

S/L 14
04.7.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 2334 of 2024

Goutam Chowdhury @ Gautam Chaudhuri
Vs.
Jamuna Prasad Shaw @ Gupta & Ors.

Mr. Amal Krishna Saha
Mr. Souvik Sarkar

...for the Petitioner.

Mr. Soumyen Dutta
Mr. Aniket Mitra

...for the Opposite Party No.1.

The plaintiff in a suit for eviction under Section 13(1)(f) of the West Bengal Premises Tenancy Act, 1956 is the petitioner of the instant application under Article 227 of the Constitution of India.

The said suit was decreed on compromise. In terms of the said compromise decree, the plaintiff is obliged to provide to the tenant/opposite party no. 1 accommodation in the building to be constructed at the site of the suit premises after demolition of the existing building and to facilitate the said construction, the tenant/opposite party no. 1 is obliged to vacate the suit property.

In compliance with the terms of the said compromise decree, the tenant/opposite party no. 1 has vacated the suit property and the plaintiff has re-located her to another accommodation belonging to him.

The opposite party no.1, alleging that the plaintiff is not honouring the terms of the said compromise decree to put her back in possession in the newly constructed building, has put the said compromise decree into execution, giving rise to the Title Execution Case No. 3 of 2022 before the 4th Court of learned Civil Judge (Senior Division), Alipore, District 24 Parganas (South).

In the said execution case, the plaintiff had filed an application under Section 47 of the Code of Civil

Procedure(hereinafter referred to as ‘the said application’ in short) questioning the execution, discharge or satisfaction of the said decree on the grounds that it is filed against the dead plaintiff, that it is barred by limitation and that the opposite party no. 1 is no longer a tenant by the operation of Section 2(g) of the West Bengal Premises Tenancy Act, 1997. The said application was registered before the Executing Court as Miscellaneous Case No.110 of 2022.

The Executing Court by the impugned judgment and order dated April 06, 2024 has answered the said questions in negative.

Mr. Amal Krishna Saha, learned advocate for the petitioner submits that the compromise decree since was not signed by all the parties to the suit, is a nullity as such, cannot be executed, besides, for restoration of the possession, the tenant is required to resort to the provision of Section 18 of said Act of 1956 within the period of limitation prescribed thereunder. He further submits that in terms of Section 18 of the said Act of 1956, for restoration of the possession, the tenant has to apply before the Controller, putting the said decree into execution is a misconceived action.

Mr. Saha however fairly submits that the points he is urging now, were not taken in the said application. He prays that the matter may be remanded to the Executing Court granting liberty to his client to amend the said application to incorporate all the points affecting the maintainability of the connected execution Case.

The aforementioned questions relating to the execution, discharge and satisfaction of the said compromise decree since were not raised before the Executing Court, in all propriety, the matter is required to be remanded to the Executing Court enabling the petitioner to amend the said application to incorporate all the points urged before this Court.

The order impugned is set aside. Leave is granted to the petitioner to amend the said application within a period of two weeks

from date, the written objection to the amended application be filed by the opposite party no. 1 within a period of two weeks from the date of service of a copy thereof.

The Executing Court shall dispose of the said amended application in accordance with law expeditiously, preferably within a period of eight weeks from the date of the filing of the objection to the said application and in doing so, shall not grant any unnecessary adjournment to either of the parties.

CO 2334 of 2024 is disposed of with the above terms without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

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

(Biswajit Basu, J.)