

TS 20/2015
TS 20A/2015

Order no.133 dated 04.07.2015

The instant suit is heard analogously with Title Suit No.20A/2015. The defendant-I in said T.S. No.20 of 2015 (originally TS No.36 of 2007) filed the petition U/s 7(2) of WBPT Act.

Today is fixed for passing order on the petition under section 7(2) of the West Bengal Premises Tenancy Act, 1997 filed by the defendant no.I on 10th May, 2007 praying for determination of relationship of land lord and tenant between the parties to the suit; adjustment of alleged amount of property stolen and security deposit with arrear of rent if any; suspend the amount of rent since April 2000 till restoration of the possession of part of suit premises so taken out of the defendant by plaintiff.

The brief contention of the petitioner as appears from the petition is that J Mantosh by his letter dated 22.12.1971 let out 10000 square feet factory cum godown to the petitioner/defendant no.I situated at 71/1 Canal Circular Road, Kolkata 700 054 at a monthly rent of Rs.1450/- without electricity payable according to English calendar month. He also took Rs.3000/- as security deposit from the petitioner.

Petitioner paid rent to the plaintiff upto January 2000 by getting receipts from Roy George Trust. When the petitioner tendered rent for February 2000 to J Mantosh, he refused to accept the same. He then offered rent for February and March 2000 and later on for the month of April 2000 to Roy George Trust they also refused to accept without showing any reason. Therefore petitioner deposited the rent to Office of Rent Controller till April 2007 .

Further contention of the petitioner is that the landlord Roy George Trust in connivance and collusion with Ujjal Kr. Ghosal dispossessed the petitioner from 7000 sq. ft of the suit property in the 1st Week of April 2000 out of tenanted portion of 10000 sq. ft with several goods, articles, machines, furniture of the petitioner. He lodged complaints with police station for such illegal act of disposing the petitioner by plaintiff and theft of articles by them causing loss of Rs.101000 to him.

He contended that he has no privity of contact with the plaintiff as regard to the tenancy and raised dispute about relationship with plaintiff. He also claimed suspension of rent for illegal dispassion of petitioner from 7000 sq. ft of the tenanted property since 2000 till restoration to the petitioner to its tenanted property.

Opposite Party/plaintiff filed written objection against the petition of the petitioner. Plaintiff contended *inter-alia* that there was no tenancy of 10000 sq. ft of factory cum godown to the petitioner by letter dated 22.12.1971 by J Mantosh at the monthly rent of Rs.1450/- excluding electricity as claimed by the petitioner. He denied about taking security deposit as alleged. He also denied that J Mantosh was landlord of the suit premises at any point of time. They D.P claimed that Roy George Trust was the landlord and defendant was tenant under them. They claimed all acts of the said J Mantosh as trustee of Roy George Trust. They denied refusal to accept rent from the petitioner as alleged. They also denied that there was no privity of contract between plaintiff and defendant. They prayed for rejection of the petition.

To prove the contention in the proceeding under section 7(2) of the West Bengal Premises Tenancy Act 1997 ('the Act' in short) petitioner adduced Ashok Somani as PWI by filing his examination in chief on affidavit and subsequently filed supplementary affidavit to his evidence. He supported the contention of the defendant/petitioner. He filed copy of letter of plaintiff dated 23.12.1971 (Exhibit 1), Rent receipt of January 2000 (Exhibit 2), challans for April 2000 to May 2007 (Exhibit 3 Collectively), challans for February and March 2000 (Exhibit 4), copies of G D Lodged (Exhibit 5 series) and certified copy of charge sheet (Exhibit 6). In examination on recall, PWI produced copy of letter dated 22.07.86 written by defendant company to the plaintiff.(Exhibit 7) and electricity bills of Joy Durga Mineral Company (Exhibit 8 and 8/1). He admitted that Defendant no. was their sister concern.

