

**IN THE HIGH COURT AT CALCUTTA
(Civil Appellate Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Supratim Bhattacharya

S.A. 67 of 2017

Sri Paritosh Santra & Ors.

Vs.

Smt. Dipali Sarkar

For the Appellant : Mr. Debasish Roy
Mr. Srinjay Sengupta
Mr. Sourav Roy
Mr. Narattam Acharyya
Mr. Ankush Ghosh

Heard On : 07.05.2024

Judgement Delivered On : 05.08.2024

Supratim Bhattacharya, J.:

1. Against the order passed by the Ld. Additional District Judge 9th Court Alipore, Sourt 24 Parganas, on 3rd of March, 2016 in the Ejectment Appeal no. 15 of 2015 the landlords/plaintiffs/appellants have preferred the instant appeal.
2. The appellants herein were the plaintiffs before the Ld. Trial Court and the respondents before the Ld. First Appellate Court while the respondent herein was the defendant before the Ld. Trial Court and the appellant before the Ld. First Appellate Court.

3. Facts of the instant lis

As stated in the plaint, the appellants/plaintiffs are brothers and sisters who are the owners of the suit premises measuring 1 cottah 5 chitaks 36 sq. ft. of land having a single storeyed brick built tin shaded house consisting of one room, a kitchen, one verandha and four shop rooms being premises no. 23, Kaliprasanna Chatterjee Lane, and Municipal Corporation Premises No. 29 Kaliprasanna Chatterjee Lane, PS Behala, Kolkata -700034, South -24-Parganas. In the suit premises there are four shop rooms out of which two of those are in possession of the appellants/landlords while the third one is in possession of a tenant running a press while the fourth shop room is in occupation of the respondent/defendant/tenant and the appellants/landlords have sought for eviction of the respondent /tenant on the ground of default in payment of rent and reasonable requirement. The requirement of the said shop room is for commencing a business to enhance the family income and also for utilising the said room during the night for sleeping that is both residential and commercial requirement.

4. Facts before the Trial Court:

The appellants/plaintiffs/landlords instituted the lis before the Ld. Civil Judge (Junior Division) 5th Court, Alipore through an Ejectment Suit no. 349 of 2007. The appellants/plaintiffs filed the suit praying

for ejectment of the respondent/tenant on the ground of default and reasonable requirement both for the sake of commercial as well as residential purpose.

The respondent/defendant/tenant entered appearance and contested the suit by filing written statement.

On the basis of the pleadings the Ld. Trial Judge framed the following issues.

ISSUES

1. *Is the suit maintainable in its present form and prayer?*
2. *Have the plaintiffs any cause of action to file the instant suit?*
3. *Have the plaintiffs any right, title and interest over the suit property?*
4. *Is the defendant a habitual defaulter in payment of rent in respect of the suit property?*
5. *Do the plaintiffs require the suit premises reasonably for their own use and occupation and for the use and occupation of family members?*
6. *Are the plaintiffs entitled to the decree as prayed for?*
7. *What other relief the plaintiffs are entitled to set in equity and law?*

On going through the oral and documentary evidence on record the Ld. Trial Judge held that the respondent/plaintiff is not a defaulter in payment of rent but had decreed the suit holding that the appellants required the said shop room and had directed the respondent/defendant to vacate the suit premises and deliver vacant khas possession in favour of the appellants/plaintiffs.

5. Facts before the First Appellate Court

Being aggrieved by and dissatisfied with the judgment passed by the Ld Civil Judge Junior Divn., the respondent/tenant preferred an appeal being Ejectment Appeal no. 15 of 2015 on several grounds.

The Ld. First Appellate Court considered the submissions of the Ld. Counsel representing the appellants/tenants and the respondents/landlords and had framed the point for consideration which is as follows:

Now the questions to be determined are whether the impugned judgment and decree suffers from any irregularity and illegality and whether Ld. Trial Court was justified in decreeing the suit and whether it requires any interference by this Court?

