

Court No. 6
(265719)

CO 3215 of 2024

14.08.2025
(AD 9)
(S. Banerjee)

Sheak Md. Rejaul Karim @ Sk. Md. Rejaul Karim & Ors.
Vs.
Santanu Sanfui
CAN 1 of 2025

Ms. Sarmishtha Ghosh Sarma
...for the petitioners
Mr. Arpan Guha
...for the opposite party

This matter is appearing under the heading 'Extension of interim order'. However, the learned advocates for the respective parties were invited to make their submission on the merit of the main civil revision application. Accordingly, the learned advocates for the respective parties have advanced their argument on the merits of the main civil revision application.

In view thereof, the main civil revision application is taken up for final hearing with the consent of the learned advocates for the respective parties by treating the same as on the day's list.

This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against an order dated August 6, 2024 passed by the learned Additional

District Judge, Diamond Harbour in Misc. Appeal No. 34 of 2024 thereby reversing the order dated June 10, 2024 passed by the learned Civil Judge (Jr. Division), First Additional Court at Diamond Harbour in Title Suit No. 2 of 2024.

The opposite party herein filed a suit for declaration of tenancy right and for permanent injunction restraining the petitioners from creating any obstruction in the peaceful possession of the opposite party in respect of the suit shop room. Thereafter, the petitioners filed an application praying for mandatory injunction which stood rejected by the learned trial judge by an order dated June 10, 2024. Being aggrieved by such order, the opposite party preferred a Misc. Appeal being no. 34 of 2024.

The learned Additional District Judge, Diamond Harbour by an order dated August 6, 2024, allowed the misc. appeal thereby directing the petitioners to open the padlock put on the suit property and hand over possession of the same to the opposite party. Being aggrieved by such order, the defendants have approached this court by filing the instant application under Article 227 of the Constitution of India.

Ms. Ghosh Sarma, learned advocate appearing for the petitioners submits that the possession of the suit property was handed over to the petitioners and

since then the petitioners are in peaceful possession of the suit property. She further submits that suppressing such fact, the opposite party filed a suit praying for declaration of tenancy right and for permanent injunction. On an application filed by the opposite party praying for mandatory injunction, the learned trial judge after holding that the opposite party failed to prove that they were in possession as on the date of filing of the suit and was forcibly dispossessed therefrom during the pendency of the suit, dismissed the application for mandatory injunction. She further submits that the learned judge of the appellate court without considering the reasoning assigned by the learned trial judge while rejecting the application for mandatory injunction, allowed the prayer for mandatory injunction by a totally non-speaking order. She further submits that the prayer for mandatory injunction should not be allowed at an interlocutory stage and the same can be allowed only after the parties have led their evidences in support of their respective cases.

Learned advocate appearing for the opposite party submits that the opposite party was inducted as a tenant in respect of the property by the predecessor-in-interest of the petitioners. He further submits that immediately after the summons of the suit was served upon the petitioners, they have

forcibly put padlock on the door of the shop room thereby forcibly dispossessing the opposite party from the suit property. He further submits that after the opposite party was forcibly dispossessed from the suit property during the pendency of the said suit, the opposite party prayed for amendment of the plaint for incorporating the pleadings in support of their dispossession during the pendency of the suit and also prayed for incorporation of the relief of mandatory injunction. Such prayer for amendment was allowed by the learned trial judge. He further submits that the learned trial judge without taking into consideration the documents produced by the opposite party along with the application for mandatory injunction in support of their case that he was tenant in respect of the suit shop room since long and were in possession of the same as on the date of filing of the suit, rejected the prayer for mandatory injunction. He further submits that being aggrieved by such order, the opposite party preferred a miscellaneous appeal and the learned judge of the appellate court, upon being satisfied with the materials placed by the opposite party, allowed the prayer for mandatory injunction.

It is the case of the opposite party that the opposite party had taken the suit property on rent from the grandfather of the petitioners. The opposite

party was running the business from the shop room and upon payment of rent in respect of the shop room.

