

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**S.A. 436 of 2003
With
I.A No. CAN 11 of 2024**

**Giridhari Pradhan, since deceased, Malini Pradhan &Ors.
Vs.
Bimalendu Bera, since deceased, Rathindra Nath Bera & Ors.**

For the Appellants	:	Mr. Asis Bagchi Mr. Prabir Kumar Misra Mr. Biduat Bhattacharya Mr. Priyam Misra Ms. Ankita Misra Mr. Sanket Chandra
For the Respondents	:	Mr. Indrajit Mandal Mr. Gopal Chandra Ghosh Mr. Bikramjit Mondal
Heard on	:	18.04.2024
Judgment on	:	15.05.2024

Ajoy Kumar Mukherjee, J.

1. This Second Appeal has arisen against judgment and decree passed by learned Additional District Judge, Midnapur on 24th July 2002, in Other Appeal no 54 of 2000. By the impugned judgment, learned court below has set aside the judgment and decree passed in favour of plaintiff/appellant herein by civil judge (Junior Division) 1st court, Contai in Title Suit no. 277 of 1994.

2. Predecessor-in-interest of present appellant, Giridhari Pradhan as plaintiff initially filed a suit against the predecessor of present respondent Bimalendu Bera, being Title Suit. no 2 of 1984 for eviction of premises tenant only on the ground of default without serving notice under section 13(6) of the West Bengal Premises Tenancy Act 1956 (in short W.B.P.T. Act 1956). The ground taken for non-service of notice under section 13(6) in that suit was that the tenant agreed to vacate by march 1981, in terms of tenancy agreement dated 12th September 1980 and as such said recital in the agreement is to be treated as a notice under section 13(1)(k) of the W.B.P.T Act 1956. After contested hearing the Trial court dismissed the suit on the ground that suit is not maintainable in the absence of notice under section 13(6) of the Act. Being aggrieved by the judgment and decree passed in aforesaid T.S 2 of 1984, the plaintiff/appellant preferred appeal being Title Appeal 51 of 1992, but the learned Appellate Court concurred with the finding of the learned Trial court and dismissed the appeal.

3. Thereafter said Giridhari being land lord again filed present eviction suit being Title Suit no 277 of 1994 on the basis of a notice dated 18.06.1994 under section 13(6) of the WBPT Act 1956 read with section 106 of the Transfer of Property Act. It is alleged in the plaint that the defendant is a defaulter in payment of rent and has also caused material detoriation to the suit premises by using the floor of premises for his heavy loaded iron works. Plaintiff also alleged that the suit premises is reasonably required for starting a business of motor parts with his son, who was then a school student and that he has no other suitable reasonable accommodation elsewhere in Contai town. Plaintiff further pleaded that his son is growing

day by day and considering present unemployment problem and also for establishing his son in a business, plaintiff is in acute need of the suit premises, for starting a shop of spare parts to be conducted by his son. Plaintiff has further alleged in the plaint that the defendant has constructed one three storied building near Udayan Cinema Hall under the name and Style Kironmoyee Engineering Works and at present he is using the suit premises as showroom and he has lathe machine and other engineering works near Udayan road. It is also stated in the plaint that the notice issued under Section 13(6) of the Act of 1956 came back with the postal endorsement "Refused" on 08th July 1994 and treating the aforesaid postal endorsement as good service, plaintiff has filed the said suit against the respondent/tenant for recovery of possession along with other reliefs

4. The defendant/tenant/respondent herein contested the suit by filing written statement denying material allegations in the plaint including the grounds taken by the plaintiff for eviction and also challenging the legality and validity of the notice issued under section 13(6) of the Act of 1956. Upon contested hearing the Trial Court decreed the suit in favour of plaintiff holding that the plaintiff has proved reasonableness of his requirement and the notice to quit has been duly served upon the tenant and the said notice under section 13(6) of the Act is legal and valid.

