

20.08.2024
Item No.19, DL
Ct.19
A.J.

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

C.O. 2916 of 2024

Indrajit Debnath

-Vs-

Smt. Mousumi Ghosh & Anr.

Mr. Ayan Banerjee,

Mr. Uttam Basak.

.....for the petitioner.

Mr. Tanmoy Roy.

.....for the opposite party no.1.

The instant application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for declaration which is directed against order dated May 10, 2024 passed by the 1st Court of the learned Civil Judge (Senior Division) at Barasat, District: 24 Parganas (North) in the said suit being *Title Suit No. 74 of 2012*.

The learned Trial Judge by the order impugned has dismissed an application filed by the petitioner praying dismissal of the counterclaim filed by the defendant no.1 for a decree of eviction of the plaintiff and the proforma-defendant no.2.

The petitioner has filed the aforementioned suit for specific performance of an alleged agreement for sale of the suit flat.

In the said suit, the opposite party no. 2 has been arrayed as proforma-defendant no.2. In the plaint, it has been alleged that since 1972, the then partnership firm, M/s. Maxo was a tenant in respect of a portion of the suit premises, of which the plaintiff and the proforma-defendant no.2 were the partners.

The alleged agreement for sale, specific performance of which has been sought for, was allegedly entered into by and between the petitioner and the proforma-defendant no.2 in one part and the defendant no.2 on the other part.

The plaintiff and the proforma defendant no.2 are in possession of the suit flat.

In the backdrop of such facts and circumstances, the defendant no.1 has prayed for a decree of eviction of the plaintiff and the proforma-defendant no.2 by way of counterclaim.

The relief against the proforma-defendant no.2 being incidental to the relief against the plaintiff, the defendant no.1 is entitled to maintain the counterclaim against the proforma defendant no.2.

*A counter claim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against the co-defendants (See **Rohit Singh & Ors. –Vs– State of Bihar & Ors.** reported in **(2006) 12 SCC 734**)*

The order impugned for the aforesaid reason(s) does not call for any interference.

C.O. 2916 of 2024 is dismissed without any order as to costs.

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

(Biswajit Basu, J.)