

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

C.O. 3030 of 2022

Unisystem Pvt. Ltd.
Vs.
Chandra Prakash Jhunjhunwala

For the petitioner : Mr. Shyamal Chakraborty,
Mrs. Manju Jaiswal,
Mr. Gaurav Kumar.

For the opposite party : Mr. Sudhasatva Banerejee,
Mr. Rahul Karmakar,
Mr. Abir Lal Chakraborti,
Mr. Sounak Mukherjee.

Hearing concluded on: 27.07.2023
Judgment on: 17.08.2023

Shampa Sarkar, J.:-

1. The revisional application has been filed challenging an order dated September 6, 2022 passed by the learned Civil Judge (Senior Division), Second Court at Howrah, in Title Suit No.37 of 2012.
2. The opposite party filed a suit for eviction, being Title Suit No.37 of 2012. The petitioner is the defendant in the suit. The petitioner entered appearance in the suit and filed a written statement along with a counter claim.
3. The plaint case was that the defendant/petitioner had been inducted as a monthly tenant in respect of one factory shed bearing No. 1A, having a covered area of more or less 5000 sq. ft. at holding 220A, Naskar Para Road,

Ghusuri, Police Station, Malipachghara, District Howrah, at a monthly rental of Rs.5,788.12p, which was lastly enhanced to Rs.6,700.49p. The defendant/petitioner defaulted in payment of the rent since April 1998. The defendant/petitioner caused damage to the property by making additions and alterations, which were not permissible as per the terms and conditions of the tenancy. The suit premises was reasonably required by the plaintiff for his own use and occupation, as the plaintiff did not have any other reasonably suitable accommodation within 10 Kms from the suit property. The plaintiff was a businessman and he had been running a business of manufacturing, export, import, processing, packaging and re-packaging etc. By virtue of a registered deed of sale dated March 22, 1983, the plaintiff became the owner and landlord of the suit premises. The plaintiff was also a stockist and commission agent who was trading in all kinds of food products, organic products, processed product, packed food, frozen foods etc. The products were being sold under the name and style of YP Foods Private Limited. YP Foods Private Limited was a private limited company incorporated under the Companies Act and the place of business was at M.J. Industrial Park, J.L. No.27, Mouza Satghoria, P.O. Bikihakola, P.S. Panchla, Howrah – 711302. That business of the plaintiff flourished and it was impossible for the plaintiff to run the business from M.J. Industrial Park. That the suit premises was reasonably required to accommodate the expanded business. As the suit premises was a factory shed and situated within Howrah town, the same would be convenient for such purpose. The defendant/petitioner had alternative accommodation. The defendant should not remain in the suit property and be in possession thereof. That tenancy

was terminated by a notice to quit which was sent by registered post to the defendant on December 19, 2011. The defendant/petitioner was asked to vacate the suit property with the expiry of January, 2012.

4. In spite of receipt of the notice, the defendant failed to vacate the suit property. Such failure led to filing of the eviction suit.

5. The plaintiff/opposite party prayed for the following reliefs:-

- i. For a decree of ejectment and khas possession of the suit property after evicting the defendant, its men and agent therefrom;
- ii. For a decree of mesne profit;
- iii. For costs of the suit;
- iv. For any other relief or reliefs to which the plaintiff is entitled to get in law and equity.

6. The schedule of the property is mentioned herein below:-

All that piece and parcel of one factory shed bearing No. 1A situated at No. 220A. Old No.220, Naskar Para Road. Ghosuri, Police Station-Malipanchghara, District Howrah, butted and bounded as follows:-

North : Boundary Wall;
 South : Cuprum Bagrabin Ltd;
 South : Boundary wall cum entrance;
 West : Way of Universal.

