

01. 07.05.2024
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In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

SAT 148 of 2022
IA No. CAN 1 of 2022

Atul Gupta
-vs-
Ajoy Kumar Sinha

Mr. Probal Mukherjee
Mr. Debjit Mukherjee
Mr. Anirban Pal

.....for the Appellant.

Mr. Debasish Roy
Mr. Kaushik Dey
Mr. Debnath Mahato

...for the Respondent

1. The Second Appeal has arisen out of a Judgment and Decree passed by the learned 4th Bench, City Civil Court, Calcutta in Title Appeal No. 55 of 2018 affirming the Judgment and decree dated 26.04.2018 passed by the learned Judge 2nd Bench, Small Causes Court at Calcutta in Ejectment Suit No. 984 of 2000.

2. It is elementary that second appeal can be admitted provided there is substantial questions of law involved.

3. We have heard Mr. Mukherjee, learned Senior Advocate appearing for the appellant at length. The grounds of attack in the second appeal is the findings of the both the courts with reasonable requirement and damage caused to the tenanted property.

4. Mr. Probal Kumar Mukherjee, the learned Senior

Counsel appearing on behalf of the appellant has submitted that both the Courts have failed to appreciate that the plaintiff does not require the tenanted suit premises in view of the nature and extent of his business. The business of the plaintiff is very small compared to that of the appellant. There was no evidence before both the Courts that the plaintiff required additional accommodation as the plaintiff got vacant possession of three rooms in the same premises and re-let the same.

5. The plaintiff amended the plaint twice to introduce that by reason of expansion of his business he requires additional place, however, the report of the Advocate/Commissioner dated 7th January, 2002 would not establish the said fact.

6. Both the Courts have failed to appreciate that the plaintiff has recovered possession of sufficient accommodation from three tenancies in the suit property that is, on the 1st floor 400 Sq. ft. on 30th July, 2009, on the second floor 20 Sq.ft. on 19th December, 2009 and on the 3rd floor 500 Sq.ft. on 30th April, 2021 and let out the same to new tenants.

7. The plaintiff in its additional written statement has stated that the measurement of the said three tenanted rooms are not less than 500 Sq.ft., 50 Sq.ft. and 600 Sq.ft respectively. The plaintiff during the pendency of the suit got possession of six tenancies but possession of three tenancies were not disclosed and suppressed.

No Commission was done in other three tenancies and the Court was kept in dark about actual measurement of three tenancies.

8. Mr. Mukherjee has relied upon the observation of the Trial Court that the defendant also did not make any application for the Commission of the said three rooms which were surrendered to the plaintiff to prove his claim as unsustainable is a wrong test applied by the Trial Court as in a suit for reasonable requirement, it was for the plaintiff to establish that his present accommodation is unsuitable and the plaintiff has also to justify the nature and extent of expansion for which an additional accommodation would be required.

9. Mr. Mukherjee has also strenuously argued that the finding of both the Courts that there has been an unauthorized construction of mezzanine floor and such construction has caused damaged to the suit property is perverse as both the Courts have failed to take into consideration, the tenancy agreement dated 1st November, 1992 which permits the appellant to construct pacca mezzanine floor in all the three rooms at the cost of the defendant.

10. Mr. Mukherjee submits that the plaintiff had never offered the defendant any one of the rooms that became vacant during the pendency of the suit or the room that is adjacent to the tenancy of the present appellant. There is no evidence to show that the plaintiff requires the room presently under the occupation of the

appellant for his business purpose as he has let out a portion of the 1st floor on 30th July, 2009 during the pendency of the suit.

11. It is thus, submitted that when equivalent floor area was available to the plaintiff in 2009 the plaintiff could have utilized the said area for his business purpose. Instead he has let out the property in the year 2009 and continued with the suit. The claim for additional space due to alleged expansion of business is sham. The absence of the reasonable requirement and existence of suitable accommodation in the premises itself can be a good ground to upset the findings and the second appeal may be admitted on the aforesaid ground. In this regard Mr. Mukherjee has relied upon a decision in **2008 SCC Online CAL 478: 2008(2) Cal LJ 881 (Sri Ratan Chandra Nath v. Sri Ranjit Kumar Nath)** to submit that on similar fact situation the second appeal was admitted inter alia on the ground of lack of proof of reasonable requirement.

