

19
05.03.2025
Ct. No. 11
Jayanta

WPLRT 73 of 2024

Debasish Ghosh
Vs
State of West Bengal & Ors.

Mr. Jayanta Sengupta
 Mr. S. K. Kanodia
 Ms. Bani Ghosh

.....For the Petitioner.

Mr. Soumitra Bandopadhyay
 Mr. Ramchandra Guchhait

.....For the State/Respondents.

Mr. Anshunath Chakraborty,

.....For the Respondent No. 2.

The present application has been preferred to challenge the order dated March 11, 2024, passed by the learned Tribunal in Original Application (in short, O.A.) no. 442 of 2021. In the said order, the Tribunal dismissed the Original Application, concluding that there was no illegality in the deposition of rent by Respondent No. 2 with the Rent Controller. Furthermore, the Tribunal directed Respondent No. 2/the tenant to continue depositing the rent with the Rent Controller, Kolkata, until the premises are partitioned by metes and bounds and the ownership of the tenanted property is determined.

The essential facts that need to be outlined for the effective adjudication of this writ petition are that the premises in question is a joint property, and one of the co-sharers, Bhaskar Ghosh, since deceased, inducted

Respondent No. 2 as a tenant in the premises by virtue of a tenancy agreement dated January 12, 2010.

Bhaskar Ghosh passed away on January 12, 2011, and his share in the premises devolved upon his minor daughter, Medha Ghosh. On August 12, 2015, the undivided 5/16 share of Bhaskar Ghosh in the premises was sold to the petitioner by one deed of conveyance executed by Soma Ghosh, as guardian of Medha Ghosh.

By issuing a notice, the petitioner informed Respondent No. 2 about the change of ownership and requested the tenant to pay the rent to him. However, the tenant filed an application under Section 21 of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as the "Act of 1997") addressing Lali Ghosh as the landlady and owner of the premises, seeking permission to deposit the rent with the Rent Controller, Kolkata in name and/or account of Lali Ghosh. The tenant claimed that he had validly tendered the rent to Lali Ghosh, but she had refused to accept it.

The petitioner appeared before the Rent Controller and filed a written objection opposing the tenant's prayer. However, by an order dated January 5, 2021, the Rent Controller rejected the petitioner's objection and allowed the tenant to continue to deposit the rent in the name of Lali Ghosh. Aggrieved by this order, the petitioner approached the learned Tribunal by preferring the OA. As mentioned earlier, by the order under challenge in this writ petition, the Tribunal dismissed the OA, and directed

the tenant to continue depositing the rent with the Rent Controller.

Mr. Sengupta, learned advocate representing the petitioner, argues that both the Rent Controller and the learned Tribunal erred in failing to consider that the rent was being deposited by Respondent No. 2 in name and/or account of a stranger who is neither the legal heir of the original landlord, Bhaskar Ghosh, nor the landlady or the owner of the premises in question.

He submits that both the order passed by the Rent Controller and the Tribunal make reference to a suit, T.S. No. 816 of 2017, but the said suit has been dismissed. Drawing our attention to the judgment in the suit, he contends that the judgment in T.S. No. 816 of 2017 is irrelevant to the issue of the petitioner's entitlement to receive rent from the tenant.

He informs that an ejectment suit filed by the petitioner against Respondent No. 2/tenant is pending final adjudication. In his view, if Respondent No. 2 is allowed to continue depositing rent, addressing Lali as the sole owner of the premises, it will seriously prejudice the petitioner's case in the pending suit. He submits that, considering this fact, this Court should intervene in the matter and pass an appropriate order.

Mr. Chakraborty, learned advocate representing Respondent No. 2/tenant, draws our attention to the definitions of "landlord" and "tenant" as provided in the Act of 1997. He contends that the petitioner has failed to

establish his right to receive the rent, both before the Rent Controller and the learned Tribunal. He further informs that, in accordance with the order of the Court dealing with the ejectment suit, the tenant is currently depositing the rent with the Court.

Mr. Bandopadhyay, learned advocate enters appearance on the half of the State.

Heard the learned advocates, perused the materials on record.

Admittedly, a close scrutiny of the materials on record placed before us reveals that the premises is a joint property. The schedule of the deed under which the petitioner acquired the property rights indicates that a 5/16th share of the premises was transferred to the petitioner by the minor daughter of one of the co-sharers, namely, Bhaskar Ghosh, since deceased.

Notably, the said deed has not been challenged by any of the co-sharers, including Medha Ghosh after attaining the age of majority, in any competent court of law. Furthermore, Lali has not appeared either before the Rent Controller or before the learned Tribunal.

The suit, T.S. No. 816 of 2017, which was filed by an individual claiming to be a tenant under the writ petitioner, was dismissed on the grounds that it had become infructuous. Therefore, the order passed in T.S. No. 816 of 2017 is irrelevant to the issue involved in this writ petition.

Although the tenant, in his affidavit-in-opposition, claims that a new tenancy has been created between himself and Lali, we have been informed that, pursuant to the order passed in an application under Section 7(2) of the Act preferred in connection with the ejectment suit, the tenant is now depositing the rent in court.

In this context, we are of the view that justice would be served if the order under challenge in this writ petition, as well as the order passed by the Rent Controller, is modified to the extent that the rent deposited by the tenant with the Rent Controller shall be deemed to have been deposited for and/or in favour of all the co-sharers of the premises in question. Accordingly, with this modification of the order under assail in this writ petition, as well as of the order of the Rent Controller, the writ spetition is, thus, disposed of.

The other portions of the orders are left unaltered. There shall no order as to the costs.

(Partha Sarathi Chatterjee,J.)(Tapabrata Chakraborty,J.)