

07.09.2021
Item No. 16
Ct. No. 04
PG

S.A. 354 of 2016
Smt. Chanda Kamillya & Ors.
Vs.
Smt. Menaka Jana & Anr.

Mr. Supratick Shyamal
Mr. Gaurab Ghosh.....for appellants

Mr. Shyamal, learned advocate appears on behalf of appellants, who were substituted defendants in the suit for eviction of tenant. On 2nd September, 2021 his submission was recorded as follows:

“Mr. Shyamal, learned advocate appears on behalf of appellants and submits, both Courts below have decided against his clients, who are tenants. Decree for eviction was confirmed. He submits, a question of law arises from appreciation of evidence where there was no local inspection. He prays for adjournment to do some further research.

List under same heading on 6th September, 2021.”

Today he relies on judgment of Supreme Court in **Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde** reported in **(1999) 4 SCC 1**, paragraph 8 reproduced below:

“8. When a landlord says that he needs the building for his own occupation there is no doubt he has to prove it. But there is no warrant for presuming that his need is not bona fide. The statute enjoins that the court should be satisfied of his requirement. So the court would look into the broad aspects and if the court feels any doubt about the bona fides of the requirement it is for the landlord to clear

such doubts. Even in a case where the tenant does not contest or dispute the claim of the landlord the court has to look into the claim independently albeit the landlord's burden gets lessened by such non-dispute. In appropriate cases it is open to the court to presume that the landlord's requirement is bona fide and put the contesting tenant to the burden to show how the requirement is not bona fide."

We have perused both judgments of the Courts below. Contention of appellants that a question of law is involved in the appeal is based on appreciation of the evidence regarding proof of reasonable and bona fide requirement. As such we need not concern ourselves with concurrent findings on other issues.

The trial Court said, *inter alia*, constructive case of defendant (original) is that plaintiffs are residing in big house and they have sufficient accommodation therein. Plaintiffs are rich and they have several business in Midnapore town. Plaintiff no. 1 has two big shops and two storied pucca building known as 'Jana Bari' in Midnapore town, having 20 rooms. Issue nos. 7 and 8 were accordingly framed to be:-

"7. Whether the suit premises is reasonably required by the plaintiffs?

8. Whether the plaintiffs have any other suitable accommodation or not?"

The trial Court appreciated the oral evidence adduced by both sides on above issues to find that defendant(s) could not discharge the burden of proof

on the assertion of alternative accommodation had by plaintiffs. Obviously, the finding was pursuant to appreciation of case made out by defendant(s), of alternative accommodation, giving rise to presumption that the claim for reasonable and bona fide requirement of plaintiffs, of the demise, was not seriously disputed and therefore sought to be avoided by the assertion.

The lower appellate Court appreciated the evidence adduced on side of defendant(s) as not furthering their case but supporting and corroborating plaintiffs' case of not having alternative accommodation elsewhere. Said Court relied on section 102 in Evidence Act, 1872 to hold, defendant(s) failed. Both Courts concurrently found that plaintiffs had reasonable and bona fide requirement and accordingly, the decree, as confirmed.

It cannot be said that just because there was no local inspection or investigation, the omission would be fatal to plaintiffs' case of reasonable requirement. The spectrum of pleadings and evidence adduced and considered by both Courts below, clearly indicate that defendant(s) asserted plaintiffs had alternative accommodation but were found to have failed to prove the assertion. In **Dattatraya Laxman Kamble** (supra), in the paragraph relied upon

Supreme Court said, there is no warrant for presuming the need is not bona fide. In obtaining satisfaction of the requirement, Court would look into the broad aspects and if the Court feels any doubt about the bona fides of the requirement, it is for the landlord clear such doubts. In the case at hand, it appears, case run by defendant(s) was that plaintiffs had alternative accommodation.

In view of aforesaid, there is no question involved in the appeal.

S.A. 354 of 2016 is dismissed.

(Arindam Sinha, J.)

(Sugato Majumdar, J.)