The Ld. First Appellate court has taken into consideration that the ground of reasonable requirement is for dual purpose. Firstly the

plaintiff No. 3 the unmarried sister will run a stationary business from the suit room for augmentation of the income of the joint family and the plaintiff No. 2 will stay at night in the shop room after the shop being closed.

The Ld. First Appellate Court has dealt with the issue of augmentation of the joint family income and has stated that the plaintiff no. 1 has a business of selling kerosene oil being an authorized agent of the Government of West Bengal. The plaintiff No.2 sells betel leaves and cigarette.

The said Court has taken into consideration the cross-examination of PW1 and has stated that the plaintiffs have one printing press and the brother of the PW1 has a jewellery shop as such the businesses involving kerosene oil and selling of green leaves and cigarette are not the only source of income.

The Ld. First Appellate Court has further stated that the landlord is the best judge of his requirement but the requirement should be genuine. He has further discussed that neither the Hon'ble Supreme Court nor the Hon'ble High Court of Calcutta has stated that even the requirement if found to be not genuine and not *bona fide* and reasonable still the Court is to act according to the desire of the landlord. The *bona fide* requirement is an outcome of sincere and honest desire in contradiction to the mere pretends or pretext to evict a tenant. The word 'reasonable' is of wide import and the

reasonableness of the claim cannot be determined with mathematical precision. The word reasonable means not immoderate or excessive but synonymous with rational, honest, equitable, fair, suitable, moderate and tolerable.

Relying on the aforementioned view the Ld. First Appellate court has come to the finding that the appellants/respondents/landlords have failed to substantiate that for augmentation of their joint family income they need the suit room for the purpose of starting a new business.

As regards to the second point that is accommodation, the Ld. First Appellate Court has opined that the landlords having business dealing in kerosene oil, printing press and jewellery shop cannot be said to be people belonging to the lower income group and has disbelieved that a member of such family will sleep during the night in a shop room having brick walls and tin shade measuring 10 ft. by 8 ft. The Ld. First Appellate Court has also taken into consideration that the landlords did not take any step to get their purchased property inspected by local inspection commissioner to ascertain how many rooms are available in that purchased property. Relying upon the aforementioned statements the Ld. First Appellate Court has come to the finding that the landlords do not reasonably require the said shop room and found that there is no justification to subscribe the view of the Ld. Trial Judge regarding reasonable requirement.

On the basis of the aforementioned findings the Ld. First Appellate Court has allowed the appeal filed by the tenant and has set aside the decree of eviction passed by the Ld. Trial Court.

6. Being aggrieved by and dissatisfied with the judgement and decree passed by the Ld. First Appellate Court the appellants/landlords have filed the instant second appeal.

The instant appeal has been admitted and a substantial question of law has been framed which is as follows:

Whether the Ld. Judge in the Court below substantially erred in law in not appreciating that the plaintiff/respondent no. 3 being the unmarried sister of the plaintiff /respondent No.1 requires to run a stationary business for augmentation of income of the joint family?

In spite of delivery of notice and receipt of the same by the respondent, which is evident from the track consignment issued by the India Post and the Acknowledgement Due Card which reflects that notice has been delivered upon the respondent on 09.02.2022 and 17.02.2022, the respondent has not entered appearance as such the instant appeal has been heard ex parte.

7. Ld. Counsel Mr. Debasis Roy being assisted by Mr. Srinjay Sengupta, Mr. Sourav Roy, Mr. Narattam Acharyya and Mr. Ankush Ghosh on behalf of the appellants has submitted exhaustively which are epitomized as follows:

- i) The appellants landlords case is that their family income from the two shops one selling kerosene oil while the other selling pan and cigarette is meager as such to augment their income the appellant No.3 seeks to start a business of her own so that she can contribute to the family.
- ii) The appellant/landlord No.2 being unmarried can use the shop room for the purpose of sleeping at night.
- iii) The arguments raised on behalf of the respondent tenant as regards to inexperience in business has been considered by both the Trial Court and the First Appellate court and have not been given any short of weightage.
- iv) The shop room is required for running the business of the appellant/landlord No.3 and the shop room in question is in the front side facing the main road as such it is suitable for running a business.
- v) The First Appellate Court has reached to an incorrect conclusion on the basis of twisted erroneous and wrong finding of facts.
- vi) The finding that PW1 in his cross-examination has revealed that they have a printing press and his brother has a jewellery shop is wrong.
- vii) Instead of appreciating the steeply reducing demand of kerosene oil and a precarious penury that a betel leaf, cigarette

seller faces the LD. First Appellate Court has painted an affluent picture of the plaintiff's financial condition.

