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Ct. No. 04

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S.A.T. 222 of 2023

CAN 1 of 2023

Loknath Shaw & Anr.

Vs.

Javad Kumar Maity

Mr. Partha Pratim Roy,

Mr. Sourav Mondal.

... for the appellants.

Both the Courts below have uniformly held that the plaintiff/respondent has been able to prove the requirement of the suit premises and, therefore, entitled to get the decree for eviction under Section 6 of the West Bengal Premises Tenancy Act, 1997.

Admittedly the plaintiff/respondent is running an eating house on the first floor of the suit property. It is also not in dispute that the entire ground floor is occupied by the tenants. The plaintiff/respondent asserted in the plaint that though the property is situated just beside a road accessible for the commuters, but the business does not yield requisite income, as he is forced to run the eating house on the first floor of the said building. The plaintiff/respondent thus claimed that the ground floor would be more suitable for expansion of the business and the accessibility to various customers may give an impetus to the income.

Both the Courts below found that the requirement of the plaintiff/respondent is reasonable, as he has been able to prove that he does not have reasonable suitable accommodation, which is sought to be assailed by the defendants/appellants in the instant appeal.

The only point raised in the instant appeal is that the plaintiff/respondent has obtained a decree for

eviction on the ground of reasonable requirement against the two tenants and, therefore, the requirement pleaded in the plaint is satisfied, as the plaintiff/respondent categorically averred in the plaint that the said shop room is required for establishment of a cash-counter. There is no other point, which has been raised before us and, therefore, our consideration is restricted on such point to ascertain the involvement of substantial question of law.

It is no longer *res-integra* that in order to succeed on the ground of reasonable requirement, the plaintiff must prove that such requirement is reasonable and not fanciful. We are also not unmindful of the proposition of law that the landlord cannot seek eviction on the ground of reasonable requirement merely saying that he wishes to get away with the tenants; otherwise the law enacted in this regard would be totally frustrated.

The requirement must be *bona fide* and the reasonability has to be adjudged on the need, which is reasonable and probable. The landlord is the best judge of choosing against whom the suit is to be filed for eviction, as the tenant cannot dictate the landlord to institute the suit against a particular tenant. The basic need is an important ingredient in order to ascertain the reasonability of such requirement and when the landlord intends to expand the business, the law does not put any fetter in achieving such purposes.

The plaintiff/respondent had vehemently narrated the incidents more particularly that he is running an eating house on the first floor of his property which is accessible through a road and in order to expand the business of such nature, the ground floor would be more suitable to augment the income, which we do not find to be unreasonable or

mere wish or desire of the landlord.

Both the Courts below have found that such requirement is reasonable and, therefore, we do not find that there is any ambiguity in this regard as every person has a right to expand his business in order to augment income and the tenant cannot stand as a deterrent to it provided such requirement is genuine and bona fide.

Reverting the core issue that the plaintiff/respondent has obtained the decree for eviction against the two tenants of the ground floor, we do not find that the same may stand in the way of denying the decree for eviction against the defendant/appellant. There is no document forthcoming nor any evidence has been adduced that the plaintiff/respondent has obtained the possession or recovered the possession of the aforesaid rooms during the pendency of the suit. Mere getting decree does not stand in the way of the landlord to recover the possession on the strength of the decree passed by the Trial Court. Furthermore we find that it is a specific case of the plaintiff/respondent that the ground floor is required for the purpose of expansion of the business; which is admittedly runned from the first floor of the said property.

Such being the pleading, even if the plaintiff/respondent has obtained the decree for eviction against the other tenants does not satisfy the requirement so pleaded. Furthermore the landlord is the best person to choose the portion of his property for a definite purpose more particularly when the decree for eviction is sought on the ground of reasonable requirement. The tenant cannot dictate the landlord how to use his property.

In such view of the matter we do not find that the

point raised before us involves substantial question of law. The appeal is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. Consequently the connection application is also dismissed.

After the judgement is dictated in open Court, the learned Counsel for the appellants submits, on instruction, that his clients may be permitted six months time to vacate the suit premises.

We have been given to understand that the execution case has substantially matured and the date for recovery of possession has already been fixed. In such view of the matter, we do not think that the prayer made by the appellants can be acceded to. Accordingly, the same is hereby rejected.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)