

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

***S.A.T. 33 of 2024
With
CAN 2 of 2024***

***Ms. Gita Das
-Vs-
Sri Lily Das & ors.***

For the Appellant : Mr. Krishna Das Poddar

Heard on : 28.08.2024

Judgment on : 03.09.2024

Madhuresh Prasad, J. :-

1. The appellant was the plaintiff in a suit for ejectment. The eviction was sought on the ground of reasonable requirement and on the ground of default. The trial court decreed the suit in favour of the plaintiff directing the defendant therein to deliver *khas* possession to the plaintiff failing which the plaintiff was granted liberty to get the decree executed through the court.

2. The tenant being aggrieved by and dissatisfied with the decree preferred the instant appeal. The first appellate court namely, the Court of learned Additional District Judge, Fast Track 2nd Court, Sealdah, had allowed the appeal of the tenants setting aside the decree pronounced by the learned Civil Judge (Junior Division), Additional Court, Sealdah. The same is the subject-matter of the present appeal at the instance of the plaintiff/landlord.
3. The brief factual matrix of the case is that the tenants were occupying an *asbestos* shed pucca room in the first floor with common bath and privy being the suit premises. The same was possessed by the defendants in the capacity of a tenant at a monthly rental value of Rs.199.50. It is the case of the plaintiff that the tenancy was determined on the 1st day of August, 2004 by virtue of a notice under Section 6(4) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'the Act'). The tenancy was thus determined. Thereafter, it is the case of the plaintiff that the defendants continued as a trespasser, having failed to vacate the possession in spite of notice of determination of tenancy. The plaintiff also asserted that the defendants were the defaulter of rent since September, 2003. The plaintiff further asserted that the premises in question was reasonably required by her for her own use and for the use of her family members and that she had no other alternative accommodation.

4. The defendants denied the allegation of the respondent. The defendants had specifically taken a stand in written statement that the notice to quit and vacate the suit premises was never served upon them. There being no service of notice, the requirement of Section 6(4) of the Act was not fulfilled. The suit was thus, not validly and legally instituted and no order of eviction could be passed in the suit due to non-compliance of the statutory requirement as contained in Section 6(4) of the Act.
5. Section 6(4) of the Act and the requirement contained therein is the issue based on which the first appellate court has allowed the appeal and set aside the decree of eviction. We therefore, consider it apposite to take a note of the provisions under Section 6(4) of the Act, which reads as follows:-

“ 6. *Protection of tenant against eviction.*

.....

...

....

(4) *Notwithstanding anything in any other law for the time being in force, no [suit] for the recovery of possession of any premises on any of the grounds as aforesaid, except on the ground mentioned in clause (e) of sub-section (1), shall be instituted by the landlord unless he has given to the tenant one month's notice expiring with a month of the tenancy.*

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6. Learned Counsel for the appellant submits that notices to quit and vacate the suit premises were twice issued upon the

tenants/defendants. The quit notice and postal receipt corroborating the factum of issuance of notice upon the defendants was marked as exhibits in the suit. The first of such notice to quit and postal receipt (P.R.) was marked as exhibit 3 and 3a. The trial court, however, has relied upon the subsequent quit notice and P.R. being exhibits 8-8/a, marked as exhibits (on admission) to conclude that the notice to quit and vacate the suit premises was validly served upon the tenants/defendants as per law.

7. Thus, finding the requirement of Section 6(4) of the Act to have been complied with by the plaintiff the trial court proceeded to decree the suit in favour of the plaintiff/appellant.
8. Apart from the issue regarding service of quit notice, the trial court had framed eight other issues. The nine issues framed by the trial court were all decided in favour of the plaintiff.
9. Learned Counsel for the appellant in the present proceeding submits that the quit notice and P.R. exhibits 8 – 8/a were marked as exhibits (on admission). The defendants in the written statement have acknowledged this fact. The trial court did not commit any error in concluding acceptance of valid service of quit notice based on the evidence on record by way of exhibits 8 - 8/a. The statutory requirement under Section 6(4) of the Act was thus held by the trial court to be complied with.

