

**(2011) 08 CAL CK 0123**

**Calcutta High Court**

**Case No:** C.O. No. 2691 of 2010

Shri Raj Kumar Modi

APPELLANT

Vs

Shri Prabhas Dutta

RESPONDENT

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**Date of Decision:** Aug. 25, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 10
- Constitution of India, 1950 - Article 227
- West Bengal Premises Tenancy Act, 1956 - Section 17(2)

**Citation:** (2010) 4 CALLT 417

**Hon'ble Judges:** Md. Abdul Ghani, J

**Bench:** Single Bench

**Advocate:** Ashis Bagchi and Prabir Kumar Mishra, for the Appellant; Debasish Basu and Lalratan Mondal, for the Respondent

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**Judgement**

Md. Abdul Ghani, J.

One Shri Raj Kumar Modi by filing the present application under Article 227 of the Constitution of India has prayed for setting aside the order No. 134 dated 15th July, 2010, passed by the learned Second Judge of Small Causes Court at Calcutta in Ejectment Suit No. 636 of 2001 and also for other order or orders as the Court deems fit and proper.

2. Having gone through the materials on record it could be detected that opposite party/Plaintiff Shri Prabash Dutta by instituting the Ejectment Suit No. 207 of 1999 in the City Civil Court at Calcutta prayed for eviction of the present applicant/tenant from the suit premises being one coal shop room situated in premises No. 64/A, Malanga Lane under Bowbazar Police Station on the ground of reasonable requirement. In the said suit the present applicant/Defendant entered appearance and thereafter submitted an application u/s 17(2)(a) and (b) of the West Bengal Premises Tenancy Act, 1956.

3. Subsequently, pursuant to two notifications being No. 2475L and 2474L dated 25th October, 1999, all the Ejectment suits under the provisions of West Bengal Premises Tenancy Act, 1956 were transferred from the City Civil Court at Calcutta to Small Causes Court at Calcutta for trial and disposal.

4. Accordingly, ejectment suit in question being No. 207 of 1999 was transferred from the City Civil Court, Calcutta to the learned Chief Judge, Presidency Small Causes Court, Calcutta which was subsequently renumbered as Ejectment Suit No. 636 of 2001. When the said ejectment suit came up for hearing before the learned Chief Judge, Presidency Small Causes Court, Calcutta, Petitioner by filing an application under Order 7 Rule 10 CPC prayed for return of the plaint for presentation of the same before the appropriate forum for trial.

5. It would appear that learned Chief Judge, Small Causes Court, Calcutta upon hearing the parties concerned rejected the Petitioner's application for return of the plaint on an observation that the learned Chief Judge, Small Causes Court, Calcutta was having both the territorial and pecuniary jurisdiction over the subject-matter of the suit. True it is that in view of the notifications indicated above the appeal from the final decree passed by the Small Causes Court will lie before the City Civil Court, Calcutta. The Chief Judge, City Civil Court and the Chief Judge of Presidency Small Causes Court, Calcutta being belonging to the same cadre the suit should be tried and disposed of by any other Bench of Small Causes Court, Calcutta which will definitely be junior/subordinate to the Chief Judge of Small Causes Court, Calcutta.

6. It has been contended on behalf of the Petitioner that the learned Chief Judge, Small Causes Court, Calcutta upon receiving the suit in question on transfer from the City Civil Court, Calcutta ought to have transferred the same for trial to any other bench subordinate to it, instead of rejecting the Petitioner's application under Order 7 Rule 10 CPC with a view to avoiding any anomaly and/or irregularity in the matter of proper adjudication of the suit. In the circumstances, the present Petitioner by filing the revisional application under Article 227 of the Constitution of India being CO No. 275 of 2010 challenged the order No. 120 dated 9th November, 2009 relating to return of the plaint passed by the learned Chief Judge, Small Causes Court, Calcutta in Ejectment Suit No. 636 of 2001 before the Hon'ble High Court, Calcutta whereupon His Lordship Mr. Justice Jyotirmoy Bhattacharya upon hearing the parties concerned was pleased to set aside the impugned order dated 9th November, 2009 without passing any order of transfer of the suit but issued direction upon the learned Chief Judge, Small Causes Court, Calcutta to send the records of the said suit to the learned 2nd Judge, Small Causes Court, Calcutta for trial inasmuch the records of the suit in question was earlier called for by the successor in office of the learned Chief Judge, Small Causes Court, Calcutta. The suit was, however, in the meantime already transferred to the learned Judge, 2nd Bench of Small Causes Court, Calcutta by the learned Chief Judge himself. Hon'ble Court while passing the order dated 24th June, 2010 in CO No. 275 of 2010 asked the

learned Transferee Court, 2nd Bench, to make an utmost endeavour for disposal of the suit as expeditiously as possible and preferably within a period of one year from the date of communication of the said order.

7. Subsequently, learned Judge of the 2nd Bench, Small Causes Court, Calcutta pursuant to the order of the Hon"ble High Court proceeded with the suit and disposed of the application under Order 7 Rule 10 of CPC filed by the Petitioner by way of rejection of the same and declined to proceed with the suit any further with an observation that there was No. direction of the Hon"ble Court to hear the suit afresh.

