

10.03.2021.
Item No. 35

S.A.T. 16 of 2020
With
CAN 1 of 2020 (Old No. CAN 2348 of 2020)

Sri Brahmanand Agarwal
Vs.
Smt. Sovana Ghosh.

Mr. Arnab Roy.

... for the appellant.

Mr. Ayan Banerjee,
Mrs. Atreyee De (Ganguly),
Mr. Koushik Bhatta.

... for the respondent.

The plaintiff/respondent is beleaguered with the litigation as the tenant/defendant/respondent has carried the judgment and decree to the higher forum and yet the family has to squeeze themselves within the insufficient accommodation.

A suit for eviction of a monthly tenant was filed by the plaintiff/respondent, inter alia, on the ground of default, violation of clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act and reasonable requirement. It is specifically averred in the plaint that the plaintiff/respondent requires the suit premises to cater the need of herself and the family, as the accommodation available to them is not reasonable suitable.

The composition of the family of the plaintiff/respondent is not disputed. However, the dispute centers around the requirement pleaded by the plaintiff/respondent not only to accommodate the

married daughters but also the relatives, who often then visit her and stay at night.

The trial court dismissed the suit as the requirement does not appear to be reasonable, but the said judgment and decree of the trial court was set aside by the first appellate court with the categorical findings that the plaintiff/respondent requires the suit premises for her own use and occupation and for the occupation of her family members and dependants.

Mr. Arnab Roy, learned Advocate appearing on behalf of the defendant/appellant, arduously submits that during pendency of the suit, the plaintiff/respondent got possession of the third floor by evicting the tenant therefrom and, subsequently, let out the same to a third party. According to Mr. Roy, the requirement is not reasonable in view of the fact that the plaintiff/respondent has let out a portion of the suit premises to a third party during pendency of the suit. Mr. Roy vehemently submits that there is sufficient accommodation available to the plaintiff/respondent at the suit premises, which would be evident from the commissioner's report, and the appellate court expanded the requirement without any basis or a proper finding to be returned in this regard. Though feebly, Mr. Roy contends that even if the suit premises is given to the plaintiff/respondent, the requirement so pleaded cannot be satisfied and, therefore, it would cause undue hardship to the tenant/defendant/appellant if get evicted from the suit premises.

We do not find the ground of comparative hardship, which has been taken by Mr. Roy, has any

substance. The concept of comparative hardship has not received the legal recognition in the West Bengal Premises Tenancy Act, 1997. If the plaintiff/respondent proves the ground of reasonable requirement, it is immaterial whether the tenant would suffer the most or the requirement so pleaded will not be satisfied in its entirety, as the landlord is the best person to take a decision in this regard. The tenant cannot dictate the landlord how he/she live with the available accommodation nor can dictate the landlord to make modifications in the available accommodation. The landlord is the best judge of his/her requirement and if the requirement appears to be reasonable, there is no fetter on the part of the court to pass a decree against the tenant. It is within the domain of the landlord how he/she will accommodate himself/herself with the family members after getting the tenant evicted from the suit premises. We do not see any deter against the landlord in getting the decree on the ground of reasonable requirement, as the requirement, so pleaded, will not be satisfied after evicting the tenant.

We have an occasion to peruse the commissioner's report depicting the accommodation available at the suit premises. Some of the rooms, which, according to Mr. Roy, can be used for the purpose of bed rooms, do not appear to be so because of its geographical area, which is seen from the measurement disclosed by the commissioner in the said report. The space between the two rooms having connective doors from both the sides is not suitable for the purpose of bedroom nor for any other purposes except to be used as a space for the purpose of ingress and egress.

The requirement of the landlord is to be judged objectively and not simplicitor on the subjective basis. The requirement varies from man to man and dependent upon the status owes in the society. It is beyond cavil of doubt that the requirement should be reasonable and there must be existence of an element of need as opposed to a whimsical and fanciful requirement. The bare necessity to live decently is the substratum of the concept underlining the reasonable requirement and not something, which appears to be a mere wish of the landlord.

The appellate court found that the married daughters, who often come to meet the brother and mother and stay at night being a part of the family, should also be accommodated in a room and not to share either with the plaintiff/respondent or the plaintiff/respondent's son, such requirement does not appear to be fanciful nor a mere wish but is reasonable as the integrity and harmony in the family is the factor to be considered in this regard.

Furthermore, the appellate court found that one of the married daughters of the plaintiff/respondent has a strained relation in her matrimonial house, which cannot be overlooked and/or discarded simplicitor on the version of the defendant/respondent. The plaintiff/respondent's granddaughters are of growing age and, according to plaintiff/respondent as well as the defendant/respondent, they are of the age of 12 and 14 years respectively. The aforesaid granddaughters need privacy and the court cannot ignore the forceable future requirement in this regard. The rooms available to the plaintiff/respondent have been found insufficient to cater the entire need and, thus,

we do not find any grounds nor any involvement of the substantial question of law under Section 100 of the Code of Civil Procedure.

The appeal is, thus, dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

In view of dismissal of the appeal itself, the connected application being CAN 1 of 2020 (Old No. CAN 2348 of 2020) has become infructuous and the same is also dismissed.

There shall, however, be no order as to costs.

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(Harish Tandon, J.)

(Kausik Chanda, J.)