(2011) 12 CAL CK 0034

Calcutta High Court

Case No: C.O. 3831 of 2011

Manoj Gadia		APPELLANT
	Vs	
Sova Malakar and another		RESPONDENT

Date of Decision: Dec. 13, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 24
- Constitution of India, 1950 - Article 227
- West Bengal Premises Tenancy Act, 1997 - Section 26, 43, 43A, 44

Hon'ble Judges: Subhro Kamal Mukherjee, J

Bench: Single Bench

Advocate: Susanta Pal, for the Appellant; Jiban Ratan Chatterjee and Mr. Asok Kumar Ganguly, for the Opposite Party No. 1, for the Respondent

Judgement

Subhro Kamal Mukherjee, J.
An affidavit of service is filed; let the same be kept on record.

2. This is an application u/s 24 of the CPC seeking transfer of R. C. Case No. 646 of 2003 pending before the Rent Controller at Kolkata to the court of the learned Civil Judge (Junior Division), Additional Court at Sealdah, for analogous hearing of the said case with Ejectment Suit No. 228 of 2004.

3. On August 14, 2003, the petitioner, namely, Manoj Gadia, filed an application u/s 26 of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as "the said Act of 1997" in short) before the Rent Controller at Kolkata. He asserted that the recorded tenant, namely, Ram Kishore Gadia, inducted him as a sub-tenant in the suit premises with oral consent of the landlady. He requested the landlady to accept him as a direct tenant after coming into effect of the said Act of 1997.

4. The landlady, however, declined to accept him as a direct tenant, as she denied that she was granted consent for creation of sub-tenancy.

5. Therefore, the petitioner approached the Rent Controller, Kolkata, for declaration that the petitioner became a tenant directly under the landlady. The proceeding has, since, been registered as R. C. Case No. 646 of 2003.

6. The landlady, on June 28, 2004, instituted a suit for eviction against the recorded tenant, namely, Ram Kishore Gadia, inter alia, on the ground of default and sub-letting. The suit was eventually transferred to the court of the learned Civil Judge (Junior Division), Additional Court at Sealdah and is pending adjudication before the said court.

7. In the said suit, this petitioner applied for his addition asserting his right as a sub-tenant.

8. The learned trial judge, by order dated September 17, 2008, rejected the application for addition of party filed by the petitioner.

9. However, the petitioner approached this court with an application under Article 227 of the Constitution of India, which was registered as C.O. 3833 of 2008. Prasenjit Mondal, J., by judgment and order dated April 8, 2009, allowed the said revisional application and directed addition of this petitioner as a defendant in the said suit.

10. By moving this application for transfer, the petitioner prays for transfer of the proceeding u/s 26 of the West Bengal Premises Tenancy Act, 1997 to the civil court for analogous trial of the same with the suit for eviction.

11. I am unable to accept the prayer made in this application.

12. The power u/s 26 of the said Act of 1997 is exclusively vested with the Rent Controller. Section 44 of the said Act of 1997 bars jurisdiction of the civil courts in respect of certain matters save and except otherwise expressly provided in the said Act. Even, by consent of the parties, such jurisdiction cannot be vested with some other forum.

13. One of the issues involved in the suit is whether the tenant had inducted a sub-tenant with consent of the landlady, or not. A suit for eviction on the ground of sub-letting is not affected by Section 26 of the said Act of 1997. Moreover, if the rent control proceeding and the suit are tried analogously, there would be some practical difficulty.

14. Against the decree passed in the suit, there shall be an appeal before the learned District Judge u/s 43A of the said Act of 1997, while against the order passed in the proceeding u/s 26 of the said Act of 1997, there will be an appeal before the Land Reforms and Tenancy Tribunal u/s 43 of the said Act of 1997.

15. In my view, therefore, to avoid all future complications in the matter and considering the fact that the Rent Controller is a tribunal of limited jurisdiction, justice will be sub-served if the rent control proceeding is stayed during the pendency of the Ejectment suit, which becomes a comprehensive one after addition of the petitioner in the said suit on his own prayer.

16. I, therefore, stay all further proceedings in R. C. Case No. 646 of 2003 pending before the Rent Controller, Kolkata, during the pendency of the suit being Ejectment Suit No. 228 of 2004.

17. I request the learned Civil Judge (Junior Division), Additional Court at Sealdah to make all endeavours to see that the aforesaid ejectment suit is disposed of as expeditiously as possible.

18. With the aforesaid directions, the application for transfer is disposed of without, however, any order as to costs.