

02.01.2025
Item No.
A 53
Saswata

C.O. 1266 of 2024

**Asha Sonkar @ Asha Choudhury @ Aasha Chowdhury
versus
Nityananda Paul & Ors.**

Mr. Dhananjay Banerjee
Mr. Anirban Gope
Mr. Prateek Tiwary

...For the petitioner

1. The petitioner claims to be protected under the provisions of Section 2(g) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the “said Act”). The petitioner is the defendant no. 1 in the above suit for recovery of possession and for declaration that the defendants are wrongful occupiers in respect of the suit schedule property. The petitioner had filed an application under the provisions of Order VII Rule 11 of the Code of Civil Procedure 1908 (hereinafter referred to as the Code), inter alia, praying for rejection of the plaint on the ground that the suit had been instituted within a period of five years from date of death of the original tenant although, the petitioner was a dependent on the original tenant and was residing with the original tenant.

2. The plaint case, however, proceeds on the premise that one Putul Sarkar (hereinafter the “deceased tenant”), mother of the defendants was a monthly tenant of one room measuring about 87 sq.ft. carpet area in the ground floor of the suit property at a monthly rental of Rs.130/- payable according to English Calendar month. It further proceeds on the premise that the deceased tenant had left behind the defendants who are the married daughters of the deceased tenant and are dependent upon their respective husbands. Incidentally in the application under Order VII Rule 11 of the Code, the petitioner on the basis of a defence case that the petitioner was dependent on her mother, had filed the application for rejection of plaint.

3. The Learned Judge upon scrutinizing the statements made in the plaint by observing that in order to prove dependency upon the deceased tenant, the defendants have to lead evidence in the suit by taking such plea in the pleadings, and having regard thereto, had rejected the application under Order VII Rule 11 of the Code. It is elementary that in an application under Order VII Rule 11 of the Code it is the plaintiff's case/statements made in the plaint that has to be accepted as true and correct. There is no scope to proceed on the basis of a defence case which is yet to be proved.

4. Having regard thereto, I do not find any irregularity or any jurisdictional error in the order passed by the Learned Judge.

5. The revisional application fails and is accordingly dismissed.

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

(Raja Basu Chowdhury, J.)