10. In view of the findings of the trial court regarding reasonable requirement being not a fanciful one, but being actually a reasonable requirement of the plaintiff for her and for her family occupation; as also the tenants being in default since September, 2003, the decree passed by the trial court merits no interference. The decree of the first appellate court, therefore, to the contrary is unsustainable.
11. From the judgment of the first appellate Court, it appears that the tenants/defendants/ respondent canvassed the issue regarding non-compliance with the requirement of serving quit notice and that therefore, the suit could not have been instituted, let alone a decree be passed thereupon, in view of non-compliance with the statutory provisions contained in Section 6(4) of the Act.
12. The tenants took a plea that the plaintiff has failed to produce any evidence in support of service of the quit notice. The appellant has made a specific assertion that the acknowledgement showing service of quit notice upon the tenants was in her possession. In fact, photostat copy of the same was produced along with the plaint. The plaintiff, however, did not produce the acknowledgement card before the trial court. The same was not marked as an exhibit. In absence of any other evidence it cannot be said that the requirement of Section 6(4) of the Act was complied with. The trial court therefore could not proceed to entertain the suit and to pass a

decree against the tenants/defendants. The first appellate court has accepted this submission advanced on behalf of the tenants/defendants and therefore, proceeded to set aside the judgment and decree and dismissed the ejectment suit.

13. Upon consideration of the submissions of the learned Counsel for the appellant and on going through the records of the present appeal and application, we find substance in the submissions of the learned Counsel for the appellant that the quit notice and P.R. exhibits 8 – 8/a were marked as exhibits (on admission). Thus, the two exhibits were proof of the fact of the quit notice having been drawn up and at best having been posted/dispatched.
14. At this juncture we observe that merely because the notice to quit and P.R. (Exhibit 8 – 8/a) were marked as exhibits (on admission), it cannot be said that there is valid service of quit notice. In the instant case the trial court while accepting the same to be proof of valid service has not even considered the fact whether the quit notice and P.R. were containing the correct address/details of the present appellant. There is no such contention regarding the dispatch of quit notice by exhibit 8 – 8/a on the current address of the tenant.
15. Further, it is the case of the plaintiff/present Appellant that she was in possession of the acknowledgement card showing actual service of the quit notice (annexure 8) dispatched by P.R. (exhibit

8/a), but we find from the records, which fact is not disputed by the learned Counsel for the appellant that the acknowledgement card was not marked as exhibit and adduced as evidence in the suit. The factum of service of quit notice under Section 6(4) of the Act being specifically in dispute before the trial court as well as the first appellate court, we find that no effort has been made even to introduce the acknowledgement card by way of additional evidence before the first appellate court.

16. Today, when the matter is being considered by us it is submitted by the learned Counsel for the appellant that the acknowledgement card was handed over to the learned Counsel for the plaintiff in the trial court who misplaced the same and failed to produce the same as evidence in the trial court. He submits that the photostat copy was very much with the trial court as it had been appended to the plaint. In the circumstances, the findings of the first appellate court that there was no valid service and that there was no compliance of Section 6(4) of the Act which are at variance with the findings of the trial court, is unsustainable.
17. The submissions, however, are not founded on any pleadings regarding the acknowledgement card being misplaced; either before the trial court, before the first appellate court or in these proceedings. In the absence of pleadings to this effect, we are not inclined to accept the submissions made on behalf of the appellant.

18. In so far as the submission regarding exhibits 8 – 8/a being proof of the fact of service of notice, we are in agreement with the conclusions of the first appellate court in this regard.
19. Even if it is an admitted position that exhibits 8 – 8/a were the quit notice and P.R., the same could at best be the proof of dispatch of quit notice.
20. It is by now a settled legal proposition that where there is a requirement of notice, and a party claims compliance with such a requirement, it is incumbent upon that party to prove actual valid service or deemed service in accordance with law. In the present case, as considered above, the fact that exhibit 8 – 8/a were marked as exhibits (on admission) cannot be considered as admission of either actual valid service, or deemed service of notice. Marking of these exhibits (on admission) cannot be made the basis of drawing of inference that the notices were written and issued upon the correct address of the tenant, let alone the same having been served. More so, since the plaintiff (landlord) has withheld from the Court the best evidence which he claimed to possess, being the acknowledgement card.
21. There being no valid service as per statutory requirement under Section 6(4) of the Act, we find no infirmity in the conclusion of the first appellate court that admission of issuance of quit notice and

dispatch of the same cannot be equated with valid service of quit notice or admission of such a fact.

22. The inference regarding the admission of actual service cannot be drawn from the circumstances emerging based on the evidence (exhibits 8 – 8/a).
23. The decree of the first appellate court therefore, requires no interference.
24. We find no substantial question of law arising in the present appeal.
25. The appeal is dismissed under Order 41 Rule 11. The pending application also stands dismissed.

(Madhuresh Prasad, J.)

26. I agree.

(Supratim Bhattacharya, J.)