7. In the written statement, the defendant/petitioner contended that the suit was not maintainable either in law or in fact. That the defendant was not a defaulter. That the defendant was not sure that the plaintiff had purchased holding No.220A, Naskar Para Road, Ghosuri, Howrah. That the plaintiff did not require the suit premises for his own use and occupation. The plaintiff had reasonable suitable, alternative accommodation within an area of 10 Kms from the suit property. The plaintiff resided at 22/5, Nalini Ranjan Avenue, Block A, New Alipore, Kolkata – 700053. The residential accommodation at New Alipore was situated over 30 Cottahs of land and the

plaintiff could easily run his business from the vacant land. In the suit building, the entire first floor measuring approximately 5000 sq. ft. was lying vacant and unused. The plaintiff could use the same for the purpose of expansion of his business. The averments with regard to reasonable requirement were insufficient and the said ground for eviction was introduced after five years from the filing of the suit.

8. During pendency of the suit, both the plaintiff and the defendant filed respective applications under Order 39 Rule 7 of the Code of Civil Procedure. In the application for local inspection, the plaintiff, inter alia, stated that a clear topography of the suit property would be required for proper adjudication of the eviction suit in which reasonable requirement was a ground for eviction. A local inspection by a practising advocate of the learned Court should be directed on the points mentioned in the schedule of the said application.

9. The schedule for local inspection, is quoted below:-

- "I. To go to locale and to draw a rough sketch map of the 'suit premises' appertaining to factory shed bearing No.1A at Holding No.220A (Old No.220), Naskar Para Road, Ghusuri, Police Station-Malipanchghora, District Howrah;
- II. To note the present nature and condition of the 'suit premises';
- III. To note any other local feature that may be pointed out at the time of commission work."

10. The defendant filed an objection to the said application, inter alia, stating that by the said application, the plaintiff only prayed for local inspection of the suit premises situated at 220A, Naskar Para Road, Ghusuri, Malipanchghora, District Howrah. Such prayer should not be allowed. As the plaintiff had sufficient accommodation at M.J. Industrial

Park and at New Alipore, which were suppressed in the application, the said application deserved to be rejected. That other accommodations of the plaintiff should also be taken into consideration and inspected in order to obtain a clear picture as to whether the plaintiff had an alternative reasonable suitable accommodation for his commercial use.

11. The defendant also filed another application and prayed for local inspection of all other accommodations of the plaintiff namely, the property situated at M.J. Industrial Park. The points for inspection as stated by the defendant/petitioner, are quoted below:-

- “i) To make inspection of the first floor of suit premises at 220A, Naskarpara Road, Ghusuri, Howrah where the plaintiff has got accommodation which is lying vacant and to measure the same and to report before the Learned Court.
- ii) To report as to the mode of user of the first floor of suit premises at 220A, Naskarpara Road, Ghusuri, Howrah;
- iii) To make inspection of premises at M.J. Industrial Park, J.L. No.27, Mouza Satgharia, P.O. – Bikhiakhola, P.S. – Panchla, Howrah – 711302 wherein the plaintiff is allegedly carrying business under the name and style ‘Y P Food Pvt. Ltd.’;
- iv) Measurement of the accommodation being available to the plaintiff at the premises at M.J. Industrial Park, J.L. No.27, Mouza - Satgharia, P.O. – Bikhiakhola, P.S. – Panchla, Howrah – 711302.
- v) To inspect and note the mode of use of the premises at M.J. Industrial Park, J.L. No.27, Mouza Satgharia, P.O. – Bikhiakhola, P.S. – Panchla, Howrah – 711302.
- vi) To prepare and produce the sketch map of the first floor of suit premises at 220A, Naskarpara Road, Ghusuri, Howrah as well as premises at M.J. Industrial Park, J.L. No.27, Mouza - Satgharia, P.O. – Bikhiakhola, P.S. – Panchla, Howrah – 711302 wherein the plaintiff is carrying business under the name and style ‘Y P Food Pvt. Ltd.’;
- vii) To inspect and measure the premises No. 22/5, Nalini Ranjan Avenue, Block A, New Alipore, Kolkata – 700053 where the plaintiff has got accommodation.
- viii) To report as to the mode of user of premises No. 22/5, Nalini Ranjan Avenue, Block A, New Alipore, Kolkata – 700053.
- ix) To prepare rough sketch map of premises No. 22/5, Nalini Ranjan Avenue, Block A, New Alipore, Kolkata – 700053 and to submit the same;
- x) To make inspection and report as to the other relevant points that may be directed by this Learned Court to take note and submit.”

