

20.01.2026
Ct. No. 30
S.L. No. 40
SM

CO 2175 of 2023
Amitava Mukherjee
Versus
Ashok Kanjilal & Ors.

Mr. Chiranjib Sinha
Mr. Dyutiman Banerjee
.....for the petitioner

1. The revisional application has been preferred against an order dated 16.05.2023 passed by the learned Civil Judge(Senior Division), 4th Court at Alipore, in Ejectment Suit No. 13 of 2020.

2. Vide the order under challenge the Trial Court held as follows.

“On perusal of the record, it appears to me that the instant suit filed for eviction of trespasser, damages and mesne profit and from the plaint it appears to me that present defendants have been inherited the tenancy of the suit property from his, Bimal Chandra Kanjilal, who was died on 09-04-1997. But, at this stage, it cannot be decided that the 7(2) is not maintainable,

*So, at this stage, both the petitions, i.e., petition of 7(2) of WBPT Act and petition u/s 151 of CPC for maintainable of the petition 7(2), will be decided at the time of final hearing after taking off evidence. **Hence, both petitions are kept in abeyance till final hearing of the suit.***

Fix 19.06.2023 for hearing petition u/s 151 CPC filed by the plaintiff on 14.01.2022 for occupational charge.”

3. Learned counsel for the petitioner has relied upon a judgment of a Co-ordinate Bench reported in **2023 SCC Online Cal 927 Jugal Kisor Das Naskar versus Dilip Das & Anr.**

4. Considering the materials on record and the issue raised in the present revision it appears that the petitioner’s suit for eviction is not under the West Bengal Premises Tenancy Act, 1997.

5. It is the petitioner’s case that in case during trial, it appears that the suit not having been filed under the WBPT Act is not maintainable, it is the petitioner who shall suffer the order and decree but the petitioner cannot be made to suffer any proceedings which are not applicable in respect of the suit filed by the plaintiff/petitioner herein.

6. It is thus submitted that the said applications being kept pending is not in accordance with law and the said order is liable to be set aside.

7. Admittedly, the suit before the Trial Court is a suit eviction of a “trespasser” on the grounds therein and the suit has not been filed under the West Bengal Premises Tenancy Act.

8. As such the impugned order dated 16.05.2023 is not in accordance with law and is thus set aside. The applications under Section 7(2) and under

Section 151 CPC being not applicable in a suit for eviction of a trespasser being not maintainable are rejected.

1. Trial Court is directed to proceed expeditiously with the suit as filed.
2. **Civil Revision stands disposed of.**
3. Applications, if any, connected thereto stand disposed of consequently.
4. Interim order, if any, stands vacated.
5. Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[Shampa Dutt (Paul). J]