

Item-5 06-05-2022

SAT 329 of 2019
CAN 1 of 2020 (old CAN 936 of 2020)

sg Ct. 8

Dilip Kumar Shaw
Versus
Smt. Keshari Devi

Mr. Partha Pratim Roy, Adv.
Mr. Dyutiman Banerjee, Adv.
...for the appellant

Mrs. Shohini Chakraborty, Adv.
Miss. Prajaaini Das, Adv.
...for the caveator

At the admission stage, upon hearing the learned Counsel for the caveator, we dispose of the appeal by giving the following directions.

The second appeal is arising out of a judgment and decree of eviction dated 6th July, 2019 passed by the learned First Appellate Court whereby the decree of the learned Trial Court, insofar as it relates to reasonable requirement, was upturned. However, both the Courts have concurrently arrived at a finding that the appellant is a defaulter by reason of non-compliance of section 7(1)(c) of the West Bengal Premises Tenancy Act, 1997.

The learned First Appellate Court differed with the finding of the Trial Court with regard to reasonable requirement. The learned Trial Court on consideration of the evidence found that the PW-1 admitted that the plaintiffs have constructed G+3 storied building at the suit premises and the other two flats owned by the sons of the plaintiff is situated within 10 kilometer from the suit premises. Apart from the other issues concerning the reasonable requirement, this piece of evidence appears to have not been considered by the learned First Appellate Court

while reversing the judgment of the learned Trial Court on the ground of reasonable requirement and allowing the cross-appeal in favour of the plaintiff.

There is another aspect of the matter, which we feel that the learned First Appellate Court is required to be considered having regard to the ground of default under section 6(1)(b) of the West Bengal Premises Tenancy Act, 1997. It appears that the appellant has deposited the rent in terms of the order passed under section 7(2) of the West Bengal Premises Tenancy Act, 1997 with the Rent Controller and not with the Court. Admittedly, the said deposit is an irregular deposit, however, that by itself would not entitle the plaintiff to a decree for eviction on the ground of default unless the plaintiff is able to prove that there has been a default in terms of section 6(b) of the West Bengal Premises Tenancy Act, 1997.

In view thereof, the order of the learned First Appellate Court is set aside.

The learned First Appellate Court is directed to rehear the appeal on merits after having a fresh look at the evidence and/or taking into consideration the aforesaid observations in deciding the appeal on merits after giving an reasonable opportunity of hearing to the parties. In the event the parties have led evidence for eviction on the ground of building and rebuilding, the same shall also be considered at the time of deciding the appeal. However, in presence of any such evidence in that regard, the learned First Appellate Court may not go into the issue at all.

We request the learned First Appellate Court to dispose of the appeal as early as possible, preferably within a period of

six monthly from date of communication of this order by either of the parties subject to convenience of the learned First Appellate Court.

The appeal and the application are, accordingly, disposed of.

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

(Sugato Majumdar, J.)

(Soumen Sen, J.)