

05.01.2026
Ct. No. 30
M/L No. 95
SM

CO 3312 of 2022
Ashoke Naskar
Versus
Baleshwar Shaw

Mr. Manas Kumar Das
Mr. Aritra Kumar Thokdar
.....for the petitioner
Mr. Md. Farhaduddin
Mr. Shabbir Yazdani
.....for the respondent

1. The revisional application has been preferred challenging an order dated 29.04.2019 passed by the learned Civil Judge (Junior Division), 6th Court, Alipore in T.S. No. 32 of 2008.

2. Vide the order under challenge the learned Trial Court was pleased to reject the plaintiff/petitioner's prayer challenging the maintainability of the applications under Section 7(1) and 7(2) of the WBPT Act filed by the defendant/opposite party herein on the ground as follows:-

"The record shows that already evidence of the defendant as the P.W. 1 in connection with the application under Section 7(2), WBPT Act had commenced on 05.09.2010 and continued on several dates till it was deferred on 01.09.2011. In such a situation, there is found no reason to delay the trial of the matter anymore.

To 15.07.2019 for further cross examination of the P.W. 1/defendant in connection with the application under Section 7(2), WBPT Act."

Sd/-
Civil Judge (Jr. Div.)
6th Court, Alipore

3. Learned counsel for the plaintiff/petitioner submits that he had challenged the maintainability of the said application on the ground that the title suit before the Trial Court is a suit for eviction filed under Section 106 of the Transfer of Property Act and as such it is submitted that in a suit filed under the provisions of Transfer of Property Act, applications under the West Bengal Premises Tenancy Act is not maintainable.

4. On perusal of the copy of the plaint annexed to the revisional application it appears that the plaintiff/petitioner herein has acquired his right/title in the suit property by way of gift on execution of a gift deed by his grandmother the original owner/landlord and has taken delivery of possession being the owner of the suit property.

5. The defendant on the impression that the plaintiff, on transfer by way of gift has become the owner and also the landlord in respect of the suit property, filed the application under Section 7(1) and 7(2) of the WBPT Act.

6. The suit for eviction in this case was filed on the ground that the defendant/opposite party herein is a defaulter in payment of rent and other grounds.

7. Section 2(c) of the West Bengal Premises Tenancy Act, 1997 defines “landlord” as follows.

“(c)“landlord” includes any person who, for the time being, is receiving, or is entitled to receive, the rent for any premises, whether on his own account or on account of, or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant;

8. Now, considering the definition of the term “landlord” and the fact that the plaintiff/petitioner herein received rent from the defendant/opposite party herein, up to April, 2007 on having been gifted the suit property by way of a gift deed on 21.03.2002, it appears that the petitioner/plaintiff has accepted rent from the defendant/opposite party, prima facie accepting them as ‘tenants’.

9. Admittedly, the defendant/opposite party was a monthly tenant in respect of the suit property under the grandmother of the plaintiff/petitioner and on transfer by way of gift in 2002, the petitioner has also accepted/received rent till April, 2007.

10. It appears that the plaintiff/petitioner has chosen to file the suit under the Transfer of Property Act and not under West Bengal Premises Tenancy Act for reasons best known to the plaintiff/petitioner.

11. But considering the facts on record it appears that prima facie the plaintiff/petitioner herein appears to meet the requirements of the definition of the term “landlord” and as such **the maintainability of the suit as to whether it has been filed under the appropriate Act is also to be looked into by the Trial Court.**

12. Considering the fact that the defendant/opposite party is continuing to deposit rent as per the order of the Trial Court, this Court at this stage is not inclined to interfere with the order under revision, but directs the trial Court to decide the maintainability of the suit in view of the observations made by this Court in this order.

13. It is directed that the maintainability of the application which has been challenged by the plaintiff/petitioner herein will be subject to the decision of the Trial Court, who shall first decide on the maintainability of the suit in view of the observation of this Court.

14. The revisional application is accordingly disposed of with the direction that the Trial Court shall make all endeavour to decide the maintainability of the suit preferably within one month from the date of communication of this order, on hearing both the parties and by passing a reasoned order in accordance with law.

15. **CO 3312 of 2022 is disposed of.**

16. Applications, if any, connected thereto stand disposed of consequently.

17. Interim order, if any, stands vacated.

18. 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]