5. Being aggrieved by that judgment and decree passed by the Trial Court dated 29th February, 2000 the tenant/respondent herein preferred first appeal before the court below being aforesaid Other Appeal no. 54 of 2000. Learned court below allowed the aforesaid appeal after contested hearing by the impugned judgment dated 24th July, 2002 and thereby set

aside the judgment and decree passed by the Trial Court. The First Appellate Court held that the plaintiff has failed to prove the grounds for eviction including the ground stating reasonableness of his requirement. Court below also set aside the decree on the ground that the notice under section 13(6) of the Act of 1956 issued by plaintiff is not legal, as tenant was not given one month's time in the notice as required under section 13(6) of the W.B.P.T Act. According to court below although in the present case notice was purportedly issued on 18.06.1994, but it's service is to be presumed from the date of refusal to accept by the tenant i.e. on 07.07.1994 but in the notice tenant was directed to quit and vacate with the expiry of July 1994 and therefore notice to quit failed to fulfil the condition laid down in section 13(6) i.e. "one month notice expiring with the month of tenancy".

6. Being aggrieved by the aforesaid impugned judgment passed by the court below plaintiff/appellant preferred the present Second Appeal. As per order of this court dated 5th December, 2023 read with 21st March, 2024 the appeal was heard on the following substantial questions of law.

"(i) Whether the learned court below has erred in not considering that the impugned agreement was a notice in connection with a suit under section 13(1) (j) of the West Bengal Premises Tenancy Act and no further notice under section 13(6) is required to be served upon tenant.

(ii) Whether the First Appellate Court has erred in refusing to grant a decree for eviction on the ground of reasonable requirement without ascertaining as to whether the requirement of the plaintiff is bona fide or not.

(iii) Whether the court below had committed any mistake in declaring the notice of eviction has unlawful."

7. Mr. Bagchi learned counsel appearing on behalf of the appellants submits that the notice to quit was sent through registered post with A/D from Contai post office on 18.06.1994 but it was returned as unserved with

postal remark “refused” on 07.07.1994. So it is good service. Relying upon the judgment of ***Bhagabandas Agarwalla vs. Bhagwandas Kanu and others*** reported in **AIR 1977 SC 1120**, he contended that notice to quit must be construed, not with a desire to find fault in it which would render it defective but it must be construed “ *Ut Res Magis Valeat Quam Pereat*”. Referring another judgement reported in **(2017) 5 SCC 737** he further contended that this court in catena of cases has hold that when a notice is sent by registered post and is returned with postal endorsement “refused” due service has to be presumed. He further submits that the judgment reported in **(2005) 6 SCC 478** states that notice to quit if issued in the correct address, the presumption taken by the court is correct and even if it was returned unserved, there is no obligation upon the Appellant to examine the post man. Mere denial of service of notice is not sufficient to rebut presumption of due service of such notice, under section 27 of the General Clauses Act, 1987.

8. He further relied upon the judgment reported in **AIR 1989 SC 630** and contended that the landlord did his best to bring the notice to the knowledge of the tenant. He cannot be expected to do anything more. In the above scenario the court below was not justified in coming to a finding that the eviction notice in connection with the present suit was not in conformity with the provision of section 13(6) of the W.B.P.T Act.

9. So far as plaintiffs ground of reasonable requirement is concerned Mr. Bagchi argued that the learned Trial court decreed the eviction suit after elaborate discussion on the ground of *bonafide* requirement of the plaintiff. The defendant had made deceptive statement that the plaintiff has other

houses adjoining to the suit premises and there is one room in the ground floor and in this context the court below has relied upon evidence of pw-1 who stated that to the east side of suit premise there is another building of Ashok Pradhan and plaintiff is owner of one room in the ground floor as well as rooms in the 1st floor in the said building. Unfortunately the court below had not taken into consideration that the alleged alternative building is the joint property of the plaintiff which cannot be an alternative accommodation. On the other hand in the cross examination of DW-1 on 3rd February 2000, defendant admitted that he has two sons and one daughter and his wife already died and all of them reside at Athilagory which is a three storied building purchased by the defendant. He further admitted that in the said purchased building there are four rooms and out of four rooms, one room is used as godown and rest three have been tenanted to Rathindra Narayan. Accordingly Mr. Bagchi argued suit shop room is not required for the defendants business and there would not be any hardship for the defendant or his sons, if they are being evicted.

