

240 16.08.2021
AN Ct. No. 04

SAT 283 of 2018

I.A. No.: CAN 1 of 2018 (Old No.: CAN 5946 of 2018)

I.A. No.: CAN 2 of 2018 (Old No.: CAN 6010 of 2018)

Shakuntala Devi & Ors.

vs.

Arun Kumar Dutta being dead and
represented by his heirs and legal representatives & Ors.

Mr. Anirban Mitra

Ms. Nipa Mullick

Mr. Amit Halder

... for appellants/defendants

Mr. Mitra, learned advocate appears on behalf of appellants and submits, his clients' appeal be admitted on three questions of law. Firstly, so far as finding of default is concerned, his clients had not filed original challans in respect of deposit of rent for period January, 2011 to March, 2011, being the fatal default to disentitle them from protection against eviction. They applied to produce additional evidence in appeal. This application was not considered by the lower appellate Court.

Secondly, by drawing attention to pages 3 and 6 of judgment of the lower appellate Court he submits, his clients had proved that respondents had alternative accommodation within the radius. Lastly, requirement of shop room by original plaintiff stood reduced on his death. Inter alia, substituted plaintiff being the son does not have such requirement.

On query from Court, Mr. Mitra submits, decree on any one of the grounds in section 6 of West Bengal

Premises Tenancy Act, 1997 can be made. We assume the ground of default ought to have been decided in favour of appellants. That brings us to the other two grounds.

So far as alternative accommodation within the radius is concerned, relied upon passages in judgment of the lower appellate Court are reproduced below: .

“... .. that Ld. Trial Court failed to consider that the plaintiff in his examination in chief did not deny the fact of their possession of four rooms at premises no. 10/5, Natabar Dutta Row, Kolkata-12

... .. The defendant (DW-1) has faced cross examination extensively and intensively and the witness came to know from the K.M.C. that the landlords are the owners of premises no. 196A, Bidhan Sarani, Kolkata-6 and 10/5, Natabar Dutta Road, but failed to say whether those buildings have already been sold out or not”

The first passage cannot be relied upon as evidence or proof of alternative accommodation admitted by plaintiffs because in examination in chief, case is made out. Denial comes in cross examination. It appears submission of appellants regarding the examination-in-chief was that there was no statement made by plaintiff regarding possession of alternative accommodation. Appellants could not demonstrate plaintiff had not denied same in cross-examination. The second passage is clear appreciation of evidence by the lower appellate Court being that appellants/defendants could not positively prove plaintiffs' are in possession of alternative accommodation within the radius.

On the third question, we find trial Court had

found requirement of at least one room for business of plaintiff no.1(b)-the son of deceased plaintiff. The lower appellate Court found as follows:-

“On a perusal of the material on record, it is very clear that the plaintiffs’ requirement of three bed rooms, kitchen room, drawing room, dinning room, guest room, servant’s room, Thakurghar and as the plaintiff no.1(a) has attained marriageable age, so requirement of at least three rooms has to be considered because of the fact that the defendants have failed to prove that the plaintiffs have other suitable reasonable accommodation save and except suit premises. So, it appears that the plaintiffs have no other accommodation elsewhere other than the suit premises.”

In view of above, no question arises on requirement of original plaintiff, since deceased, as could not be pressed at trial subsequently. Concurrent findings on fact of requirement are not based on requirement of original plaintiff, since deceased.

We do not find any question of law arises in the second appeal. It is **dismissed**. Consequently, connected applications are also **dismissed**.

Mr. Mitra submits there are errors in judgment of the lower appellate Court. We make it clear that correction of errors cannot be in second appeal.

(Arindam Sinha, J.)

(Saugata Bhattacharyya, J.)