

08.03.2021
Ct No.12
Sl. 13
(PA)

FMAT No. 357 of 2020
With
CAN No. 5190 of 2020
CAN No. 5191 of 2020
CAN No. 5207 of 2020

Shankar Shaw & Ors.
Vs.
Navin Shaw & Ors.

Mr. Anif Ali, Adv.
Mr. Sarban Bhattacharjee, Adv.
.... For the petitioners/appellants.

Affidavit of service furnished by the petitioners
be taken on record.

None appears for the respondents/plaintiffs.

This is an appeal against the judgment and
decree dated 30th September, 2019, passed by
learned Judge, 4th Bench, City Civil Court, Calcutta
in Title Appeal No. 23 of 2017, setting aside the
judgment and decree of eviction dated 23rd
December, 2016, passed by learned Judge, 5th
Bench, Small Causes Court, Calcutta with a
direction to rehear four (4) issues, after sending
back the case on remand to the learned Trial Court.

The remand order was granted upon setting
aside the decree of eviction passed in Ejectment Suit
No. 285 of 2010, with a direction to rehear the issue
nos. 4, 8, 9 and 10 for decision afresh of the suit.

Appellants/defendants have challenged the
order of remand alleging that without any

appropriate discussions, the First Appellate Court has directed to rehear issue no. 4 dealing with defaulter in the payment of rent.

In the interest of this appeal, the order of remand directing four issues for decision afresh may be reproduced as hereinbelow:

“4. Are the defendants defaulter in payment of rent as alleged in the plaint?”

8. Is the Plaintiff entitled to get the decree as prayed for?

9. To what other reliefs is the plaintiff entitled?

10. Whether the suit premises is reasonably required by the plaintiff for his own use and occupation and for his family members?”

Appellants have incidentally referred the Trial Court judgment, wherefrom it appears that issue no. 4 was decided against the landlord/plaintiff seeking eviction.

Since, appellants/defendants were a first defaulter the statutory protection under Section 7(4) of West Bengal Premises Tenancy Act was extended by the Trial Court.

Issue no. 10 deals with the reasonable requirement of the respondents/plaintiffs.

Issue nos. 8 and 9 are consequential to the principle relief sought for in this case.

Upon perusal of the judgment, it appears that the Appellate Court, while sending back the case on

remand for decision afresh of four issues, opportunities were equally given to the both the parties to file amendment petition responding to their separate petition under Order 41 Rule 27 C.P.C. filed by either of the parties to this case.

The opportunity to make necessary amendment in their respective pleading was however, restricted to the ground of reasonable requirement.

It is thus, clear that either of the parties to this case, in course of hearing of first appeal, filed a separate petition each under Order 41 Rule 27 C.P.C. intending to adduce additional evidence, which could not be produced at the time of trial in spite of due diligence exercised by either of the parties to this case.

When both the parties were given equal opportunity to seek for amendment to their respective pleading, restricting to the reasonable requirement issue, there is nothing left to claim prejudice in any manner whatsoever by either of the parties to this case, because such benefits extended will sure to enure benefits to each of the parties to this case.

The judgment, so delivered by the First Lower Appellate Court has considered the requirement of necessity allowing the remand for decision afresh of some issues, particularly on reasonable

requirement, and further extended the opportunity to adduce additional evidence in terms of the separate petition filed each under Order 41 Rule 27 C.P.C. There lies no perversity in the order requiring any interference by us so far as the issue dealing with reasonable requirement is considered.

Though, First Appellate Court has considered that besides the issue pertaining to the ground of reasonable requirement, all other issues including the defaulter issue have been decided against the plaintiff, but being oblivious of such findings, the First Lower Appellate Court again directed for decision afresh of issue no. 4 without subscribing any independent reasons therefor. Decision afresh of issue no. 4, as ordered by the First Appellate Court, would as such be redundant. The issue no. 4 does not require to be re-decided afresh.

Since issue nos. 8 and 9 are consequential to the principle relief sought for, the same would however, remained unchanged.

That being the position, we modify the order of remand to the extent as follows.

The learned Trial Court is directed to rehear issue nos. 8, 9 and 10 after giving sufficient opportunities to the either of the parties to this case to file amendment petition, if any, and also adduce evidence, as already observed in the body of the judgment of First Lower Appellate Court, and then

dispose of the suit, as expeditiously possible, preferably within six (6) months from the date communication of this order.

The other portions of the order will, however, remain unchanged.

The order of remand is thus modified.

With this direction and observation, the appeal stands disposed of along with all its connected applications.

Urgent certified photostat copy of this order be given to the parties, if applied for, upon compliance with requisite formalities.

(Soumen Sen, J.)

(Subhasis Dasgupta, J.)