

31.07.2024

WEDNESDAY

Court : 04
Item : 157
Transcriber : AD

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

SAT 110 of 2023
With
IA No. CAN 2 of 2024

Ramapada Biswas
Versus
Swapna Dey & Ors.

**Mr. Saptarshi Roy,
Ms. Kakali Das Chakraborty**

.....for the Appellant

**Mr. Shyamal Chowdhury,
Mr. Debjoyti Mondal**

.....for the Respondents

1. The Trial Court as well as the First Appellate Court have recorded concurrent finding in favour of the respondent regarding existence of a reasonable requirement of the shop room premises occupied by the tenant who is the appellant in the instant proceedings. The decree of eviction has been passed by the Trial Court against the present appellant which has been affirmed by the First Appellate Court.
2. The plaintiffs filed a suit for a decree of eviction and recovery of vacant peaceful possession in respect of the suit premises being a shop room. The plaintiffs had also prayed for a decree in respect of mesne profits and/or damages and any other reliefs. The shop room in question is situated on the ground floor of the three storied building in premises No. 131 Lenin Sarani (West). The decree of eviction was prayed on three grounds being the ground of defaulter, change of user by the tenant and also the ground of reasonable requirement of the premises

by the plaintiff/ landlord. The present appellant, defendant in the suit was a monthly tenant of the plaintiff, which fact is not in dispute. The ground in so far as it alleged the defendant to be a habitual defaulter in payment of rent, specifically in April 2012 was rejected by the Trial Court.

3. The plaintiff also prayed for eviction by asserting that the shop room in question was reasonably required by the plaintiff for their own use and occupation and for the use and occupation of the plaintiff's family. In so far as the ground of reasonable requirement, the plaintiff asserted that the shop room was refused for being used as a garage. According to the plaintiff for want of garage the plaintiff was unable to maintain a vehicle though he had the financial stability and capacity to maintain a car. The plaintiff No. 1 stated that she was aged and required to move for treatment and her consultation with doctors at Kolkata for which the plaintiffs always had to hire a vehicle. Similar hardship is claimed by the other family members for want of a car. Since the plaintiffs had no suitable place for garaging the vehicle, they sought eviction of the shop room which the present appellant was occupying as a tenant.
4. It was a specific case of the plaintiff that the ground floor was fully tenanted having shops in the front portion and the ESI Corporation as a tenant in the back portion of the building. The ESI was carrying on the services of dispensary in the premises occupied by them as tenant. It was further case of the plaintiff that there was no space for entry of a car in the back portion of the ground floor. The entire first floor was let out to UCO Bank. It is the

plaintiff's case that they are using the second floor of the premises in question comprising of 5 rooms for their residential purposes. It was the plaintiff's case that the shop room occupied by the appellant is situated adjacent to the staircase of the building and, therefore, is the most suitable and convenient place for using by the plaintiff as a garage.

5. The plaintiff has alleged that the appellant/ tenant has caused damage and deterioration of the shop room in question and also alleged that the user of the building has been changed without consent of the plaintiff/landlord from running of a grocery shop initially to now running of a business of hardware from the shop room in question. In the above circumstances the notice was served on the defendant/ appellant on 09.04.2012 asking them to quit, vacate and deliver vacant and peaceful khas possession of the suit premises on the expiry of May 2024 or the next calendar month of tenancy after service of the notice. The notice was replied by the defendant through his Advocate by a letter dated 14.05.2012. The cause of action as per the plaintiff arose on 1st June 2012 upon expiry of the notice period as per the notice of eviction dated 09.04.2012.

6. The learned Counsel for the appellant submits that decree for eviction has been passed by the Trial Court only on the ground of reasonable requirement. It is submitted that it is a settled law that reasonable requirement at the time of filing of the suit is required to continue till passing of the decree for eviction. A subsequent event, during pendency of the suit and before passing of decree in the suit may be capable of extinguishing the

reasonable requirement. He has placed reliance on two decisions of the Apex Court in this regard, reported in **(1991) 3 SCC 483** in the case of ***Gulabbai vs Nalin Narsi Vohra and Others*** and reported in **(2010) 12 SCC 740** in the case of ***Dinesh Kumar vs Yusuf Ali***. It is submitted that contrary to the settled law, in the present case the reasonable requirement was not continuing. The plaintiff during pendency of the suit have purchased a motor car. The purchase was a development which was not incorporated in the plaint. In the circumstance, the defendant/appellant filed an application under Order VI Rule 17 C.P.C. for incorporating this development. In the application the defendant averred that after purchasing the car, the same is being kept in the plaintiff's accommodation wherein they already have a garage. The requirement, therefore, as stated in the plaint no longer existed. The Trial Court has failed to consider this aspect of the matter and, thus, the decree of eviction was unsustainable. The Appellate Court has also overlooked this aspect of the matter.