12. The plaintiff objected to the said application by stating that the properties mentioned by the defendant at the industrial park and at New Alipore, were beyond the limits of the Howrah Municipal Corporation and not within 10 Kms from the suit property. Hence, as per provisions of Section 6(1)(d) of the West Bengal Premises Tenancy Act, 1997, the question of inspection of those two premises, would not arise.

13. The learned trial Court heard both the applications analogously. By order dated September 6, 2022, the petitioner's application was rejected on the ground that the residential house situated at 22/5, Nalini Ranjan Avenue, Block A, New Alipore was beyond 10 Kms from the suit premises. M.J. Industrial Park was situated within a gram panchayat area and would not be amenable to the provisions of the West Bengal Premises Tenancy Act, 1997. The learned Court further held that the nature of requirement could not be fulfilled at the accommodation at New Alipore, was used for residential purpose. The prayer for local inspection of the residential accommodation at New Alipore and the accommodation at M.J. Industrial Park, was rejected.

14. The learned Court allowed the application filed by the plaintiff, and appointed a learned Advocate commissioner for the purpose of local inspection, upon payment of provisional cost of Rs. 5,000/-, as commission fees. The learned court formulated the points for inspection. The points for inspection/consideration are quoted below:-

- "1) To draw a rough sketch map of the entire suit premises comprised in 220A (old 220) Naskar Para Road, Ghusuri, P.S M.P Ghora, District - Howrah.
- 2) To note and depict the structural position of the suit premises.

- 3) To note the total number of rooms available in the suit premises (in all floors).
- 4) To note the extent of accommodation available to the plaintiff within the suit premises.
- 5) To note the extent of accommodation available to the defendant within the suit premises.
- 6) To note any other local feature or features as would be relevant in this regard.”

15. Mr. Chakraborty, learned Advocate appearing on behalf of the petitioner submitted that the order impugned suffered from various irregularities. There was no evidence that the property situated at New Alipore was a residential property and was situated beyond 10 Kms from the suit property. The observation that the accommodation at M.J. Industrial Park was also beyond the limit of the Howrah Municipal Corporation was also incorrect. The distance of 10 Kms should be measured from the last point of the territorial jurisdiction of the Howrah Municipal Corporation. The Panchla property (industrial park) was situated within Howrah district. Major portion of the property owned and enjoyed by the plaintiff which were still lying vacant, had been left out of the purview of local inspection. Such omission was contrary to the principles governing local inspection of the accommodation available to the plaintiff/landlord, in a suit for eviction on the ground of reasonable requirement.

16. According to Mr. Chakraborty, not only the suit premises, but also other suitable accommodation available to the plaintiff ought to have been inspected in order to ascertain whether the plaintiff was in possession of other accommodation from which the expanded business could be run and the suit premises could remain with the present occupant. The other accommodation available, ought to have been brought on record. The

application for local inspection filed by the petitioner/tenant should have been allowed.

17. Learned counsel further submitted that the finding that the residential accommodation was not suitable for business purpose, was perverse and based on surmise and conjecture. The finding of the court that the residential area was beyond 10 Kms from the suit premises, was also based on guess work and not on evidence. Distance could be measured in various ways and the learned Court below, without undertaking an exercise to measure the distance of the residential house at New Alipore from the suit property, could not have come to the said finding. Hence, learned counsel prayed that the order impugned be modified upon allowing local inspection of the premises situated at New Alipore and M.J. Industrial Park.

18. Mr. Banerjee, learned Advocate for the opposite party submitted that it was for the plaintiff to prove that he did not have any other reasonable suitable accommodation for the purpose of expansion of his business. It was not for the tenant to decide which property of the landlord would be suitable for the business. The plaintiff had the right to decide from which property he wanted to run the business. Moreover, the suit property which was situated at Ghusuri, Malipachghara, Howrah was at a distance of more than 10 Kms from all the other property. The fact was well-known and physical measurement of the distance was not required to be undertaken. The accommodation at M.J. Industrial Park which was situated much beyond Ghusuri, Malipachghara, Howrah, was within the jurisdiction of a gram panchayat. The said Act did not extend to the said area.

