

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

SA No. 601 of 2007
(IA No: CAN 09 of 2022)

SMT. GAYATRI DUTTA & ORS.
VS.
SMT. MANIKA GHOSH.

For the appellants/petitioners:

Mr. Sumanta Biswas,
Mr. Bikash Shaw.

For the respondent:

Mr. Rupak Ghosh,
Mr. Abhijit Sarkar,
Mr. Shantanu Mishra,
Mr. Abhik Chitta Kundu,
Mr. Bidish Ghosh.

Heard on : 16.03.2022

Judgment on : 30.03.2022

Biswajit Basu, J.

1. The present second appeal is at the instance of the tenants/defendants in a suit for Ejectment and is directed against the judgment and decree dated January 05, 2007 passed by the VIth Bench, City Civil Court at Calcutta in Title

Appeal No. 11 of 2006 thereby affirming the judgment and decree dated November 18, 2005 passed by the learned Judge, IVth Bench, Presidency Small Causes Court Calcutta in Ejectment Suit No. 2458 of 2000.

2. The appellants were the tenants in respect of one shop room at the ground floor of premises no. 172 Bidhan Sarani, Kolkata- 700006, under the respondent. The respondent filed the said ejectment suit for eviction of the appellants from the suit shop room on the ground that the respondent requires the suit shop room for her own use and occupation as well as for the use and occupation of her family members and she has no other reasonably suitable accommodation elsewhere. The other ground on which the respondent sought eviction of the appellants from the suit shop room is that the appellants had defaulted in payment of rent.

3. The present second appeal was admitted under Order XLI Rule 11 of the Code of Civil Procedure on December 18, 2007 to answer the following substantial questions of law:-

- i. *Whether the learned Court of Appeal below committed substantial error of law in passing a decree for eviction on the ground of reasonable requirement by totally overlooking the admission of the plaintiff that the suit property cannot be used as Garage?*
- ii. *Whether the Learned Court of Appeal below committed substantial error of law in passing a decree for eviction on the ground of reasonable requirement by not considering the fact that the*

plaintiff is already in possession of seven rooms in the suit property and apart from those rooms, has separate chamber and at the same time he had no intention of using the suit property as his chamber without getting accommodation of shop rooms situated in the ground floor for which he had already filed suits?

- iii. *Whether the Learned Court of Appeal below committed substantial error of law in passing a decree for eviction on the assumption that the plaintiff would succeed in the other suits filed against the other shop-owners and after taking into possession of those shop-rooms, he will utilize the said shop room either as his chamber or his garage?*

4. The plaintiff in the suit has pleaded her requirement for the suit shop room to use it either as the chamber of her husband, who was a doctor or as the garage to park her car. The defendants contested the suit, in the written statement they stated inter alia that plaintiff after purchase of the suit property, got vacant possession of one big room with covered verandah at the ground floor of the suit premises from one tenant which the plaintiff initially kept under lock and key but recently her son has started business in the said room for the purpose of the said suit. It is the further case of the defendants that the plaintiff used to collect rent for six months at a time but never issued rent receipts, when the plaintiff refused to accept rent, the defendants started depositing the same with the Rent Controller from July, 1999. The defendants in their written statement further alleged that the husband of the plaintiff since has a chamber at Premises No. 10A, Madan Chatterjee Lane, Kolkata- 700007, he does not require the suit shop room.

5. In view of the nature of requirement, both the learned Courts below rightly did not consider the occupation of the plaintiff in the first floor and second floor of the suit premises. The only relevant consideration in this case is the extent of occupation of the plaintiff in the ground floor of the suit premises. The learned Trial Judge from the materials-on-record held that it is an admitted position that besides the suit room, there are two other road side shop rooms at the ground floor of the suit premises occupied by the tenants and suits for eviction are pending against the said tenants. The plaintiff is in occupation of one room at the said ground floor in which the son of the plaintiff is running a business under the name and style of “*Saswata Infotech*”.

6. The defendants challenged the bona fide of the requirement of the plaintiff for the suit shop room on the ground that the size of the suit shop room is too small to be used as a garage without remodeling and/or renovation. The learned Trial Judge relying on the decision of the Hon’ble Supreme Court in the case of **S.R. BABU vs. T.K. VASUDEVAN AND OTHERS** reported in **(2001) 8 SCC 110** overruled the said challenge holding that the plaintiff is entitled to use the suit room according to her convenience, either as it is or after necessary repairs, addition or alteration and accordingly decreed the suit. The defendants in appeal, were unsuccessful in reversing the said findings of the learned Trial Judge.

