

10.05.2024
sayandeep
Sl. No. 111
Ct. No. 04

SAT 203 of 2023
With
CAN 1 of 2023

Utpal Kanti Bhattacharyya & ors.
Vs.
Kamal Das & ors.

Mr. Aniruddha Chatterjee
Mr. Kazi Sajjad Alam
Mr. Abirlal Chakraborty

..... for the appellants

The concurrent finding of facts is sought to assail in the instant second appeal at the behest of the tenant/defendant solely on the ground that in absence of any local inspection carried out in course of the proceeding, the eviction on the ground of reasonable requirement cannot be granted. For the purpose of record, we hastened to add that none of the provisions contained under Section 6 of the West Bengal Premises Tenancy Act, 1997 postulates the local inspection to be carried out but it is also to be remembered that in order to succeed on the ground of reasonable requirement apart from the reasonability of such requirement, the plaintiff shall have to prove that he is not in possession of the reasonable suitable accommodation.

Obviously, in order to ascertain whether the accommodation available to the plaintiff landlord is reasonable and suitable, the local inspection may be one of the factors to be weighed to the Court. Such inspection becomes inevitable in the event the Court while dealing with the case of reasonable requirement finds that the partial eviction may satisfy the requirement.

In the instant case, the suit premises is a single room situated in the ground floor and, therefore, the concept of partial eviction does not apply. To arrive at

the suitability and the reasonability of the accommodation available to the plaintiff, the evidence in this regard is required to be meticulously examined and in the event the Court arrives at the impeccable opinion that there is no need to have the local inspection to be done to ascertain other accommodations, there is no fatter on the part of the Court to proceed and decide the matter on the basis of the pleadings as well as the evidence. It depends upon the special facts and the features and, therefore, applying the abstract notion of mandatory local inspection to be done in case of a reasonable requirement may not be proper.

In the instant case, the eviction is sought of a suit premises situated in the ground floor of the premises admittedly owned and possessed by the plaintiff/respondent. The eviction suit is filed for a chamber of one of the plaintiffs (plaintiff No. 3) who is a practicing advocate, notary and marriage registrar. It is sought to be contended that he has not been able to prove by documentary evidence that he is an advocate, notary and the marriage registrar which does not hold water from the tenet of the evidence adduced by the witnesses cited on behalf of the plaintiff's landlord including the plaintiff No. 3 for whom the requirement was pleaded. He has categorically stated that he is a practicing advocate, notary and the marriage registrar and, therefore, requires a chamber to cater the need of the clients who intend to avail his services in the legal field. He has further deposed that he is an empanelled advocate of the Electricity Department and the General Insurance Company apart from the private litigations which he handle and an important factors that weighed to the Court as well as us is that the said plaintiff (plaintiff No. 3) had suffered a fracture and undergone an operation of replacement of the hip joint and is diagnosed to have 50% disability. The evidence would also indicate that he cannot walk on his own but with

the help of the stick and, therefore, climbing up to the stairs to have chambers on the upper storied may not be suitable because of his health. Though it is sought to be contended that there are other rooms situated in the ground floor which can cater his need but it appears from the evidence that the other rooms are occupied by some of the plaintiffs who are also engaged in the profession of deed writer and for other purposes which cannot be overlooked. Both the Courts have disbelieved the stand of the defendant appellant that there are reasonable suitable accommodations available to the plaintiffs/respondents and such concurrent findings of facts does not warrant interference unless the second appellate Court finds it to be perverted or beyond the record. The landlord is the best judge to choose a portion for his requirement. The moment initial onus is discharged proving that the premises is reasonably required meaning thereby there is an element of need in it, it erases the factors of fancifulness or a mere desire. Considering the evidences which have been adduced, we have no hesitation to find that the plaintiff No. 3 is a practicing advocate, notary and the marriage registrar as well as suffers from physical disabilities and, therefore, the requirement of the chamber in the ground floor cannot be said to be unreasonable or mere fanciful.

We thus do not find any involvement of any substantial question of law in the instant case.

The appeal is dismissed without any order as to costs. The connected application being CAN 1 of 2023 is also disposed of.

After the dictation as above, the counsel for the appellants submits that since one of the appellants is also a practicing advocate, a reasonable time may be given to vacate the suit premises. Since we have dismissed the matter at the Order XXXXI Rule 11 stage in absence of the respondents, we, therefore, grant

liberty to the appellant to approach the executing Court with such prayer which we hope and trust shall be considered in a reasonable, rational and pragmatic manner.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)