

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**SA 242 of 2013
Sri Palas Kumar Dutta
Vs
Sri Subhash Chandra Saha & Ors.**

For the Appellant : Mr. Amales Ray
Ms. Mousumi Bhowal
Mr. Ishan Bhattacharya

For the Respondent : Mr. Nripen Das
Mr. Debanjan Das
Mr. Dhananjay Nayak

Heard on : 16.02.2023

Judgment on : 20.03.2023

Ajoy Kumar Mukherjee, J.

1. This second appeal has been directed against judgment and decree dated November, 30, 2012 passed by Learned Additional District Judge, 1st Court at Siliguri, Darjeeling in Title Appeal No. 12(5) of 2011 arising out of other cases (OC) Ejectment Suit No. 24 of 2010. Division bench of this court while admitted the appeal formulated following substantial questions of law:-

(i) “Whether the learned Appellate Court below applied the correct legal principles in dismissing the Title Appeal No. 12(5) of 2011 and

affirming the judgment and decree dated 6th April , 2011 passed by the Learned Civil Judge, Senior Divisions, Siliguri in O.C. (Ejectment) No. 24 of 2010?

(ii) Whether a suit on the ground of reasonable requirement for personal use and occupation filed by a transferee/landlord before expiry of one year from the date of acquisition of the suit property could have been entertained and decreed?”

2. Factual backdrops:

(i) The appellant/defendant was inducted as a tenant for residential purpose in respect of the ground floor of the two storied building at a monthly rent of Rs. 3000/-excluding electricity and other charges payable according to English calendar month by the erstwhile landlord.

(ii) The sale deed was executed in favour of the plaintiffs/landlords by his vendor on 29.11.2007. Subsequently the sale deed was registered before the Registration Authority on 18.04.2008.

(iii) Notice under section 6(4) of the West Bengal Premises Tenancy Act, 1997 (herein after called as Act of 1997) was issued by the plaintiffs/landlords on 14.01.2009 and the said notice was received by the appellant/tenant on 15.01.2009.

(iv) The plaintiffs/landlords instituted the suit for Ejectment before the learned Civil Judge, (Junior Division), Siliguri on 30.03.2009. The learned Civil Judge, (Junior Division), Siliguri returned the plaint

for want of pecuniary jurisdiction under Order VII Rule 10 of Civil procedure code on 10.03.2010. Eventually the returned plaint was filed before learned Civil Judge, (Senior Division), Siliguri on 16.03.2010.

(v) The learned Civil Judge, (Senior Division), Siliguri passed the judgment and decree on 06.04.2011 ex-parte against the appellant/defendant/tenant in O.C. Ejectment Suit No. 24 of 2010. The learned judge arrived at the findings, that the plaintiffs have their reasonable requirement in respect of suit premises and the defendant is also defaulter in payment of rent. It may be relevant to mention that there was an inordinate delay in filing the application by the defendant/tenant under Section 7(2) of the said Act of 1997, which was dismissed on 03.03.2011.

(vi) The learned Additional District Judge, 1st court, Siliguri passed the impugned judgment and decree on 30.11.2012 in Title Appeal No. 12 of 2011 affirming the ex-parte judgment and decree dated 06.04.2011, passed by the learned Civil Judge, (Senior Division), Siliguri.

3. In the instant appeal the appellant has attacked the judgment impugned mainly on two grounds.

(i) It was written in the notice dated 14.01.2009 under section 6(4) of the Act of 1997 as well as it was pleaded in the plaint that the rent was Rs. 3,000/- per month excluding electricity and other

charges. Accordingly the monthly rent exceeds amount of Rs. 3,000/-, as such the court below did not have jurisdiction to try the suit or the appeal and entire judgment is vitiated for want of jurisdiction in view of section 3(e) (ii) of the Act of 1997 as the suit premises falls within “other areas” under the said section.

