

21.08.2023

Court : 04
Item : 14
Matter : SAT
Status : DISMISSED
Bench ID : 266147
Transcriber : NANDY

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

**SAT 119 of 2023
CAN 1 of 2023**

Mrs. A. Domingo
Vs.
Janab Amjad Ali

**Mr. Partha Pratim Roy, Advocate
Mr. Sanjib Seth, Advocate**

.....for the Appellant

**Mr. Kushal Chatterjee, Advocate
Mr. Soumik Das, Advocate
Mr. Rudranil Das, Advocate**

.....for the Respondent

1. The tenant is vociferously resisting the decree for eviction passed against him in respect of the suit premises having lost in both the Courts below on a mere technical plea that the moment the landlord does not disclose the recovery of possession from other tenants in his examination-in-chief, his disclosure in the cross-examination may be fatal and the Court must draw an adverse inference. It is further submitted that it is the paramount duty of the landlord to prove that he is not in possession of reasonable suitable accommodation and in absence of any commission for local inspection, the landlord would be presumed not to have discharged the statutory onus and, therefore, the Court should admit the instant appeal on the aforesaid substantial question of law.
2. At the time of institution of the suit, the plaintiff categorically averred that the suit premises consist of 13 rooms out of which 12 rooms are in

possession of the tenants; meaning thereby the plaintiff-respondent was in possession of one room at the time of institution of the suit. The plaintiff's family consists of himself, his wife, one son and two daughters. The record would reveal that the children are school going children and the Trial Court held that the study room for such children is reasonable. It is further manifest from the record that the landlord-respondent is residing in a tenanted flat and a rent-receipt in respect thereof was tendered in evidence and was marked as exhibit 6.

3. It goes without saying that the landlord who is residing in tenanted premises intends to reside in his own house and, therefore, the law cannot stand in the way of fulfilling such cherish and the element of need can be seen in this regard. The tenant cannot compel the landlord to live in a rented premises for all time to come as such possession of the landlord is always precarious and living under the threat of eviction. The law does not mandate a notice of the suit or the eviction to be issued against the landlord by his landlord of the tenanted premises and the moment it is proved that the possession of the landlord under the present premises is that of a tenant, that itself renders his position precarious. The law does not mandate that the landlord should got first evicted from his tenanted premises and, thereafter, ask for a possession from his tenant in respect of his house as it would give an unjust premium to such tenant.

4. We are not unmindful of the proposition of law that in order to succeed in a suit for recovery of possession against the tenant on the ground of reasonable requirement, the landlord must prove that he reasonably requires the suit premises for his own use and occupation and for the family members and dependants and he is not in possession of any reasonable suitable accommodation.
5. The first point is more objective than subjective and even the second point may have an element of subjective consideration, yet it has to be judged on the parameters of objective approach. In order to ascertain whether a person is in possession of reasonable suitable accommodation, various factors viz., the status of a landlord, the composition of the family, the comfort and the amenities which he intends to enjoy and apart from the same, his avocation, are required to be considered in this regard.
6. The landlord at the time of institution of the suit was in possession of one room but during the pendency of the suit he obtained the possession of three rooms from three tenants and a further room after executing the decree obtained against the fourth tenant. In total, the landlord at the time of deposition has obtained the possession of five rooms.
7. An explanation is offered in the cross-examination that out of four rooms which the landlord obtained during the pendency of the suit, three of them which were tile-shed rooms and in damaged

condition, were demolished. So far as the other room is concerned, the landlord admitted to be in possession thereof and, therefore, the Court can safely proceed on the basis that the landlord had in his kitty two rooms which are habitable.

8. The question of drawing an adverse inference under Section 114(g) of the Evidence Act is concerned, the same may be activated provided the landlord suppressed the recovery of possession during the pendency of the suit and the defendant in his evidence have successfully proved that the landlord is in possession of the same.
9. Since the landlord himself admitted to have obtained in possession of the aforesaid four rooms and explained the status thereof, we do not think that an adverse inference in this regard should be drawn against the landlord.
10. As indicated above, the family of the landlord consists of himself, his wife, one son and two daughters and the landlord indisputably residing in a tenanted accommodation, the possession of two rooms cannot be regarded as reasonable suitable accommodation to cater the need of the landlord.
11. A point is taken before us that the Trial Court have wrongly shifted the onus upon the tenants to prove that the accommodation available to the landlord is not reasonable suitable. We do not dispute the aforesaid contention as it is a paramount duty of the landlord to prove that he is not in possession of reasonable suitable

accommodation before he proceeds to get a decree of eviction against the tenant on the ground of reasonable requirement.

12. As indicated above, the moment the parties have adduced evidence, the totality of the evidence has to be looked into and the Court, if finds, that the landlord is not in possession of reasonable suitable accommodation, there is no fetter on the part of the Court to arrive at such conclusion and negate the contention of the tenant in this regard.
13. We thus do not find involvement of any substantial questions of law in the instant appeal.
14. The appeal being **SAT 119 of 2023** is thus **dismissed**. Nor order as to costs.
15. The connected application being **CAN 1 of 2023** also stands **dismissed**.

(Harish Tandon, J.)

(Ajay Kumar Gupta, J.)