19. Considering the submissions of learned counsel for the parties, this Court finds that the suit for eviction was filed on other grounds, including reasonable requirement of the suit premises. The premises is a factory shed. The plaintiff, as the landlord, was entitled to file a suit for eviction of the tenant on the ground of reasonable requirement, for expansion of the manufacturing, and export, import business. The plaintiff was the best judge of his own requirement and the plaintiff alone, could select the place where he would want to establish his business and run the same profitably and conveniently. It is also for the plaintiff to prove not only reasonable requirement but also that there was no other suitable accommodation within 10 Kms from the suit premises or within the same Municipal Corporation or the Municipality.

20. Reference is made to the decision of this Court in the matter of ***Prafulla Kumar Nayak vs. Dr. Ashim Kumar Bardhan*** reported in **2016 SCC OnLine Cal 596**. Further reference is made to the decision of this Court in the matter of ***Amar Singh Saini vs. Rup Chand Das & anr.*** reported in **1995 SCC OnLine Cal 206**. In the said decisions, it was held that in a suit for eviction filed on the ground of reasonable requirement, the plaintiff had to prove that he required the suit premises for his own use and occupation and that the plaintiff did not have any other reasonable suitable accommodation. Thus, the extent of the accommodation of the plaintiff could be ascertained by local inspection. The onus was on the plaintiff to prove that he was not in a possession of any other reasonably suitable accommodation as per the provisions of Section 6(1)(d) of the said Act. Section is quoted below:-

“6(1)(d) where the premises is required by the landlord for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises is held and the landlord or such person is not in possession of any suitable accommodation within the same Municipal Corporation or Municipality or within ten kilometres from such premises in any other area where this Act extends;”

21. The proper interpretation of the above-mentioned provision of law is that the onus was on the plaintiff to prove that the plaintiff did not have any reasonable suitable alternative accommodation within the Howrah Municipal Corporation or within 10 Kms from the suit property, under any other municipality. The defendant will also be able to rebut such claim of the plaintiff by adducing evidence, in order to prove the contrary. If the plaintiff cannot discharge such onus, the suit will fail. Thus, for the plaintiff to prove his case, the local inspection as permitted by the learned court below was correct and based on legal principles.

22. This Court is unable to accept the contention of Mr. Chakraborty, that the distance of the suit property from New Alipore and M.J. Industrial Park, should be measured from the end point of the territorial jurisdiction of the Howrah Municipal Corporation. The section clearly provides that the plaintiff who filed a suit for eviction on the ground of reasonable requirement should not have any reasonable suitable alternative accommodation within the Municipal Corporation or within any Municipality or within 10 Kms from the suit property. The distance between Panchla, and Ghusuri and New Alipore are not difficult to ascertain with the advancement of technology. Such information is readily available to all. Moreover, the learned Court below found that Panchla, where the industrial park was situated, fell under the jurisdiction of a gram panchayat and the said Act

would not be applicable. The petitioner has not been able to show any material which would contradict such finding. The expression 'suitable accommodation' would also justify the finding of the learned Court below that the New Alipore premises need not be considered for business purpose not only on account of the distance, but also because the same was admittedly used as a residential premises.

23. Finally, if the plaintiff fails to prove on trial, that the accommodation in New Alipore and M.J. Industrial Park would not come within the meaning of Section 6(1)(d) of the 1997 Act, the plaintiff would suffer the consequences and the defendant was always at liberty to prove his case, rebut the plaint case and cross-examine the plaintiff on the point of alternative suitable accommodation, at the trial. Thus, this Court does not find any irregularity in the order impugned. The order is upheld. The findings of this Court, as also the trial court are tentative and shall not influence the trial. The learned Trial Judge will proceed in accordance with law.

24. Thus, the revisional application is dismissed.

25. There will be no order as to costs.

26. Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)