7. In the present second appeal, the appellants have taken out an application under Order XLI Rule 27 of the Code of Civil Procedure being CAN 09 of 2022. In the said application, the appellants have stated, inter alia, that the husband of the respondent has expired during the pendency of the present second appeal, as such the suit shop room is no longer required for the chamber of the husband of the respondent. It has further been alleged in the said application that the respondent recently has obtained possession of one room at the ground floor and two rooms at the second floor of the suit premises, and the respondent has converted the said ground floor room into a garage, therefore, the requirement of the respondent for the suit shop room has been fully satisfied. The appellants by the said application have prayed for appointment of a special officer to inspect the suit premises to ascertain the extent of occupation of the respondent in the suit premises and whether the respondent has also modified and/or altered her occupied portions in the suit premises to meet the requirement.

8. The respondent has filed affidavit-in-opposition to the said application to which the appellants have filed reply. In the said affidavit-in-opposition the respondent has stated that although she has obtained possession of one ground floor shop room of the suit premises but her son is using the said room as the garage to park his car and she is still parking her car on road on payment of night parking charges to the Kolkata Municipal Corporation,

photocopy of the receipts of such payments have been annexed with the said affidavit-in-opposition.

9. The learned advocate for the appellants submits that in an eviction proceeding on the ground of reasonable requirement, even second Appellate Court can take into account any subsequent events and in support of his such submissions, he places reliance on the decision of the learned Single Judges of this Court in the case of **SHYAM PYARI DEVI vs. OM PRAKASH SHAW** reported in **(2000) 3 ICC 383** and the case of **NETAI CHANDRA PAUL & ANR. vs. DILIP KUMAR SAHA** reported in **(2005) 4 CHN 819**. He further submits that the husband of the respondent as witness in the suit has admitted that the suit shop room without addition or alteration cannot be used as garage but both the learned Courts below without considering the said admission, have decreed the suit and thereby have committed substantial error of law. He placing reliance on the decision of the Hon'ble Supreme Court reported in **(2001) 8 SCC 110 (supra)** contends that the learned Courts below should have considered the hardship of the tenants/appellants before decreeing the suit.

10. Learned counsel for the respondent on the other hand submits that the subsequent events sought to be brought in the records of the present second appeal do not affect the decisions of the Courts below inasmuch as the said subsequent events do not alter the requirement of the respondent for the suit

shop room. He submits that the plaintiff requires the suit shop room either to use it as the chamber of her husband or to use it as a garage to park her car, no doubt after the death of her husband, requirement of the respondent for such chamber has been extinguished, but her requirement for a garage to park her car remains.

11. The said learned advocate further submits that even after obtaining possession of one ground floor shop room, the requirement of the respondent has not been fully satisfied since the son of respondent is using the said shop room as his garage and the respondent is still parking her car on road on payment of parking charges to the Kolkata Municipal Corporation. He next contends that the suit was filed way back in the year 2000, the appellants successfully have kept the *lis* pending for more than twenty years and now they are trying to take advantage of the said delay as the husband of the respondent has died in the meantime. He emphatically submits that the crucial date for deciding the bona fides of the requirement of the landlord is the date of application for eviction, the landlord should not be penalized for the tardiness of the legal system, in support of his such submission he refers to the decisions of the Hon'ble Supreme Court in the case of **KAMLESWAR PRASAD vs. PRADUMANJU AGARWAL (DEAD) BY LRS.** reported in **(1997) 4 SCC 413** and the case of **GAYA PRASAD vs. PRADEEP SRIVASTAVA** reported in **(2001) 2 SCC 604.**

He concludes his argument by submitting that the substantial questions of law formulated in the present second appeal are essentially questions of fact, as such, cannot be gone into in a second appeal and on the scope of Section 100 of the Code, he refers to the decisions of the Hon'ble Supreme Court in the case **PARAS NATH THAKUR vs. SMT. MOHANI DAS (DECEASE) AND OTHERS.** reported in **AIR 1959 (SUPREME COURT) 1204**, the case of **RAMACHANDRA AYYAR AND ANOTHER vs. RAMALINGAM CHETTIAR AND ANOTHER** reported in **AIR 1963 (SUPREME COURT) 302** and the case of **MADAMANCHI RAMAPPA AND ANOTHER vs. MUTHALURU BOJJAPPA** reported in **AIR 1963 (SUPREME COURT) 1633**.

12. Heard learned advocate for the parties, perused the materials-on-record. The plaintiff in the suit has pleaded her requirement for the suit shop room to use it either as the chamber of her doctor husband or as a garage to park her car. It is noteworthy to mention here that the plaintiff in paragraph 6(a) of the plaint has pleaded her requirement for two garages on the road side of the suit premises for keeping two cars of her family. The evidence-in-chief of P.W.₁, the husband of the plaintiff on this point is "our family have two cars of which one Maruti Car No. WNW-8525 and another car No. WB-02-G-6037, but due to shortage of accommodation, we sold car No. 8525. But, we require two garages for our car parking." Record reveals that the said witness during cross-examination was not even put to any contrary suggestion.

