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2024**

Ct. No. 08

Ab

**SAT 196 of 2023
IA No. CAN 1 of 2024**

**Shri Goutam Koley
Vs.
Shri Amitava Kundu.**

**Mr. Gopal Chandra Ghosh,
Mr. Subhrajit Chakraborty,
Mr. Swadhin Pan,
Mr. Surav Ghosh.**

... for the appellant.

Both the Courts below have decreed the suit against the defendant/appellant directing to vacate and hand over the khas possession of the suit premises unto in favour of the plaintiff/respondent.

A suit was instituted by the plaintiff/respondent for eviction of the defendant/appellant from the suit premises, inter alia, on the ground of default and reasonable requirement. Both the Courts held that the plaintiff/respondent is able to prove the case of reasonable requirement and, therefore, being one of the ground envisaged under Section 6(1)(d) of the West Bengal Premises Tenancy Act, 1997 (in short 'said Act'), he is entitled to a decree for eviction against the defendant/appellant.

Admittedly, the requirement was not pleaded for residential purpose, but was restricted to a commercial purpose. It is specifically averred in the plaint that the suit premises occupied by the defendant/appellant as a tenant is reasonably required for the purpose of establishing the business and, therefore, the defendant/appellant should be directed to be evicted from the suit premises.

The defendant/appellant took a defence that the plaintiff/respondent is in possession of several rooms within the premises and has grossly suppressed the same. It is further pleaded that the plaintiff/respondent

is in habit of evicting the tenant and subsequently letting out the same to different tenant at higher rate of rent, which corrodes very concept of reasonable requirement. It is further averred that there is no element of reasonability in the requirement allegedly pleaded and the plaintiff/respondent being in possession of reasonable suitable accommodation is not entitled to a decree for eviction.

On the conspectus of the aforesaid pleadings, the parties went in trial. The plaintiff's witness no. 1 narrated the statements made in the plaint and also denied the defence taken by the defendant/appellant in the written statement. The 1st witness of the plaintiff, who is the plaintiff himself, admitted the existence of three rooms on the eastern side of the premises, out of which two rooms are occupied by the tenant and one room is put under lock and key. The plaintiff/respondent further deposed that out of three rooms, one is occupied by the defendant/appellant himself and the other rooms are in possession of a tenant i.e. Pradip Kundu with corroboration that he is not his relative. He further disclosed six rooms on the southern side of suit premises, which are not in his possession, by disclosing the name of the tenants, who are occupying the same.

The plaintiff/respondent further disclosed that there are four rooms on the western and northern side of the suit premises, which are all tenanted. In total, the plaintiff/respondent disclosed 13 rooms in the ground floor, which are suitable for the commercial purposes. Nothing could be brought out from the further cross-examination, which would lead to a fanciful desire of the plaintiff/respondent in seeking eviction against the defendant/appellant.

However, the emphasis is put to the evidence of the 2nd witness of the plaintiff/respondent, who is admittedly a neighbor, in order to convince the Court that the statement of the plaintiff/respondent, so far as

it relates to the number of the shop rooms are concerned, is suppression.

According to Mr. Gopal Chandra Ghosh, learned Advocate appearing on behalf of the defendant/appellant, the plaintiff's witness no. 2 has categorically admitted the existence of 14 shop rooms that would lead to a presupposition that the plaintiff/respondent is in possession of two rooms and, therefore, both the Courts have committed error in decreeing the suit against the defendant/appellant.

We had an occasion to peruse the cross-examination of the plaintiff's witness no. 2, wherein he admitted that on the western side there are five to six rooms used for the office purpose. Probably Mr. Ghosh has taken higher denomination in order to arrive at a mathematical precession. If the numerical no. 6 is taken, it would lead to fourteen rooms, but on the numerical no. 5, we do not find that it would lead to fourteen rooms. We, thus, do not find any inconsistency in the number of the shop rooms.

Let us now confine to a situation when the 1st witness of the plaintiff/respondent has stated in the cross-examination that out of three rooms situated in the eastern side of the suit premises, one is kept under lock and key. There is no corroborative evidence forthcoming before the Court in support of the stand of the defendant that the said room, which is kept under lock and key, is in possession of the plaintiff/respondent.

The entire cross-examination of the plaintiff/respondent manifestly indicates the nature and occupation of the rooms available in the ground floor and the suitability of the suit premises for commercial purposes. In the cross-examination, the plaintiff/respondent disclosed the name of the tenants, which, according to the defendant/appellant, was possessed by the plaintiff/respondent and in absence of

any cogent and counter evidence at the behest of the defendant/appellant, such statement cannot be ignored. The plaintiff/respondent even clarified when a distinction was put that the four rooms to the western and southern side of the suit premises are in his occupation. It is a specific stand of the plaintiff/respondent that though one room is kept under lock and key but is tenanted and further proceeds to disclose the name of those tenants.

The landlord is the best person to take a decision with regard to the reasonability and the suitability of the tenanted premises for the purpose of eviction under Section 6(1)(d) of the said Act. The tenant cannot dictate the landlord to squeeze his requirement or to take steps against the other tenants as such tenanted room would be more suitable for the purposes for which the eviction is sought against the said tenant. It is a choice of the landlord against whom he would file a suit for eviction.

We are not unmindful of the settled proposition of law that in order to succeed under Section 6(1)(d) of the said Act, it is imperative on the part of the landlord to prove that he reasonably requires the premises and is not in possession of any suitable accommodation within the Municipal Corporation or the Municipality or in any other area within 10 kilometers from the suit premises. We are conscious that the onus lies on the landlord to prove the above ingredients and the moment the initial onus is discharged, it shifts upon the tenant to dispel the same.

The reasonability of the requirement is to be determined on the subjective or objective assessment and, therefore, the Court shall not be swayed by one stray sentence but should take into consideration the entire pleadings and the depositions collectively.

Though the defendant/appellant has pleaded that the plaintiff/respondent is in possession of a shop room in the ground floor, but we do not find any cogent

evidence having produced except one stray sentence uttered by the 2nd witness of the plaintiff/respondent, who is admittedly the neighbor. Even if we proceed to take such admission that the plaintiff/respondent is in possession of a room yet we do not find that the law stands in the way of the landlord in seeking requirement for extension of the business or for better use thereof.

The expression “reasonably required” erodes the concept of mere desire or a fanciful approach at the behest of the landlord, the Court may deny the decree for eviction if it appears that the requirement so pleaded has no element of reasonability and further may deny in the event the Court found the reasonable suitable accommodation available to the landlord for which the eviction is sought.

The 2nd witness of the plaintiff/respondent being the neighbor may not be aware of all the nitty-gritty of the situations prevalent at the suit premises admittedly owned and belonged to the plaintiff/respondent. The credibility and relatibility is to be judged on such parameter and if the Court does not find any discrepancy in the, mere fringe discrepancy cannot be projected affront to thwart the genuine claim of the land.

From whatever angle we look at does not find any infirmity and/or illegality in the ultimate decision of both the Courts below nor we find any involvement of the substantial question of law in the instant appeal. The appeal and the connected application for stay being CAN 1 of 2024 are dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

