

06.02.2024
Court No. 19
Item No.16
CP

C.O. No. 4161 of 2023

Suman Sarda
Vs.
Ajoy Kumar Sarkar

Mr. Debdipto Banerjee
Mr. Soumen Banerjee

.....for the petitioner.

1. This revisional application arises out of an order dated September 5, 2023, passed by the learned Civil Judge (Junior Division), 1st Court, Sealdah in Ejectment Suit No.109 of 2015.

2. By the order impugned, the learned court rejected an application under Order 14 Rule 2 of the Code of Civil Procedure filed by the petitioner. The learned court accepted the contention of the petitioner that in limited cases a question of fact could be decided as a preliminary issue if it did not amount to disposal of the suit. Reliance was placed on the decision of this court in the matter of Synthetic Plywood Industries (P) Ltd. Vs. Smt. Manjulika Bhaduri & Ors., reported in (1998) 1 CHN 387.

3. Upon considering the facts of the case, the relationship of landlord and tenant was taken up as a preliminary issue. The learned court was of the

view that the defendant no. 2 relied on an unregistered deed to dispute the relationship of landlord and tenant between the plaintiff no. 2 and the defendant. Prima facie, the court did not find any basis for such claim of the tenant.

4. According to the court, the issue in this case required evidence. Thus the application was rejected on the ground that the relationship of landlord and tenant, in this case, was a triable issue. The court has kept the issue open.

5. The suit is for eviction. The suit has been fixed for hearing of the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the “said Act”).

6. The petitioner had called upon the learned court to decide the relationship of landlord and tenant as a preliminary issue, under Order 14 Rule 2 of the Code of Civil Procedure. The court, upon applying the law and the facts of the case, came to the decision that such relationship would be decided at the trial.

7. Under such circumstances, this court does not find that the learned court had acted illegally and/or with material irregularity.

8. In any event, the petitioner claims to have questioned the relationship in the application under

Section 7(2) of the said Act and it is well-settled that while disposing of the application under Section 7(2), the issue of relationship of landlord and tenant can also be decided. Such issue shall be open for the court to decide upon allowing the parties to adduce oral and documentary evidence.

9. This court has not observed on the merits. The application under Section 7 (2) of the said Act shall be disposed of in accordance with law and on its own merits.

10. The revisional application is, thus, disposed of.

11. There shall be no order as to costs.

12. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)