12. We have read the judgment of the learned Trial Court as well as the First Appellate Court with regard to both the issues raised by Mr. Mukherjee during argument.

13. The fact emanates from reading of both the judgments are as follows:

14. The plaintiff is a resident of Behala and he is having a business near about the place where the suit property is situated and is carrying on his business

from his rented premises. He purchased a property from the Mundras and becomes the owner of the property. It appears the suit property was tenanted. The three tenants who have surrendered their tenancies were in the ground floor, first floor and third floor respectively.

15. We are presently concerned with the first floor as the space in the third and ground floor are inadequate for the purpose of business of the plaintiff. The defendant is occupying three rooms which is approximately 500 sq.ft. with mezzanine floor constructed in the said rooms. The aggregate area covered by the defendant would be around 1080 sq. ft. The suit premises is situated on the northern side of the said building which is opposite to shop room at the first floor. The southern portion of the suit premises has been let out in the year 2011. The plaintiff claimed that he reasonably required the suit premises for his business purpose. Admittedly the plaintiff is carrying on business from a rented shop at Lenin Sarani which is near to the suit premises. Initially, plaintiff was dealing with hardware but he has now diversified and expanded his business which now includes household goods, appliances, refrigerator, table, chair and other items of household need. However, by reason of small size of the shop room at Lanin Sarani he was unable to carry on his business effectively. He wanted larger and additional space from which he could conduct his business profitably. The rooms under the occupation of the

appellant is much more than the space at the rented premises wherefrom the plaintiff is carrying on business. The rooms in the ground floor and third floor are not spacious and suitable for business.

16. The ground floor room is very small covering around 20/40 Sq.ft. and the room at the 3rd floor cannot be used as a showroom because of inadequate space and inconvenience. Another room at the first floor was in the southern portion of the suit building whereas the suit premises is on the northern side of the suit building just opposite to the said room. The defendant had never proposed to the plaintiff for shifting of his room from northern side to the southern portion upon the said portion being vacated. The defendant was not willing to shift to the said flat. Moreover, it appears from the report of the Commissioner that the suit property situated facing the road side can also be used as a showroom displaying the articles. It is found to be more convenient both from the point of view of business and advertisement of the products.

17. This fact could not be disproved at the trial. Moreover, it appears that the defendant has raised mezzanine construction damaging the wall of the suit premises. This is proved from the evidence of the Engineer Commissioner. Although permission was given to the defendant to raise mezzanine floor it should be in accordance with KMC Building Rules and without affecting the existing structure. The report of the

Engineer Commissioner clearly shows that such construction has caused damage to the wall. It is an old building. The appellant did not challenge the report of the Commissioner. It is settled law that landlord is the best Judge to choose a more suitable premises for carrying on business and such reasonable requirement of the plaintiff should not be denied unless it appears to be illusory or sham and is a ploy to evict the defendant. The appellant cannot dictate the manner in which the plaintiff should conduct his business. Both the courts have taken into consideration the nature of the business and space reasonably required for its expansion. The first floor having the entrance from the road side can be a more suitable location for the plaintiff to carry on his business effectively.

18. In the second appeal the findings of the Trial Court as well as the First Appellate Court shall not be easily interfered with unless it appears that such findings is perverse and contrary to record. On a careful reading of the evidence as well as the judgment of the Trial Court as well as First Appellate Court, we are unable to find any perversity in the order passed by the Trial Court or the First Appellate Court. Both the judgments have been passed on proper appreciation of fact and evidence. The requirement of the plaintiff cannot be said to be illusory. Both the courts on objective assessment of the materials as also the evidence on record found the claim of reasonable requirement as rational. It is

not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized for his business purpose. It is immaterial that the landlord was carrying on his business in a rented property nearby or that he could carry on his business from other floors of the suit premises. It cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the suit premises for his own business. The requirement of the tenanted premises has been established at the trial. It cannot be said that there has been any absence of proof of reasonable requirement and existence of reasonable requirement. Moreover, the damage to the existing structure was also established.

19. On such consideration we are unable to admit the second appeal.

20. The appeal stands dismissed at the admission stage and all connected application are dismissed.

21. However, there shall be no order as to costs.

22. Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Soumen Sen J.)

(Uday Kumar, J.)