- (ii)** A document so long it is not registered is not valid. Here suit on the ground of reasonable requirement has been filed within one year from the date of acquisition of interest i.e. date of registration and the statutory notice under section 6(4) of the Act of 1997 was also served upon defendant/tenant within one year from acquisition of interest by the plaintiff and as such suit is barred under section 6(2) of the Act of 1997. Learned Counsel on behalf of Appellant in support of his aforesaid argument relied upon following judgments

(a) AIR 2007 Cal 37 (Para 6)

(b) AIR 1974 Mad 286 (Para 6 & 7)

(c) (1990) 2 SCC 651 (Para 3)

(d) 2016 (4) CLT 328 Para (17 & 18)

(e) 2010 (13) SCC 128 Para (13,16 & 23)

(f) 1998 (7) SCC 498 (Para 11)

(g) 2009 (4) SCC 193 (Para 16)

(h) 86 CWN 1099 (Para 10 & 11)

(i) 85 CWN 635

(j) 82 CWN 184 (Para 6)

(k) AIR 1957 CAL 59 (Para 15)

(l) 2004 (1) CHN 552 (Para 35 & 36)

4. Appellants first ground of attack is courts below had no pecuniary jurisdiction to try the suit. He submits under section 3(e) (ii) of the Act of 1997, the Act shall not apply to any premises let out for residential purpose, which carries more than Rs.3000/- as monthly rent in “other areas” i.e. areas outside the limits of Kolkata Municipal Corporation or the Howrah Municipal Corporation. In support of the appellants argument that monthly rent is more than Rs. 3,000/- and as such it attracts section 3(e) (ii) of the Act of 1997 and for which the trial court did not have pecuniary jurisdiction to try the said suit, learned counsel for the appellants has drawn my attention to the averment made in the plaint as well as notice to quit, send by Plaintiff/Respondent. Appellant pointed out paragraph 3 of the plaint and the notice of Ejectment dated 14.01.2009, wherein it has been specifically mentioned that the rent was firstly fixed at Rs. 3,100/- and same was reduced to Rs. 3,000/- excluding electricity and other charges. Accordingly Appellant submits, if the electricity and other charges are added with Rs. 3,000/- then the amount of monthly rent becomes more than 3,000/- and for which section 3(e) (ii) attracts in the present case. His further contention is settled position of law is that the term “rent” includes all that are payable as consideration for tenancy and where the tenant was liable to pay electricity charges as well as others charges it is to be considered as part of the rent. In this context he relied upon **Promila**

Mookerjee and others Vs. Krishna Dutta reported in **AIR 2007 Cal 37**. He accordingly submits that the word rent includes not only what is strictly understood as rent but also payment in respect of the amenities or services provided by the land lord under the term of tenancy. In this context he also relied upon another judgment of the Apex Court in ***Puspa Sengpta Vs. Susma Ghose*** reported in **(1990) 2 SCC 651** and contended that rent includes payment in respect of amenities or services provided by the land lord such as payment in lieu of consumption of electricity under the terms of the tenancy.

5. In reply, learned counsel appearing on behalf the respondents/plaintiffs/land lord submits that the electricity charges which the tenant wants to incorporate with the rent was never paid by the defendant /appellant to the plaintiff/respondent. Practically whatever amount has been paid by the defendant/tenant by way of electricity charges, has been paid to electricity distribution company in terms of his consumption of electricity and it can never be included with the amount of rent. Accordingly section 3(e) (ii) of the Act does not have any application at all in the present context.

6. I have considered the rival contentions. It appears that in the plaint as well as in the notice, plaintiff has specifically stated that the rent was firstly fixed at Rs. 3,100/- and the same was subsequently reduced to Rs. 3,000/- excluding electricity and other charges. What is meant by the terms “other charges” has not been explained, anywhere. There is also nothing to suggest that the defendant/appellant has paid any amount to the plaintiff, monthly, along with rent towards the heading “other charges”. Accordingly it appears

that said word has been loosely used by the plaintiff/land lord which hardly carries any sense. However, it is true that the plaintiff have specifically stated that the rent excludes electricity charges but plaintiff contended that electricity charges was separately paid by the defendant/appellant to the electricity distribution company and it was never paid to plaintiff with the rent, so that it can be included as monthly rent. There is no dispute about the clear proposition of law that the term “rent” includes all that was payable as consideration of tenancy. Rent includes not only what is strictly understood as rent but also payment in respect of amenities or services provided by the land lord under the terms of the tenancy but such electricity charges can be treated as a part of rent only when a tenancy which carries with it amenities like electricity to be provided or services to be maintained by the landlord and such payment has been made to landlord in lieu of consumption of electricity or for rendering other services under the terms of tenancy. In the present context defendant nowhere stated that he used to pay any amount of money to the landlords towards consumption of electricity under the terms of tenancy. I have gone through the original tenancy agreement dated 1st day of August 2001, where clause 17 of the tenancy agreement runs as follows:-

“17 That in addition to the rent the second party is liable to pay the electricity charges separately and the same shall never form part of the monthly rent”.

