

Ej. Suit No. 55 of 2022
CNR No. WBPS01-000074-2022

Order No. 18
Dated 05.01.2024

Today is fixed for hearing in regard to the application under Section 7(1) & 7 (2) of the West Bengal Premises Tenancy Act (hereinafter shortened as the WBPT Act) filed by the defendant no. 2 on 21.04.2023.

The plaintiff and defendant no. 2 is represented through their Ld. Advocate. The suit is already running exparte against defendant no. 1 vide order dated 06.06.2022.

This is a suit for eviction filed u/s 6 of the WBPT Act, 1997. The plaintiff has claimed to be the landlord in respect of the **suit property/premises i.e. flat no. 7 at premises no. 6 A.K., Md. Siddiqui Lane, Kolkata - 700016** wherein the **status of the defendant no.-1 namely Shabbir H.N. Tajjania** has been coloured as the premises tenant at a monthly rental of Rs. 315/- payable according to English Calendar. Plaintiff has alleged that the defendant is liable to be evicted from the tenanted property on various grounds available under the WBPT Act, 1997. However, **defendant no. -2 namely Nazia Parvin** got herself added as a party defendant on account of having interest in the tenanted premises vide order dated 20.04.2022.

The defendant no.2 though entered her appearance in this suit on 11.03.2022 and got herself added on 20.04.2022, she filed applications under Section 7 (1) & 7(2) of the WBPT Act, 1997 on 21.04.2023.

Now in presence of both sides the petition u/s 7(1) & 7(2) of the WBPT Act, 1997 is taken up for hearing.

The added defendant no. 2 namely Nazia Parvin by filing applications u/s 7(1) & 7(2) of the WBPT Act, 1997 specifically submits that the plaintiff is not the landlady/owner of premises no. **5AK, Md. Siddiqui Lane, Kolkata – 700016** of which the defendant no.-2 is a lawful tenant for which he is willing to deposit rent before this Court in respect of one tenanted flat situated at premises **5 A.K., Md. Siddiqui Lane, Kolkata – 700016 (emphasis given).**

The defendant no.-2 further submitted that premises no. **5 A.K., Md. Siddiqui Lane, Kolkata – 700016** and suit premises no. **6 A.K., Md. Siddiqui Lane, Kolkata – 700016** are undivided property situated in the same building though

two premises number has been given by KMC in respect of a single building. It is also stated that one Md. Aslam is the landlord of the defendant no. -2 and not the plaintiff and accordingly the defendant no. -2 has prayed for passing necessary order for determination of the arrear of rent if any due by the defendant in terms of provision of Section 7(2) of the WBPT Act, 1997.

The defendant no. -2 has filed photocopy of a plaint being T.S. No. 57 of 2019 and photocopy of rent receipt dated 10.08.2018.

The plaintiff has raised vehement objection against the application filed u/s 7(1) & 7(2) of the WBPT Act, 1997 by specifically stating that the defendant no. 2 has no locustandi to bring the above applications as he is not a tenant under the plaintiff and accordingly plaintiff has prayed for rejection of the above applications with exemplary cost for causing undue delay and harassment to the plaintiff.

I heard both sides.
Perused the materials on record.
Considered.

At the very outset, it is worthy to mention that this is a suit for eviction filed under the provision of Section 6 of the West Bengal Premises Tenancy Act, 1997 and it is to be only seen whether there exists landlord/tenant relationship between the parties and whether the landlord is entitled to get eviction of the tenant on the grounds mentioned by him in the plaint and nothing more and it is only two parties viz., the landlord and the tenant who are required for the maintenance of the instant suit and no one else. Needless to say, if the plaintiff fails to prove the above facts, the suit will not succeed **[2018 (2) ICC 495 (SC) relied on]**.

In the present case, the plaintiff has specifically claimed that he is the landlord of the suit premises i.e. flat no. 7 at premises no. **6 A.K., Md. Siddiqui Lane, Kolkata – 700016** and the plaintiff has filed a series of counterpart of rent receipts with regard to the above premises from which it is found that the plaintiff is the landlord of the suit premises (the question of title of the plaintiff becomes irrelevant under the present Act of 1997 and only the landlordship is to be considered) and defendant no. -1 Shabbir H.N. Tajjania is a tenant therein.

Defendant no. 2 has nowhere stated in her application u/s 7(1) & 7(2) that she is a tenant in respect of suit premises no. **6 A.K., Md. Siddiqui Lane, Kolkata – 700016** but she has all along claimed to be a tenant in respect of **non-suit premises no. 5 A.K., Md. Siddiqui Lane,**

Kolkata – 700016 under one Md. Aslam and the photocopy of the rent receipt filed by the defendant also relates to non-suit premises no. **5 A.K., Md. Siddiqui Lane, Kolkata – 700016** and not to the suit premises.

Though, the photocopy of the plaint of T.S. No. 57 of 2018 shows that a suit has been filed by the present plaintiff against defendant no. 2 as well as defendant no. 1 with regard to the suit premises but it is nowhere found in the said document that the plaintiff has admitted present defendant no.02 as a tenant but specific allegation has been made by the plaintiff against the defendant no.-02 of the instant suit as a trespasser in the suit premises and the same is not matter of adjudication under the present suit.

As per Section 7(1) & 7(2) of the WBPT Act, 1997 only a lawful tenant can bring such application in a suit initiated against him by the landlord u/s 6 of the WBPT Act, 1997 and no one else.

But in the present case the defendant no. 2 has not come up with any cogent document to establish his tenancy right in the suit premises and no landlord-tenant relationship is found between the plaintiff and defendant no. -2 with regard to the suit premises i.e. premises no. **6 A.K., Md. Siddiqui Lane, Kolkata – 700016**. Accordingly, in my considered view the application filed by the defendant no.-2 u/s 7(1) & 7(2) of the WBPT Act, 1997 is not maintainable in the eyes of law, and, as such, the same are required to be rejected by this Court.

Hence, it is,

ORDERED

That the applications under Section 7(1) & 7(2) of the WBPT Act on filed by the defendant no. 2 on 21.04.2023 are considered and rejected on contest but without cost.

The defendant no. 2 also filed another application today seeking necessary action to be taken against the plaintiff for violating the order dated 28.02.2023 passed by the Ld. Chief Judge, PSC Court, Calcutta.

However, at the time of hearing the Ld. Advocate for the defendant no.-2 failed to ascertain under which provision of law such petition has been filed and what kind of action has been sought for by the defendant no.-2 and accordingly an application seeking time has been filed by the defendant no. -2 in order to enable the defendant to proceed with the said hearing.

Considering the grounds made out, the adjournment petition stands allowed after noting objection from the side of the plaintiff.

To **07.03.2024** for hearing of petition dated 04.01.2024 by the defendant no.-2 and framing of issues.

Dictated and corrected by me:

Judge

Smt. Sudipa Banerjee
J.O. Code : 01148
Judge, 3rd Bench,
Presidency Small Cause Court,
Calcutta.