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Ct-08

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SA 55 of 2021

with

I.A No. CAN 1 of 2019(Old No. CAN 11097 of 2019)

CAN 2 of 2020(Old No. CAN 1376 of 2020)

CAN 3 of 2021

Moloy Ghosh

Vs.

Tapan Kumar Mallick & Ors.

Mr. Asis Bagchi, Sr. Adv

Mr. Anit Rakshit

Mr. Sailendu Sekhar Bayerd

.... For the Appellant

Mr. Avhik Sarkar

.... For the Respondents

CAN 3 of 2021 (Substitution)

This is an application for substitution filed consequent upon the death of the respondent no. 1, namely, Tapan Kumar Mallick, who died intestate on 10th July, 2021 leaving behind him the heirs and legal representatives, as described in the cause tile of the application.

After hearing the learned counsel appearing for the parties and considering the fact that the heirs and legal representatives of the deceased respondent no. 1 are major and sui juris and the right to sue and be sued survives in favour of such heirs mentioned in this application, we allow the application for substitution and direct substitution of heirs and legal representatives of deceased respondent no. 1, as described in cause tile of the application in stead of and in place of the deceased respondent no. 1 in the appeal.

The application being CAN 3 of 2021 is thus allowed without any order as to costs.

Office shall carry out the necessary amendments in the cause title of the Memorandum of appeal, as indicated hereinbefore within one week from date.

Mr. Avhik Sarkar, learned counsel appearing for the respondents, submits that he has received instruction to appear on behalf of the substituted respondents and undertakes to file Vokatnama in the department within one week from date.

Now, we take the appeal for hearing.

This second appeal has come up for admission.

Mr. Ashish Bagchi, the learned senior counsel appearing for the appellant has raised two questions of law in support of admission of the second appeal.

The first question relates to the bar under Section 13(3A) of the West Bengal Premises Tenancy Act, 1956.

The second question relates to the finding of the trial court on reasonable requirement, as it is contended that the reasonable requirement for the purpose of business is required to be proved more specifically and strictly than the requirement of a dwelling house.

In relation to the first issue it is an admitted fact that the plaintiff is a transferee landlord at the time of institution of the suit. Three-years embargo under Section 13(3A) of the West Bengal Premises Tenancy Act, 1956 was in existence. However, the suit did not proceed and subsequently after the expiry of three years, the plaintiff filed an application for amendment of the plaint. The said amendment was allowed and the order of amendment was never challenged.

The landlord in a pending suit or appeal can always amend the plaint suitably to include the ground of reasonable requirement, if in the mean time three years have passed from the date of transfer and in such case, the landlord should be treated to have filed the plaint on the date of amendment and if the said date falls beyond the three years from the date of transfer, the rigours of retrospective operation may be mitigated as observed in ***Ramendra Vs. Sachi, reported in AIR 1991 Cal 87.***

In so far as the second issue is concerned, both the courts below on the basis of the evidence have arrived at a finding that there is a reasonable requirement of the room in favour of the plaintiff.

The plaintiff purchased a suit property on 18th May, 1991 from the wife of late Jaharlal Das. At the time of transfer the appellants were tenant under the said Nanda Rani Das and paying rent month by month.

The plaintiff contended that from the month of May 1991 till the month of August 1993, the appellants did not pay the rent and they became habitual defaulter. The plaintiff claims to be a businessman and carrying on joint business along with his two brothers at 150, N.S Avenue, in his ancestral rented house, after the death of his father. It was the case of the plaintiff that other than the suit property and due to financial stringency the plaintiff could not find out any other suitable to run his exclusive business. It was on that ground the plaintiff prayed for eviction of the defendants.

The defendants in their written statement have alleged that the plaintiff has sufficient accommodation in the existing property and

accordingly the need of reasonable requirement is illusory and the suit should be dismissed.

The appellants alleged that in the property in which the plaintiff is presently residing had sufficient space, which could be used conveniently by the plaintiff for his business.

It was further contended that one of the defendants, namely, Ram Krishna Ghosh filed a preemption case in respect of the suit property and the said suit is pending.

The plaintiff could carry on his business in three vacant rooms in the ground floor of the house situated at Vivekananda Road. Accordingly, the plaintiff should be disbelieved with regard to his reasonableness of requirement.

Both the courts below arrived at a finding that the plaintiff was in possession of three vacant rooms at Vivekanantda Road was not proved. The report of the Advocate Commissioner did not show that the plaintiff had sufficient space in the Vivekananda Road properly for carrying his exclusive business. The appellants also did not pray for appointment of any commissioner to establish that the plaintiff was occupying three vacant rooms in his house. From the evidence of the advocate commissioner it can be inferred that there was no vacant room at Vivekananda Road wherefrom the plaintiff could carry on his exclusive business.

Both the courts below, in our view, have rightly decreed the suit in favour of the plaintiff. Both the courts have relied upon the judgment of the Supreme Court reported in (2005)12 SCC 778, where the Hon'ble Supreme Court observed that "whenever a landlord seeks ejectment of a tenant for bonafide requirement, it shall be

presumed to be genuine and bonafide.” Once the plaintiff is able to establish his bonafide requirement for his business purpose, he is entitled to a decree. Moreover, in the instant appeal the plaintiff has established his requirement of the said room for his own business. The plaintiff being the landlord certainly would have right to run his business for livelihood and he would certainly prefer to carry on his separate business at his own place as per his choice.

Under such circumstances, in view of concurrent finding of facts with the reasonable requirement of the plaintiff in relation to the suit property, we do not find any reason to interfere with the order passed by both the courts below and no substantial question of law is involved to admit the present appeal.

Accordingly, SA 55 of 2021 is, therefore, 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 application for injunction being CAN 11097 of 2019 and the same is accordingly dismissed.

Learned counsel for the appellant has filed an application being CAN 1376 of 2020 to consider the subsequent events during the pendency of the Title Appeal along with Advocate Commissioner’s report as additional evidence. We have already considered the said document while disposing of the second appeal and we do not find from the said document any favourable observation, which could tilt the issue in favour of the appellants.

In view of the above, CAN 1376 of 2020 is

disposed of.

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)