

90 **19.12.
2023**

Ct. No. 04

Ab

**SAT 228 of 2022
IA No. CAN 1 of 2022**

**Sri Krishna Shaw
Vs.
Sri Bholaram Kahar.**

**Mr. Swarup Banerjee,
Mr. Sajal Kumar Ghosh.
... for the appellant.**

The law, which is more or less settled through catena of judgments and/or decisions, is sought to be unsettled with the eloquence of the Counsel for the appellant.

The landlord reasonably requires the suit premises for him as well as the other family members and approached the Court to pass a decree under Section 6 of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'said Act'). The landlord/respondent categorically averred that his family consists of eleven members, out of which four sons, three daughters are unmarried and there is one married daughter, who was unfortunately deserted by her husband subsequently and is also residing with him. It is further stated that another married daughter often visits and stays with him and, therefore, the accommodation available to him is not reasonable suitable to cater such need.

The defendant/appellant did not deny the composition of the family rather the first witness of the defendant/appellant admits that one of the sons is married and residing at the suit premises and further admitted that the entire family of the plaintiff/respondent are residing in the suit premises.

Both the Courts held that the requirement of the plaintiff/respondent is reasonable, as he is not in possession of reasonable suitable accommodation elsewhere and proceeded to decree the suit.

A point is sought to be raised before us that out of three rooms, one room was alleged to be in a dilapidated condition, which has not been considered by the Court as reasonable accommodation, when the same can be made habitable by making the repairs by the plaintiff/respondent.

It is strenuously argued that both the Courts have proceeded on the basis that the plaintiff/respondent is in possession of two rooms, thereby ignoring the third room for which the matter should have been remitted to the Trial Court to reconsider the issue on remand. It is further submitted that the plaintiff/respondent being the subsequent purchaser was well-aware that three rooms in the suit premises are occupied by the tenant and being conscious of such reality having purchased the same, it creates a bridle on him to claim the eviction of tenant on the ground of reasonable requirement.

It is vociferously argued by the Counsel for the defendant/appellant that the defendant/appellant is occupying a tile shed room and living with eleven members and, therefore, there is no fetter on the part of the plaintiff/respondent to accommodate themselves with the existing accommodations and eviction would cause undue hardship on the tenant. Lastly, it is submitted that the Commissioner's report is not sacrosanct and, therefore, both the Courts have proceeded on presumption in upholding the claim of the plaintiff/respondent. Though feebly, it is submitted further that the Trial Court as well as the Appellate Court overlooked the fact that the entire rent was deposited under Section 7 of the said Act and the application under Section 7(3) of the said Act was dismissed by the Trial Court thereby refusing to strike out the defence for non-compliance of the requirements under sub-section (1) and (2) of Section 7 thereof.

We are unable to comprehend the proposition of law sought to be raised before us on the above score,

more particularly, when the matter is judged on the basis of the parameters of law as well as the pleadings of the respective parties. The parties were put on trial and the witnesses were examined in support of their respective stands taken in the said proceeding. We are not unmindful of the somewhat settled proposition of law that in order to succeed on the ground of reasonable requirement, the Court must venture to see whether such requirement is genuine and a bare necessity of a human being.

The Court shall refuse to pass a decree on the ground of reasonable requirement, if it is found fanciful or mere wish and desire of the landlord to evict the tenant from the tenanted premises. The extent of requirement varies from a man to man depending upon their status and the position in the society and, therefore, there cannot be any straight jacket formula in this regard. There is no denial on the part of the defendant/appellant on the composition of the family of the plaintiff/respondent and there is no dissent that three rooms are available at the suit premises with the plaintiff/respondent out of which one is in dilapidated condition.

The appointment of Advocate Commissioner to make an inspection in such scenario is inevitable as the Court is required to see the extent of the possession of the respective parties and the nature of such possession and the manner in which the same is being used. It has a further impact upon the reasonability and the suitability of the accommodation available to the plaintiff/respondent, which is one of the ingredients of Section 6(1)(d) of the said Act. In order to succeed on the ground of reasonable requirement, the landlord has to prove that he is not in possession of any suitable accommodation within the Municipal Corporation or the Municipality within 10 kilometers from the suit premises and that he reasonably requires the premises for his own

occupation and for the occupation of his family members.

Sub-section (1) of Section 6 of the said Act does not contemplate that the decree for eviction cannot be passed on one ground rather it is manifest therefrom that the eviction can be sought on one or more of the grounds enumerated therein and, therefore, if the landlord has been able to prove that he reasonably requires the suit premises for his occupation and for the occupation of his family members, it would invite a decree for eviction to be passed against the tenant.

The question of undue hardship as raised by the Counsel for the defendant/appellant is not tenable as the legislatures have not incorporated such concept within the ambit of the said Act. The eviction is not decided on an equitable principle where the Court is required to balance the rights of each of the litigants in order to render the justice. We are conscious that the Rent Restriction Act was introduced to protect the tenants from the hands of an unscrupulous landlord in seeking the eviction at his wish, but equally the landlord has also been permitted to seek eviction on the ground enumerated therein, which is a primary reason for incorporating sub-section (1) of Section 6 of the said Act.

Admittedly, the composition of the plaintiff's family is large and even if we accept the stand of the defendant/appellant that one room, which is termed as dilapidated room, can be suitably used for catering the need, yet the bare necessity of living cannot be ignored and three rooms available to the plaintiff/respondent is too scanty.

An interesting point was raised that a purchaser of a tenanted house cannot seek eviction on the ground of reasonable requirement having aware of the fact that such premises is fully tenanted or partly tenanted. We do not see any embargo in the statute rather the converse inference can be drawn from sub-section (2) of Section 6 of the said Act where a moratorium period of one year is

incorporated denuding the subsequent purchaser to file a suit for recovery of possession on the ground of requirement for building and rebuilding, addition and alteration or for own use and occupation. Such embargo of one year may create a bridle on the part of the landlord on seeking eviction on such ground but does not create an absolute fetter on the part of the landlord to institute a suit for recovery of possession after the expiry of the said moratorium period on the grounds as mentioned therein.

It, thus, goes against the true purport and spirit of the provisions of the statute and, therefore, the contention of the Counsel for the defendant/appellant being contrary to law is not accepted. The law does not stand in the way of the landlord in seeking eviction against the tenant even if such tenant is evicted yet the need remains wanting. The tenant cannot dictate the landlord to squeeze within a small area or the accommodation so available and, therefore, the concept of undue hardship has no role to play in the present Act.

From whatever angle we look at it, we do not find that the instant appeal involves any substantial question of law. The appeal is hereby dismissed.

In view of the dismissal of the appeal itself, the connected application being CAN 1 of 2022 has become infructuous and the same is accordingly dismissed.

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

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