10. Referring judgment reported in **(2008) 7 SCC 770**, Mr. Bagchi further argued that comparative hardship should be considered in favour of the landlord. He also contended that the court below erred in not considering that the plaintiff sought for eviction from the suitable shop room of such building, wherein his family members are residing in the 1st floor. According to the Appellant, it is a baseless statement of the defendant that there exists another building wherein the other person namely Ashok Pradhan who is not a family member of the plaintiff resides in the 2nd floor of the said building. Therefore said another building having co-owners cannot be an

alternative and suitable and safety place for running a business in comparison to the suit premises.

11. Referring the judgement reported in **(2002) 6 SCC 16**, Mr. Bagchi contented that the *bonafide* need of landlord for the suit premises have to be determined by the court by applying objective standard and once the court is satisfied of such *bonafide* therein, the matter of choosing, out of more accommodation than one available to the landlord, is subjective choice which shall be respected by the court. Mr. Bagchi strenuously argued that an alternative accommodation to entail denial of the claim of the landlord must be reasonable suitable, obviously in comparison with the suit accommodation, wherefrom the landlord is seeking eviction. To run business from the suit premises is safer, more comfortable and better than that of the alleged alternative room. The family members are also residing in suit building and plaintiffs such requirement must receive a wide liberal and useful interpretation rather than a strict narrow construction. In this context he relied upon **(2002) 5 SCC 397**.

12. In this context Mr. Bagchi further contended that the original defendant/tenant died on 8th October 2012 and his wife had predeceased him and as such after expiry of five years from the death of the father of the present respondents, the present respondents have become trespasser in respect of the suit property, in view of definition of “tenant” given under section 2 (g) of the W.B.P.T Act 1997.

13. Mr. Bagchi further submits that the defendants have alleged that after the death of the father of present appellants some rooms of the buildings are let out to other persons which is a baseless allegation because nowhere it

has been stated that any non-residential shop room has been let out by the appellant to anybody. The allegations made in the connected application being CAN 11 of 2024 stating that the son of the original plaintiff for whose requirement the suit was filed has obtained permanent job is not correct, which the appellant herein has denied by filing written objection. Referring the judgment reported in **(2005) 8 SCC 252**, he contended that it is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. On the contrary it is always the privilege of the landlord to choose the nature of the business and the place of business.

14. He submits that in this context the observation of the court below is absolutely baseless, since it is not possible for the landlord and his son to wait till the disposal of the case. They have to do something in life and they cannot wait till the tenant is evicted from the suit premises, when it is our common experience that landlord-tenant dispute in our country takes a long time to settle and one cannot wait indefinitely for resolution of such litigation. Accordingly if the son of original plaintiff want to expand their business, then it cannot be said that the need is not *bonafide*, simply because the son of the plaintiff is now employed in another state and that there is no likelihood that he will not return to his mother's land. He can always come back and start his business at the suit premises.

15. Mr. Bagchi further submitted that he had to go another state in search of job as he cannot be expected to idle away time by staying unemployed till the case is finally decided. Accordingly the court below was

not justified in coming to a conclusion that landlord has failed to prove that his requirement in respect of suit property is reasonable or *bonafide*.

16. Mr. Gopal Chandra Ghosh learned counsel appearing on behalf of the respondent argued in reply to first substantial question of law relating to necessity of notice under section 13(6) of the Act, when recital of impugned tenancy agreement allegedly constitutes notice under section 13 (1)(j) of the Act. He submits that such contention is not sustainable in view of the fact that the creation of the tenancy agreement or any recital made in such agreement of tenancy is neither a notice nor an agreement after creation of tenancy as intended by the statute in section 13(1)(j) and (k). Secondly in earlier suit being T.S. 2 of 1984 which was also filed for eviction of respondent/tenant, treating the tenancy agreement as notice under section 13(1) (j) & (k) was dismissed and as in the absence of a notice under section 13(6), the said suit was dismissed so in absence of any second appeal, concurrent findings of a fact that recital in agreement of tenancy does not constitute notice under section 13(k), has reached its finality and binding upon the parties and such question cannot be reopened in the present suit as it is barred by *res judicata* . Moreover the present proceeding has been initiated after issuing notice under section 13(6) of the Act and therefore, plaintiff has waived such contention in view of his own admission and assertion made in Exhibit-2 by treating the original tenancy as subsisting till 31.07.1994. In this context he relied upon ***Gosto Bihari Roy Vs. Ramesh Chandra Das*** reported in **(1978) 1 CALLJ 186**. That apart in another judgment reported in 69 CWN 568, this Court held that such

clauses contained in the agreement is not a subsequent agreement in writing to deliver possession and as such cannot be treated as notice to quit.