7. It is also submitted that the Trial Court and the Appellate Court has relied upon the Commissioner's report to conclude that there was no garage available for parking of the vehicle purchased. It has thus erroneously concluded that the reasonable requirement was continuing.

8. Upon consideration of the pleadings and submissions, we find from the order of the Trial Court and the Appellate Court that the relationship of landlord/tenant between the plaintiff and defendant (appellant) is not denied or disputed. We

further find that the Trial Court has come to a finding based on statements made in para 8 of the amended written statement dated 18.08.2018 that there are two tenancies in between the parties to the suit. One tenancy stands in the name of the defendant, and the other tenancy stands in the name of the defendant and his elder brother jointly as tenant. In so far as the other tenancy jointly with his brother is concerned, a separate eviction suit has been filed by the plaintiff.

9. The fact of purchase of vehicle during pendency of the suit was not denied or disputed by the plaintiff. The Court has, therefore, proceeded to examine whether, or not there was any accommodation on the ground floor of the suit holding available to the plaintiff for parking his car. Considering the final report of the Inspection Commissioner along with relevant documents collectively marked as Exhibit 7 the Court has taken note of the fact that the Commissioner has found a passage of common use by the plaintiffs and their neighbours on the southern portion of the suit holding. A continuous boundary wall has been found on the northern and western side of the suit holding. In so far as the northern side of the suit holding is concern, the Trial Court has recorded the fact based on the cross-examination of PW1 that there is a space of only 1 ft. running along the northern side of the suit holding. The evidence of PW1 and report of the Commissioner, is consistent to the extent that there is no room or space available on the ground floor for the plaintiff to park his car. The Court has also recorded that it is not the defendant's case that the plaintiffs are having any other specific, suitable and

readily available accommodation in the entire premises which can be used as a garage. A vague assertion has been incorporated in the written statement by way of application under Order VI Rule 17 which reads as follows:-

“That recently the plaintiff purchased a motor car and the plaintiff has not been incorporated in the plaint about the said fact and that the object of filling of the instant suit has been frustrated. That the plaintiffs have already garage in their accommodation and for that reason they have purchase the car and that is kept in their accommodation and there is no need for suit property. That the plaintiffs suppressed the aforesaid fact and for that reason the proper adjudication of the instant suit would not be possible. That the suit suffers from the defects of non discloser of proper and real fact before the Ld. Court for proper adjudication. That the instant suit is at present harassing and there is no ground. That the instant suit would be dismissed.”

10. The same does not contain any details regarding the portion of the suit holding wherein any garage accommodation is available. There is no evidence adduced by the defendant in this regard whatsoever. As against this there is a finding of fact by the Trial Court regarding their being no other accommodation. Such finding is based on evidence of PW1 and the final report of the Inspection Commissioner. We, therefore, are not in agreement with the submissions advanced by the learned Counsel for the appellant that the Court has failed to consider the subsequent development regarding purchase of motor car by the plaintiff so as to disentitle the plaintiff to a decree of eviction. We find that the same is duly considered, but the consideration has led to a conclusion as regards the existence or non-existence of another

accommodation for garaging of the vehicle in question; which finding is against the defendant.

11. The two judgments relied upon by the learned Counsel for the defendant are in support of a well settled proposition that the reasonable requirement must continue till passing of the decree and mere existence of such requirement at the time of filing the eviction suit would be insufficient to pass an eviction decree. The plea of the defendant that the requirement did not subsist till passing of the decree contains an inherent admission of the existence of the requirement at the time of filing of the eviction suit. The defendant's assertion that purchase of vehicle during pendency of the suit denies the continuance of such requirement and that the reasonable requirement had extinguished has rightly been disbelieved by the Trial Court and affirmed by the First Appellate Court with reference to cogent evidence after the deposition of P.W.1 and the Inspection Commissioner's report. Purchase of car *per se* cannot be made the basis to conclude that there was a garage in the plaintiff's premises. The defendant who is a tenant in the same premises has not given any details/description of any portion in the premises which is capable of being used as a garage. Therefore, there was no basis for the Trial Court to conclude that the plaintiff's requirement of garage did not continue till passing of the decree. The Trial Court has thus rightly acknowledged existence of reasonable requirement of the premises occupied by the defendant/ appellant for garaging of vehicle till passing of the decree. In view of such factual finding based on evidence, we find

that appellant's reliance of the judgments of the Apex Court in the case of ***Gulabbai vs Nalin Narsi Vohra And Others*** (supra) and ***Dinesh Kumar vs Yusuf Ali*** (supra) is misplaced and unsustainable.

12. We, therefore, find no infirmity in the decree dated 07.01.2019 passed by the Trial Court as well as the judgment dated 28.02.2023 Passed by the Appellate Court.

13. We find that no substantial question of law arises in the present appeal. The appeal is accordingly dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J)