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C.O. 2667 of 2025

Bipra Kumar Das
Vs.
Subhasish Das

Mr. Subhojit Saha
Ms. Srijani Mukherjee
....for the petitioner

Mr. Bibek Jyoti Basu
Mr. Sandep Prasad Shaw
Mr. Aman Kumar Singh
Mr. Debjyoti Kar
..... for the opposite party

This application has been filed by the petitioner, who happens to be a defendant/tenant in an eviction suit, under Section 24 of the Code of Civil Procedure (for short, “the Code”), seeking transfer of Title Suit No. 1162 of 2023, currently pending before the learned Civil Judge (Junior Division), 1st Court at Alipore, District – South 24-Parganas, to any other court of the learned Civil Judge (Junior Division) at Alipore, District – South 24-Parganas.

Mr. Saha, learned Advocate representing the petitioner, submits that upon receipt of summons, the defendant/tenant entered his appearance and filed an application under Sections 7(1) and 7(2) of the West Bengal Premises Tenancy Act, 1997 (for short, “the 1997 Act”). Subsequently, the petitioner filed an application under Section 151 of the Code of Civil Procedure (the “Code”) for dismissal of the suit on the ground that the plaintiff had

deposited inadequate stamp duty, rendering the suit liable to be dismissed.

Mr. Saha submits that on several occasions, learned advocate who is representing the petitioner before the learned Court below requested that the application under Section 151 of the Code be heard before any other application was taken up for consideration. However, the court did not pay heed to this request; rather, in open court, the Presiding Officer commented that the application presented by the petitioner under Section 151 of the Code would be dismissed. Such a comment has caused apprehension in the mind of the defendant/tenant that he would not receive a fair trial in that court. This apprehension has prompted the petitioner to file the present application seeking transfer of the case to any other competent court. He submits that the next date of hearing is fixed for 8th September, 2025, and prays for an interim order staying all further proceedings in the suit. In support of his contention, he relies on the decision reported in *1987 (Supp) SCC 48 (R. Aurnagiri & Ors. vs. C. Ranganathan & Ors.)*.

Mr. Basu, learned Advocate representing the plaintiff/opposite party, vehemently opposes the contentions advanced by Mr. Saha. He submits that the application filed by the petitioner under Sections 7(1) and 7(2) of the 1997 Act was heard on several occasions. Thereafter, during course of hearing of those two applications, the petitioner filed an application under Section 151 of the Code. The court inquired whether the plaintiff had deposited adequate court fees, to

which the learned Advocate for the plaintiff/opposite party stated that since the office had not submitted the report, the court fees had not been deposited. The court then asked the defendant/tenant whether he had made the deposit as per his undertaking given in the application filed under Sections 7(1) and 7(2) of the 1997 Act. Mr. Basu further submits that the filing of this application under Section 151 of the Code, followed by subsequent applications, is nothing but an attempt to delay the proceedings. He points out that the defendant/tenant has filed two other applications under Section 151 of the Code. Mr. Basu cites two decisions in support of his contention: (2023) 1 ICC 488 (Anupam Ghosh & Ors. vs. Fiaz Mohammed & Ors.) and 2022 LiveLaw (AB) 517 (Hari Singh vs. ShyamBihari & 20 Others). He also submits that since the petitioner seeks transfer of the suit within the court, the proper course would have been to approach the court of the learned District Judge before preferring this application.

Heard the learned Advocates appearing for the respective parties.

This application has essentially been filed on the apprehension that the defendant/tenant may not receive a fair trial, since the learned Judge, in open court, commented that the application presented by the petitioner under Section 151 of the Code shall be dismissed. It is well settled that mere expression of opinion or queries made by the Presiding Officer during hearing of the case is not a ground for transfer.

It is unfortunate that recently a tendency has developed where allegations are routinely levelled against Presiding Officers of Subordinate Courts whenever they fail to obtain a favourable order. There is an impression that Presiding Officers of the District Courts are easy targets, and such allegations are made to pressure them into granting favourable orders. These irresponsible allegations, if entertained, can demoralize the Presiding Officer who is entrusted with the responsibility of discharging judicial functions impartially with favour or ill-will. If any party finds that their application, appeal, or other action has been rejected or not entertained, they can seek remedy before the higher forum. Allegations of bias, often without cogent or convincing evidence, are unfortunate and detrimental to the administration of justice. The Hon'ble Supreme Court, in the judgment of Anupam Ghosh (*supra*), has acknowledged this unfortunate tendency and criticized such practices.

Had there been any occasion warranting rejection of the plaint, the defendant/tenant was at liberty to file an application under Order 7 Rule 11 of the Code. In such a situation, the Court ought to have directed that the said application be taken up prior to any other application. However, after having filed an application under Sections 7(1) and 7(2) of the 1997 Act, and during the pendency of its hearing, the subsequent filing of another application under Section 151 of the Code, insisting that the latter be taken up first while keeping the earlier application pending, is indeed surprising. If, upon refusal of such a request, an allegation of

bias is levelled against the Presiding Officer, in my considered view, the same is wholly unwarranted and improper.

In this case, the petitioner has not argued that the suit should be transferred because, if tried by this court, the defendant/tenant or any witnesses called for deposition may face inconvenience. As noted previously, the application was presented on the ground that the defendant/tenant may not get a fair trial as the suit is being tried by a court with a preconceived or predetermined mindset. This allegation is supported only by a stray comment made in court. Mr. Basu, who personally appeared before that court, has vehemently opposed such contention and/or allegation.

In that view, I do not find any justified reason to direct the transfer of the suit to any other court. Accordingly, the application preferred by the petitioner under Section 24 of the Code of Civil Procedure is dismissed.

I have carefully gone through the decision cited by the petitioner, but the proposition laid down in that decision cannot be applied to the factual matrix of the present application.

There will be no order as to costs.

(ParthaSarathiChatterjee, J.)