

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 1312 of 2021

Tanup Kumar Metya
Vs.
Sukumar Das

Mr. Indranil Nandi
Mr. Deba Prasad Samanta
Mr. Sayak Konar
... For the petitioner

Mr. Subhadip Biswas
Mr. Ratul Das
Mr. Shuvonil Chakraborty
Ms. Pritha Ray
Ms. Dona Saha
... For the opposite party

1. This revisional application has been filed assailing the order dated 21st April, 2021 passed by the learned Civil Judge (Junior Division), 1st Court, Tamluk, Purba Medinipur, in connection with Other Suit No.84 of 2018 wherein the learned Judge dealt with an application under Order VII Rule 11(d) of the Code of Civil Procedure (hereinafter referred to as the 'CPC') filed on behalf of the defendant with a prayer for rejection of the plaint.

2. The learned Judge considered the prayer but refused the same on the ground that in the case at hand, rate of rent could not be ascertained as the defendant failed to comply with the provision of Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the 'WBPT Act') and, as a result,

defence was struck out under Section 7(3) of the WBPT Act. The learned Judge further observed that the question of jurisdiction raised at the behest of the defendant can be ascertained during evidence and, accordingly, the learned Judge rejected the application under Order VII Rule 11 of the CPC.

3. Learned counsel appearing on behalf of the defendant/petitioner herein has submitted that the averment of the plaint itself discloses the rate of rent as Rs.50,000/- per month and, therefore, the suit is not maintainable within the meaning of Section 3(f) of the WBPT Act which bars a suit in respect of premises let out for non-commercial purpose. Section 3(f) runs as follows:-

“S. 3. Exemption.

(f) any premises let out for non-residential purpose, which carries more than —

(i) ten thousand rupees as monthly rent in the areas included within the limits of the Calcutta Municipal Corporation or the Howrah Municipal Corporation, or

(ii) five thousand rupees as monthly rent in other areas to which this Act extends.”

4. In support of his contention, learned counsel appearing on behalf of the petitioner refers to the decisions of **Church of Christ Charitable Trust and Educational Charitable Society v. Ponnamman Educational Trust** reported in **(2012) 8 SCC 706** and **Srihari Hanumandas**

Totala v. Hemant Vithal Kamat & Ors. reported in **AIR 2021 SC 3802** wherein the Hon'ble Apex Court observed that at the time of considering an application under Order VII Rule 11 of the CPC, Court has to look into the averment of the plaint only and would not consider any evidence or enter into disputed question of fact or law.

5. In opposition to that, learned counsel appearing on behalf of the opposite party has referred to the averment of the plaint and submitted that at this stage, it is not disputed that the tenanted premises was let out for commercial purposes and in that case it will come within the purview of the Commercial Courts Act, 2015 which came into force by the Notification, bearing No.4284-A dated 2nd July, 2019, whereby four commercial courts were established in the State with effect from 5th July, 2019. It is submitted that prior to 5th July, 2019, the suit was filed on 9th October, 2018. Therefore, the suit is exclusively tried by the commercial court and shall not come within the purview of any subject under Order VII Rule 11 of the CPC.

6. In terms of argument advanced on behalf of the learned counsel appearing on behalf of the opposite party, I find that the observation of the learned Trial Judge in his order dated 21st April, 2021 suffers from serious irregularity and is also against the settled proposition of law enunciated in **Ponniamman Educational Trust** (supra) and **Srihari Hanumandas Totala** (supra).

7. So far as the nature of the suit is concerned, I am fully agreeable with the learned counsel appearing on behalf of the opposite party. Admittedly, the subject matter of the suit relates to commercial matter and has to be determined under the provision of the Commercial Courts Act, 2015. It is also apparent from the Notification that the commercial courts in the State started functioning on and from 5th July, 2019 and prior to that, commercial disputes were being tried by the civil courts.

8. In the aforesaid view of the matter, the application under Order VII Rule 11 of the CPC, in my opinion, is not at all maintainable.

9. In the premises set forth above, the impugned order dated 21st April, 2021 stands set aside.

10. Parties are at liberty to file application before the learned Trial Court for transmitting the record to the commercial court having jurisdiction.

11. With the aforesaid observation, the revisional application stands disposed of.

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

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

(Bibhas Ranjan De, J.)