

(1999) 04 CAL CK 0040
In the Calcutta High Court

Case No : Civil Revisional Jurisdiction, C.O. No. 340 of 1999

Bengal Non-Ferrous Metal Industries

APPELLANT

Vs

Smt. Mohini Todi and Others

RESPONDENT

Date of Decision : 04-04-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Transfer of Property Act, 1882 — Section 106

West Bengal Premises Tenancy Act, 1956 — Section 13, 17, 17(2)(2A)

Citation : (1999) 2 CALLT 469

Hon'ble Judges : Dibyendu Bhusan Dutta, J

Bench : Single Bench

Advocate : Mr. Utpal Bose and Mr. P.K. Jhunjunwala, for the Appellant; Mr. Subhra Kamal Mukherjee, Mr. Gautam Ray and Mr. Pradip Kr. Sarangi, for the Respondent

Judgement

D.B. Dutta. J.

1. The present application u/s 115 of the CPC is directed against order No. 373 dated 20th November, 1998 passed by the learned Civil Judge, Sr. Division. 2nd Court, Howrah in Title Suit No. 73 of 1989. It was a suit for recovery of khas possession upon determination of a tenancy u/s 106 of the Transfer of Property Act. The suit was not instituted on any of the grounds referred to in section 13 of the West Bengal Premises Tenancy Act. The original defendant on filing a written statement contended, inter alia, that the tenancy is governed by the provisions of the West Bengal Premises Tenancy Act and not by the provisions of the Transfer of Property Act. An application u/s 17(2)(2A) of the West Bengal Premises Tenancy Act was filed on behalf of the defendant. Subsequently the original defendant died and the present respondents/opposite parties were brought on record as his heirs and legal representatives. The application u/s 17(2)(2A) of the West Bengal Premises Tenancy Act was being resisted by the plaintiff/petitioner on the basis of a written objection wherein the plaintiff/petitioner has specifically urged that the said application was not maintainable.

and was liable to be rejected in limine, particularly in view of the fact that the suit was apparently one instituted not on any of the grounds referred to in section 13 of the West Bengal Premises Tenancy Act. Eventually the trial court proceeded with the hearing of the application u/s 17(2)(2A) of the West Bengal Premises Tenancy Act and even proceeded to take evidence in support of the application. The plaintiff/petitioner did also take part in the cross-examination of the witness that was examined on behalf of the respondents/opposite parties in support of their application u/s 17(2)(2A) of the West Bengal Premises Tenancy Act. The plaintiff/petitioner at that stage of the hearing came forward with a separate application praying for summary rejection of the application u/s 17(2)(2A) of the West Bengal Premises Tenancy Act on the self same ground of non-applicability of the provisions of sections 17 of the West Bengal Premises Tenancy Act to the suit as framed. By the Impugned order, the learned trial court rejected that petition with the observation that it was very difficult to hold at that stage without framing any issue and taking necessary evidence on the point as to whether the suit would be governed under T.P. Act or West Bengal Premises Tenancy Act. It appeared to the learned Judge that the said question could be decided at the time of conclusion of the trial as the same was. In his view, a mixed question of law and facts. Subsections (2) and (2A) of section 17 are evidently applicable only to a suit or proceeding referred to in sub-section (1) and sub-section (1) of section 17 of the West Bengal Premises Tenancy Act begins with the expression "on a suit or proceeding being instituted by the landlord on any of the grounds referred to in section 13". If one goes by the averments made in the plaint as a whole, one cannot argue that it was a suit instituted on any of the grounds referred to in section 13 of the West Bengal Premises Tenancy Act. In order to ascertain the fact that it was not a suit instituted on any of the grounds referred to in section 13 of the West Bengal Premises Tenancy Act, one was not required to go into the evidence. It is apparent on the face of the plaint itself. In case the suit is governed by the West Bengal Premises Tenancy Act and not by the provisions of the Transfer of Property Act, the plaintiff has run the risk of going out of the court. Evidently, institution of a suit or a proceeding by the landlord on any of the grounds referred to in section 13 of the West Bengal Premises Tenancy Act is sine qua non for applicability of the provisions of section 17. Since it is apparent on the face of the plaint that it was not a suit or proceeding instituted on any of the grounds referred to in section 13, the question of applicability of section 17 of the West Bengal Premises Tenancy Act could not arise at all. Obviously the application u/s 17(2)(2A) was not entertainable in the suit as it has been framed. That being so, it will be futile exercise on the part of the learned Judge to proceed to take evidence in support of the application u/s 17(2)(2A) of the West Bengal Premises Tenancy Act. In order to arrest further delay and in the interest of justice it is considered expedient to make it clear at this stage in exercise of this court's Jurisdiction u/s 115 of the CPC that the application u/s 17(2)(2A) is not maintainable and does not merit any consideration at all. In the circumstances, the said application is liable to be rejected. The learned trial

Judge is directed to proceed with the hearing of the suit as expeditiously as possible taking it to be a suit governed by the provisions of the Transfer of Property Act.

2. It is hereby made clear that this court has not expressed any opinion as to whether the tenancy is governed by the provisions of the West Bengal Premises Tenancy Act or of the Transfer of Property Act. I have directed summary rejection of the application u/s 17(2)(2A) of the West Bengal Premises Tenancy Act only because of the fact that the suit as framed is not one instituted on any of the grounds referred to in section 13 of the West Bengal Premises Tenancy Act.

The revisional application is accordingly disposed of.

3. Application disposed of