

DL. March 18,
54. 2021

S.A.T. 157 of 2020

Mr. Bhabani Prasad Mandal,
...for the appellant.

This second appeal is against a judgment of affirmation by the learned Additional District Judge, Eleventh Court at Alipore, South 24-Parganas, in Ejectment Appeal No. 72 of 2016, arising out of judgment and decree passed by the learned Civil Judge (Junior Division), Third Court at Alipore, South 24-Parganas, in Ejectment Suit No. 43 of 2007.

The plaintiffs/respondents filed a suit for eviction against the defendant/appellant on the ground of default in payment of rent, reasonable requirement and subletting. The plaintiffs succeeded before the learned trial judge in establishing all the grounds. In an appeal preferred against the said judgment by the defendant/appellant, the learned Judge in the first appellate court affirmed the judgment and decree passed by the learned trial judge.

A second appeal can be admitted provided it raises substantial question(s) of law.

In the present case, both the courts below found, on the basis of the evidence, both oral and documentary, that the plaintiffs/respondents have been able to make out a case of reasonable requirement. Both the courts below have taken into consideration the evidence adduced on behalf of the plaintiffs that they required the suit property for the benefit of their family members. The plaintiffs deposed that they have been running a sweet meat shop on the adjoining north of the suit property and that they have to maintain three families comprising of thirteen (13)

members and it has become difficult for them to maintain their families from the income of the small sweet meat shop in their occupation as the income is not sufficient and, as such, they intend to do some business from the suit property. It has been further deposed that the son of the plaintiff no. 1 named Raju is presently unemployed and intends to carry on business of similar nature of sweet meat shop from the suit property and the plaintiffs have decided that the plaintiff no. 1 and his son shall jointly carry on such business from the suit property for augmenting the family income of the plaintiffs.

The defendant/appellant, during his cross-examination, admitted the fact of composition of the family members of the plaintiffs that the plaintiff no. 1 has three (3) sons and the plaintiff no. 2 has one (1) son.

The learned trial judge relied on the commissioner's report being Exhibit 8 to ascertain the nature and extent of the plaintiffs' shop room and found that there was no other shop room in the possession of the plaintiffs save and except the shop room mentioned in the commissioner's report.

The learned trial judge relied upon the decisions rendered by the Hon'ble Supreme Court in the case of **Ragavendra Kumar vs. Firm Prem Machinery & Co.** reported in **(2000) 1 S.C.C. 679** and in the case of **Mohd. Ayub vs. Mukesh** reported in **(2012) 2 S.C.C. 155** and held that it is a settled position of law that the landlord is the best judge of his requirement for residential or business purpose and has complete freedom in that matter and decreed the suit.

The defence of the defendant/appellant with regard to long tenancy in the suit property was also found to be unjustified and untenable to deprive the plaintiffs to get possession of the suit shop room once the reasonable requirement is established (see **Dinesh Kumar vs. Yusuf Ali reported in (2010) 12 S.C.C. 740**).

The family members of the present plaintiffs comprised of grown up sons, who are unemployed and the decision of starting a separate business from the suit property for augmenting the family income of the plaintiffs as also a business for one of the sons of the plaintiffs from the suit property cannot be said to be fanciful. Both the courts below have also found the defendant/appellant to be a defaulter in payment of rent and in view of the settled law that if the deposits are not made within the statutory period, the defence is to be automatically struck off under Section 7(3) of the West Bengal Premises Tenancy Act, 1997. The appellant has lost its defence. That precisely happens in the present case.

On the basis of the evidence available with the trial court as well as the first appellate court the bona fide requirement of the plaintiffs for the scheduled property is established. The trial court as well as the appellate court, in our view, have meticulously analyzed and appreciated the reasonable requirement of the premises for the business. Both the courts have appreciated the evidence in the right perspective. It cannot be said that the requirement is a mere desire or fanciful. It happens to be a genuine need. Once a plaintiff has been able to establish a genuine need for the premises the plaintiffs as landlords are entitled to a decree for eviction on the ground of reasonable requirement. In a fairly recent decision in

Mehmooda Gulshan vs. Zavaida Hussain Mungloo reported at **2017(5) S.C.C. 683** the Hon'ble Supreme Court has observed that what is a genuine need would depend on the facts and circumstances of each case, the court in that case, allowed the eviction on the ground of reasonable requirement considering the background of the son who was unemployed and uneducated and that business was the only available option and tenanted premises was the only space available. It was reiterated that mere non-examination of the family member who intends to do the business cannot be taken as a ground for repelling the reasonable requirement of the landlord. Once the genuine need is established the plaintiff shall be entitled to a decree for eviction on the ground of reasonable requirement.

On such consideration, we feel that the plaintiffs were able to make out a case of reasonable requirement and established such requirement throughout the proceeding. The findings of fact arrived at by the trial court as well as the first appellate court do not appear to be perverse and arbitrary. As such, we do not find any cogent reason to interfere with the judgment of affirmation passed by the first appellate court.

The learned advocate for the appellant has strenuously argued that the plaintiffs have failed to prove the case of subletting. The learned counsel submits that on the date of the commission, the defendant/appellant could not remain present due to medical ground and that there is no evidence to show that the control of the suit property has been parted with to a stranger. It has also been argued that the person found to be in occupation of the shop room at the time during the visit by the commissioner was the brother of the

appellant. The brother of the appellant would have been inherited the said tenancy in the absence of the appellant as he becomes Class-II heir according to Hindu Law.

Although we feel that on the ground of subletting the appellant may have a case, but in view of the fact that there is a clear finding against the appellant with regard to the reasonable requirement of the plaintiffs in relation to the suit property and this finding is sufficient to pass a decree for eviction and having not found any perversity in arriving at the conclusions by both the courts below there is no scope to interfere in the second appeal.

In a second appeal, the concurrent findings of fact can be interfered with where such finding is perverse, based on no evidence or a misreading of the evidence, or such finding has been arrived at by ignoring or overlooking the material evidence, or such finding is so grossly erroneous that if allowed to stand it will occasion a miscarriage of justice.

In the instant case, on the basis of the evidence adduced the requirement of the suit property is established. Mr. Mondal has tried to argue that the appellant ought to have been given an opportunity to amend the written statement as the appellant had come across information and documents that would suggest that the family of the plaintiffs are well off and the plaintiffs have rented another shop room. We find that before the first appellate court the application for amendment of the written statement was made but the same was dismissed as there was no application filed under Order XLI Rule 27 of the Code of Civil Procedure.

The appellant ought to have filed an application under

Order XLI Rule 27 of the Code of Civil Procedure disclosing such alleged additional evidence which the defendant in spite of due diligence could not have gathered during the trial. Unless such application is filed and satisfaction is recorded that in spite of due diligence such evidence could not be discovered the appellate court cannot be expected to act mechanically and accept the said application. The application for amendment of the written statement at the appellate stage, in our view, is misconceived. Moreover, we find that the first appellate court has recorded in the order that the said application for amendment of the written statement was grossly belated and filed with a view to delay the trial. We agree with such finding of the first appellate court. The final acceptance of the report of the commissioner with regard to the nature and extent of the occupation of the plaintiffs has not been challenged.

On such consideration also, we are not inclined to interfere with the judgment and decree passed by the courts below evicting the defendant/appellant from the suit property.

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

In view of dismissal of the appeal, nothing remains to be decided in the connected application for stay filed under CAN 1 of 2021 and the same is also disposed of.

There will be no order as to costs.

(Soumen Sen, J.)

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(Saugata Bhattacharyya, J.)