

18.12.2023

SB
Ct. No. 236

S.A. 7 of 2017
CAN 2 of 2018, CAN 3/2018,
CAN 5/2021, CAN 6/2022, CAN 7/2023

In the matter of : Syed Shamsul Arefin

Mr. Aniruddha Chatterjee ...for the appellant.

Ms. Pallavi Priyadarshee ...for the Special Officer.

1. Mr. Chatterjee, learned counsel representing the appellant.
2. The respondents are not represented.
3. This appeal challenges the judgement and decree passed by the learned Civil Judge (Senior Division) 1st Additional Court, Burdwan in Title Appeal No. 2 of 2015 reversing thereby the judgement and decree dated 23.12.2014 passed by the learned Civil Judge (Junior Division), 4th Court, Burdwan in Title Suit No. 169 of 1999 renumbered as Title Suit No. 54 of 2003.
4. For the sake of convenience the parties will be referred to as they have been arrayed in the suit.
5. Briefly stated, the plaintiff filed the suit for eviction of a premises tenant on the ground of reasonable requirement under the West Bengal Premises Tenancy Act of 1956. The defendant contested the suit by filing written statement denying the averment as well as assertion of the plaintiff as to the reasonable requirement.

6. Learned Trial Court after considering the pleadings of the parties and evidence both oral and documentary adduced during trial was pleased to answer the issue of reasonable requirement in favour of the plaintiff and the defendant was directed to quit and vacate the suit property within sixty days from the date of decree.
7. Aggrieved by the said judgement and decree the defendant preferred an appeal.
8. Learned First Appellate Court after reassessing the testimony of P.W. 1 found that the plaintiff is in occupation of another accommodation. The plaintiff in course of evidence explained that it was a rented accommodation. He took the said property on rent to house his chamber. Admittedly the plaintiff is an advocate by profession. But having admitted his possession in respect of entire the ground floor consisting of three rooms he did not produce any rent receipt or any other document including the tenancy agreement.
9. Learned first Appellate Court on that score was pleased to set aside the judgement of the learned Trial Court.
10. Mr. Chatterjee, learned counsel appearing on behalf of the appellant adverted that the plaintiff is under obligation to prove that he has no other reasonably suitable accommodation elsewhere. The plaintiff ought to have taken step to prove the same even before the learned first Appellate Court.

11. However, at the behest of the plaintiff additional evidence was allowed to be taken.
12. Ms. Priyadarshee, an advocate of this Court was appointed Special Officer to see as to whether the property claimed to have been taken on rent for the purpose of housing the chamber of the plaintiff and one room measuring 9 ft. / 10 ft. is being used as bed room and the condition of the ground floor of the suit house. The report of the Special Officer demonstrate that the plaintiff used to possess the ground floor of house owned by Mr. Kajdem Ali and according to the landlord who produced the title deed of the suit house the plaintiff used to possess the property since 1982 and he surrendered the tenancy in 2018 and the rooms, previously under the occupation of the plaintiff are now being used by the landlord and his family members. This report of learned Special Officer unerringly indicates that the plaintiff does not have any reasonably suitable accommodation elsewhere and this evidence is lending support to the observation made by the learned Trial Court while passing the decree for eviction on the ground of reasonable requirement and it also rules out the observation of the learned first Appellate Court for which the judgement of learned Trial Court was reversed by learned first Appellate Court.
13. Under such circumstances, I am of the view that judgement and decree impugned should be set aside and

the judgement and decree passed by the learned Trial Court should be restored which I accordingly do.

14. Consequently, the appeal is allowed ex parte, without costs. The defendant is to quit and vacate the suit property within thirty days from date failing which the decree shall be put into execution.
15. The connected applications are also disposed of.
16. Let a copy of the order along with lower court record be sent down to the learned Court below for information and necessary action.

(Siddhartha Roy Chowdhury, J.)