From Ext.1, it appears that by letter dt.23.12.1971 (dt. Interpolated) the petitioner concern wrote a letter to J. Mantosh the trustee of Roy George Trust informing them about the terms and condition of the tenancy on the basis of a letter of the OP/plaintiff dt.22.12.1971. Ext.7 is another letter of the petitioner dt.22.07.1986 in relation to the tenanted property. Ext.2 is a rent receipt alleged to be issued by the plaintiff/OP

dt.01.01.2000 for the month of January 2000. Save and except these letters and alleged rent receipt, petitioner did not file a single document to show that there is at all any tenancy agreement between the party. In a suit under Premises Tenancy Act, premises is determined by the agreement for tenancy which is not produced by the petitioner. Virtually, there is no document in support of the petitioner from which this court can hold that there is a tenancy agreement between the plaintiff and defendant or between Roy George Trust and the petitioner.

From his cross examination it appears that he saw the J Mantosh once in his office about 30-35 years ago and he tendered rent to him by hand till 2000. He failed to say whether J Mantosh was alive or death. He failed to say the area of 71, Canal Circular Road. It appears from the evidence of the PW1 that there was business of Joy Durga Mineral Company in the suit property which is no more there at present. It also appears from his evidence that said Joy Durga Mineral Company is a sister concern of the petitioner. PW1 admitted that defendant no.1 had no authority to sublet any portion of suit premises in view of Exhibit 1. It appears that petitioner prayed for permission to connect electricity in their premises before Roy George Trust addressed to J Mantosh.

From evidence of PW2, Pravat Singh it appears that he was witness by summons and stated about one incident occurred in April 2000 when he saw that Mithilesh Singh, J Mantosh, Ujjawal Kr. Ghosal, Dolly Mantosh, Paresh were standing at the godown of defendant no.1/petitioner and some persons were loading generator, ceiling fans, type machine, etc in a taxi. According to his evidence, the incident occurred about 9:30 A.M.

From careful perusal of the evidence, it appears that petitioner took the suit premises demarked in two parts of 3000 sq. ft and 7000 sq. ft and they are in possession of 3000 sq. ft of the property. All these contentions of the petitioner is based on oral evidence and there is no documentary evidence as regard to any tenancy agreement between the party or between petitioner and Roy George Trust. The single rent receipt alleged to have been issued by Roy George Trust is not a satisfactory document to conclude that there is at all any tenancy agreement between the petitioner and Roy George Trust in respect to the suit property. He admitted the said demarcation wall in the suit property by dividing the property to 5000 sq. ft and 2000 sq. ft. he prayed consent for electricity connection from Roy George Trust, the plaintiff herein and on the basis of same, they took connection. From the evidence of the PW1, it clearly appears that petitioner admitted the Roy George Trust as landlord. There is no evidence on record from the side of the plaintiff/opposite party that the plaintiff

became landlord of the suit property. It is also not denied by the opposite party by evidence that petitioner did not pay rent for any point of time to the landlord. There is no evidence of the petitioner that petitioner was at all informed that there is no existence of Roy George Trust and the property was devolved upon the plaintiff/Opposite party by law of inheritance. So the contention of the petitioner that there is no relationship between plaintiff and the defendant petitioner sustains on the basis of the available evidence.

I have gone through the challans filed by the petitioner and found that the challans of payment of rent from August 2003 to May 2007 are in the name of The Roy George Tourist and not in the name of The Roy George Trust. There is also no Money Order filed by the petitioner in respect of tendering of rent to the landlord according to petitioner when he refused to accept the rent as alleged. Therefore, from the careful consideration of the evidence so available in the record, in the circumstances when plaintiff/OP did not adduce any evidence in their favour to challenge the contention of the petitioner in proceeding U/s 7(2) of the Act, the relationship between the petitioner and the plaintiff as well as the petitioner and the Roy George Trust are not established. Since the relationship between the plaintiff and the defendant no.2 is not established as landlord and tenant, there is no scope of determination of default in payment of rent to the plaintiff. So the defendant no.2 is not defaulter in payment of rent to its landlord. Due to same reason, question of adjustment of rent in respect to the dispossession of petitioner from suit property as alleged need no adjudication at present.

Hence, it

ORDERED

that the petition under section 7(2) of the West Bengal Premises Tenancy Act, 1997 is allowed on contest and without cost. There is no relationship of the tenant and landlord between the plaintiff and petitioner. Petitioner is not found defaulter in payment of rent to the plaintiff.

Fixing 21.07.2015 for framing of issue.

D/Corrected by me

Judge, SCC

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