

Ej. Suit No. 119 of 2022
CNR No. : WBPS01-000183-2022

Order No. 42
28.01.2025

Today is fixed for further cross-examination of PW-1 i.d. argument of the suit.

Parties are present by filing hazira through their Ld. Advocates.

At this stage a petition has filed by the defendant u/s 151 of CPC praying for recalling the order No. 30, dated 07.05.2024 passed by this Court on the ground stated in the petition.

The copy of the petition is served to the other side.

Heard both sides.

Perused the petition and the case record.

Considered.

It appears that the defendant has prayed for recall of the order No. 30, dated 07.05.2024 passed by this Court on the ground that the same is erroneous.

It was submitted by him that this Court vide Order No. 26, dated 05.02.2024 while considering the application Under Order-7, Rule-11 of CPC had come to a finding that the matter regarding *whether the defendant is a tenant under the plaintiff or not in respect of the suit premises and the same is matter of evidence and can be adjudged at the time of the disposal of the application u/s 7(2) of the WBPT Act, 1997 by framing a specific issue to the effect or even at the time of final disposal of the suit but under no circumstances the said issue can be adjudged under an application under Order-7, Rule-11 of CPC.*

The defendant further submits that vide Order NO. 30, dated 07.05.2024 this Court struck out the defence of the defendant against delivery of possession in the present suit under the provision of Section 7(3) of the WBPT Act, 1997. The defendant submits that contradicting the finding made in Order No. 26, dated 05.02.2024 this Court erroneously passed order no. 30, dated 07.05.2024 striking out the defence of the defendant. He further submitted that since the defendant is a bonafide purchaser of the suit property and tenancy came to an end by way of merger of interest since became a owner/landlord, his defence ought not to have been struck out under the provision of Section 7(3) of the WBPT Act, 1997.

On the other hand, the plaintiff vehemently raised objection to the application of the defendant and submitted that the petition is devoid of merit and the defendant has filed such application with the sole intention to delay the proceeding of the suit and deprive the

plaintiff of the justice, and, as such, prayed for rejection of the application with exemplary cost.

It appears that the defendant had though filed applications u/s 7(1) & 7(2) of the WBPT Act, 1997 in the instant suit but “not pressed” the same on 20.09.2023 and accordingly this Court vide order no. 30, dated 07.05.2024 had held that the defendant has not complied with the provision of Section 7 within the statutory period and accordingly struck off the defence of the defendant under the provision of Section 7(3) of the WBPT Act, 1997.

The provision under Section 151 of the CPC is invoked to recall those orders which have been obtained on mis-representation or fraud and the suppression of material facts, where there has been violation of natural justice, the order has resulted in injustice due to an abuse of legal provisions. Courts generally only recall a reasoned order if there was a significant procedural error, fraud, lack of jurisdiction or a mistake that substantially prejudiced a party, not simply because a party disagrees with the original decision. The order no. 30, dated 07.05.2024 had been passed after hearing both sides and considering the materials on record. The said order is a reasoned order and is not arbitrary. Till this day the defendant has not challenged either order no. 26, dated 05.02.2024 rejecting his prayer made under order 7, Rule-11 of CPC nor has challenged order no. 30, dated 07.05.2024 striking out his defence u/s 7(3) of the WBPT Act, 1997 for not complying the provision of Section 7 of the WBPT Act, 1997 of the WBPT Act, 1997. The said orders are still standing and valid.

In view of the above, the petition filed by the defendant u/s 151 of CPC prayed for recalling the order No. 30, dated 07.05.2024 passed by this Court on the ground stated in the petition is hereby rejected on contest.

Fixing 29.01.2025 for further cross-examination of the PW-1.

Dictated and corrected by me:

Judge

Smt. Gladys Bomjan
(J.O. Code: 01039)
Judge, 3rd Bench
Presidency Small Cause Court,
Calcutta