

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 1290 of 2022

**Plasto Eltronics Pvt. Ltd. represented by its Directors
Mr.Swarochi S. Ghuwelewala & Ors. Anr.**

Vs.

Sampat Devi Shaw & Ors.

For the petitioner :Mr. Probal Kumar Mukherjee, Adv.
Mr. Partha Pratim Roy, Adv.
Mr. Dhutiman Banerjee, Adv.
Mr. Samrat Chakraborty, Adv.

For the Opposite Party :Mr. Ujjal Ray, Adv.
Mr. Sk. Abdur Rahim, Adv.

Heard On :03.09.2024 & 25.09.2024,

Order On :01.10.2024

Bibhas Ranjan De, J. :

1. The instant civil revision application has been preferred under Article 227 of the Constitution of India Challenging the order dated 22.03.2022 passed by Ld. Civil Judge, Junior Division,

1st Court, Sealdah in connection with Ejectment Suit No. 84 of 2011 wherein Ld. Judge rejected the prayer of the petitioner for expunging the names of the substituted defendant nos. 1(b) to 1(d) from the cause title of the plaint in terms of the provision of Section 2(g) of the West Bengal Premises Tenancy Act, 1997 (for short WBPT Act).

- 2.** There is no debate that the petitioners filed an Ejectment Suit registered as 84 of 2011 with a prayer for eviction of the tenants in respect of subject property. It is also not disputed that after demise of the original tenant, Jangilal Shaw on 01.02.2015, all his legal heirs/ opposite parties herein were substituted invoking the provision of Order 22 Rule 4 of the Code of Civil Procedure (for short CPC).
- 3.** On 13.04.2021 plaintiffs/petitioners herein filed one application with prayer for expunging the name of sons of the original tenant/ opposite parties no. 2 to 4 herein i.e. substituted defendant nos. 1(b) to 1(d), invoking the provision of Section 2(g) of the WBPT Act.
- 4.** Ld. Trial Judge refused to entertain the application for expunging the name of the substituted defendant nos. 1(b) to 1(d) vide order dated 22.03.2022. Being aggrieved by and

dissatisfied with the said order, the petitioners herein have preferred this revision application.

Reasons recorded by the Ld. Trial Judge

5. Ld. Trial Judge rejected the application for expunging the name of substituted defendant nos. 1(b) to 1(d) on the following grounds:

“ While deciding the matter at hand, the basic principle which is to be kept in view is that the plaintiff is the dominus litis of the proceedings, but this principle is subject to basic exception. The exception is whether the Court comes to a conclusion that presence of party is necessary before Court for proper and final determination of matter in controversy. In the present scenario, the suit was filed for eviction of tenant by invoking Section 6 of the WBPT Act, 1997 and after demise of the original defendant/tenant, the legal heirs being wife and sons were substituted since the right to sue survived and they stepped into the shoes of the original defendant. Now, the plaintiff does not want to proceed with the suit against the defendant nos. 1(b) to 1(d) who are the sons of the original defendant and only wants to proceed with the suit in presence of the substituted defendant no. 1(a). However, the presence of all the substituted defendants is required in the instant suit for proper and final determination of the matter in controversy, and also to avoid multiplicity of proceedings. As such, I am not inclined to allow the prayer of the plaintiff.”

Argument:

6. Ld. Counsel, Mr. Probal Kumar Mukherjee, appearing on behalf of the petitioners has heavily relied on the provision of Section 2(g) of the WBPT Act, 1997 and contended that substituted defendant nos. 1(b) to 1(d) lost their tenancy right over the subject premises on expiry of 5 years from the date of death of the original tenant. He has further submitted that the original tenant died on 01.02.2015 and right of the substituted defendant nos. 1(b) to 1(d) over the tenanted premises extinguished on and from 31.01.2020. In support of his contention, Mr. Mukherjee has relied on the case of ***Montee Dey vs. Chandralekha Roy reported in 2010 SCC OnLine Cal 1734.***

7. In opposition to that, Ld. Counsel, Mr. Ujjal Ray, appearing on behalf of the opposite parties has submitted that the application for expunging the names of the substituted defendants was filed after one and a half years of the expiry of the right to tenancy in the subject premises. He relied on the reasons recorded by the Ld. Trial Judge and contended that there is no requirement for any interference with the order impugned as it suffers from no infirmity.

Analysis:-

8. At the very outset, I would like to reproduce the relevant provision of Section 2(g) of the WBPT Act, 1997 which runs as follows:

“2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

...(g) tenant" means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and [in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family and were dependant on him or a person authorised by the tenant who is in possession of such premises,] [Words within the third brackets substituted for the words 'in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family and were dependent on him' by W.B. Act 14 of 2002, w.e.f. 10.7.2001.] but shall not include any person against

whom any decree or order for eviction has been made by a court of competent jurisdiction.”

9. While codifying the provision of the WBPT Act of 1997, legislature intended to extinguish the right of tenancy of the legal heirs except spouse of the original tenant after 5 years from date of demise of the original tenant. The provision also envisaged condition that the legal heirs claiming right of tenancy must be originally residing with the original tenant upto the date of death of the original tenant since deceased and further on condition that those legal heirs did not own or occupy any other residential premises. This principle has been further ratified by the Hon'ble Co-Ordinate Bench of this Court in the case of **Montee Dey** (Supra).
10. The mandatory provision of Section 2 (g), in my view, cannot be ignored on the plea of 'proper and final determination of the matter in controversy'.
11. Considering the factual matrix of this case, the tenancy right of the substituted defendant nos. 1(b) to 1 (d) came to an end on 31.01.2020 as substituted defendant nos. 1(b) to 1 (d) were not entitled to continue the tenancy beyond 5 years from the date of death of their father.

- 12.** Referring to the argument advanced by Mr. Ray with regard to delay in filing expunging application, I am of the view that tenancy right of the substituted defendant nos. 1(b) to 1 (d) already extinguished on and from 31.01.2020 i.e. on expiry of 5 years by operation of law and therefore question of delay in filing application for expunging the names of those substituted defendants does not make any difference to the merit of the application.
- 13.** Regard being had to the above, the order impugned is found to have been suffering from illegality and thus not sustainable in the eye of law.
- 14.** With the aforesaid observation, the civil revision application being no. 1290 of 2022 stands allowed and therefore the names of substituted defendant nos. 1(b) to 1 (d) are expunged.
- 15.** Ld. Trial Judge is requested to take necessary steps to incorporate the changes in the cause title of the plaint of the Ejectment suit being no. 84 of 2011.
- 16.** Interim order, if there be any, stands vacated.
- 17.** Connected applications, if there be, also stand disposed of accordingly.

- 18.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 19.** 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.]