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Ct. No. 04

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S.A. 39 of 2023

CAN 1 of 2023

Pabitra Sarkar alias Pabitra Kumar Sarkar

Vs.

Sri Krishna Chandra Mondal

Ms. Shohini Chakraborty,

Mr. Arijit Sarkar.

... for the appellant.

An unsuccessful litigant, who also lost the status of tenant by virtue of operation of law in view of the definition of “tenant” under Section 2(g) of the West Bengal Premises Tenancy Act, 1997, has filed the instant Second Appeal assailing the order of the Appellate Court by which the judgement and decree of the Trial Court was reversed that the Appellate Court has not considered the basic parameters in relation to reasonable requirement being one of the grounds for eviction of a tenant under Section 6 of the said Act.

The suit was filed by the plaintiff/respondent for eviction of the appellant as the suit premises is reasonably required by him to shift the business, which, in fact, is carried on from the premises belonging to his elder brother as permissive occupant. It is pertinent to record that due to non-compliance of the provisions contained under Sections 7(1) and 7(2) of the said Act the defence of the appellant was struck off; meaning thereby that the written statement was taken off from the record. The moment the defence is struck out, the defendant is denuded to lead any evidence in support of the defence having taken in the written statement, but has been extended the right to cross-examine the plaintiff’s witness and the entire cross-examination was restricted on the sufficiency, validity and the service of notice of suit under Section 6(4) of the said Act.

Though the Trial Court dismissed the suit, but the Appellate Court did not persuade itself to concur with the findings returned in the judgement passed by the first Court and held that the plaintiff/respondent is entitled to a decree for eviction of the appellant on the ground of reasonable requirement. However, in pursuit of the said decree having passed in favour of the plaintiff/respondent, the Appellate Court further noticed the definition of “tenant” engrafted in Section 2(g) of the said Act, which restricts the heritability of the tenancy in the event the tenant dies.

It is ardently submitted by the learned Advocate for the appellant that the Appellate Court should not have proceeded to decide the appeal taking shelter under Section 2(g) of the said Act, as the suit was primarily filed for eviction of a tenant on the ground of reasonable requirement.

Even if we accept the aforesaid submission, yet we cannot ignore that the suit was also decreed by the Appellate Court on the ground of reasonable requirement.

The learned Advocate for the appellant vociferously submits that it is a paramount duty of the plaintiff to prove that he reasonably requires the suit premises and was not in possession of reasonable suitable accommodation.

Naturally the aforesaid submission was advanced, as the plaintiff/respondent did not produce any document that his occupation at the premises no. 188/1 Gopal Lal Tagore Road, Kolkata-35 is permissive, as the said property is owned by his elder brother. The

Moment the plaintiff asserted that the occupation in the other premises is mere permissive and in absence of any cross-examination in this regard, it cannot be said at this moment that the plaintiff/respondent has miserably failed to prove his case.

The defence of the appellant was struck off and, therefore, it is not open to the defendant to lay a defence, which he took in the written statement. A person in permissive occupation or as tenant in another premises is always at the risk of being evicted. There is always a threat of eviction and it is immaterial that the landlord of the said premises or the owner of the said premises has not initiated any proceeding against him. Furthermore, the owner/landlord of the premises intended to shift his business establishment in his own house and, therefore, law does not act as deterrent in achieving such intention and the tenant cannot dictate the landlord to remain in existing occupation which is always regarded as precarious.

It is not in dispute that the plaintiff/landlord is running a business of selling music instruments or giving lesson of music and, therefore, if the landlord intended to shift the said set up in his own premises, such intention cannot be said to be mala fide nor be regarded as a mere wish or desire, but had an element of need in it, which satisfies the concept of reasonableness in securing a decree for eviction on such ground.

A plea of notice has been held against the appellant and, therefore, we do not find that such finding is required to be interfered with nor any substantial question of law may be said to have been arisen therefrom.

We thus do not find any substantial question of law involved in the instant appeal.

The appeal is thus dismissed at the stage of admission under Order XLI Rule 11 of the Code of Civil Procedure.

In view of dismissal of the appeal itself the connected application is also dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)