

12.02.2025
DL.12
Court No.22
S. Gayen

CO 2962 of 2023

**Parijat Investments Limited
Versus
Anil Kumar Poddar & Ors.**

Mr. Probal Kumar Mukherjee, Sr. Adv.
Mr. Vinay Kumar Purohit
Mr. Pradeep Kumar Upadhyay
...for the Petitioner.

Mr. Anirban Roy
...for the Opposite Party No.1, 3 & 4.

Mr. Asim Kumar Roy
...for the Opposite Party No.5 & 6.

Mr. S. Banerjee
Mr. Sumalyo Ganguly
...for the Opposite Party No7.

1. Affidavit of service is taken on record.
2. The instant revisional application has been filed assailing the order dated 3rd April, 2023 passed in connection with Title Suit No. 813 of 2017, wherein learned Judge, 11th Bench, City Civil Court, Calcutta refused to entertain an application under Section 151 of the Code of Civil Procedure filed by the petitioner/defendant No.3 in the suit with a prayer for recording the surrender of his tenancy on and from 30th September, 2018 in favour of the defendant Nos. 1 and 2 in the suit.
3. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Judge refused to record the surrender of possession of

the portion of the suit property occupied by the defendant No.3 on the ground that it is a personal matter of the defendants and accordingly the prayer was refused.

4. Learned counsel appearing on behalf of the opposite party Nos. 1, 3 and 4, in his usual fairness, has submitted that the petitioner/defendant No.3 in the suit can surrender his portion of the suit premises, subject to the issue of mesne profit to be decided at the end of trial.
5. Learned counsel appearing on behalf of the opposite party Nos. 5 and 6/defendant Nos. 1 and 2 in the suit has submitted that he has no objection if the property occupied by the petitioner is surrendered in favour of the plaintiff as opposite party Nos. 5 and 6 are not in possession of that particular portion of the suit premises.
6. Learned counsel appearing on behalf of the opposite party No.7/defendant No. 4 in the suit has submitted that defendant No.4 is also willing to surrender his tenancy right now.
7. This suit was filed for recovery of possession in respect of suit premises occupied by the three sets of defendants. In course of trial an application under Order 40 Rule 1 of the Code of Civil Procedure was filed and it is pending before the

Trial Court and defendant No.3/petitioner herein also filed an application under Section 151 of the Code of Civil Procedure seeking permission to surrender his portion of tenancy in favour of the defendant Nos. 1 and 2. The learned Trial Judge refused to entertain that application in spite of no objection raised on behalf of the other sides and recorded that the surrender of possession of the suit property is a personal matter between the parties.

8. Having considered all the facts and circumstances of this case as well as having heard the learned counsels appearing on behalf of the parties to this revisional application, I find that learned Judge ought to have allowed permission to the defendant No.3/petitioner herein to surrender of his portion of tenancy i.e. the portion 'A' of the map annexed with the plaint as no objection was raised by other parties to the suit.
9. I have gone through the written objection filed by the plaintiffs/opposite party Nos. 1, 3 and 4 herein claiming surrender of the portion of the tenancy occupied by the defendant No.3/petitioner herein in favour of the plaintiffs/defendant Nos. 1, 3 and 4.
10. From the affidavit-in-reply to the written objection, the defendant No.3/petitioner herein also

expressed his willingness delineating a specific averment in paragraph 9 of the affidavit-in-reply that the defendant No.3/petitioner herein is ready to hand over the possession to such person as this learned Court might direct.

11. Considering all facts and circumstances discussed hereinabove, I find no reason for any Court to stand in the way of surrender a portion of tenancy occupied by the petitioner/defendant No.3 in the suit in favour of the plaintiffs/opposite party Nos. 1, 3 and 4 herein. Accordingly, this Court accords permission to the petitioner/defendant No.3 in the suit to surrender the portion of tenancy occupied by him in favour of the plaintiffs on and from 30th September, 2018.
12. Accordingly as a sequel the impugned order stands modified.
13. Liberty is given to the parties to appear before the learned Trial Court with regard to hand over of the key of the premises.
14. Liberty is also given to the opposite party No.7/defendant No.4 to file application before the learned Trial Court with regard to surrender of his portion.
15. With the aforesaid observations, the revisional application stands disposed of.

16. It is reported that the learned Trial Court is lying vacant. The process of surrendering the premises in favour of the plaintiffs by the defendant No.3/petitioner herein shall be taken up by the learned Judge-in-Charge of that Court.
17. Connected application, if any, also stands disposed of accordingly.
18. The learned advocate appearing on behalf of the petitioner is directed to intimate the order to the learned Trial Judge.
19. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.
20. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De, J.)