13. Suitability of the suit shop room for use of it either as doctor's chamber or as a garage is not in dispute since it is situated on the roadside. The respondent does not require a chamber for her husband as he has expired in the meantime but her requirement for the suit shop room to use it as her garage still exists as she owns a car and is keeping it on the road on payment of night parking fees to the Kolkata Municipal Corporation. Once it is decided that the plaintiff requires the suit shop room to use it as her garage, the question as to whether it can be used for the said purpose without any addition or alteration is of no consequence inasmuch as it is for the respondent to decide the manner of addition and or alteration in it, the tenant cannot defeat *the bona fide* requirement of the landlord on the said plea. The Hon'ble Supreme Court in the case reported in **(2001) 8 SCC 110 (supra)** has held that once it is found that the landlord requires the additional accommodation for his personal use, the landlord becomes entitled to use it to best suit his requirement he can use it as it is or after necessary repair, addition or alteration, the tenant has no say in such matter. Therefore, non-consideration of the said alleged admission of the P.W.₁ by the appeal court below does not give rise to any substantial question of law.

14. The plaintiff claims that suit shop room is required for her own use and occupation and for the use and occupation of her family members. The plaintiff during the pendency of the present second appeal has obtained possession of

one shop room at the ground floor of the suit premises. One of the sons of the plaintiff is using the said shop room as garage to park his car. The said son is a family member of the plaintiff, as such, his requirement for a garage comes within the zone of *bona fide* requirement of the plaintiff. Moreover, the requirement of the plaintiff is for two garages therefore even after getting possession of said one shop room, requirement of the plaintiff for the suit shop room still subsists.

15. There is no dispute with regard to the proposition of law that in a suit for eviction on the ground of reasonable requirement the court even at the second appellate stage can take note of subsequent events but subject to the condition that the said subsequent events are such which is affecting the decision of the court, that has been laid down in the decision of the learned Single Judges of this Court cited by the learned advocate for the appellants reported in **(2000) 3 ICC 383(supra)** and **(2005) 4 CHN 819(supra)**. The Hon'ble Supreme Court in the case reported in **(2001) 2 SCC 604 (supra)** cited by the learned advocate for the respondent clarified that subsequent events may in some situations be considered to have overshadowed the genuineness of landlord's need but only if they are of such nature and dimension as to completely eclipse such need and make it lose significance altogether. The subsequent events sought to be brought in the records of the present second appeal by the application under Order XLI Rule 27 of the Code neither affects or overshadows the decisions of

the courts below nor by the said subsequent events the requirement of the plaintiff for the suit shop room has totally been eclipsed.

16. A second appeal under section 100 of the Code can be entertained by the High Court only when the High Court is satisfied that the case involves a substantial question of law. The decisions of the Hon'ble Supreme Court reported in **AIR 1959 (SUPREME COURT) 1204(supra)**, reported in **AIR 1963 (SUPREME COURT) 302(supra)** and reported in **AIR 1963 (SUPREME COURT) 1633(supra)** cited by the learned advocate for the respondent are apposite to the said proposition of law. The substantial questions of law framed in the present second appeal fails to qualify the said requirement of Section 100 of the Code as the said questions are essentially questions of fact.

17. The decision of the Hon'ble Supreme Court reported in **(2001) 8 SCC 110 (supra)** relied on by the learned advocate for the appellants is misplaced in the facts and circumstances of the present case inasmuch as the said case was under Kerala Buildings (Lease and Rent Control) Act, 1965, the proviso appended to Section 11 thereof stipulates consideration of the hardship of the tenant at the time of enforcing a decree of eviction under the said Act but there is no such provision in the West Bengal Premises Tenancy Act, 1956 under which the parties of the present second appeal are litigating.

Summing up the discussion made above, this Court is of the opinion that no such substantial questions of law are involved in the present second appeal as framed under Order XLI Rule 11 of the Code on December 18, 2007.

S.A. 601 of 2007 and the application thereto under Order XLI Rule 27 of the Code being CAN 09 of 2022 are dismissed.

The judgment and decree dated January 05, 2007 passed by the VIth Bench, City Civil Court at Calcutta in Title Appeal No. 11 of 2006 affirming the judgment and decree dated November 18, 2005 passed by the learned Judge, IVth Bench, Presidency Small Causes Court Calcutta in Ejectment Suit No. 2458 of 2000 is hereby affirmed. There shall be no order as to costs.

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

(BISWAJIT BASU, J.)