

CIVIL REVISION

Present : The Hon'ble Mr. Justice Prasenjit Mandal

Judgement On: August 23, 2010.

C.O. No. 866 of 2008

Panchanan Roy.

Versus

Bimal Krishna Dutta and Ors.

Points:

Scope of Revision - Whether revision lies if there is no miscarriage of justice- Constitution of India-Article 227

Fact:

The predecessor-in-interest of the defendant was a tenant under the plaintiff/landlord and the plaintiff/landlord filed an Ejectment Suit against the predecessor of the defendant and in that suit, the tenant got the benefit of Section 17(4) of the West Bengal Premises Tenancy Act, 1956. Thereafter, the plaintiffs/landlord filed present suit on the ground of default for the second time. The defendant appeared and filed application under Section 17(2) of the said Act of 1956 and that application was disposed of on 26.03.2007 directing the defendant to deposit arrears of rent along with. The defendant has contended that he made deposits with the rent controller and thereafter he made the deposits in court but the learned Trial Judge has held that all such deposits were invalid.

Held:

From the papers filed by the petitioner, it cannot be ascertained that they have made any deposit in compliance with the order passed by the learned Trial Judge. In fact, save and except the order impugned the applicant has not filed any other papers in support of his application. This being the

position, on perusal of the order impugned, Court is of the view that the petitioner has failed to show that the miscarriage of justice has been occasioned by passing the impugned order. In such a situation, according to the decision reported in (2009) 5 SCC 616 para 13 court shall not interfere with the order impugned. Paras 3 and 4.

Case cited:

(2009) 5 SCC 616

For the Petitioner: Mr. Shyamal Chakraborty,
Mr. S. K. Bose.

For opposite parties: Mr. Haradhan Banerjee.

Prasenjit Mandal, J.: This application is at the instance of the defendant/petitioner and is directed against the order no.185 dated March 26, 2007 passed by the learned Judge, Third Bench, Small Causes Court, Calcutta acting as Additional Controller – III in Ejectment Suit No.1585 of 2000 thereby disposing an application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956.

2. The short fact is that the plaintiff/opposite party filed the suit for ejectment on the ground of default against the predecessor-in-interest of the defendant/petitioner in the year of 1971. At that time, the father of the defendant got the benefit of Section 17(4) of the West Bengal Premises Tenancy Act, 1956. Subsequently, the defendant/petitioner became defaulter in payment of rent for the subsequent period and for that reason the plaintiff/opposite party filed the suit for ejectment. In that suit, the defendant appeared and filed an application under Section 17(2) of the West Bengal

Premises Tenancy Act, 1956. That application was disposed of by the impugned order holding that the defendant was a defaulter in payment of rent to the extent of Rs.8,162/- including statutory interest. The defendant was directed to deposit the said amount to the credit of the plaintiff within 60 days from the date of the order. The defendant was also directed to make payment for the current months within 15 of every month. Being aggrieved by the said order, this application has been preferred.

3. Admittedly, the predecessor-in-interest of the defendant, namely, Probodh Ch. Roy, was a tenant under the plaintiff/landlord and the plaintiff/landlord filed an Ejectment Suit No.741 of 1997 against the Probodh Ch. Roy and in that suit, Probodh Ch. Roy got the benefit of Section 17(4) of the West Bengal Premises Tenancy Act, 1956. Thereafter, the plaintiffs/landlord filed another suit on the ground of default for the second time. In that suit, the defendant appeared and filed application under Section 17(2) of the said Act of 1956 and that application was disposed of on 26.03.2007 directing the defendant to deposit a sum of Rs.8,162/- as arrears of rent along with interest within 60 days from the date of the said order. The defendant was also directed to deposit the current rent month by month within 15 days of every month. The defendant has contended that he made deposits with the rent controller and thereafter he made the deposits in court but the learned Trial Judge has held that all such deposits were invalid. From the papers filed by the petitioner, it cannot be ascertained that they have made any deposit in compliance with the order passed by the learned Trial Judge. In fact, save and except the order impugned the applicant has not filed any other papers in support of his application. The learned Advocate for the petitioner has filed one short notes and matters on record

simply meaning the dates and certain events but these are not all supported by any document.

4. This being the position, on perusal of the order impugned, I am of the view that the petitioner has failed to show that the miscarriage of justice has been occasioned by passing the impugned order. In such a situation, according to the decision reported in (2009) 5 SCC 616 para 13 court shall not interfere with the order impugned.

5. Therefore, I am of the view that this application is meritless.

6. Accordingly, this application is dismissed.

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

(Prasenjit Mandal, J.)