It is the case of the defendants/petitioners herein that the suit property was gifted to them by their grandfather by a deed being no. 1097 dated April 20, 1996. It is the further case of the petitioners that they approached the opposite party for increase of rent on September 24, 2023 and one meeting was held but no agreement could be reached and on September 24, 2023, the opposite party approached the local police station for settlement and then there was a written agreement between both the parties in presence of witnesses. It was agreed between the parties that the rent would be increased to Rs. 1,500/- per month from October 1, 2023 to September 30, 2025. It is the further case of the petitioners that subsequently the opposite party failed to comply with the terms of the agreement and thereafter the petitioners took possession of the suit property as the opposite party left the said premises as per their own free will.

After going through the pleadings of the respective parties, this court finds that the petitioners have admitted that the predecessor of the opposite party had taken the suit property on rent from their

grandfather. The petitioners have also accepted that on September 24, 2023, there was an agreement between both the parties in presence of witnesses for increase of rent for the period from October 1, 2023 to September 30, 2025. In view of such admitted fact this court is of the view that it is not in dispute that the opposite party was in possession of the suit shop room till September 24, 2023.

The petitioners have taken a specific stand that the opposite party has left the suit property out of free will and thereafter the possession of the suit shop room was taken by the opposite party.

On the other hand, it is the specific case of the opposite party that they were all along in possession of the suit shop room and only on January 25, 2024, i.e., during the pendency of the instant suit, the petitioners have put a padlock on the suit property.

Thus from the admitted facts it appears that the opposite party was possessing of the suit property as a tenant. The question that arises is how such tenancy right stood extinguished.

Though it has been alleged by the petitioners that the opposite party failed and neglected to pay rent in terms of the written agreement, it is well-settled that mere non-payment of rent does not

amount to relinquishment of tenancy right. A tenancy right can only be relinquished either by way of surrender by the tenant or by a decree for eviction being passed against the tenant in a proceeding instituted by the landlord before a competent court of law. No document has been produced by the petitioners herein in support of surrender of tenancy right of the opposite party to the landlord/petitioners herein. Thus, the tenancy right cannot be said to have been extinguished and/or relinquished in the case on hand.

This Hon'ble Court in the case of ***Indian Cable Company Ltd. -Vs.- Sumitra Chakrabarty***, reported in **AIR 1985 Cal 248** held that where the tenant had been in possession of the suit premises until a certain date and they were dispossessed, it is then obvious that on the date when the landlord took over possession of the suit premises, he/she know it very well that she had no right to do so during the continuance of the tenancy.

Since no document could be produced by the petitioners herein in support of their claim that the opposite party has surrendered their possession in respect of the suit shop room in favour of the petitioners, this court is of the considered view that

the petitioner could not prove that the tenancy right stood extinguished.

The learned trial judge while rejecting the prayer of mandatory injunction shifted the onus upon the opposite party herein to show payment of rent and drew an adverse inference against the opposite party herein. This court has already held that mere non-payment of rent does not amount to relinquishment of tenancy right. That apart, the petitioners failed to produce any document to show that the possession of the suit shop room was surrendered by the opposite party in favour of the petitioners.

It is well settled that a person can be dispossessed from an immovable property without due process of law.

The learned judge of the appellate court after noting the admitted fact that the opposite party was in possession of the suit shop room also recorded that sufficient documents have been produced by the opposite party in support of their tenancy right.

Such factual finding could not be controverted by the learned advocate for the petitioner in course of her argument.

In view of the aforesaid discussion, this court holds that the learned judge of the appellate court

was right in allowing the prayer for mandatory injunction.

For all the reasons as aforesaid, this court is not inclined to interfere with the order impugned. Accordingly, CO 3215 of 2024 stands dismissed.

In view of the order passed in the main civil revision application, no order need be passed in the application, being CAN 1 of 2025, and the same accordingly stands dismissed.

(Hiranmay Bhattacharyya, J.)