then it cannot be considered as a change in tenancy.

- 21.** Keeping both the applications for enlistment rendered by KMC at a juxta position, it will be further crystallized that there is a clear change in the nature and character of business. Furthermore, in common parlance Doctors Polyclinic cannot be said to be an ancillary to the business of readymade garments.
- 22.** So far as the contention regarding total area of business is concerned, from the available documents it appears that certificate of enlistment was sought for in respect of 240 sq.ft. of land only and not 640 sq. ft. of land therefore the arguments regarding possession and control over 640 sq. ft of land has no applicability to the case at hand.
- 23.** In the aforesaid view of the matter, the clarification provided by the Ld. Trial Judge in my humble opinion requires no interference at all.
- 24.** As a sequel, the instant civil revision application being no. C.O. 1177 of 2022, stands disposed of. However, with no order as to costs.
- 25.** Considering the long pendency of the suit, which is languishing since 1997, Ld. Trial Judge is requested to dispose of the suit preferably within twelve (12) weeks from the date of communication of this Order.

- 26.** Connected applications, if there be, also stand disposed of accordingly.
- 27.** Interim order, if there be, also stands vacated.
- 28.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 29.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]