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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 1244 of 2024

Ranjit Lal Shaw
Versus
Indrason Nunia

Mr. Ayanava Bhattacharyya
... For the Petitioner.

1. The instant revisional application has been filed, inter alia, challenging the order dated 6th December, 2023 passed by the learned Civil Judge (Junior Division), 1st Court, Sealdah, in Ejectment Suit No. 226 of 2007, thereby rejecting the defendant's/petitioner's application for dismissal of the suit.
2. Records would reveal that the plaintiff/opposite party has filed an Ejectment Suit for eviction of the defendant/petitioner and for recovery of Khas possession as also for *mesne* profit. The defendant/petitioner has not only filed a written statement but has also filed an application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the "said Act").
3. It is the petitioner's case that the plaintiff/opposite party is not the landlord rather, it is the mother of the opposite party Smt. Shewnathia Nunia, who had inducted the petitioner in the tenanted premises by virtue of a document in writing executed on 17th March, 1997. On a perusal of the written statement

the same would further go to show that the petitioner has also challenged the legality, validity and sufficiency of the notice issued under Section 6(4) of the said Act. It is not in dispute that prior to the petitioner's application for dismissal of the suit, an application under the provisions of Order VII Rule 11 of the Code of Civil Procedure 1908, (hereinafter referred to as the "Code") was filed, *inter alia*, on the ground that the property is a thika tenanted property. The said application had been rejected by the learned Trial Court vide order dated 12th July, 2011.

4. Having failed to seek rejection of the plaint and stall the hearing, the petitioner filed an application for amendment of the written statement to incorporate a ground that since, the suit property is a thika property, the suit is not maintainable. Such application was rejected by order dated 15th January, 2013 by the learned Court. Although, a revisional application was filed before this Court which was registered as CO 1554 of 2013, the same was rejected by order dated 12th August, 2013. Dismissal of such application, however, did not deter the petitioner to file yet another application for dismissal of the suit based on the self-same ground. On this occasion, the application had been captioned "An application for dismissal of the suit for

want of jurisdiction in view of development of fact through evidence and documents as to the admission by the plaintiff that the property is a Thika tenancy property". From a perusal of such application it would transpire that the petitioner claims to have received a communication issued by the office of the learned Thika Controller that the present plaintiff has filed a return before the office of the learned Thika Controller and having regard thereto, the petitioner has sought for dismissal of the suit. It is not in dispute that all the three applications; the first one dismissed vide order dated 12th July, 2011, the second dismissed by order dated 15th January, 2013 and the present application forming subject matter for consideration in revision are based on the identical set of facts as regards the claim made by the petitioner that the property in question is a thika tenant property. The learned Judge by his order dated 6th December, 2023 had categorically come to a finding by noting that prior application under Order VII Rule 11 of the Code was rejected on the same point and also noting that the application does not identify the provisions under which the same have been filed, had construed such application as a method of adopting dilatory tactics by the petitioner and consequently, rejected the same and placed the matter for hearing of the

application under Section 7(2) of the said Act filed by the petitioner, for argument.

5. Although, the learned advocate representing the petitioner by placing reliance on the provisions of Sections 5(3) and Section 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 would submit that the Civil Court is incompetent to decide on a question which a Controller under the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 is entitled to decide, he would, however, candidly submit that the petitioner does not claim the status of a thika tenant, rather it the petitioner's case that the petitioner is not a tenant under the plaintiff but a tenant under the mother of the plaintiff/opposite party. I find that the learned Court has already by its order dated 12th July, 2011, by noting that the statements contained in the plaint are only relevant for consideration of an application under Order VII Rule 11 of the Code and upon scrutiny of the plaint having not found any material to corroborate the claim of the petitioner had rejected such application. The petitioner once again after expiry of 7 years from the date of passing of such order on identical set of facts had moved a similar application which, at best, can be said to be an abuse of process of Court, especially having regard to the fact

that the petitioner does not maintain a claim of thika tenancy.

6. Since an application under Section 7(2) of the said Act is already pending, I am of the view that it would not be prudent at this stage to make any observation as regards the status of the petitioner having regard to the provisions contained in the said Act.
7. The petitioner has not been able to identify any procedural irregularities and/or jurisdictional error committed by the learned Judge. However, taking note of the fact that the suit is pending for more than one and half decade and the application under Section 7(2) of the said Act is yet to be decided, I am of the view that the learned Judge should dispose of the application under Section 7(2) of the said Act, within a period of one month from the date of communication of this order without granting any unnecessary adjournment to the parties and shall dispose the entire suit within six months from date.
8. The revisional application is, thus, disposed of with the above observations and directions.

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

(Raja Basu Chowdhury, J.)