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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 1430 of 2024

Dilip Kumar Seth alias Dilip Seth & Anr.
Versus
Sanat Mondal

Mr. Indrajit Sen
Ms. S. Medda

... For the petitioners.

1. Challenging the order dated 1st February, 2024 passed by the learned Civil Judge (Junior Division), 1st Court, Alipore, South 24-Parganas in Title Suit No. 538 of 2014 whereby, the defendant's application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code) for amendment of the written statement was allowed, the instant revisional application has been filed.
2. Mr. Sen learned advocate appearing in support of the aforesaid revisional application by drawing attention to the plaint filed in this case would submit that the suit is for recovery of khas possession of the suit property from the ex-licensee who is at present is in illegal occupation of the suit property. He would submit that the defendant is, in fact, a trespasser. Although, the defendant had filed a written statement claiming tenancy rights, subsequently an application has been filed seeking amendment of the written statement. The facts

highlighted in the proposed amendment are already on record in the written statement. Having regard thereto, he would submit that the application filed by the defendant/opposite party is to delay the hearing of the suit. He would also submit that despite the fact that the petitioners did not file the suit under the provisions of Section 6 of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the said Act), an application under Section 7(2) of the said Act has been filed. He would submit that the procedure adopted in hearing out the application under Section 7(2) of the said Act in a case for evicting the trespasser is unknown in law. In any event, he would submit that the amendment of the written statement should not be allowed and this Hon'ble Court may set aside the order dated 1st February, 2024.

3. Heard the learned advocate appearing for the petitioners and considered the materials on record. In this case I find that the plaintiffs filed a suit for recovery of khas possession from the ex-licensee who is in illegal occupation. The defendant in the original written statement has taken the plea of tenancy and in paragraph 7 thereof has claimed that the defendant used to pay the rent @ Rs.1300/- per month to the plaintiffs since 2004 to 2012 and lastly till 2014 the defendant used to pay Rs.1500/- per month to the plaintiffs, despite several requests,

the plaintiffs did not issue any money receipt with the ulterior motive. It may, however, be noted that in the proposed amendment, the defendant has attempted to incorporate five several paragraphs. To understand the scope of amendment the amended Paragraph 13 (a) to 13(e) is reproduced hereinbelow:

“13(a) That the defendant was inducted as a tenant at a rental of Rs.1300/- pr month and was paying rent regularly.

13(b) That subsequently, it was enhanced to the amount of Rs.1500/- per month.

13(c) That on receipt of the rent, the plaintiffs/landlords did not issue any rent receipt. Subsequently, the plaintiffs started to pay rent through “money order”.

13(d) That the defendant is in possession as a tenant since the year of 2004

13(e) That prior to filing of the alleged suit, the relation between the parties was very much cordial. The defendant failed to understand why the plaintiffs filed this speculative suit”.

4. From a perusal of the aforesaid as rightly pointed out by Mr. Sen, learned advocate representing the petitioners that the factum of the defendant's claim for tenancy is already recorded in the written statement. However, I find that the defendant to morefully clarifying its stand has brought about the aforesaid amendment which at best can be said to be clarificatory in nature.
5. It is to be borne in mind that amendment of a plaint stand on different footing than the amendment of written statement. Although, Order VI Rule 17

provides for amendment of pleadings subject to applicability of the proviso, amendment of a written statement requires a more liberal approach especially having regard to Order VIII Rule 9 of the Code. Be that as it may, I do not find any irregularity on the part of the learned Judge in allowing the same, as the amendment appears to be clarificatory in nature. Although, the petitioners had stressed on the fact that the learned Judge has committed a procedural irregularity in hearing the application under Section 7(2) of the said Act, I am of the view that such application is yet to be adjudicated and it is premature at this stage to make any observation in that regard.

6. Having regard to the above, the revisional application fails and is accordingly dismissed.
7. There shall be no order as to costs.
8. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)