

08.02.2021.
Item No. 5

S.A.T. 510 of 2016
With
CAN 3 of 2018 (Old No. CAN 4312 of 2018)
CAN 5 of 2018 (Old No. CAN 8638 of 2018)
CAN 6 of 2019 (Old No. CAN 9468 of 2019)

Kamala Majhi and others.
Vs.
Rabindra Nath Chakraborty and others.

Mr. Shiba Prosad Ghose,
Mrs. Juin Dutta Chakraborty.
... for the appellants.

Mr. Partha Protim Roy,
Mr. Nilanjan Adhikari.
... for the respondents.

Let affidavit-in-opposition filed by the respondents to an application being CAN 6 of 2019 (Old No. CAN 9468 of 2019) be kept with the record.

The said application is not on record.

Learned Advocate for the appellants hands over the photocopy of the said application to which learned Advocate for the respondents did not raise any objection.

Let photocopy of the said application be taken on record. In the meantime, the office shall trace out the said application and tag with the record. We proceed to decide the matter on merit treating such photocopy to have been filed.

Indubitably, a suit for eviction of a monthly tenant on the ground of building and rebuilding and reasonable requirement under the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as 'said Act') was filed. It is alleged by the plaintiffs/respondents that the accommodation available to them at the suit premises is not

reasonable suitable and, therefore, they require more accommodation to cater the need of the family members and the dependants. It was further alleged in the plaint that since the suit premises is in a dilapidated condition, therefore, it requires immediate demolition and reconstruction is the need of an hour and after the construction of a new structure the accommodation required by the plaintiffs/respondents shall be satisfied.

The defendants/appellants contested the suit denying all the allegations including the composition of the family members pleaded and proved by the plaintiffs/respondents. It is contended that the suit premises is not suitable for any other purposes, as the plaintiffs/respondents are residing in a nearby house having sufficient accommodation. It is further stated in the written statement that the requirement, as pleaded by the plaintiffs/respondents, is fanciful and there is no element of need in it.

On the conspectus of the respective stands, the Advocate Commissioner was appointed for inspection and report was also submitted before the court. The trial court after closure of the evidence adduced by the respective parties held that the plaintiffs reasonably required the suit premises after making building and rebuilding thereat and, therefore, the defendants are not entitled to any other protection. The order of the trial court was carried to an appellate court and the appellate court affirmed the same by dismissing the appeal.

Learned Advocate appearing on behalf of the appellants submits that it is imperative on the part of the court to make an order under Section 18A of the said Act once a decree on the ground of building and rebuilding has been passed. Since the court did not pass such an order, there is a clear infirmity and

illegality therein and, therefore, it raises a substantial question of law. It is further submitted that once the case of building and rebuilding has been made it runs counter to the case of reasonable requirement, as a person cannot occupy a portion, which, according to him, is in a dilapidated condition and not habitable for the purpose of residence or otherwise. He relies upon a Single Bench judgment of this Court in case of **Mahananda Das Karamakar vs. Biswanath Dey and Ors.**, reported in **AIR 1976 Calcutta 185** in support of the aforesaid contention that the word 'requires' under Sections 13(1)(f) of the said Act means there must be element of need and not mere wish and desire of landlord to evict the tenant. It is further submitted that an application for taking the additional evidence has been filed to show that the landlord has a house adjacent to the suit premises, which is wholly occupied by them and, therefore, such additional evidence should be allowed to be taken in this appeal.

On the basis of the aforesaid submission, the only point, which germane therefrom as to whether both the courts below committed serious infirmity in not applying the provisions incorporated under Section 18A of the said Act while passing a decree on the ground of building or rebuilding. In order to succeed in a suit for eviction of a monthly tenant under the said Act on the ground of building and rebuilding and reasonable requirement, the landlord has to prove that he is a owner thereof and that the suit premises requires building or rebuilding and for his own occupation thereat. The landlord is the best person to take a decision over his accommodation and the manner in which he will occupy. The tenant cannot dictate the landlord how to squeeze himself or occupy the premises. Once the only element, which is

required to prove in such case, is that the requirement pleaded by the landlord is reasonable and if the requirement is for his own use and occupation the existing accommodation is not reasonable suitable for him.

