

10.05.2024

FRIDAY

Court : 04
Item : 04
Matter : SAT
Status : DISMISSED
Bench ID : 266176
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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**SAT 157 of 2022
with
CAN 1 of 2022**

Gouri Sarkar & Ors.
Vs.
Jadu Nath Mallick

**Mr. Amal Mukhopadhyay, Advocate
Mr. Pinaki Bhattacharya, Advocate
Mr. Palash Chakraborty, Advocate
Ms. Payel Ghosh, Advocate
Ms. Sangeeta Roy, Advocate
Mr. Kaushik Roy, Advocate**

.....for the Appellants

1. The suit filed by the plaintiff/landlord seeking eviction on the ground of default and reasonable requirement stood decreed by the Trial Court and such decree is affirmed by the First Appellate Court. There is no denial as to the relationship of the landlord and tenant between the parties. The eviction was sought on the premise that the plaintiff/landlord is running a jewellery business on a tenanted premises and he reasonably requires the suit premises for the purpose of such business.
2. A plea was sought to be taken by the substituted defendant by way of amendment that during the pendency of the suit, the plaintiff/landlord obtained possession of a big room in the suit premises from another tenant and, therefore, the requirement ceases and no longer exist. Though such amendment was allowed and the aforesaid facts were permitted to be incorporated in the written-statement but there was no oral or documentary evidence produced by the defendant in respect of the same.

3. We are conscious that there is a distinction between a pleading and proof. The person, who asserts, has a primary duty to prove such facts and if he fails to do so, the onus cannot be shifted to the other side to disprove the same. Shifting of the onus may arise in the event the initial onus is discharged by a person by proving the facts pleaded in the pleading and then it falls on the shoulder of the other side to disprove the same by convincing evidence.
4. Both the Courts have concurrently held that though a plea of an accommodation, subsequently obtained by the plaintiff/landlord, is pleaded by way of an amendment but in absence of any corroborative evidence, such fact having not proved, cannot adversely affect the requirement pleaded by the plaintiff/landlord. Apart from the same, it is undisputed that the plaintiff/landlord is running a business of jewellery in tenanted premises which is always regarded as precarious. Even though no steps have been taken by the landlord for eviction of the tenanted premises, yet the sword is always hanging upon him and the possibility of being evicted from the said tenanted premises can be reasonably presumed.
5. Furthermore, the law does not deter a landlord to shift his business from a tenanted premises to his own premises nor mandates such landlord to suffer eviction from his tenanted shop room and thereafter seeking for eviction of a tenant from his property. The Court must evaluate the requirement both subjectively and objectively. The requirement must be reasonable and element of need must be evident as opposed to a fanciful desire. Both the Courts have found that the plaintiff/landlord has been able to prove his requirement which is genuine and not fanciful. Such

concurrent findings of fact should not ordinarily be interfered with under Section 100 of the Code of Civil Procedure.

6. A point is sought to be taken before us that the moment the amendment is allowed by permitting the facts to be incorporated in the written-statement, in absence of any denial from the plaintiff/landlord, it would be presumed to be correct. Such proposition does not hold good for the simple reason that the initial onus lies on the person who asserts the happening of an event and unless such initial onus is discharged, the law does not presuppose that in absence of any denial in the cross-examination, such fact would be presumed to have been proved.
7. Both the Courts have concurrently held so to which we do not think that any interference is warranted. We do not find involvement of any substantial question of law in the instant appeal.
8. The appeal being **SAT 157 of 2022** is **dismissed** under Order XLI Rule 11 of the Code of Civil Procedure. The connected application being **CAN 1 of 2022** also stands **dismissed**.
9. However, we observed that the Executing Court would take utmost effort to bring the said proceeding to its logical end and shall not permit the appellant to protract the litigation endlessly.

(Harish Tandon, J.)

(Maduresh Prasad, J.)

