

(2013) 11 CAL CK 0031
In the Calcutta High Court
Case No : C.O. No. 3448 of 2013

Chhabi Sadhu and Another	Vs	APPELLANT
Smt. Rina Saha and Another		RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2013) 11 CAL CK 0031

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Shaktinath Mukherjee, Mr. Bhaskar Ghosh and Mr. A.K. Samanta, for the Appellant; Probal Kr. Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—Challenge is to the order dated July 19, 2013 passed by the learned additional District Judge, Sealdah in Ejectment Appeal No. 62 of 2011 thereby rejecting an application dated December 15, 2011 filed by the appellants/petitioners herein. The plaintiffs/respondents/opposite parties herein instituted an ejectment suit being Ejectment Suit No. 1 of 2007 against the petitioners for recovery of possession and other consequential reliefs before the learned Civil Judge (Senior Division), Sealdah.

2. In that suit the petitioners entered an appearance and filed an application raising the question of non-maintainability of the said suit. That application was rejected by the learned Trial Judge and then an appeal was preferred against the said order before the Land Tribunal as per provisions of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997. But the said appeal was returned to the concerned District Judge in view of the amendment of the said Act of 1997 subsequently. The appeal was then transferred to the learned Additional District Judge, Sealdah for decision and then the petitioners filed an application for withdrawal of the appeal for the purpose of re-filing a revisional application. That application was rejected by the impugned order. Being aggrieved, this application has been preferred.

3. Now, the question is whether the impugned order should be sustained.

4. Mr. Shaktinath Mukherjee, learned Senior Advocate appearing for the petitioners has contended that while passing the impugned order, the learned Appellate Court has not taken into consideration the amended provisions of 1997 Act and since the question of maintainability of the suit was raised, the impugned order is not an appealable one, but, revisable and as such the appropriate remedy of the petitioners lies by taking a recourse under the provisions of Article 227 of the Constitution of India. Thus, he has contended that the learned Appellate Court should have allowed the appellants to withdraw the appeal with permission to file a revision under Article 227 of the Constitution of India and so, the impugned order cannot be sustained.

5. On the other hand, Mr. Probal Kr. Mukherjee, learned Advocate appearing for the opposite parties has contended that since the matter went to the concerned Land Tribunal as an appeal and as per existing law, it was returned to the learned District Judge for hearing of the said appeal, there is no illegality in rejecting the prayer of the appellants/petitioners herein. Thus, he has supported the impugned order.

6. Upon due consideration of the materials on record, I find that the petitioners had wanted to withdraw the appeal from the concerned 1st appellate Court with a prayer to re-file a civil revision and that application was rejected by the learned 1st appellate Court holding that in view of the provisions of Section 43A of the West Bengal Premises Tenancy Act, 1997 the appeal is quite maintainable.

7. Moreover, the appeal was preferred by the appellants in view of the specific provisions of the 1997 Act at the relevant time and then the order of transfer was passed as per the then existing law. As such, the question of giving permission to withdraw the appeal and to file a revision against the order impugned before the Hon"ble Court did not arise at all.

8. It is pertinent to record here that the appeal before the Land Tribunal was filed against the order dated March 19, 2009, and that was permissible as per the then existing law. There is a deeming clause in Section 4 of the West Bengal Premises Tenancy (Amendment) Act, 2010 in respect of anything done or any action taken or purported to have been taken or done under the principal Act for the period from July 10, 2001 to September 1, 2010.

9. In my view, since the Section 43A of the West Bengal Premises Tenancy Act, 1997 Act had been incorporated w.e.f. September 1, 2010, i.e., subsequent to the appeal preferred by the appellants and such an appeal had been transferred as per the then existing Act of 1997, the learned 1st Appellate Court, has rightly addressed the issue. Accordingly, in my view, the impugned order should be sustained and that there is no scope of interference with the same.

10. Therefore the application is dismissed.

11. Considering the circumstances, there will be no order as to costs. Urgent

xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.