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SA 70 of 2022

Sri Pran Ranjan Das
VS
Smt. Anita Barui & anr.

The appellant is not represented, nor any accommodation is prayed for on his behalf. Even on the earlier occasion, the appellant was not represented.

The present appeal has arisen out of a judgment and decree passed by the learned Civil Judge (Senior Division), First Court at Contai, Purba Medinipur, in a first appeal being Other Appeal No. 94 of 2012 affirming the judgment and decree dated September 21, 2012 passed by the learned Civil Judge (Junior Division), First Court at Contai in an ejectment suit being Other Suit No. 285 of 2008.

The plaintiffs/respondents filed the suit on the ground that the defendant/appellant was defaulter in payment of rent and also on the ground of reasonable requirement for the purpose of building and rebuilding. The suit was decreed on the ground of reasonable requirement.

The plaintiffs/respondents alleged that the plaintiff no. 1, being widow is of advanced age and she is suffering from illness and that she requires the suit premises for residential purpose of her only daughter, who is residing with her for proper upkeep of the

plaintiff no. 1.

Similar issue had come for consideration before a co-ordinate bench of this court in the case of **Deokinandan Boobna vs. Sundar Sarkar** reported in **(1988) 1 C.L.N. 278** in which it was observed as follows:-

“When an old landlord and his aged wife have only the married daughter as their only child and required the tenanted premises for the occupation of the daughter and her family so that they might live with them and they might be properly looked after and taken care of in their old age, such requirement would not in law, be the requirement of that daughter or her family but would be the requirement of the landlord for his own occupation within the meaning of S. 13(1)(ff) of the West Bengal Premises Tenancy Act.”

The first appellate court has also taken into consideration the decisions of this court in the case of **Arora and Sons, M/s. vs. Debi Prasad Khanna** reported in **A.I.R. 1990 Cal. 216** and in the case of **Bibhabati Ghosh vs. Panchu Gopal Paul** reported in **A.I.R. 1989 Cal. 244**. Those two decisions reiterate the same principles enunciated in Deokinandan Boobna’s case.

The requirement of the plaintiff/respondent no. 1

cannot be said to be illusory. Both the courts below on objective assessment of the materials on record as also the evidence on record found the claim of the plaintiffs/respondents of reasonable requirement as rational. The intention of the landlord/plaintiffs was found to be bona fide. The defendant/appellant could not be able to adduce any evidence to show that the plaintiffs/respondents have any other alternative suitable accommodation. Absence of pleading with regard to non-availability of alternative suitable accommodation in the plaint could not justify the suit to be dismissed or in appeal to be remanded as observed in the case of **Bibhabati Ghosh (supra)**. The appellate court on objective assessment of the evidence on record had arrived at a finding that the plaintiffs/respondents have no other alternative accommodation.

We are in agreement with the views expressed by the trial court as well as the first appellate court that mere refusal to accept the notice to quit under Section 6(4) of the West Bengal Premises Tenancy Act would not construe that the said notice was not issued to the defendant/appellant. In this regard, the first appellate court has relied on a decision in the case of **V. D. Devassia vs. Micheal Jopseph** reported in **A.I.R. 1990 Kerala 261**, wherein it has been held as follows :-

“The essential element of waiver is that there must be a voluntary and intentional relinquishment of a known right or conduct as warrants the inference of the relinquishment of such right. To constitute waiver there must be definite evidence of a voluntary and intentional relinquishment of a known right. When a landlord has issued notice to the tenant to quit from the premises and when he immediately filed the suit mere acceptance of rent cannot be considered as a waiver, especially when the landlord accepted the rent as compensation for use and occupation. If it is held otherwise it would result in gross hardship to a plaintiff who had filed the suit for eviction and if the suit is prolonged indefinitely from Court to Court. As the plaintiff in the present case has stated that the amount of Rs. 200/- was received by him as compensation for use and occupation it cannot be held that the plaintiff has waived his right to get eviction of the defendant from the property. In *Mohammed Sadruddin Khan vs. Gulam Mohiuddin*, AIR 1953 Hyderabad 97 it has been held that the mere fact that rent is accepted after a notice of ejection is given would not amount in law to a waiver of the right of the landlord to eject a tenant. In the above decision it

has been stated that there ought to be evidence of an express intention on the part of the landlord to waive his right to eject a tenant. As the present suit was filed immediately after issuing notice to the defendant and as the rent was received by the plaintiff only as compensation for use and occupation and as there is no other evidence of an express intention on the part of the plaintiff to waive his right to eject the defendant it is not possible to hold that the plaintiff has waived his right to eject the defendant from the premises. There is no evidence in the case that the plaintiff has desired that the defendant should continue in possession as a tenant.”

In any event, once the plaintiffs/respondents have been able to prove and establish one of the grounds available to him for eviction of the tenant under Section 6 of the West Bengal Premises Tenancy Act on the basis of preponderance of evidence, we are of the view that the concurrent findings of fact arrived at by both the courts below on the ground of reasonable requirement do not call for any interference. We find no substantial question of law involved in this appeal for which the appeal can be admitted.

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

In view of dismissal of the appeal, the connected application for stay filed under CAN 8747 of 2015 also stands dismissed.

There will be no order as to costs.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)