viii) The finding fault on the ground that local inspection commission has not been prayed for in respect of 12 chitaks 3 sq. ft. of plot of land where two rooms one drawing cum dining room, one small verandha, one bath cum privy is also not in accordance with law.

ix) The First Appellate Court has failed to appreciate that the said two rooms situated on the land measuring 12 chitkas 12 sq. ft. belonging to the plaintiff no. 1 is on the backside of the property and are not used as shop room.

x) The Ld. Counsel has relied upon the following judgments:

1. 2006 (2) ICC 571
2. 2010 (1) ICC 138
3. 2005 (2) ICC 574
4. 2006 (4) ICC 567
5. 2023 (1) ICC 492 (SC)
6. (1996) 5 SCC 344
7. 2024 (1) ICC 168 Cal
8. 2010 SAR (Civil) 69 SC
9. 2014 SAR (Civil) 1071
10. (2001) 8 SCC 110
11. AIR 1979 SC 272

Discussions with reason:

8. This Court will now be dealing with the instant appeal and for the said purpose let us first consider the reasons placed by the appellants/plaintiffs/landlords seeking eviction of the respondent /defendant /tenant from the suit property that is a room wherein the respondent/tenant being a widowed lady who is a decorator. In the plaint the appellants/plaintiffs stated that the plaintiff No.1 has a business of selling kerosene oil being authorised by the Government of West Bengal and is the only earning member of his family. It has also been stated that the plaintiff No. 2 is selling betel leaves, cigarette etc. and he earns meagre amount from the said business which he contributes for his own expenses and it has become impossible for the plaintiffs no. 1 and 2 to manage the total expenses of the family with their meagre income as the plaintiffs no. 1 to 4 that is the two brothers and the two unmarried sisters are residing in a joint mess. It has also been mentioned that for the said reason in order to augment the income of the family the plaintiffs have decided to open a new business of stationary shop in the suit premises which will be run by the plaintiff No. 3 with the help of her brothers as such the plaintiffs reasonably require the suit premises for their business purpose. It has also been mentioned in the plaint that the plaintiffs can use the suit shop room for accommodating the plaintiff no. 2 to

sleep during the night in the said shop after the said shop being closed.

The Ld. Counsel representing the appellants has also reiterated the pleadings. Thus, the appellants/plaintiffs intend to serve dual purpose that is for business and accommodation.

The instant *lis* being a suit for eviction on the ground of reasonable requirement this Court though being aware of the fact that a second appeal is being adjudicated delves into the facts which are the integral part of this litigation.

9. First of all the issue of requirement of the suit room for the purpose of business is being dealt with. While discussing this issue the evidence of the plaintiff witness No.1 that is Mr. Paritosh Santra is considered. The said witness being the eldest brother among the appellants has deposed being well aware of the entire facts since the days when the other appellants were very young. The said witness during his cross-examination has deposed that a printing press has been started by him and has further deposed that there is a jewellery shop room and the jewellery shop belongs to his brother who is one of the appellants. The facts which have been deposed by the said witness are missing in the averments laid down in the plaint. In the plaint it has been stated that the appellants have a shop wherefrom kerosene oil is distributed being a government authorized agent and another shop wherefrom betel leaves and cigarette are sold.