7. Said tenancy agreement dated 1st August, 2001 was signed by both the parties and they are bound by the agreement of the tenancy. Moreover in the agreement there is no mention of payment of “any other charges” by the tenant

to the land lord. Accordingly ***Puspa Sengupta (supra) case and Promila Mookerjee (supra) case*** are clearly distinguishable from the present context, because in the present case it was clearly agreed by and between the parties that the electricity charges shall never form part of the monthly rent. Above all I have also gone through the application filed by the defendant/appellant under section 7(2) of the Act of 1997 dated 3rd March, 2011 and in paragraph 4 of the application, Appellant/Defendant has clearly admitted as follows:-

“(4) that the defendant submits that he was inducted in the suit premises by one Prodyut Kumar Chakraborty since deceased, the year of 2001 at a monthly rental of Rs. 3,000/-(Rupees Three Thousand) only, governed by English calendar”

8. In ***ABL Internatioanl pvt. Ltd. Vs. Susmita Ramchand Sadarangani & others***, reported in **(2009) 1 CHN 56**, the defendants tenants by virtue of their admitted agreement of tenancy, were liable to pay air-conditioning charges in accordance with the prevailing rates in addition to agreed amount of rent and service charge. Division Bench of this court observed that the variable amount of electricity charges cannot be said to be rent within the meaning of section 17 of the West Bengal Premises Tenancy Act, 1956 and thus, claim of electricity charges at the rate subsequently increased by CESC cannot amount to the prayer for re-fixation of the fair rent within the meaning of the Act. Moreover it appears from the record that inspite of getting opportunity the defendant/appellant never challenged the rate of rent in the court below. The law is clear on this point. Wherever the opponent has declined to avail himself of the opportunity to put his essential and materials case in cross-examination, it must follow that he believed that the testimony given could not be disputed

at all. The effect of declining cross examination of the plaintiffs' witness who has stated that the defendant was a tenant at a monthly rent of Rs. 3,000/-, would be presumed that the said version of the plaintiff has been accepted by the defendant/appellant.

9. In view of the aforesaid clear admission and also in view of the aforesaid discussion, there appears hardly any scope to say that the monthly rent in connection with the suit property was more than Rs. 3,000/- at the time of sending eviction notice or at the time of filing the suit, so that it can attract section 3(e) (ii) of the Act of 1997.

10. Appellants in support of his case argued further that in the present case admittedly the purchase deed in favour of plaintiff was executed on 29.11.2007 and it was registered on 18.04.2008, when the sale gets completed. Sub-Section (2) of Section 6 of Act of 1997 created an embargo on a transferee landlord to seek eviction either for building rebuilding or for personal use and occupation for a period of one year. Accordingly under the provision of 6(2) of the Act of 1997, the land lord was not entitled to file suit for eviction on the ground of reasonable requirements till 17.04.2009. However, in the present case it appears that the notice of Ejectment was given on 14.01.2009 and the suit before Civil Judge (Junior Division) at Siliguri was filed on 27.03.2019 i.e. before expiration of one year from the date of acquisition of interest in the suit premises by the plaintiff and as the second suit which was filed on 16.03.2010 is practically continuation of the first suit, so according to Appellants, the suit is barred under the provision of 6(2) of the said Act.

11. The deed of sale was executed in favour of plaintiffs/respondents on 29.11.2007 but it was registered on 18.04.2008. The notice was given on 14.01.2009 and the plaint was affirmed on 27.03.2009 and suit was filed before Civil Judge (Junior Division), Siliguri on 30.03.2009 which is before the expiry of one year from the date of registration of the deed and as such the suit clearly attract section 6(2) of the Act. In this context he contended that even though the said suit which was filed before Civil Judge (Junior Division) at Siliguri on 30.03.2009 was subsequently returned for want of pecuniary jurisdiction and later on filed before the Civil Judge (Senior Division), Siliguri on 16.03.2010 but the said second suit is continuation of first suit and as such it attracts the said provision and in this context reliance has been placed in the judgment of ***Md. Sali Vs. Mary Gonrath Fernando and others*** reported in **AIR 1974 Mad 286**. In this context he further contended that sale of immovable property becomes complete and effective only when it gets registered and therefore the fiction created by section 47 is not applicable to deed of sale of immovable property before its actual registration. In this context reliance has been placed upon judgment in ***Har Narain Vs. Mam Chand & Others*** reported in **(2010) 13 SCC 128**. Reliance has also placed in this context in ***Bishnudeo Narain Rai & others Vs. Anmol Devi & others*** reported in **(1998) 7 SCC 498**. In ***Kaliaperumal Vs. Rajagopal and another*** reported in **(2009) 4 SCC 193**. In ***Indian Oil Corporation Vs. Himangshu Kumar Ghosh*** reported in **AIR 1983 Cal 87**.

