

17.05.2024
95
Ct. no. 652
sb

CO 1854 of 2021

**Soma Guha
Vs.
Md. Arif & Anr.**

Mr. Sounak Bhattacharya
Mr. Abhirup Halder
Mr. Sounak Mondal
Mr. Anirban Saha Roy ...for the Petitioner

In spite of service, the opposite parties are not represented.

The opposite parties herein as plaintiffs filed a suit for eviction and recovery of khas possession against the petitioner herein being Ejectment suit no. 69 of 2019. The petitioner herein as defendant appeared in the aforesaid suit and filed written statement.

The petitioner submits that he was very much shocked and surprised to find that the opposite parties herein have prayed for eviction of the petitioner from the suit premises, although the opposite parties herein had entered into an agreement for sale of the suit premises and had received a sum of Rs. 2,40,000/- as part payment of the consideration price.

The petitioner herein, after obtaining legal advice, had filed a suit for specific performance of

contract against the opposite parties for enforcing the agreement for sale, entered by and between the parties in May, 2015 being, Title Suit no. 421 of 2021. In the said suit, the petitioner herein also filed an application for temporary injunction and learned Trial court was also pleased to grant an ex parte ad interim order of injunction, directing the opposite parties and their men and agents from creating any third party interest in the suit property and also directed to maintain status quo in respect of possession of the property for a short period.

Thereafter, the petitioner herein filed an application under Section 151 of the Code of Civil Procedure, praying for stay of the said eviction suit till disposal of the petitioner's suit for specific performance of contract. By the impugned order, learned court below had rejected the petitioner's prayer for staying the aforesaid eviction suit, holding that the petition is groundless.

Being aggrieved by that order dated 22.9.2021, Mr. Bhattacharya, learned counsel for the petitioner submits that the court below had acted illegally and with material irregularity in passing the order impugned mechanically, without applying his judicial mind. He failed to appreciate that if both the suits run conjointly, there is a chance of passing contradictory and conflicting judicial decisions.

Accordingly, he has prayed for setting aside the order impugned.

I have considered the submissions made by the petitioner and also considered the order impugned. Learned court below while disposing the said application, held that petitioner did not show any ground in the petition as to why the present ejectment proceeding is required to be stayed till disposal of the suit for specific performance of contract and accordingly, the learned court below held that the petition for stay is groundless and, the court below rejected the said Application with a cost of Rs. 1,000/-.

From the copy of the document supplied by Mr. Bhattacharya, learned counsel for the petitioner, during hearing, It appears that the parties have entered into an agreement for sale annexing a memorandum of consideration showing payment of a sum of Rs. 2,40,000/- by the petitioner to the opposite parties herein, out of total consideration price of Rs. 14,87,500/-.

It is now well settled that when the erstwhile tenant and landlord entered into an agreement for sale, the relationship of landlord and tenant ceased to exist as they have consciously converted the relationship of landlord and tenant into a relationship of vendor and purchaser, this is because whenever a

certain new relationship arises between the parties as regards the identical subject matter, the two sets of mutually contra relationships cannot co-exist as being inconsistent and incompatible, that is to say, if the latter can come into effect only on termination of the earlier that would be deemed to have been terminated in order to enable the latter to operate, as held by the Division Bench of this court in **Smt. Sashi Jain @ Shashi Jain Vs. Sandip Sarkar in F.A. 55 of 2017**. Their Lordships in the said judgment have also relied upon the Supreme Court judgment of **R. Kanthimathi and ors. Vs. Beatrice Xavier** reported in **(2000) 9 SCC 339 (Para-6)** which runs as follows:-

“This decision clearly spells out that once there is agreement of sale between a land lord and a tenant, the old relationship as such comes to an end. It goes on to record that even after the cancellation of such agreement of sale the status of tenant is not restored as such. In other words, on the date of execution of the aforesaid agreement of sale their status as that of landlord and tenant changed into a new status as that of a purchaser and a seller.”

Their Lordship in this context have also relied upon the judgment of Travancore-Cochin High Court in **Velu Vs. Lekshmi & Ors.** reported in **AIR 1953 Travancore-Cochin 584**.

Since the submissions made by the petitioner herein that they have entered into an agreement for sale and part consideration amount has allegedly been paid by the petitioner herein and that in spite of

payment of such part consideration money, the opposite parties herein allegedly did not execute the deed of sale in favour of the petitioner herein on receipt of rest consideration amount, and for which he was compelled to file a suit for specific performance of contract being Title Suit no. 421 of 2021 and since such statements remains uncontroverted herein, the observation of the court below that he did not find any reasons to pray for the stay of ejectment suit and for which petition filed by petitioner under Section 151 of the Code, is groundless, is not sustainable.

In view of the aforesaid discussion, the impugned order dated 22.9.2021 is hereby set aside.

All further proceedings of Ejectment Suit no. 69 of 2019 pending before the learned 6th Bench, Presidency Small Causes Court at Calcutta is hereby stayed till disposal of the petitioner's aforesaid Title Suit no. 421 of 2021, which is pending before the learned 5th Bench, City Civil Court, Calcutta.

C.O. 1854 of 2021 is accordingly disposed of.

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

(Ajoy Kumar Mukherjee, J.)