17. As regards third substantial question of law regarding legality and validity and service of notice under section 13(6) of the Act, Mr. Ghosh argued though said notice does not contain any threat of suit but it stated that more than 30 days time to be given to the defendant but here on and from 1st July, 1994 the defendant would be treated as trespasser. However, learned Trial court did not consider that the notice is not a month's notice because it falls short of eight days from the alleged date of service of notice and as such is bad in law. According to Mr. Ghosh though the notice is dated 18.06.1994 but it came back with the postal endorsement "refused" on 07.07.1994. Mr Ghosh is not disputing that the refusal is good service but according to his contention under the law notice is deemed to have served upon tenant on 07.07.1994 and the notice indicates that the tenant will have to vacate the suit property after expiry of the month July, 1994. The statute clearly says that a notice is not valid unless plaintiff has given to the tenant clear one month notice expiring with the month of tenancy. The provision is mandatory and therefore the court below rightly held that the notice is bad since from the date of service of the notice i.e. from 07.07.1994, there was only 22 days left for the rest of the month, as the tenant was asked to quit on and from 1st August, 1994, which is short of eight days from the mandated 30 days. In this context Mr. Ghosh relied upon ***Subadini Vs. Durga Charan Law and Ors*** reported in **(1901) ILR 28 CAL 118**. He further relied upon judgment of Apex Court in ***Mangilal Vs. Sirgan Chand Rathi***, reported in **AIR 1965 SC 101**. He also relied upon

the judgment of ***Shibani Basu Vs. Sandip Ray*** decided on 26.11.2010 in **SLP (C) 34267 of 2009** in support of his contention that computation of one complete calendar month is applicable in the present context. Therefore, according to Mr. Ghosh learned Appellate Court has rightly held that the notice is bad.

18. In reply to the second substantial question of law, Mr. Ghosh argued that though the suit is not maintainable for want of valid notice but still it can also be argued that the appellant/plaintiff has miserably failed to prove his case of reasonable requirement in the suit. He further contended that in the year 1994, the suit was filed *inter alia* on the ground of reasonable requirement of the original plaintiff and his son for starting a Motor Parts business from the suit shop room but failed to prove the same. PW-1 admitted that the plaintiff owned a bus which plies in Digha-Mecheda route and he himself looks after the said transport business and he failed to prove that he had any talk with any persons to sell the bus. Moreover, his son was a student of class X at that time and he admitted that his son is eager to develop his educational career. The court below also found that the plaintiff has also suitable accommodation near the suit premises.

19. Mr. Ghosh further argued that the defendant has brought to the notice of this court by filing CAN 11 of 2024 that during pendency of the litigation original plaintiff died and his said son has become an Engineer and for his service he is residing outside West Bengal. Moreover original plaintiff's daughter is married and residing outside the plaintiff's village with her husband and both the said daughter and her husband are school

teacher. Therefore, the question of reasonable requirement of the suit property for starting business no longer subsists.

20. He further contended that there is nothing on record that any of the heirs of the original plaintiff, since deceased has any intention to start any business as sought for by the original plaintiff for himself and his son. Therefore in view of settled proposition of law to that effect that requirement as on the date of the decree is relevant factor for consideration and not what the requirement was on the date of filing the suit, if it is found that the requirement has become infructuous on the date of decree, the appellate court can take notice of the same and dismiss the suit. In this context Mr. Ghosh relied upon the case of ***Hasmat Roi and Another Vs. Raghunath Prasad*** reported in **AIR 1981 SC 1711** and ***Santilal Dhulichand Shah Vs. Ramesh Chandra Gujrati*** reported in **AIR 1981 Cal 413**.

