

12.11. 2024
item No. 2
n.b.
ct. no. 24

C.O. 2806 of 2023

Sri Sushil Kumar Agarwal
Vs.
Smt. Chandrika Ray.

Mr. Gunjan Shah,
Ms. Shreya Agarwal
..... for the petitioner
Mr. Amitabha Ghosh,
Ms. Nabanita Chatterjee,
Ms. Arpita Dhar,
..... for the respondent.

The instant revisional application has been preferred against the order dated May 30, 2023 passed by the learned Civil Judge, Senior Division, 2nd Court at Barasat, District - 24 Parganas (North) in Title Suit No.1136 of 2016. The present petitioner is the defendant/tenant before the learned Trial Court. The defendant/petitioner filed one application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint on the ground that the plaint does not disclose any cause of action. Learned Civil Judge concerned has heard the matter and passed the impugned order observing that the plaintiff has stated a cause of action in the plaint, thus, the application under Order 7 Rule 11 has been turned down. Against the said order, the instant civil revision has been preferred.

Learned advocate for the petitioner has annexed the plaint as well as the application under Order 7 Rule

11 of the Code of Civil Procedure. He submits that the entire plaint disclosed the ground for termination of tenancy, which was existed between the parties since long. He also pointed out that the plaint has disclosed that one notice of termination was issued in terms of the provisions of Section 6 (4) of the West Bengal Premises Tenancy Act for vacating the premises on the ground of reasonable requirement and others. The petitioner further argued that the instant suit was filed under the provisions of Transfer of Property Act, though the notice has been served under the provisions of West Bengal Premises Tenancy Act. He further argued that the parameters and the grounds for eviction was demonstrated in the plaint under the provisions of West Bengal Premises Tenancy Act though the suit has been filed under the provisions of Transfer of Property Act. It is the case of the petitioner that the plaintiff has no cause of action to file the suit for eviction under the provision of Transfer of Property Act. He further argued that the Civil Judge concerned has failed to appreciate the ground and turned down the application, which is illegal and arbitrary. So, he prayed for setting aside the impugned order.

Learned counsel appearing on behalf of the respondent/opposite party submits that the learned Civil Judge concerned has considered the prayer of the defendant/petitioner and passed the impugned order.

This is not at all arbitrary, illegal or improper. He argued that the plaint itself disclosed the cause of action. He specifically pointed out that whether the cause of action, as disclosed in the plaint is correct under the provision of Transfer of Property Act or not, would be determined after the trial. At this juncture, as the cause of action has been disclosed in the plaint, the learned Civil Judge concerned has correctly rejected the prayer of the defendant/petitioner under Order 7 Rule 11 of the Code of Civil Procedure.

He further submits that the wrong quoting of Section of notice itself does not *ipso facto* extinguished the right of the plaintiff is to file the suit. He prayed for rejection of the instant civil revision.

Heard the learned advocates and perused the impugned order passed by the learned Civil Judge concerned. It appears that the learned Civil Judge concerned on observing the dictum of the Hon'ble Supreme Court in **Gurudev Singh. Vs. Harvinder Singh** relied upon by this Court in **2022 (3) ICC 28** has observed that the plaint has disclosed a cause of action, which may be incorrect or not applicable in the eye of law, but, at the initial stage, it cannot be said that the cause of action does not exist.

I have seen the paragraph 5 of the plaint wherein the plaintiff has disclosed that he sent notice to the defendant under the provisions of Section 6 (4) of the

West Bengal Premises of Tenancy Act. It is admitted fact by the parties that the plaintiff is receiving the rent amounting to Rs.7,800/- per month from the defendant. Whether the notice to vacate the premises under provision of Section 6(4) West Bengal Premises Tenancy Act, 1997 is justified to determine the tenancy in question would be determined by the learned Trial Court after receiving the evidences. Moreover, at this juncture, if the extension of application under Order 7 Rule 11 of the Code of Civil Procedure be considered as true or correct, the merit of notice as demonstrated under paragraph 5 of the plaint would decided without adopting required formalities. At this juncture, I cannot pass any order to justify the notice and its legal effects thereof.

I make it clear that the fact demonstrated in the plaint for eviction of the defendant on the basis of the notice dated May 24, 2016 can be evaluated only at the time of trial. At this juncture, it appears to me that the trial has already been started; the issues have already been framed. So, at this juncture, court will determine the issue as to whether the suit has any cause of action or not. Thus, I find no justification to interfere with the order passed by the learned Civil Judge concerned. Thus, the instant civil revision, being merit less, dismissed and disposed of.

Learned counsel appearing on behalf of the parties has put before this court an order of the learned Civil Judge concerned passed on September 3, 2024, wherein the payer of the defendant for setting aside the *ex parte* order has been turned down subject to payment of cost of Rs.3,000/-. Both by plaintiff and defendant appearing before this Court has categorically admitted sportingly that the suit may be proceeded with and disposed of expeditiously.

Considering the fair submission on behalf of the plaintiff/opposite parties, I intend to issue a specific direction for speedy disposal of the instant matter. The instant civil revision is preferred in the year 2023 and today the civil revisional application has been disposed of. So I find the justification of the defendant for not participating before the learned Civil Judge concerned. Thus, the order of cost imposed by the learned Civil Judge concerned dated September 3, 2024 is hereby vacated on consent.

The petitioner/defendant is directed to submit an application for setting aside order of *ex parte* before the learned Civil Judge concerned with a put up petition coupled with the copy of the order of this Court within fortnight from date.

On such application, the learned Civil Judge concerned shall pass the appropriate order according to law so that the defendant may be allowed to cross-

examine the P.W. 1 at an early dates. I make it clear that the parties shall proceed diligently and learned Civil Judge concerned shall allow unnecessary adjournment to either parties.

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

(Subhendu Samanta, J.)