12. It is apparent from the object intended to be achieved by introduction of section 6(2) is that the legislature intended to protect tenants against misuse of grounds of eviction namely reasonable requirement and building re-building by taking recourse to transfer *inter vivos* and the period mentioned in section 6(2) is one year from the date of acquisition of such interest. In the said authorities of law it has been clearly established that a combined reading of section 8 and section 54 of the Transfer of Property Act, suggests that though on execution and registration of a sale deed, the ownership and all interests in the property passed to the transferee yet that would be on the terms and conditions embodied in the deed indicating the intention of the parties. It follows that on execution and registration of a sale deed, the ownership title and all interests in the property passes to the purchaser, unless a different intention is either expressed or necessarily implied which has to be proved by the party asserting that title has not passed on execution of the sale deed. I have gone through recital of the purchase deed of which relevant portion runs as follows:-

“NOW THIS INDENTURE WITNESSETH that in pursuance of the aforesaid offer and acceptance in consideration of the said sum of Rs. 32,00,000/-(Rupees Thirty –two Lacs) only paid by the purchasers to the Vendors (the receipt whereof the Vendors do hereby acknowledge and grant full discharge to the purchasers from the payment thereof) the Vendors do hereby grant, convey, transfer and assign unto and in favour of the purchasers the properties described in the schedule “B” below and deliver possession thereof to the purchasers together with all rights, title, interest, liberties, privileges, and also the sorts of amenities forming part and appertaining to the said properties described in the Schedule ‘B’ below and belonging to the said property TO HAVE AND TO HOLD the said properties subject to the payment or rents and taxes payable to the State and to other authorities for the said property.”

13. Aforesaid recital unequivocally suggests that the consideration price was paid on the date of execution and the possession of 'B' schedule property was also delivered to the purchasers with all right title interests liberties privileges and also all sorts of amenities forming part and appertaining to the said properties. Accordingly if the recital of the deed is construed in its proper perspective then there is no room to suggest that the land lord/plaintiff/respondent did not "acquire interest" in the suit property on the date of execution of the deed i.e. on 29.11.2017, which deed was also subsequently registered on 18.04.2008 and according to section 47 of the Registration Act of 1908 it had relate back to the date of execution of the deed. Apart from all these, the ex-parte decree in Ejectment suit being OC (Ejectment suit) no. 24/2010 was passed against the defendant in respect of the suit premises not only on the ground of reasonable requirement but also on the ground of default in payment of rent. It is also apparent from the contents of the plaint that the eviction suit was filed by the plaintiff against the defendant on the ground of defaulter, reasonable requirement and for causing damages to the suit property. The first suit even by no means is barred, though it may have filed within one year from the date of registration of deed, because it is settled law, when the Ejectment suit is filed on the ground of reasonable requirement, default along with other grounds suit filed within one year of transfer is maintainable. In this context reliance has been placed in **Smt. Mira Devi Vs. Smt. Leela bati boral and others** reported in **1979 (1) CLJ. 196**. Since the present suit was filed not only on the ground of reasonable requirement but

also on other grounds, the suit is maintainable, because there is no requirement in law that when the land lord wants to file a suit for eviction on the grounds of default, he will still have to wait for one year from the date of purchase.

14. Then comes the question that the suit was initially filed on 30.03.2009 before the Civil Judge (Junior Division), Siliguri which was returned on 10.03.2010 by the said court for presenting the same before the proper forum and thereafter the suit was filed before the Civil Judge (Senior Division), Siliguri being competent forum to try the suit, on 16.03.2010. Now whether such suit can be treated as continuation of that earlier suit which was filed before the Civil Judge (Junior Division), Siliguri and who admittedly did not have jurisdiction to try the suit.

