

1 12.4.2023

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

**S.A.T. 161 of 2022
With
CAN 1 of 2022**

Naima Rasool and Ors.

Vs.

Rezaul Hussain and Ors.

**Mr. Sumit Kumar Ray
Mr. Nadeem Suleman
Mr. Munshi Ashiq Elahi**

... For the Appellants.

**Mr. Supratim Dhar
Mr. Dhananjay Nayak
Mr. Kazi M. Rahaman**

.... For the Respondents.

This is an intended second appeal.

The appellants defendants before us are the tenants of a flat on the first floor of the western side of Premises No. 79B, Dilkusha Street, Police Station-Beniapukur, Kolkata-700 017

In 2007 the respondent/plaintiff landlord had instituted a suit in the learned court below claiming, inter alia, eviction of the appellants/defendants (which includes the original defendant) and delivery of khas possession of the flat to him on the ground that it was reasonably required by them. On 10th November, 2017 the suit was decreed in favour of the respondent/plaintiff, holding that he reasonably required the flat for his occupation and that he did not have any suitable alternative accommodation.

S.D.

The first appeal against this judgement and decree was dismissed by the first appellate court, the Additional District Judge, Second Court, Sealdah on 28th June, 2022 affirming the finding of the learned court below.

Learned counsel for the appellants has very strenuously argued that both the learned courts below had fallen into an error in relying on a report of the Commissioner who had only made enquiry whether the respondent/plaintiff had any accommodation in the demised premises and did not make a full enquiry as to whether he reasonably required the demised premises or had any suitable alternative accommodation. Learned counsel also submitted that even otherwise there was no evidence led by the respondent/plaintiff to show that he did not have any suitable alternative accommodation.

Learned counsel for the respondent/plaintiff stated before us that his client is about 80 years of age, fighting this litigation for over fifteen years. He was living as a licensee with his brother-in-law, had no accommodation of his own and very earnestly required the demised premises. He also submitted that adequate proof had been furnished by the respondent/plaintiff which had been duly considered and recorded in the impugned judgement and decree.

Whether the respondent/plaintiff reasonably

required the demised premises for his occupation and whether he had no other alternative suitable accommodation was a question of fact. We find on examination of the evidence that the respondent/plaintiff has been able to adduce evidence, largely oral to the effect that the premises were reasonably required by him and that he had no suitable alternative accommodation. The respondent/plaintiff was not expected to prove the negative but once having asserted the negative that the demised premises was reasonably required by him and he had no suitable accommodation, the burden of proof is on the appellants/defendants to show that there was no requirement and that he had alternative accommodation.

The learned courts below have rightly come to the conclusion that the respondent/plaintiff had been able to prove his case inasmuch as the appellant/defendant could not disprove the evidence furnished by the respondent/plaintiff.

In any case such finding of fact is a plausible view and far less from perverse so as to warrant interference by this court in second appeal.

In those circumstances, we are not minded to entertain this appeal. However, considering the forceful submissions made by learned counsel for the appellants/defendants, we grant time up to 15th March, 2024 to the to vacate the premises on the following

conditions:-

Without prejudice to the rights and contentions of the respondent/plaintiff to recover mesne profits for the earlier period, i.e. the period preceding this judgement and decree, the appellants/defendants shall be permitted to reside in the subject premises only upon payment of occupation charges @ Rs.1,000/-(One thousand) per month from April, 2023, payable by 30th April, 2023 for the month of April, 2023 and by seventh of each succeeding month as advance rent.

Till 15th March, 2024 the respondent shall not take any steps in execution or proceed with the execution proceedings. However, in default of payment of any occupation charges the respondent/plaintiff shall be free to execute the decree forthwith.

The appellants shall vacate the subject premises by 15th March, 2024 failing which the respondent/plaintiff shall be free to take immediate steps for his eviction in execution.

With these observations and directions the appeal (SAT 161 of 2022) and the connected application(CAN 1 of 2022) are disposed of, after formally admitting the same.

(I.P. Mukerji, J.)

(Biswaroop Chowdhury, J.)