21. In respect of Additional point taken by the appellant by filing CAN 9 of 2023, Mr. Ghosh argued that such issue was not formulated as a substantial question of law but even then it is admitted position that the suit out of which the present second appeal has arisen was instituted in the year 1994 but the provisions under section 2(g) has come into effect from 10.07.2001 with the introduction of W.B.P.T Act, 1997. He further submits that section 45 of the Act of 1997 repealed the W.B.P.T Act, 1956 and it has been clearly stated therein that notwithstanding the repeal of the earlier Act the suits which are pending under the earlier Act at the commencement of the new Act before any court of law shall be continued and disposed of in accordance with the provision of the said act as if the earlier act had continued in force and the new act had not been passed. Accordingly section

2(g) of the Act of 1997 has no application in the present case which was initiated under the W.B.P.T Act, 1956 and the court while deciding the case in second appeal is to follow the mandate of section 45 of the Act of 1997 keeping in mind that section 2(g) of 1997 Act is not in existence. Accordingly Mr. Ghosh prayed for dismissal of the Second Appeal.

DECISION

22. So far as the first substantial question of law is concerned I agree with Mr. Ghosh that the contention of the appellants counsel is not sustainable in view of the fact that on the date of creation of the tenancy, the recital in the agreement of the tenancy is neither a notice nor an agreement which can be stated to have entered after creation of tenancy, in order to attract section 13(1) (j) or (k). Moreover, Mr. Ghosh rightly pointed out that said issue once decided in the earlier suit and has been affirmed by the first appellate court and when no challenge was offered against the said judgment and decree by filing second appeal, the concurrent findings that the agreement of tenancy does not constitute notice under section 13 (1) (k), attains its finality. Moreover, plaintiff by filing the present suit after issuing notice under section 13(6) of the Act of 1956 admits that he has accepted the proposition of law settled in the earlier suit.

23. The other important question of law urged before me in this appeal is the third substantial question of law which says whether the court below has committed any mistake in declaring the notice of eviction as unlawful. It is not in dispute that plaintiff issued notice to quit on 18.06.1994 by a registered post which came back to the plaintiff with the postal endorsement “refused” dated 07.07.1994. It appears from the notice which were posted on

18.06.1994 that the tenant was asked to vacate the suit property after expiry of the month of July 1994. The court below held that in order to calculate the period of one month time, the day of which the notice is served is to be excluded, meaning thereby that the term of one month should start from the date of service of the notice and not from the date of its issuance as has been held wrongly by the Trial court. He further observed that in the present case, although the notice was purportedly issued on 18.06.1994, but its service is to be presumed from the date of refusal to accept i.e. from 07.07.1994. Since the tenant was legally entitled to have clear one month's notice from the date of refusal which has not been followed in the present context so court below rightly came to a finding that the notice was not in conformity with the provisions of section 13(6) of the Act of 1956 and as such bad in law.

24. At the outset it is to be noted that defendant in paragraph 10 of his written statement has stated that it is false to state that notice was issued on 18.06.1994 or the defendant had ever refused such notice. In the evidence also the defendant as DW-1 stated that before filing this suit Giridhari Babu did not serve any notice upon him and no postal peon tendered him any notice and it is not a fact that he has refused any notice to accept. Defendant as DW-1 further stated that he has grievance upon postal peon of his area who uses to give false report. If that be so, then taking the plea that notice was presumed to have served upon him on the basis of postal endorsement dated 07th July, 1994 and as such notice is bad in law, is an attempt on the part of defendant to blow both hot and cold at the same time and as such it is a question whether the respondent tenant can be

allowed to approbate and reprobate at the same time and whether he can be allowed to take advantage of his own wrong, going beyond his pleading and evidence.

25. However now let me consider the legality about the observation of the Court below that since in the present context the notice to quit deemed to have served upon 7th July, 1994, asking defendant/tenant to vacate with the expiry of the month of July 1994 in respect of a notice which was sent through registered post on 18.06.1994, is an invalid notice, since tenant defendant could not avail 30 days time from the date of service of notice.

26. Before going to further details let me quote section 13(6) of the WBPT Act, 1997.

“(6). Notwithstanding anything in any other law for the time being in force, no suit or proceeding for the recovery of possession of any premises on any of the grounds mentioned in sub-section (1) except the grounds mentioned in clause (j) and (k) of that sub-section shall be filed by the landlord unless he has given to the tenant one month’s notice expiring with a month of the tenancy”.

