

30-08-2023
ct no. 13
sl. no. 4
sp

S.A.T. No. 23 of 2023
With
CAN 1 of 2023
Adarsha Vidyalaya, Jan Bazar
-Versus-
Gokulananda Das & Anr.

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Abhirup Halder

...for the appellant

Mr. Souradipta Banerjee,
Ms. Fatima Hassan

... for the respondents

1. The second appeal has been tendered against a judgement and order dated January 10, 2023 passed by the learned Chief Bench, City Civil Court at Calcutta in Title Appeal No. 21 of 2022. The said Title Appeal was filed against the judgement and decree for eviction dated May 20, 2022 passed in Ejectment Suit No. 6967 of 2014 by the VIth Bench of the Presidency Small Causes Court at Kolkata.

Facts of the Case

2. The facts relevant to the instant case are that the plaintiffs/respondents are the legal heirs of the original landlord Gopinath Das.
3. By a tenancy agreement dated March 20, 1959, the appellant defendant was inducted into the suit premises No. 32, Uma Das Lane, Kolkata –

700013 at a monthly rent of Rs. 350/-. The suit premises was let out for the purpose of running a primary school. admittedly, the property is prime and located the Central Kolkata.

4. The respondent/plaintiff found that the defendants were letting out the suit property for marriage and functions. No consent of the landlord has taken.
5. In addition thereto, rent for the suit property was also not paid for from March, 2014.
6. The respondent landlord issued notice under Section 6(4) of the West Bengal Premises Tenancy Act, 1997 (Act of 1997) on July 14, 2014 and despatched the same by Speed Post with A.D. Upon receiving no response, the Ejectment Suit was filed.

Proceeding in the Courts below

7. The defendants filed written statement and applied under Section 7(1) and 7(2) of the Act of 1997, for permission to pay the defaulted rent. The Court below allowed the said application on May 6, 2016 permitting the appellant tenant to deposit the defaulted rent within one month. The appellant did not do so.
8. By an order dated November 21, 2016, the appellant's defence was struck off under Section

7(3) of the said Act. The order of striking off defence was not challenged by the appellant at any point of time.

9. In the suit which was taken up for hearing, the plaintiff adduced one witness. The defendant was allowed to cross-examine the witness of the plaintiff and also allowed to advance oral arguments in the suit.
10. The first Court had framed the following issues,
 1. *Is the suit maintainable in its present form and prayer?*
 2. *Whether the plaintiff have nay cause of action to file the instant suit?*
 3. *Whether the notice to quit is legal and valid and whether the notice was duly served upon the defendant?*
 4. *Whether the defendant has used the premises for a purpose other than that for which it was let out without obtaining consent of the plaintiff in writing?*
 5. *Whether the defendant is guilty of causing nuisance and annoyance to the plaintiffs?*
 6. *Are the plaintiffs entitled to get a decree of eviction?*
 7. *What other relief or reliefs the plaintiffs are entitled to get?*
11. The plaintiff exhibited as many as 10 documents including the notice to quit the AD Card, the Death Certificate of the original landlord, the rent receipts and the postal track report of “India Post” of the notice to quit dated July 20, 2014.

12. The Court went on to find that the notice to quit under Section 6(4) of the said Act which is a precondition for entertaining a suit for eviction under the said act of 1997 was duly served. There was default in payment of rent and that the defendant was using the premises for purposes other than for what the premises is let out. Eviction of the appellant was decreed.
13. The said judgement and decree dated May 20, 2022 was confirmed by the Lower Appellate Court in Title Appeal No. 21 of 2022.

Arguments of Counsel in this Appeal

14. The learned counsel for the appellant Mr. Sounak Bhattacharya would pray for admission of the second appeal as substantial questions of law arise.
15. The questions of law according to Mr. Bhattacharya are as to whether the finding of the Court below as regards the service of notice under Section 6 Sub-Clause 4 of the Act of 1997 can be deemed as proved. The Court below according to Mr. Bhattacharya committed error in holding that it has been proved. The other question of law that has arisen for consideration is as to whether the respondent/plaintiff had discharged the burden of proof as regards the

use of the tenanted premises for purposes other than what it was let out for.

Analysis and Findings of this Court

16. This Court has carefully considered all the evidence that has come on record in the first Court, the pleadings filed, the judgement delivered by the first Court as also the Lower Appellate Court.
17. This Court does not find any infirmity whatsoever in the decision either the first Court or the second Court for admission of the appeal. No questions of law arise for adjudication.
18. The Court notices firstly that the appellant had applied in the Court below for paying the defaulted rent amount under Section 7(1) and (2) of the Act of 1997. Such prayer was allowed under Sub-Section (2) of Section 7 of the said Act. The appellant did not even avail the same. It did not pay the defaulted rent conferred by the legislature on him to pay the defaulted amount. The defence of the appellant was therefore rightly off under Sub-Section 3 of Section 7 of the said Act of 1997 by the first court.
19. The conduct of the appellant to say the least, was recalcitrant, as found by the two Courts below.

20. The Lower Appellate Court did not have the occasion or reason to deal with the prayer for payment of all arrears since the order under Section 7(3) had already attained finality and remained unchallenged.
21. On the first question of law proposed by learned counsel for the appellant, this Court finds that there is clear evidence on record that the A.D. Card of the notice under Section 6 Sub-Clause 4 was served on the appellant. The first Court found as such which was confirmed by the Lower Appellate Court that the A.D. Card was signed albeit without stamp from the school. The track report of delivery published on the website of "India Post", exhibited in the first Court clearly indicates that the notice has been served on the school. This Court is, therefore, of the clear and unequivocal view that the two Courts below were absolutely justified in finding that the statutory notice for eviction was duly served on the appellant. There is, therefore, no question of law that arises on this score.
22. The next proposed question of law is that the plaintiff/respondent/landlord has not been able to demonstrate clearly in the Court below that the appellant has let out the premises for purposes other than running of a primary school. The appellant has indicated that in the

statutory notice and has also produced exhibits 5, 6, 7 and 9 being complaints addressed to the school and the police that the premises has been let out for non-educational purpose.

23. There is absolutely no cross-examination by the appellant of the witness of PW-1 or even a suggestion put forth, that the premises was not being used for any other purpose.
24. This Court therefore finds that the plaintiff has discharged the burden of proof in this regard. The defendant has not even chosen to suggest to the plaintiff's witness to the contrary. The least that the appellant could have done after his defence was struck off was to put forward his defence in cross-examination to the plaintiff's witness. It is only thereafter that any of the parties or the Court below exercised any rights under the provisions of the C.P.C. for summoning any additional evidence. The same could also have prompted the Court below to have exercised power under Order 16 Rule 14 of the C.P.C.

Conclusion

25. For the reasons stated above, this Court does not find any infirmity in the two decisions rendered by the Court below. There are no

serious or substantial questions of law warranting admission of the instant appeal.

26. S.A.T. 23 of 2023 shall stand dismissed. In view of the above, CAN 1 of 2023 shall also stand dismissed.
27. There shall be no order as to costs.
28. Let the records be sent back to the Court below expeditiously to enable the respondent/plaintiff to take steps.
29. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)