

D/L.23.
December 12, 2024.
MNS.

SMA No. 1 of 2024

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CAN 1 of 2024

Sri Dipankar Saha

Vs.

Smt. Purabi Ghosh and another

Mr. Abhijit Roy,
Mr. Santu Nandy

... for the appellant.

Mr. Gautam Das,
Mr. P. Das,
Ms. Madhumita Patra

...for the respondents.

1. Learned counsel for the appellant contends that the appellant, who was in occupation of the decretal property, was sought to be evicted by a collusive suit filed by the respondent no.1/wife against the proprietorship firm (respondent no.2) belonging to her husband.
2. It is contended that the eviction suit was decreed without impleading the appellant as a party to the suit, thereby affecting adversely the valuable rights accrued in favour of the appellant by virtue of his possession.
3. Upon going through the materials on record and judgments of both the courts below, we find that that both the courts below have returned a concurrent finding to the effect that the appellant failed to prove his claim of tenancy in

respect of the decretal property by way of any cogent evidence.

4. Fact remains, that even if the suit had a tinge of collusion, the appellant, claiming an independent right as a tenant within the purview of Order XXI Rules 97 to 101 of the Code of Civil Procedure, had to establish such independent right by virtue of evidence. In the absence of such evidence, the appellant's case would not come within the ambit of the said provisions. Even if the appellant was either a licensee or a sub-tenant under the husband, such claim of possession would be through the judgment debtor/husband and not an independent right, thereby taking the appellant outside the scope of Order XXI Rules 97 to 101 of the Code.
5. Hence, in the teeth of the concurrent findings of both the executing court and the first appellate court to the above effect, we are of the opinion that no substantial question of law has been made out in the appeal.
6. Accordingly, SMA 1 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. Consequentially, CAN 1 of 2024 is treated as on the day's list and also stands dismissed.

7. The learned Advocate for the appellant, at this juncture, submits that the appellant is willing to vacate the suit premises within six months.
8. It is left open for the appellant to approach the executing court with such prayer. If so approached, the executing court shall consider such prayer of the appellant and, upon giving an opportunity of hearing to the decree holder as well, shall decide the same.
9. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Partha Sarathi Sen, J.)