

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Gaurang Kanth

SAT 74 of 2024
IA No: CAN 1 of 2024

Sardar Zorawar Singh
Vs
Smt. Kalpana Shaw and others

For the appellant : Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Anirban Saha Roy

For the respondents : Ms. Sabita Mukherjee Roy Chowdhury,
Mr. Subhojeet Mookherjee

Heard on : 05.12.2024

Judgment on : 05.12.2024

Sabyasachi Bhattacharyya, J.:

1. The present second appeal has been preferred at the behest of the tenant/appellant against a judgment of affirmance, whereby both the trial court and the first appellate court passed a decree of eviction against the appellant.
2. Learned counsel for the appellant argues that there were two previous eviction suits filed on similar grounds which were decreed on

compromise. It is contended that in view of the said suits having been compromised, lastly one year prior to the institution of the present suit, it should be deemed that the alleged requirement of the landlord is not reasonable.

3. Learned counsel further contends that the plaintiff no.1/respondent no.1 alleged that she is aged and lives on the second floor of the premises and requires the first floor because it would be easier for her to climb the stairs considering her age. However, one room was found to be in occupation of the plaintiffs on the ground floor; as such, the finding that the suit premises on the first floor was required by the said elderly lady, the respondent no.1, was erroneous.
4. Moreover, it is contended that in view of the second floor, which was initially a part of the tenancy of the appellant, having been handed over in terms of the compromise arrived at in the second suit, the requirement, if any, of the plaintiff/respondents was mitigated in any event.
5. It is, thus, argued that the present second appeal ought to be admitted on such grounds.
6. We find from the tenor of the arguments that those revolve primarily around mixed questions of fact and law and/or pure questions of fact. Since both the courts have appreciated the facts and the evidence on record at length and have come to their respective findings of fact corroborating each other, we are not inclined, within the limited

conspectus of a second appeal, to interfere with the same merely because another view might be possible on the self-same set of facts.

7. Insofar as the previous compromise decrees are concerned, the trial court as well as the first appellate court dealt with the same and arrived at the conclusion that those did not conclusively determine the requirement of the plaintiffs and that there were subsequent circumstances such as the increase in age of the respondent no.1, the daughters in the family having grown older and their requirement having increased, etc.
8. Insofar as the ground floor vacant room is concerned, we find from a photocopy of the Commissioner's report handed over by learned counsel for the respondents at the time of hearing on the request of the court (which is kept on record), that the ground floor room measures only 8'-5" from North to South and 8'-7" from East to West and there are wooden table, chairs, one box-cum-sitter etc. in the said room. The said room has been designated as a lawyer's chamber. Hence, the ground floor room is already in use by the respondents for some other purpose than the residence of the respondent no.1. Moreover, the respondent no.1, in her advanced years, is not expected to live alone on the ground floor since she is the co-owner of suitable alternative accommodation by way of the suit premises.
9. It is well-settled that while deciding eviction suits, the position as on the date of passing the decree is to be considered and the courts have

to sit in the armchair of the landlord to assess the reasonableness of the requirement.

10. Applying the said test as well, we do not find a single substantial question of law involved in the present second appeal, all the more so since there are concurrent and elaborate findings of fact arrived at by both the trial court and the first appellate court, holding that the plaintiffs/respondents do have reasonable requirement of the suit premises.
11. Accordingly, SAT 74 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. IA No: CAN 1 of 2024 is dismissed accordingly as well.
12. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Gaurang Kanth, J.)