

09.09.2022
SL No.7
Court No.8
(gc)

SA 122 of 2022
CAN 1 of 2014 (Old No: CAN 9220 of 2014)

Taraknath Poddar
Vs.
Somenath Banerjee

The second appeal appeared in the daily list on 5th September, 2022 and no interest was shown by the appellant to move the second appeal.

The appellant is also not represented today nor any accommodation is prayed for on behalf of the appellant. Although, the appellant has sufficient knowledge and notice of the listing of this matter.

The second appeal is arising out of a decree of affirmation dated 22nd January, 2014 whereby the judgment and decree passed by the learned Trial Judge on 16th September, 2011 in a suit for ejectment being Ejectment Suit No.313 of 2007C.

The plaintiff filed the eviction suit on the ground of subletting. The learned Trial Judge upon being satisfied that the notice to quit was served upon the respondent and there is no ambiguity with regard to the nature and extent of tenancy delved to the issue of subletting and after taking into consideration the following facts revealed in course of evidence:-

- i) The defendant is using the tenancy for the last 50 years.

- ii) Fifteen years ago, the defendant had ration card which stood in the address of the defendant at Hind Motor.
- iii) Hind Motor address was the permanent address of the defendant.
- iv) The defendant used to reside at Hind Motor 10/12 years back.
- v) The defendant sometimes reside at Ultadanga at his son's residence and sometimes at Hind Motor.
- vi) The communications sent at the address of tenancy are either received by the defendant personally or by Bishnu Das, as per oral instruction of D.W.-1.
- vii) Postal authority or the landlord was not informed about by the defendant about such instruction of the defendant that in his absence, Bishnu Das will receive his letters.
- viii) The defendant has received the notice sent by landlord, on the basis of intimation, and from the postal department.
- ix) Such an information about intimation was supplied by Bishnu Babu to the defendant.

The appellant could not establish the reason for Sailesh Chandra Saha to reside in the suit premises and it was revealed that all communications including the notice to quit was received by Sailesh Chandra. The presence of Sailesh Chandra in the suit premises could not be explained.

It transpires that the appellant had parted with the possession in favour of Sailesh Chandra. The First Appellate Court has concurred with the finding of the learned Trial Court that the plaintiff was able to establish his case of induction of sub-tenant by the defendant without the consent of the plaintiff which is a valid ground for eviction. The said finding is based on the oral and documentary evidence. On the basis of the oral and documentary evidence, it was open for the Trial Court as well as the First Appellate Court to arrive at the said finding.

There is no substantial question of law is involved in the second appeal.

The second appeal, accordingly, stands dismissed at the admission stage.

In view of dismissal of the second appeal, the connected application also stands dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)