8. Being aggrieved by and dissatisfied with the order impugned dated 15th July, 2010 the Petitioner has come up before this Court praying for relief sought for as indicated above.

9. Mr. Asish Bagchi, learned Counsel appearing for the Petitioner referring to the contents of the application under Article 227 of the Constitution of India as also some other materials including the order dated 9th November, 2009

passed by the learned Chief Judge, Small Causes Court, Calcutta as also the Gazette notification dated 25th October, 1999 contained in 6 (2) of the City Civil Court (Amendment) Act, 1999 submits that the order impugned suffers from illegality and material irregularity inasmuch as the learned Judge of the 2nd Bench of Small Causes Court, Calcutta ought to have disposed of the suit on merit without stopping himself from further proceeding of the suit. Referring to the materials on record he further submits that in view of the circumstances as appearing before us impugned order is not sustainable under the law and the same is liable to be set aside and the learned Judge, 2nd Bench of Small Causes Court, Calcutta should be directed to proceed with the suit in accordance with law.

10. On the other hand, Mr. Debasish Basu, learned Counsel appearing for the opposite party/Plaintiff referring to the materials on record urges that No. doubt the Ejectment Suit No. 207 of 2010 was transferred to the Small Causes Court, Calcutta from the City Civil Court, Calcutta for disposal as the Small Causes Court, Calcutta has jurisdiction for trial and disposal of such suit. He also submits that learned Judge, Second Bench of the Small Causes Court, Calcutta should be given appropriate direction for disposal of the suit in accordance with law.

11. It is the admitted position that all suits and proceedings of the value not exceeding Rs. Thirty thousand in each individual case relating to the recovery of possession of any premises under the West Bengal Premises Tenancy Act, 1956, pending in the City Civil Court, Calcutta on the date immediately before the date of coming into force of this Act stood transferred to the Small Causes Court, Calcutta on the date on which this Act came into force. Accordingly, the Ejectment Suit No. 207 of 1999, subsequently renumbered as Ejectment Suit No. 636 of 2001 was transferred to the learned Chief Judge, Presidency Small Causes Court, Calcutta for

disposal. Thereafter, present Petitioner/Defendant by filing an application under Order 7 Rule 10 of the CPC prayed for return of the plaint to the Plaintiff for presentation before appropriate forum inasmuch as the learned Chief Judge of this Presidency Small Causes Court belongs to the same cadre of the learned Chief Judge, City Civil Court, Calcutta, and also in view of the amendment of the City Civil Court Act, 1999, appeal against the ultimate decree passed in such a suit by the learned Chief Judge, Presidency Small Causes Court will lie before the City Civil Court.

12. It would appear that learned Chief Judge, Presidency Small Causes Court, Calcutta upon hearing the parties concerned was pleased to reject the Petitioner's aforesaid application under Order 7 Rule 10 CPC by holding that the Chief Judge, Small Causes Court, Calcutta is having territorial and pecuniary jurisdiction over the subject-matter of the suit. The Petitioner/Defendant being aggrieved by the order dated 9th November, 2009 passed by learned Chief Judge, Small Causes Court, Calcutta filed an application under Article 227 of the Constitution of India before this Hon"ble Court. Hon"ble Justice Jyotirmoy Bhattacharya while disposing of the said application under Article 227 of the Constitution of India observed that the learned Chief Judge, Small Causes Court, Calcutta, instead of passing the order as to return of the plaint ought to have transferred the same to any other bench of the same Court inasmuch as the presiding Judge of the other Bench of the Presidency Small Causes Court belongs to a cadre lower than the cadre to which the Chief Judge belongs. The record of the Ejectment Suit No. 207 of 1999 was, however, ultimately transferred to the learned Judge, Second Bench of the said Court on 31st March, 2010 by Order No. 36. His Lordship Mr. Justice Jyotirmoy Bhattacharya in course of disposal of the application under Article 227 of the Constitution of India asked the learned Transferee Court being the Second Bench of the Small Causes Court, Calcutta to make an utmost endeavour for expeditious trial and disposal of the suit within a period of one year from the date of communication of the order dated 24th June, 2010.

13. Unfortunately, the learned Trial Judge, being Second Bench of the Small Causes Court, Calcutta, failed to understand and appreciate the actual meaning and spirit of the order dated 24th June, 2010 passed by the Hon"ble Court and simply upon deciding the petition under Order 7 Rule 10 Code of Civil Procedure, he stopped himself to proceed with the suit any further on the observation that the said Court was not directed to dispose of the suit afresh by the said 2nd Court.

14. Therefore, having heard the learned Counsel for the parties concerned and also on perusal of the materials on record as also all other surrounding circumstances of the case I am satisfied to say that the order impugned passed by the learned Second Bench, Small Causes Court, is not sustainable under the law and the same deserves to be set aside.

15. Accordingly the order dated 15th July, 2010 passed by the learned Second Bench, Small Causes Court is hereby set aside and quashed. Resultantly, the application under Article 227 of the Constitution of India stands allowed.

16. Learned Judge, Second Bench is directed to proceed with the suit and to dispose of the same along with the pending application, if any, in accordance with law expeditiously and positively within a period of one year from the date of communication of the order.

17. Urgent photostat certified copy, if applied for, be handed over to the parties as early as possible.