

30.07.2024
SL No.5
Court No.24
Ali

CO 3230 of 2022

**Smt. Lila Devi Singh
Versus
Mohan Kumar Jaiswal**

Mr. Pradeep Kumar
...for the petitioner.

Ms. Sohini Chakraborty,
Mr. Ishan Bhattacharya,
Ms. Sneha Shaw
.... for the opposite party.

The instant CO has been preferred against the order dated 20th September, 2022 passed by the learned Additional District Judge, Howrah in Misc. Appeal No. 174 of 2022.

The crux of the matter is that the present opposite party being plaintiff filed a suit for declaration and injunction praying for declaring his tenancy right over the suit property and also prayed that he may not evicted without due process of law. Before the filing of the suit there was a blast of refrigerator within the suit premises. Accordingly, the plaintiff filed an application under Order 39 Rule 1 and 2 read with Section 151 C.P.C. praying for necessary order for repair. The matter was heard on contest from both sides and the learned Civil Judge has passed the order on 15.09.2022 allowing the plaintiff to repair the suit premises on certain conditions.

Being aggrieved by and dissatisfied with the said order the defendant/landlord preferred one Misc. Appeal being Misc. Appeal No. 174 of 2022 before the learned District Judge, Howrah. After filing the said Misc. Appeal the landlord has preferred an application for stay, it was heard by the learned Additional District Judge and passed the impugned order on 20th September, 2022 thereby the application for stay was rejected.

Being aggrieved by and dissatisfied with the said impugned order dated 20th September, 2022 passed in the Misc. Appeal the instant CO has been preferred.

Learned counsel appearing on behalf of the petitioner submits that the petitioner is the landlord over the suit premises. The petitioner has the right to make repair over the suit premises but the learned Trial Court has not considered the entire facts and allowed the plaintiff/defendant to conduct the repairing the suit premises. He further submits that the impugned order passed by the learned Trial Court if allowed to be continued the nature of character of the suit premises may be changed. He further submits that the learned Trial Court has also passed an order on 19.06.2024 allowing the plaintiff's prayer for police help. The landlord/defendant has preferred an application for

recalling the order dated 19.06.2024 by filing a specific application on 27.06.2024.

Learned counsel for the landlord/petitioner further submits that there are certain additional facts which will determine the act and conduct of the tenant for which the order passed by the learned Trial Court on 15.09.2022 as well as 19.06.2024 need be set aside.

Learned counsel appearing on behalf of the opposite party submits that on the prayer of the plaintiff/tenant the learned Trial Court has specifically passed the order of repair with some stringent conditions. The plaintiff intends to make repair of the suit property following the condition imposed by the learned Trial Court. The plaintiff is not in a position to change the nature and character of the suit premises. Accordingly, the impugned order passed by the learned Additional District & Sessions Judge confirming the order of learned Civil Judge (Junior Division) concerned is maintainable.

Heard the parties it appears that the present petitioner has preferred an application on 27.06.2024 which, he says that shall determine the entire matter of repair as well as the order passed by the learned Civil Judge (Junior Division) regarding police help in favour of the tenant. It further appears that the said petition is yet to be disposed of by the learned Civil Judge (Junior Division)

concerned. I think it necessary that as the defendant/landlord intends to bring out some additional facts before the learned Trial Court it would be prudent for this Court to allow the present petitioner/defendant to demonstrate his case before the learned Trial Court concerned by virtue of the application dated 27.06.2024.

On that score the plaintiff/tenant is also liberty to file the written objection before the learned Civil Judge concerned and participate the hearing of the matter.

I make it clear that this Court has not entered into the merits of the matter and refrain himself from passing any order regarding the merit of application dated 27.06.2024 and the order passed by the learned Civil Judge (Junior Division) concerned dated 15.09.2022 as well as the impugned order dated 20.09.2022.

The learned Civil Judge (Junior Division) concerned shall dispose of the application dated 27.06.2024 after hearing both the parties. I make it clear that the present petitioner/landlord is at liberty to prefer reasonable prayer at his wish before the learned Trial Court by demonstrating the additional facts. Learned Trial Court shall dispose of the application/application dated 27.06.2024 according to the law.

On the above observations, the application being **CO 3230 of 2022** is disposed of.

All connected applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)