

25.11.2025
Item No.33
Ct. No. 30
Aloke

CO 1681 of 2024

Vinty Khemani & Ors.

Vs

Dr. Sanjay Lahiri

Mr. S. Ghosh

Mr. Sourav Mondal

Mr. Swapnadwip Roy

... for the petitioners

Mr. Tapash K. Bhattacharya

Mr. Aviroop Bhaattacharya

... for the opposite party

1. The revisional application has been preferred challenging an order no. 6 dated 24th April, 2024 and Order no. 8 dated 30th April, 2024 both passed by the learned Judge, Vth Bench, City Civil Court at Calcutta in Title Suit No. 381 of 2023.

2. Vide the order under challenge the trial Court was pleased to treat the suit instituted by the plaintiffs/petitioners herein as a suit under Section 2(g) of the West Bengal Premises Tenancy Act.

3. It is submitted by the learned counsel for the petitioners that nowhere did the plaintiffs/petitioners state that the suit has been filed under the WBPT Act. But the trial Court erroneously came to the said finding vide the order under challenge and hence, the civil revision.

4. Learned counsel appearing for the defendant/opposite party submits that as per Section 2(g) of the WBPT Act, the defendant is a tenant after

the death of his mother who was the original tenant and, as such, the trial Court has rightly held that the suit is under the Premises Tenancy Act.

5. On perusal of the copy of the plaint, it appears that the suit filed is for declaration and recovery of khas possession along with other reliefs. There is no pleading in the plaint stating that the suit is under the Premises Tenancy Act.

6. It further appears from the notice to quit that the same has been issued asking the defendant to vacate the premises by considering him as a 'trespasser' and not as a 'tenant' .

7. Even in the written objection to the application under Section 7(1) of the WBPT Act filed by the defendant before the trial Court in which the order under challenge has been passed, there is no averment that the suit is under Section 2(g) of the WBPT Act. As such, the trial Court has erroneously held in paragraph 5, 8 and 9 of the order as follows :

“5. Plaintiff has filed written objection against the said petition stating that the instant suit is filed under Section 2(g) of the W.B.P.T. Act and the provision of under Section 7(1) of the W.B.P.T. Act is not also applicable to this suit and it is prayed to dismiss the petition.

8. On the other hand Ld. Advocate appearing for the plaintiff submitted that the instant suit has been under section 2(g) of the W.B.P.T. Act and the provision of Section 7(1) of the W.B.P.T. Act is not at all

applicable since the defendant is a trespasser or illegal occupier and it is prayed to dismiss the said application.

9. It appears from the record that the instant suit has been instituted under Section 2(g) of the W.B.P.T. Act and whether the tenancy has been extinguished or not cannot be ascertained unless the suit goes on trial....”.

8. The statements in the above paragraphs are contradicting in itself.

9. Finally, the trial Judge while deciding the defendant’s application under Section 7(1) of the WBPT Act has held as follows :

“Since the relationship of landlord and tenant cannot be decided without framing any issue to that effect the defendant is permitted to deposit the rent as per his prayer at his own risk.....”

10. On perusal of the order under challenge, this Court finds that the application of the defendant before the trial Court was to be considered if there was a counter claim and/or by framing an additional issue at the time of trial.

11. The Court suo motu could not have converted the plaintiff’s suit for declaration and other consequential reliefs into a suit under the West Bengal Premises Tenancy Act, on the prayer of the defendant by way of an application under Section 7(1) of the WBPT Act.

12. Considering the fact that the order under challenge is not in accordance with law the same is set aside.

13. The trial Court shall proceed with the suit in accordance with law and in course of hearing of the trial, the defendant shall be at liberty to adduce evidence in support of his case. And if the Court is satisfied that the defendant has been able to prove his case, the suit for declaration and consequential relief shall meet its logical end by the Court deciding the maintainability of the suit along with other issues.

14. Civil Revision is accordingly allowed.

15. The order no. 6 dated 24th April, 2024 and Order no. 8 dated **30th April, 2024** passed by the learned Judge, Vth Bench, City Civil Court at Calcutta in Title Suit No. 381 of 2023, is set aside.

16. The trial Court to proceed expeditiously with the suit.

17. There will be no order as to costs.

18. Connected application, if any, stands disposed of.

19. Interim order, if any, stands vacated.

20. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Shampa Dutt (Paul), J.)