

S/L. 11
15.10.2026
Ct. No.2
Mujahid

CO 2315 of 2021

Tilak Shankar Mazumder & Anr.
Vs.
Central Bank of India

Mr. Rudradeb Chaudhuri

...for the petitioners

1. Present petition has been filed challenging the order dated 6th September, 2021 passed in Title Suit No.06 of 2021. The facts in brief are that the petitioners filed a Title Suit No.06 of 2021 against the opposite party for recovery of khas possession of the suit property and recovery of sum of Rs. 31,947.50/- on account of reimbursement of municipal takes and commercial surcharge in respect of the suit property as well as the mesne profits from 1st Febraury, 2021.

2. Learned counsel for the petitioners submits that in the said suit, the petitioner made an application under Order XIII-A of the CPC for summary judgment decreeing the claim of the plaintiff retaining to the recovery of khas possession and recovery of sum of Rs. 31,947.50/- on account of reimbursement of municipal taxes and commercial surcharge in respect of the suit property.

3. Learned counsel for the petitioners submits that this application was duly contended and after contesting, learned Judge, Commercial Court at Alipore passed an order dated 31st August, 2021 whereby the court while granting the prayer 'a' and 'b', i.e., for recovery of khas possession and reimbursement of municipal taxes and commercial surcharge allowed the application for summary judgment.

4. The grievance of the petitioners is that while disposing of the application for summary judgment being I.A. 3 of 2021. The learned Judge, Commercial Court decreed the suit in terms of prayer 'a' and 'b' whereas the prayer for mesne profit made in the main suit was still pending. Learned counsel submits that for the correction/rectification of this, the petitioners moved an application which was also dismissed by the learned Judge, Commercial Court vide order dated 6th September, 2021.

5. The petitioners aggrieved of this filed the present suit challenging the order dated 6th September, 2021. Learned counsel submits that the application for summary judgment was only in respect of the limited prayer for recovery of khas possession and reimbursement of money on account of municipal taxes and commercial surcharge.

6. Learned counsel for the petitioners submits that the learned Judge, Commercial Court fell into error

while decreeing the suit itself on the limited prayers made in the application for summary judgment and thereby leaving the prayer for mesne profit undecided.

7. The opposite party was tried to be served repeatedly. Affidavit of service was filed, however, opposite party has chosen not to appear.

8. This Court has perused the record, the petitioners had filed the suit for recovery of khas possession as well as the recovery of mesne profit and reimbursement of municipal taxes. While this suit was pending an application for summary judgment were made on the limited prayer of recovery of khas possession and recovery sum of Rs. 31,947.50/- on account of municipal taxes and commercial surcharge.

9. Learned Judge, Commercial Court while disposing the application I.A. 3 of 2021 though allowed the prayer 'a' and 'b' application for summary judgment decreed the suit itself. Thus, apparently the prayer of the petitioners for recovery of mesne profit was left undecided. The learned Court should have corrected the the same while the petitioners moved an application under Section 151 read with Section 152 of CPC. However, the learned Judge, Commercial Court dismissed the application.

10. The Court considers that since the prayer for mesne profit from 1st February, 2021 is still not adjudicated the Title Suit No.06 of 2021 is liable to be

restored to its original number for decision in accordance with law in respect to mesne profit from 1st February, 2021 after giving the parties an opportunity of being heard in accordance with law.

11. With the above observations, present petition stands disposed of.

12. All parties shall act on the server copy of this order duly downloaded from the official website of this court.

(Dinesh Kumar Sharma, J.)