
(2019) 08 CAL CK 0153

In the Calcutta High Court

Case No : Civil Order/Misc.Cas (CO) No. 2629 Of 2019

Kayan Oil & Nut (India) Private Limited

APPELLANT

Vs

Al Burhan Engineering Company Private Limited

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

West Bengal Court-Fees Act, 1970 — Section 7(xiii), 7(xiii)(d)
Code Of Civil Procedure, 1908 — Section 2(12), Order 2 Rule 4, Order 7 Rule 11
West Bengal Premises Tenancy Act, 1997 — Section 6, 12A

Citation : (2019) 08 CAL CK 0153

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Deepnath Roy Chowdhury, Mudrika Khaitan, Probal Kumar Mukherjee, Debjit Mukherjee, A. Z. Mondal, Shahnaz Parveen

Final Decision : Dismissed

Judgement

Sabyasachi Bhattacharyya, J

The defendant in an eviction suit under the West Bengal Premises Tenancy Act, 1997 has preferred the instant revisional application against an order of refusal of the defendant's prayer for return of plaint, wrongly captioned to be under Order VII Rule 11 of the Code of Civil Procedure, by the trial court.

The learned advocate appearing on behalf of the defendant/petitioner argues that the plaintiff overvalued the suit and resorted to forum-shopping by approaching the City Civil Court at Calcutta instead of the Small Causes Court at Calcutta, thereby depriving the petitioner of a forum of appeal.

It is argued by the learned advocate for the petitioner that the suit was primarily for recovery of possession under the 1997 Act and, as such, ought to be valued according to the provisions of Section 7(xiii)(d) of the West Bengal Court-fees Act, 1970. It is submitted that clause (xiii) of the said Section contemplates in an omnibus manner all disputes between the landlord and tenant and, as such, also

included a suit of the present nature, which also incorporated reliefs of mesne profits and arrears of rent along with ejectment. Accordingly, it is submitted that the trial court ought to have returned the plaint to be filed before the proper forum.

The learned senior advocate appearing on behalf of the plaintiff/opposite party argues, by placing reliance on Section 12A, read with schedule IV, of the West Bengal Premises Tenancy Act, 1997, which contemplate in conjunction, that a suit for recovery of possession of any premises under the 1997 Act has to be filed in a court stipulated in schedule IV of the said Act, which, in the present case, was the City Civil Court at Calcutta, since the suit was valued between Rs. 60,000/- (rupees sixty thousand) and Rs. 10,00,000/-(rupees ten lakh).

The learned senior advocate for the opposite party further places reliance on a judgment of a division bench of this court in the case of *Steelco Syndicate vs. Sashi Prasad Goenka* reported at (2011) 2 C.H.N. 687, wherein it was held, relying on a case of *Nandita Bose vs. Ratanlal Nahata* reported at A.I.R. 1987 S.C. 1947, that if the mesne profits/damages along with the recovery of possession are claimed, it was not for the court to prejudge the issue as to the quantum of such mesne profits at the stage of deciding whether the suit was valued properly or not and the same would be decided at the time of hearing of the suit. As such, the question of overvaluation/undervaluation of the suit could not hinge on a premature examination of the actual quantum of mesne profits to which the plaintiff was entitled.

The learned senior advocate for the opposite party next cites a judgment of a co-ordinate bench of this court in the case of *Kamakhya Singhdeo vs. Modula India* reported at (2008) 3 Cal. L.T. 562 (H.C.), wherein it was held that a landlord in a suit for recovery of possession under the West Bengal Premises Tenancy Act, 1956 could legitimately add to the amount calculated on the basis of twelve months rent, the amount claimed by him on account of past mesne profits or damages, by whichever expression he describes it. The damages claimed by the plaintiff at the reasonable letting out value of the suit premises, alleging that by remaining in wrongful possession of the property, the defendant became liable to pay the amounts, which are nothing but mesne profits within the meaning of Section 2(12) of the Code of Civil Procedure. As such, the learned Single Judge sanctioned the clubbing of mesne profits with eviction for the purpose of ascertaining the valuation of the suit property in the said reported case.

The third judgment cited by the learned senior advocate for the opposite party is the case of *Modula India vs. Kamakhya Singhdeo* reported at (2014) 2 C.L.J. 448, wherein a division bench of this court held, inter alia, that in view of settled principles of law, the plaintiff need not obtain any leave under Order II Rule 4 of the Code of Civil Procedure to club the claim of damages as well as the mesne profits along with the prayer for recovery of possession.

Upon a consideration of the submissions of both sides and on a plain reading of

Section 7(xiii) of the West Bengal Court-fees Act, 1970, it appears that the said provision relates to disputes between landlord and tenant, but not in an omnibus manner. The specific disputes contemplated under the said clause are enumerated in sub-clauses (a) to (g) of the same. A suit for recovery of immovable property from a tenant is contemplated in sub-clause (d) of clause (xiii) of Section 7 of the said Act, which stipulates that the court-fees therefor (which regulates the valuation as well) has to be the rent payable for one year immediately preceding the date of presenting the plaint.

It is well-settled that a suit has to be valued on the primary relief and not on consequential reliefs.

In the present case, the three reliefs sought in the suit, being those of recovery of possession, claims of arrear rents and mesne profits consequential upon unlawful continuance of the tenants on the suit premises, can be dissociated with each other. Although the claim of mesne profits is dependent on the relief of recovery of possession, it has been held consistently by this court, as in the judgments cited on behalf of the opposite party, that a claim for mesne profits can be clubbed in a suit for recovery of possession, even under a special statute, such as, the West Bengal Premises Tenancy Act, 1956, which was the predecessor statute of the present statute of 1997 under which the present suit has been filed.

As far as the claim of arrears of rent is concerned, since the court deciding a suit for eviction under Section 6 of the 1997 Act has been held to be a civil court by a line of successive decisions of this court, it cannot be said that the civil court is precluded from entertaining a prayer for arrears of rent, even if clubbed with the prayer for eviction under the 1997 Act.

In such view of the matter, the claims of recovery of possession and for recovery of arrear rents, on the basis of which the suit has been valued conjointly, have to be treated as independent reliefs and not reliefs consequential upon each other. Hence, the present suit is not circumscribed merely by the provisions of Section 7(xiii)(d) of the West Bengal Court-fees Act, 1970 but has a wider scope and, as such, the plaintiff was justified in evaluating the suit on the basis of the claims made therein.

It is further perused from a plain reading of the plaint that sufficient objective basis for such valuation, even as regards the mesne profits and arrears of rent, was made out in the plaint, to satisfy the test that the plaint was not demonstratively overvalued ex facie.

As such, the trial court was justified in rejecting the application of the petitioner.

Accordingly, the revisional application bearing C.O. 2629 of 2019 is dismissed on contest.

There will be no order as to costs.

Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of dns putting in the requisites.