

CIVIL REVISION

Present :

The Hon'ble Mr. Justice Prasenjit Mandal

Judgement On: August 23, 2010.

C.O. No. 3234 of 2009

With

CAN No.8948 of 09

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. Plaintiff filed an application under Section 17(3) of the said Act of 1956 and Trial Court allowed the said application.

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 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 and is directed against the order no.205 dated May 2, 2009 passed by the learned Chief Judge, Small Causes Court, Calcutta in Ejectment Suit No.1585 of 2000 thereby allowing the application under Section 17(3) 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 one, Probodh Chandra Roy. The said Probodh Ch. Roy got the benefit under Section 17(4) of the West Bengal Premises Tenancy Act, 1956. Thereafter, the plaintiff no.1 instituted the present suit against the defendants who are the heirs of Probodh Ch. Roy.

The defendants appeared in the suit and filed an application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956. Before appearance, they paid rents to the landlord and thereafter on refusal to accept rent on the part of the landlord, they deposited the rent with the rent controller in accordance with law. They are paying the current rent in the court regularly. But the said application under Section 17(2) of the West Bengal Premises Tenancy Act, 1956 was disposed of directing the defendants to deposit an amount of Rs.8,162/- as arrears of rent within 60 days from the date of the order. For non-compliance of the said order, the plaintiff filed an application under Section 17(3) of the West Bengal Premises Tenancy Act, 1956 and that application was also allowed. Consequently, the defence against the delivery of possession has been struck out. Being aggrieved by the said order, the defendant has preferred this application.

3. Admittedly, the predecessor-in-interest of the defendants, 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 defendants 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. The petitioner has also filed a CAN application No.8948 of 2009 praying for condonation of delay of 33 days in filing this revisional application. Though this petition is with the record, it is not moved before me for condonation of delay. However, as per above observations, I am dismissing the application, so, this Can application has become infructuous and it also stands dismissed.

8. 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.)