15. Law in this context is well settled that a suit instituted by the presentation of a plaint in pursuance to an order passed under order VII rule 10 of the code of civil procedure is not a continuation of the suit which was instituted in the court which had no jurisdiction to entertain it. In this context reliance has been placed upon ***Amar chand inani Vs union of India*** reported in **1973 AIR 313**

16. In ***Ram kishan Vs. Ashirvad*** reported in **I.L.R. XXIX 699** Patna High Court held a suit cannot be said to have been instituted so long as the plaint is not presented before the court competent to try the suit. When the court before whom the plaint is filed returns it on the ground that it has no jurisdiction to try the suit and the plaint is presented before the proper court, the suit is to be

considered as instituted on the date of such presentation and cannot be regarded in any sense a continuation of the suit before the former court. In the present context it is not in dispute that Civil Judge (Junior Division), Siliguri who has returned the plaint invoking power under order VII rule 10 had no jurisdiction to try the suit and. The case law relied by the defendant/appellant reported in **Md. Salis's Case** reported in **AIR 1974 Mad 286** is not applicable in the present case as in that case, the application under order VII rule 10 was not applicable at all as the junior subordinate judge had not come to any definite finding on the question of jurisdiction and was merely of opinion that there was just a possibility that the case may be outside his jurisdiction. The plaintiff also had not asked in that case for return of the plaint under that rule but had requested that the case be transferred to a competent court. Accordingly said case is clearly distinguishable from the present one.

17. In view of aforesaid discussion it is quite clear that by no stretch of imagination it can be said that section 6(2) of the Act of 1997 attracts in the present case on the basis of allegation that the plaintiffs /landlord has filed the suit within one year. The suit has been actually filed by the plaintiff before the appropriate court on 16.03.2010 which is much after the expiry of one year from the date of execution i.e. 29.11.2007 and also from the date of registration which is on 18.04.2008. Moreover as I have noted above the suit was filed not only on the ground of reasonable requirements but also on the ground of default and for causing damages in the suit property and suit was also decreed not only on the ground of reasonable requirement but also on the ground of

default, so there is no question of application of section 6(2) of the Act of 1997 in the present context.

18. Now as a last resort defendant has pleaded that deed was registered on 18.04.2008 but the notice to quit was issued on 14.01.2009 which was received by the tenant on 15.01.2009 before the expiration of the period of one year from the date of acquisition of such interest. He further submits subsection (4) of section 6 of the Act of 1997 contemplates that no suit for the recovery of possession shall be instituted by the land lord unless he has given to the tenant one month's notice expiring with a month of the tenancy. Accordingly defendant contention is that notice under section 6(4), which is the basis of the suit was served upon defendant before the expiration of the period of one year from the date of acquisition of such interest and it is settled principle of law that if such notice suffered from infirmities, subsequent institution of the suit on the basis of such invalid notice is bad in law and not maintainable in the eyes of law. In this context he relied upon the judgment of co-ordinate bench of this court reported in ***Shibani Basu Vs. Sandip Roy, (Monu)***, S.A. No 29 of 2006.

19. It is to be noted that with the registration of the deed it took effect from the date of execution i.e. from 29.11.2007. A Division Bench of this court in ***Bindeshwar Prasad Gupta Vs. Murari Mohan Bhandari*** reported in **(1992) 1 Cal.L.T. 48 (HC)** has held that there can be no bar for a transferee/owner to issue the notice of ejectment even prior to the expiry of the statutory period which is a *sine qua non* to the filing of an ejectment suit under the act and

thereafter immediately after expiry of the statutory period to file a suit for ejectment. If the transferee landlord has to issue ejectment notice only on expiry of the statutory period from the date of purchase, then he cannot exercise his right to file a suit for ejectment immediately on expiry of one year and he has to wait sometime more to file a suit for Ejectment because a tenant has to give a notice for a period of at least one month with the expiry of the month of tenancy before an ejectment suit under the Act can be filed against the tenant. In view of above Division Bench in that case held that the bench is unable to accept the contention of the Appellants that both the suit was filed by the respondents are hit by that provisions.

20. In view of above the second appeal **SA 242 of 2013** is dismissed. LCR to be send down to the court below at once along with a copy of judgment.

21. There will be no order as to costs.

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

(AJAY KUMAR MUKHERJEE, J.)