56 04.09.2023

Ct. No. 04

Ab

SA 56 of 2023
IA No. CAN 1 of 2023

Smt. Gita Banu
Vs.
Sri Prasanta Dutta.

Mr. Sounak Bhattacharyya,
Mr. Raghunath Das,
Ms. Monalisa Das.
... for the appellant.

Mr. Debasish Roy,
Mr. Srinjay Sengupta,
Mr. Sauran Roy.
... for the respondent.

Both the Courts below have held that the plaintiff/respondent reasonably requires the suit premises for starting a business with an intent to augment/enhance the income therefrom, which is sought to be assailed in the instant second appeal.

The plaint case proceeds with the assertion that initially the said property was owned by the plaintiff/respondent and his brother. Subsequently, by virtue of a partition, the portion in which the suit property is situated was allotted to the plaintiff/respondent. The plaintiff/respondent immediately intimated the aforesaid fact and demanded the payment of rent, but the defendant/appellant failed and neglected to pay the rent from the month of October 1994. It is further alleged that the defendant/appellant has illegally transferred and/or parted with possession of the tenanted shop room in favour of her nephew and, therefore, is a guilty of subletting.

The case of reasonable requirement is founded upon an assertion that the plaintiff/respondent being a retired person and in order to augment his income, he intended to start a business at the said premises. Ultimately a notice of eviction was issued upon the defendant/appellant and despite having served with the notice, there is a reluctance on the part of the defendant/appellant to hand over the possession of the suit premises.

Interestingly, the defendant/appellant took a defence that the plaintiff/respondent earns decent money in the form of rent from the existing tenants and, in fact, has let out two rooms after taking huge salami in a recent point of time. It is further averred that the plaintiff/respondent used to run a Xerox machine business in one of the shop room, which was subsequently let out to United Bank of India for setting up an ATM counter and one room for hair cutting saloon. It further alleged that the plaintiff/respondent's elder daughter is a service holder and earns a decent salary therefrom. Both the Courts below disbelieved the defence taken by the defendant/appellant and ultimately decreed the suit.

It is sought to be contended by the Counsel appearing for the defendant/appellant before us that the plaintiff/respondent has a sufficient space and sufficient income and, therefore, it is merely a fanciful desire to evict the defendant/appellant from the shop room. It is further submitted that plaintiff/respondent has let out the premises to the United Bank of India for establishing an ATM counter, which would be evident from the fact that an agreement was entered into in the month of March 2016 for a further period of five years. It is sought to be contended that the aforesaid act would show that the plaintiff/respondent does not have any intention to set up his business. Lastly, it is submitted that the plaintiff/respondent has not adduced any evidence showing his expertise in relation to starting a business and, therefore, both the Courts below have wrongly proceeded on the basis that the requirement is genuine.

So far as the letting out of the premises to the different tenants are concerned, though reliance appears to have been made on the agreement entered with the United Bank of India in the year 2016, but we find that initially the said shop was demised unto the said bank in the year 2010 and the document in the form of lease agreement was executed by and between the parties. A letter dated 16th March 2016 relied upon by the defendant/appellant does not indicate that the said shop room was let out for the first time just on the eve of the institution of the suit. The said shop was leased out in the year 2010 and in terms of the clauses of renewal the same was further extended/renewed for a period of five years. Furthermore, it is always the choice of the landlord against whom he will seek eviction on the ground enumerated under Section 6 of the West Bengal Premises Tenancy Act, 1997; it is not open to the tenant to dictate the landlord that the eviction should be filed against the other tenant and he should be spared in this regard.

So far as the expertise in starting a business is concerned, we find from the affidavit as to examination in-chief that the landlord intended to start a stationary business at the said shop room and further indicated that the business of the Xerox machine and the STD booth, which was started much earlier, did not yield the sufficient earning and the plaintiff/respondent was compelled to stop the same. It does not appear from the record that when such business was stopped nor the defendant/appellant has come up with the positive case that the said room is still in possession of the plaintiff/respondent or has been let out after the institution of the suit. The stationary business does not require any expertise. A person can run the said business with the resources available at his disposal and, therefore, the contention of the defendant/appellant in this regard is not tenable. (see (1999) 8 SCC 1)

In order to succeed on the ground of reasonable requirement, the Court must consider that there is any element of need in it as opposed to a fanciful desire. The landlord intended to start a business of a stationary shop and having proved that he is not in possession of the reasonable suitable accommodation, we do not find that the law stands in the way of establishing such business, which does not require any special skill, knowledge or experience.

The defendant/appellant has not come up with the positive evidence that the landlord has an alternative suitable accommodation within the vicinity or in the suit premises and, therefore, we do not find that the finding of both the Courts below are perverse in this regard.

The instant appeal does not involve the substantial question of law and the same is hereby dismissed.

In view of the dismissal of the appeal itself, the connected application being CAN 1 of 2023 has become infructuous and the same is also dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)