27. Accordingly for filing a suit under section 13 of the Act of 1956 it is condition precedent to give a notice in accordance with section 13(6) of the Act. Legislators have used to word “give” in that section to mean a measure taken by the landlord to cause service of notice upon the tenant to file a suit under section 13 against him and not an absolute obligation upon landlord to prove service of notice. In my opinion the word “give” in this context should be interpreted as “cause to receive”. It is needless to mention that when a notice is given under section 106 of Transfer of property Act, it is a notice terminating the lease but a notice under section 13(6) of the Act of 1956 is only a notice of suit and accordingly there is no reason, why the term “give” used in section 13(6) shall not be interpreted to mean as a

measure taken by the landlord to cause service of notice to suit upon the tenant and it is absurd to suggest that taking measure to cause service in the present context can be said to be insufficient and that the landlord has an absolute obligation to prove that from the date of service, there was clear one month left expiring with a month of tenancy. This is simply because the section itself does not suggest any mode of service. Such service can even be made by post. Accordingly in the present context when the landlord posted the notice to quit through registered post on 18.06.1994, he cannot do anything further in the matter of service of notice. As soon as the letter containing notice to quit has been posted as registered post, only the postal authority can deal with the article. It was never the intention of the legislature that the landlord is mandatorily required to prove one month's time expiring the month of the tenancy from the date of service of notice because such direction enjoins upon a landlord to do something of which he has no personal knowledge and which is beyond his control. If there is no impediment on the part of the landlord to send notice through registered post, then why he would be asked to count one month time from a date which is not within his control. If I am to accept the argument advanced by Mr. Ghosh that the word "give" is to be interpreted to mean service of notice then it may not be possible for a landlord to establish service of notice in most of the cases. In most of the ejectment suits, the tenants deny service of notice and the fate of such suits mostly depend on the question of service of notice. If the term "has given to the tenant one month's notice" in section 13(6) is interpreted as "has given to the tenant one month's notice from the date of service of notice" then the tenants to a large extent shall leave no

stone unturned to avoid service of notice. This is also because very seldom a tenant admits service of notice in an ejectment suit. Since, in case of a notice under section 13(6) there is no need of determination of relationship with a premises tenant within the meaning of the Act of 1956, the word “give” should be construed as “sending notice”. In this context ratio laid down in **AIR 1989 SC 630** supports plaintiff’s contention.

28. The earlier decisions under the Transfer of property Act should not be imported while interpreting the words “has given to the tenant” as used in section 13(6), as the literal meaning of the said words does not mandate for service of notice. The case law cited by Mr. Ghosh in **Subhadini’s Cases (supra)** is not in connection with the Act of 1956. Moreover, the observations made by the Apex Court in **Mongilal’s Case (supra)** has been clearly held to be not correctly decided in the context of a notice under section 106 of the Transfer of the Property Act, in a subsequent judgment by seven judges Bench in **V. Dhanpal Chettiar Vs. Yesodai Ammal** reported in **AIR 1979 SC 1745**. In view of aforesaid discussion, I am constrained to conclude that the observation of the court below that the present notice under section 13(6) is not in conformity with the provisions of the 13 (6) of the WBPT Act, 1956, is perverse and not sustainable in the eye of law.

29. As regards the second substantial question of law regarding the question as to whether the court below has correctly come to a conclusion that the plaintiffs claim of *bonafide* requirement of the suit premises is not sustainable in law, is based on the evidence available in record. While dealing with the issue, I find that the trial court has scanned the evidence adduced by the parties, while deciding issue no. 5 and came to a clear

finding that the plaintiff is in acute need of suit premises for establishing his son and the intention of plaintiff does not go to show that it is *malafide* and he further held that the plaintiff has got no other alternative accommodation in which he can start a business of spare parts for his son. Before the trial court the question of plaintiffs alternative accommodation in the ground floor in separate building was agitated but the Trial court quoting the judgment reported in **AIR 1979 SC 272** came to a finding that the term “need” or “requirement” should not be artificially extended nor it is so unduly stretched or strained so as to make it extremely difficult for the landlord to get a decree for eviction.

