

12 **16.08.**
2023
Ct. No. 04

SAT 119 of 2020
IA No. CAN 1 of 2020
IA No. CAN 2 of 2021

Ab

Sri Biswanath Chandra and others
Vs.
Sri Sankarnath Shaw.

Mr. Manas Kumar Ghosh,
Ms. Susmita Dey (Basu).
... for the appellants.

Mr. Anit Rakshit.
... for the respondent.

A suit for eviction on the ground of default, building and rebuilding and reasonable requirement stood decreed by the trial court and affirmed by the first appellate court. The suit was filed for recovery of possession upon issuance of statutory notice as the defendants/appellants are the monthly tenants governed by the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'said Act').

It is a specific case of the plaintiff/respondent that he requires the suit premises for setting up a business for his sons and also for himself as he is running a shop from a tenanted premises. It is further averred that the suit premises is in a dilapidated condition and cannot be made habitable and/or usable unless the reconstruction is made.

The defendants/appellants contested the suit and took a stand that two of the shop rooms in the said premises were subsequently handed over to the plaintiff/respondent and, therefore, the requirement diminishes. It is further contended that the plaintiff/respondent is running his shop from a premises in a close proximity of the suit premises and it

is a mere fanciful desire of the plaintiff/respondent to get rid of the defendants/appellants. Both the courts below did not accept the contention of the defendants/appellants.

A point is sought to be taken before us that the trial court abruptly closed the evidence of the defendants/appellants as an application under Section 24 of the Code of Civil Procedure was filed before the District Judge for transfer and the appellate court has proceeded on the *ipsi dixit* of the findings recorded by the trial court that the defendants/appellants did not adduce any evidence in support of the written statement.

It appears from the findings returned by both the courts below that after receiving the summons, the defendants/appellants filed an application under Section 7(1) and Section 7(2) of the said Act, which was ultimately rejected by the trial court. The order rejecting the said application was assailed before this Court under Article 227 of the Constitution of India, but the same was subsequently dismissed.

The fact remains that there was no compliance of Section 7(1) and Section 7(2) of the said Act though there is no application taken out by the plaintiff/respondent for defence to be struck off during the pendency of the suit.

Be that as it may, it appears that the plaintiff/respondent explained the contention of the defendants/appellants that he received two rooms and one of the room, which was not usable and/or habitable was demolished and the other room has been given to one of his son for starting a business. There are other sons, who were not denied and the plaintiff/respondent is proceeding to recover the said possession not only for his own purpose but for sake of his sons, who are

dependent upon him.

The matter can be viewed from another angle that the plaintiff/respondent during his evidence proved the rent receipt of the shop where he is running a business as a tenant, which has not been denied by the defendants/appellants. The possession of the shop as tenant is always regarded as precarious as the threat of eviction is always over the head of a tenant. It is immaterial whether any notice of eviction has been issued upon the tenant the moment the possession is found as tenant in respect of the premises and if the landlord, who is running a business from a tenanted shop, intends to shift his business to his own house, it can never be regarded as fanciful desire nor a mere wish but an element of need can be seen therefrom.

A person cannot be forced to continue as tenant in another's property for the sake of his own tenant and the law cannot act as a deterrent in this regard. Since the default has also been proved against the defendants/appellants and case of the reasonable requirement also appears from the record, we do not find that the point, which is raised before us, would tilt the decision in diametrically opposite direction.

We, thus, do not find any substantial question of law involved in the instant appeal.

The appeal is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

In view of the dismissal of the appeal itself, the connected applications being CAN 1 of 2020 and CAN 2 of 2021 have become infructuous and the same is also dismissed.

(Harish Tandon, J.)

(Ajay Kumar Gupta, J.)