We do not find any fetter in the provisions of the said Act to seek for eviction under a composite ground i.e. building and rebuilding and the reasonable requirement. (See **Ramnikal Pitambardas Mehta vs. Indradaman Amratlal Sheth**, reported in **AIR 1964 Supreme Court 1676**). Even the judgment of the Single Bench in case of **Mahananda Das Karamakar (supra)** does not run counter to the proposition as laid down by the Supreme Court. The Single Bench held that mere wish or desire of the landlord to get the suit premises in question is not enough. There must be some element of need or necessity in such requirement and such need or necessity should be reasonable and bona fide.

We have no quarrel to such proposition, as the Section itself mandates the landlord to prove that the requirement pleaded is reasonable as opposed to fanciful or lack of any need in it. It is more objective than a subjective satisfaction, which is to be viewed in order to ascertain the requirement pleaded by the plaintiffs/respondents. The composition of family has been found concurrently by both the courts below and requirement thereof has also been held in favour of the landlord. Once the landlord has been able to prove that the existing accommodation is too scanty or not reasonable suitable, there is no fetter on the part of the court to pass a decree for eviction against the defendant/tenant. It is not open to the defendant/tenant to contend that he will suffer more in comparison to the hardship of the landlord. The concept of comparative hardship has not been

envisioned by the legislature while legislating the said Act, as such provision is conspicuously omitted or absent therein. If the statute does not contain such provision, it is not open either to defendant/tenant nor the court to import such concept and decide the matter thereupon.

Reverting to the other point relating to the accommodation to be provided to the tenant after building or rebuilding by the landlord, if the eviction decree is passed on such ground, it is no gain saying that Section 18A of the said Act provides the modalities and/or mechanism to be adopted by the court while passing a decree on the ground of building and rebuilding. The court may pass the order while decreeing the suit on such ground that the tenant would be re-accommodated in a newly constructed or newly built structure and the rights of the tenant shall not extinguish in this regard. The aforesaid proposition would have its full applicability if the suit is decreed solely on the ground of building or rebuilding but loses its applicability if something more is attached thereto.

As indicated above, it was a suit for eviction on a composite ground of building and rebuilding and reasonable requirement of the landlord and if the court finds that after building or rebuilding the accommodation that would be available to the landlord would satisfy its need and the tenant cannot be accommodated, the provisions contained in Section 18A of the said Act will lose its applicability and, therefore, we do not find any infirmity in the judgment of both the courts below in not providing any conditions enshrined under the said Section.

So far as the subsequent event is concerned, though leave was granted to the defendants/appellants to file the same but mere leave

does not mean that the court shall not look into the additional documents sought to be produced for the purpose of its nexus to the issues involved in the suit. By virtue of the application for subsequent event, the defendants/appellants intended to bring the factum of one bedroom, two kitchens and one computer room at the building adjacent thereto to say that the requirement has been satisfied. Every event, which has no bearing or impact on the decision, cannot be brought by way of subsequent event or additional evidence at the appellate stage. The event must have the bearing on the decision as if the said fact would tilt the decision already taken diametrically opposite thereto. The facts, which have remote impact thereupon without touching the ultimate decision, cannot be allowed to be brought as and by way of additional evidence. The importance of subsequent event has been visioned to minimize the litigation and to bring to end all controversies of the parties in the litigation.

We do not find that even the additional room wipes out the requirement of the plaintiffs/respondents, which has been held to be reasonable and, therefore, we do not think that there is any necessity to allow such application for production of additional evidence.

We, thus, do not find any substantial question of law involved in the instant appeal at the stage of Order XLI Rule 11 of the Code of Civil Procedure and the same is hereby dismissed.

In view of the dismissal of the appeal itself, the connected applications being CAN 3 of 2018 (Old No. CAN 4312 of 2018), CAN 5 of 2018 (Old No. CAN 8638 of 2018) and CAN 6 of 2019 (Old No. CAN 9468 of 2019) have become infructuous and the same are also dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties within a week from date.

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(Harish Tandon, J.)

(Kausik Chanda, J.)