The appellants have sought for eviction of the tenant from the shop room embarking upon the fact that they have meager income and from the said income the appellants are unable to maintain their family. To have bare subsistence of the family the appellants need to augment their income and this being the prime concern and banking upon the same the appellants have sought for eviction from the shop room. The evidence on record and the averments made in the plaint do not corroborate each other. The facts which are revealed transpire that the appellants in addition to the kerosene shop and the betel shop have a printing press and a jewellery shop. This addition of the two shop rooms gives a twist which does not appreciate the cause of the appellants. Thus from the evidence on record it is clear that the appellants have four shop rooms including a jewellery shop and a printing press. The appellants have also not placed the entire suit premises for local inspection commission though a local inspection Commissioner was appointed but the said Commissioner was directed to perform the commission work not in respect of the entire suit premises. During his cross-examination the appellant no. 1 who was the plaintiff Witness No. 1 has stated that commission took place only in respect of 1cottah, 5 chitaks of land. Twelve Chitaks of land was not shown to the commissioner. Thus, it reveals that the entire suit premises was not placed for local inspection commission, as such there was concealment of fact by the appellants.

10. Though it is trite law that the landlord is the best judge of his requirement which has been time and again reaffirmed by the Hon'ble Apex Court. The bona fide contention as regards to requirement is the word '*reasonable*'. In the case in hand the landlords have prayed for eviction of a tenant on the ground of initiating new business of stationary shop and also for accommodation.
11. Now as regards to the use of the said suit room for the purpose of sleeping of one of the appellants during the night is to be taken into consideration. The appellants have relied upon the fact that after the closure of the stationary shop within the said shop room the appellant No. 2 will sleep during the night. From the commission report it transpires that the suit room is measuring about 10 ft. X 8 ft. From the evidence of the PW1 it has transpired that the said appellant that is the appellant No. 2 has a jewellery shop and it is hard to believe that a person having a jewellery shop will sleep in a room wherefrom a stationary shop is being run and in addition the room is having tin shade and measuring only 10 ft X 8ft. This aforementioned discussion does not go in hand with the word reasonable requirement. If at all that be so, the said appellant shall sleep in his jewellery shop wherein there are much more precious articles. It also raises doubt in the mind of this Court as regards to the rationality of the said reasoning by the appellants for the purpose of eviction.

12. From the aforementioned discussion it is apparent that the appellants /landlords have not approached the Court in clean hand. It is the basic principle of law that one who seeks equity must come in clean hand. In this aspect this Court refers to Paragraph 34 of the judgment of the Hon'ble Apex Court passed in the case between Pemmada Prabhakar and Ors. Vs. Youngmen'S Vysya Association and Ors. and reported in (2015) 5 SCC 355.

“34. It is an undisputed fact that the plaintiffs have not approached the trial court with clean hands. It is evident from the pleadings of the agreement of sale which is produced for the decree for specific performance of agreement of sale as the plaintiffs did not obtain the signatures of all the co-sharers of the property, namely, the mother of the defendants, the third brother and three sisters. Therefore, the agreement is not enforceable in law as the persons who have executed the sale deed, did not have the absolute title of the property. Apart from the said legal lacuna, the terms and conditions of the agreement of sale for payment of sale consideration agreed to be paid by the first plaintiff in instalments within the period stipulated as indicated above were not paid.”

13. As regards to the substantial question of law, as the appellants/landlords have concealed the true and entire facts of the said lis, so this issue could not be decided in favour of the appellants/landlords.

- 14.** As regards to the authorities produced on behalf of the appellants all the citations bank upon the fact of *bona fide* and reasonableness. *Bona fide* includes genuineness, reality and authenticity which have not been followed in this instant *lis*. As such the appellants could not prove the reasonableness of the requirement. So the aforementioned judgments relied upon by the appellants are not applicable in the facts and circumstances of this case.
- 15.** The impugned judgment that is the judgment passed by the First Appellate court has dealt with all the pros and cons and this Court finds no reason to strike out the reasoning and decision of the First Appellate Court.
- 16.** As such the judgment of the First Appellate Court passed in the Ejectment Appeal No. 15 of 2015 is **affirmed** and this instant appeal being Second Appeal No. **67 of 2017** is **dismissed**.
- 17.** Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.
- 18.** Urgent certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)