

17th August,
2021
(AK)
138

S.A. 66 of 2017

**Panna Lal Shaw
Vs.
Lambhodhar Shaw**

(Via Video Conference)

Mr. Gopal Ghosh
Mr. Sibasis Ghosh
Mr. Ashis Kumar Dutta
... For the Appellant.

Mr. Jahar Chakraborty
Mrs. Sabita Mukherjee Roychowdhury
...For the Respondent.

Learned counsel for the plaintiff/appellant contends that the appellate court substantially erred in law in reversing the decision of eviction given by the trial court in favour of the appellant on the ground of reasonable requirement merely on the ground that the room in occupation of the defendant/respondent, being a small room having no windows, is not suitable for the plaintiff/appellant, who is a heart patient.

The substantial questions of law formulated by a Division Bench of this court while admitting the appeal on April 25, 2017 are, accordingly, as follows:

- 1. Whether the learned Judge of Lower Appellate Court substantially erred in law in reversing the judgment of the learned Trial Judge on a misconception of law by holding that the plaintiff being a heart patient cannot stay in a*

small room having no windows is absolutely without any basis inasmuch that the court cannot dictate how the plaintiff would adjust in the said accommodation and utilize it best to suit his requirement and therefore the impugned judgment cannot be sustained and liable to be set aside?

2. *Whether the learned Judge of Lower Appellate Court substantially erred in law in refusing to grant a decree for eviction in favour of the plaintiff on the ground that the tenanted room is not best suited for his better living is absolutely cannot be sustained inasmuch the plaintiff's heart ailment has not been denied by the defendant/tenant and in the absence of such denial the learned Judge ought to have granted a decree of eviction of the tenanted room which would be a genuine requirement of the plaintiff?*

It is seen from the appellate court's judgment that the sole premise on which the trial court's decision was reversed by the appellate court was apparently the flimsy ground that the room available in the occupation of the defendant was not suitable for the plaintiff.

However, it is well-settled that it is not for the court or the tenant to decide as to how the landlord should use her/his property.

In view of the requirement of the plaintiff having clearly been accepted by the trial court on the evidence-on-record, which was not reversed on merits by the first

appellate court (which was the last court of facts), the judgment of reversal passed by the appellate court is patently untenable in the eye of law.

As settled in various judgments by the Supreme Court as well as this court, the court is to sit in the arm-chair of the landlord to decide the actual requirement of the landlord.

It is entirely for the landlord to modify in a manner which is suitable to the landlord and/or use as it is the available room in the occupation of the defendant in the event the eviction decree is passed.

Hence, the judgment and decree of the court of appeal below does not stand the scrutiny of law.

Accordingly, S.A. 66 of 2017 is allowed, thereby setting aside the judgment and decree dated November 8, 2016 passed by the learned Judge, Sixth Bench, City Civil Court at Calcutta in Title Appeal No.31 of 2015, reversing those dated May 11, 2015 passed by the learned Judge, Sixth Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 274 of 2007.

The judgment of the Trial Judge, granting a decree of eviction against the defendant/respondent is, thus, revived and the appellant will be at liberty to levy/proceed with the execution of such decree at the earliest.

A decree may be formally drawn up by the Department at the earliest.

The Lower Court Records be sent down urgently to the court below by special messenger, the costs of which shall be payable by the appellant within a week from date.

There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)