

Item-24. 19-05-2023

SAT 2504 of 2007
CAN 1 of 2021

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Ct. 8

Gobinda Narayan Saha, since deceased, represented by his legal heirs, namely, Jyostna Rani Saha & Ors.

Versus

Rajpati Saha, since deceased, represented by
Gopal Ch Saha & Ors.

Mr. Sourav Sen, Adv.
Ms. Sumitra Das, Adv.

...for the appellants

Although we may find some substance in the argument of Mr. Sourav Sen, learned Advocate for the appellants that the findings of the First Appellate Court with regard to defaulter could be a factor, however, both the courts have held that the plaintiffs could prove the reasonable requirement of the said premises.

Mr. Sen submits that from the impugned judgment of the First Appellate Court, it will not appear that the First Appellate Court has considered the argument of the appellants with regard to reasonable requirement.

However, from the internal page 5 of the judgment, it appears that the First Appellate Court has considered the following facts as the ground for affirming the order of the Trial Court with regard to reasonable requirement:

“In this case PW 1 said that his father was a medical sales man and he himself and his father used to sell medicine moving here and there. So they require a shop as a place of business for selling medicine. The plaintiff has no other suitable accommodation elsewhere. PW2 also corroborated the case of the plaintiff. Though the defendant tried to make out a story that one

of the sons of the plaintiff Gopal Saha owns a medical shop by the side of Kaliaganj Registry Office under the name and style 'Rajpat Pharmacy' but the defendant failed to prove this fact by oral and documentary evidence.”

It is submitted that an application for review is pending.

We are unable to accept the submission of Mr. Sen that the First Appellate Court has not taken into consideration any relevant fact in arriving at a decision with regard to reasonable requirement.

The second appeal stands dismissed at the admission stage.

Dismissal of the second appeal shall not stand in the way of the First Appellate Court to review its order.

In view of the dismissal of the appeal, the application also stands dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)