

Ejectment suit 150 of 2023

(CNR No. WBPS01-000352-2023)

Before Smt. Jayashree Banerjee, Ld. Chief Judge-in-Charge.

04.

25-07-2023.

Ld. P.O. has been transferred.

Record is put up before me.

Today is fixed for S/R & A/D and appearance.

Record reveals that on the strength of a put petition, defendant has entered appearance in the suit on 18-07-2023 and filed petitions u/s 7(1) & 7(2) of W.B.P T Act and the petition u/s 7(1) of W.B.P T Act was allowed on the self same date , fixing today for hearing of petition u/s 7(2) of W.B.P T Act.

Today plaintiff files hazira. Defendant files a petition praying for time for filing W/S on the ground stated therein. Copy served. Defendant also files photocopy of Court deposit challan showing deposit of arrear rent from May 2023 to July 2023.

Both parties are present on call. The matter is taken up for hearing.

Regarding the petition u/s 7(2) of W.B.P T Act, Ld. Counsel for the defendant submitted that after appearing in the suit, defendant has deposited admitted arrears of rent with interest in Court till July -2023 and there is no due in payment of rent.

Ld. Counsel for the defendant further submits that he has filed an application u/s 4(3) of W.B.P T Act read with Section 151 of C.P.C today on the ground that till last Saturday, his client had been to the suit property where the common bath, privy along with drinking water tap was available to his client for using the same but on returning from home to the suit premises on Monday, his client found that one iron gate has been installed debarring access to the defendant from availing the common bath, privy and drinking water tap which his client has been

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25-07-2023.

using since 1945. Therefore, by filing the instant application, defendant is praying for an order for removing the iron gate so as to provide him with sanitary and water facility .

Against this, although no Written objection has been filed by the plaintiff , however, at the time of hearing, Ld. Counsel appearing on behalf of the plaintiff submits that the tenancy given to the defendant /tenant is a commercial tenancy and nowhere in the tenancy agreement or in the rent receipt, the defendant can show that he was permitted or entitled to use the common bath, privy and avail drinking water or that landlord is bound to provide the same to him.

Bereft , such provision being made in the tenancy agreement, it is not incumbent upon the plaintiff to provide the defendant with the facility of common bath, privy and drinking water.

So far petition u/s 7(2) of W.B.P T Act filed by the defendant is concerned, Ld. Counsel for the plaintiff submitted that he is satisfied that the deposits made by the defendant are correct and regular and rents have been paid properly by the defendant up to date. He submitted that the petition u/s 7(2) of W.B.P. T Act may be disposed of.

Having hearing Ld. Counsels for both sides, I find force in the submissions of the Ld. Counsel for the plaintiff yet this Court cannot overlook the fact that since 1945, the defendant was using the common bath , privy and drinking water facility. Therefore, to stop two essential facility all on a sudden to the tenant who has been occupying the suit premises since 1945 does not seem to be a fair action on the part of the

*p.t.o.....*

plaintiff towards the tenant/ defendant, particularly when the tenant did not default in making payment of rent.

Having said thus, this Court cannot travel beyond the statute to grant relief to the defendant and the statute does not permit the defendant to claim such facility as a matter of right from the plaintiff which has not been granted to him at the time of induction as a tenant or in the tenancy agreement. However, since it is admittedly a common facility ( user of privy and drinking water );

Accordingly,

it is

Ordered

that the action of the plaintiff is hit by Section 4(3) of West Bengal Premises Tenancy Act, and this Court directs the plaintiff to remove the iron gate enabling the defendant from using the common , privy as well as drinking water tap even if it is a non-residential tenancy and these essential supply or service is mentioned or not mentioned in the tenancy agreement shall be assessed by the Court at the time of Trial on Evidence.

The application u/s 4(3) of W.B.P T Act read with Section 151 of C.P.C filed by the defendant is thus disposed of accordingly.

Regarding the petition u/s 7(2) of W.B.P T Act is concerned, the same also stands disposed of with observation that no rent is due is lying due and payable by the defendant till July- 2023.

Defendant is directed to go on depositing current rent month by month by the 15<sup>th</sup> of each succeeding month as per law.

Prayer for time to file W/S by the defendant is also considered and allowed, fixing ( **18-09-2023** ) for filing W/S by the defendant.

Chief Judge-in-Charge.

J.O. Code WB 01049

