

M/L 78
13.01.2025
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 1427 of 2024

Dilip Shaw
Versus
Abhishek Das & Ors.

Mr. Amit Baran Dash
Ms. Ankana Sarkar
... For the petitioner.

Mr. Gopal Chandra Ghosh, Sr. Advocate,
Ms. Isita Chowdhury.
... For the opposite parties.

1. Challenging the order dated 1st March, 2024 passed by the learned Civil Judge (Junior Division), 3rd Court, Alipore, South 24-Parganas, in Title Suit No. 1806 of 2019, dismissing the application filed by the plaintiff/petitioner under Order 39 Rule 7 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "Code"), the instant revisional application has been filed.
2. The records would reveal that a suit has been filed, inter alia, praying for a decree for declaration that the plaintiff is a lawful and *bona fide* tenant in respect of the suit property under the defendant no.1. It is in connection with the aforesaid suit that the plaintiff had filed an application under Order 39 Rule 7 of the Code, inter alia, contending that the suit premises has become dilapidated and as such for carrying out necessary repair work an advocate

commissioner may be appointed to inspect the points for commission as detailed in the schedule of points for inspection, forming part of such application. The defendant nos. 2 and 3 are contesting the said suit and have filed a written objection, inter alia, claiming that by two several indenture of sale both dated 8th November, 2019 the defendant nos. 2 and 3 jointly purchased the suit property from the defendant no. 1 and other co-owners. The factum of the defendant nos. 2 and 3 acquiring the ownership in respect of the suit property was duly intimated by the defendants to the plaintiff/petitioner through their advocate Indra Chandra Gupta vide a communication sent through speed post. The plaintiff/petitioner, however, did not recognize the defendant nos. 2 and 3 as owners and had not tendered rent. The rent is, however, being deposited with the rent controller in the name of the predecessor-in-interest of the defendant no.1. The learned Court by the order impugned was of the view that unless the plaintiff/petitioner makes payment of rent no relief can be granted in favour of the plaintiff and by proceeding on the premise that the petitioner/plaintiff did not tender or deposit any rent with the rent controller had rejected the application.

3. At the time of hearing of the present revisional application, Mr. Dash, learned advocate appearing in support of the revisional application would submit that although, the petitioner had been depositing the rent with the Rent Controller in the name of the estate of predecessor-in-interest of the defendant no.1, however, having regard to the claim made by the defendant nos. 2 and 3, the petitioner without prejudice to his rights and contentions in the suit is ready and willing to make payment of rentals to the defendant nos. 2 and 3 from the date of the aforesaid defendants' acquiring interest of ownership in the suit property, for the purpose of removing the objection for allowing the application under order 39 rule 7 of the Code. He, however, submits that liberty may be given to the petitioner to withdraw the money already deposited before the Rent Controller in the name of the predecessor-in-interest of the defendant no.1.
4. Having heard the learned advocates appearing for the respective parties and considering the fact that the petitioner is ready and willing to make payment of rent from the date of the defendant nos. 2 and 3 acquiring interest in the suit property, as claimed in the written objection and since Mr. Ghosh, learned senior advocate representing the opposite parties

would submit that the opposite parties do not have any objection to receive such rent, I am of the view that the entire rental that may have fallen due from the date of acquisition of interest in respect of the suit property by the defendant nos. 2 and 3 be deposited by the petitioner with the learned Trial Court without prejudice to the rights and contentions of the petitioner in the title suit. The defendant nos. 2 and 3 shall be at liberty to withdraw the same.

5. Let the entire arrears calculated upto the month of December, 2024 be deposited on/or before 30th January, 2025. The current rentals are also to be deposited by the petitioner with the learned Court within 7th of each succeeding English calendar month, so long the suit remains pending. The above payments shall abide by the result of the suit.
6. Subject to complying with the aforesaid direction and considering the fact that the petitioner may have a reasonable cause for moving the application for repair, I am of the view that the application filed by the petitioner under the provisions of Order 39 Rule 7 of the Code should be allowed.
7. In view thereof, the order dated 1st March, 2024 passed by the learned Civil Judge (Junior Division), 3rd Court, Alipore, South 24-Parganas in Title Suit

No. 1806 of 2019 is set aside.

8. Learned Court is directed to take steps for appointment of the Commissioner.
9. As prayed for, the petitioner shall be at liberty to withdraw the money deposited by the petitioner with the Rent Controller at the risk and cost of the petitioner.
10. With the above observations and directions, the revisional application stands disposed of.
11. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)