30. However, while dealt with the issue of reasonable requirement the court below acted very casually and disbelieved the Trial courts observations by making a cryptic finding that in support of plaintiff’s case of reasonable requirement, plaintiff himself has only adduced evidence and from his evidence it appears that he owned a bus which plies in Digha-Mecheda route and that there is nothing to show that he had talked with any persons for selling the said bus and to engage himself in the spare parts business and as such it cannot be said that plaintiff has any intention or plan to discontinue his transport business and to run spare parts business from the suit premises. The other ground for disbelieving Trial courts observation is that plaintiff himself admitted that his son is a student of class X and plaintiff admitted that said son is eager for the development of his academic career and as plaintiff admitted that his son is eager for development of his academic career, so plaintiff’s entire case of reasonable requirement of the suit premises become groundless. Another ground for disbelieving Trial

courts observation by the court below is that, plaintiff admitted that he has a room in another building in ground floor and also owner of entire first floor in the said building, so he failed to prove that he has no other reasonable suitable accommodation beside suit premises.

31. On perusal of the materials in record I must say that the observation by which the court below has set aside the trial courts finding on the ground of reasonable requirements is not based on evidence, adduced by the parties. It is settled law that in second appeal the court can interfere with the observation of the last court of fact, when such finding is not based on materials in record. Mr. Bagchi has rightly pointed out that it is not possible for the land lord and their son to wait till the disposal of the case since they require to earn their livelihood for their survival, when it is the usual experience that the landlord-tenant dispute takes a long time to settle. Even the present dispute is continuing since 1980, which has not yet been settled and as such said son cannot be expected to idle away time by staying unemployed. There is no material to hold that even if landlord gets possession of the premises, he will not return to start business therein. Regarding alternative accommodation also, Mr. Bagchi rightly pointed out that the plaintiffs requirement is for running business in the suit property and without considering the space available in the ground floor at another building and it's suitability and safeness and/or whether same is similar profit earning or not and suitable for all other aspects for a business or not, it cannot be causally concluded that the said space is a reasonable suitable accommodation to run plaintiffs business. In this context Mr. Bagchi pointed out that a tenant cannot dictate his landlord to run his business for

a separate place which according to landlord is not his exclusive property. In such view of the matter the observation of the court below regarding reasonable requirement is also perverse, and also in view of the fact that plaintiff wants to get the suit property for business purpose and not for residential purpose and as such mere possession of one room if any, in ground floor in a separate building whether suitable to meet plaintiff's business requirement or not, should have been considered by court below. In the absence of cogent document or evidence, and without ascertaining relevant facts, court below erroneously overruled Trial Courts finding about reasonableness of plaintiff's requirement, specially when Trial Court's observation is based on evidence. In this context reliance has been placed in **(2002) 6 SCC 16.**

32. In addition to what has been discussed above it is also a fact that original plaintiff died in 2011 and his wife pre-deceased him and since new definition of "tenant" became effective from 2001, so with the death of original tenant present respondent did not inherit tenancy right and their tenancy has come to an end, after five years from the death of original tenant. Since the above conclusion is unavoidable in view of operation of law, so even if no substantial question framed, there is no bar to held that the respondents are trespassers by operation of law after five years from the death of original tenant as the respondent has not inherited tenancy right. In this context ratio laid down by co-ordinate bench of this Court in **Goutam Dey Vs. Jyotsna Chatterjee** reported in **(2013) 1 CHN 336 (Cal)** and **M/S Mangalic Enterprise Vs. Swapan Kumar Das & others**, reported in

(2022) 3 ICC 923 (Cal) supports plaintiff's case. From that score also plaintiff is entitled to get decree.

33. In such view of the matter **S.A. 436 of 2003** is allowed. The judgment and decree passed by learned Additional District Judge, Midnapore, in other appeal no. 54 of 2000 dated 24.07.2002 is hereby set aside and the judgment and decree dated 29.02.2000 passed by Learned Civil Judge (Junior Division) 1st court, Contai in T.S. No. 277 of 1994 is hereby affirmed. Connected application is also disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)