

Item-21. 10-01-2023

SAT 428 of 2014

sg Ct. 8

Mir Musharaf Ali alias Ekram & Ors.
Versus
Must. Halima Khatoon & Ors.

The matter initially appeared in the warning list on 29th November, 2022 and thereafter transferred to the regular list on 5th December, 2022. There was a clear indication in the list that the matter shall be transferred to the daily cause list on 5th December, 2022 and since then the appeal is appearing in the list.

The appeal is of the year 2014. The appeal is defective. In spite of an order passed by a coordinate Bench on 28th January, 2015, no attempt has been made to remove the defects.

The appellate decree dated 22nd April, 2014 affirming the judgement and decree dated 12th March, 2007 is the subject matter of challenge in this second appeal.

The suit for eviction was allowed by the trial court upon considering the oral and documentary evidence.

We find from the judgment of the trial court that the appellant was able to establish default. It appears that by an order no. 43 dated 27-11-2000 the application under section 17(2) of the West Bengal Premises Tenancy Act was disposed of on the basis of the joint statement. However, the defendants did not file any challan to show that they had complied with the order dated 27-11-2000. As a result whereof, the defendant was hold to be a defaulter and they were not entitled to get any protection under section 17(4) of the West Bengal Premises Tenancy Act, 1956. Moreover, on the basis of the report filed by the engineer

commissioner appointed by the trial court, the decree-holder shall be able to prove that the defendant was guilty of breach of clauses 'm', 'o' and 'p' of section 108 of the Transfer of Property Act. No contrary evidence was placed before the court to show that the report of the engineer commissioner was perverse. The plaintiffs were also able to prove the subletting.

It appears from the evidence that one Mr. Aslam was found to be in exclusive possession in the premises in question and on such evidence, the inference of subletting can be established. The plaintiffs were also able to prove reasonable requirement of the suit premises having the requirement of him and his family members. The trial court has taken into considered exhibits 3, 10, 11 and 12 to arrived at a finding that the plaintiffs require the suit premises for his accommodation as the tenanted house is not suitable for alternative accommodation.

The appeal was preferred after a delay of 1800 days. The first appellate court dismissed the said petition on the ground that the appellant was unable to show sufficient cause for not being able to file the appeal within the period of limitation.

The trial court has discussed few judgments of the Hon'ble Supreme Court and applied the said principle to the fact situation in dismissing the said application. Even if we overlook the order passed in the section 5 application, the detail evidence before the trial court justify the decree in favour of the plaintiffs.

The second appeal stands dismissed at the admission stage.

(Uday Kumar, J.)

(Soumen Sen, J.)