

35 **14.03.**
2024

Ct. No. 04

ab

SAT 255 of 2023
IA No. CAN 1 of 2024

Sri Arabinda Sett
Vs.
Sri Souvick Samanta.

Mr. Uddipan Banerjee..

... for the appellant.

Mr. Animesh Paul,
Ms. Haardikaa Rajdev.

... for the respondent.

In this appeal the judgment dated 12th October 2023 passed in Title Appeal No. 131 of 2022 by the learned Additional District Judge, 2nd Court, Howrah has been assailed.

While disposing the said appeal, the First Appellate Court affirmed the decree of eviction of a tenant (the appellant herein) as passed by the learned Civil Judge (Junior Division), 7th Court, Howrah in Title Suit No. 264 of 2019.

From the copy of the judgment, as has been impugned before the First Appellate Court, it appears to us that a suit for eviction under West Bengal Premises Tenancy Act has been filed against the defendant, who is the appellant before us, on various grounds, namely; defaulter in payment of rent, reasonable requirement of the suit property of the plaintiff for his own use and occupation and his family members, building and re-building, the defendant has his own property within ten kilometers of the suit property or within the same Municipal Corporation area and also on the ground of subletting.

On perusal of the judgement of the trial court as passed in Title Suit No.264 of 2019 it appears that trial court found that the present appellant has defaulted in payment of rent and has sublet the suit property to his

brother(s). Trial court further found that the suit property is reasonably required by the plaintiff/respondent for his own use and occupation as well as for his family members. Trial court further found that the defendant has acquired a house or flat at 49/2 Makardah Road. On the point of notice trial court further found that such notice of eviction is legal, valid and has been properly served upon the defendant.

In the impugned judgement before us the First Appellate Court on re-appreciation of the entire facts as placed before it came to a finding that the view taken by the trial court regarding the legality, validity and sufficiency of notice of eviction is correct. The First Appellate Court further found that the finding of the trial court regarding the alleged default of payment of rent by the defendant is not required to be interfered with. The First Appellate Court further found that the trial court rightly observed that the defendant had sublet the suit property to his brother(s) and started residing at premises no.49/2 Makordah Road which has been purchased in his wife's name. So far as the ground of reasonable requirement of the plaintiff is concerned, the First Appellate Court also came to a finding that the view taken by the trial court in this regard is very much justified and thus requires no interference at all.

In course of his submission, learned Advocate for the defendant/appellant contended before us that the view taken by the Trial Court regarding sufficiency of service of notice of eviction upon the appellant has been wrongly assessed by the Trial Court as well as by the First Appellate Court in view of the fact that before the Trial Court it was not been proved that actually such notice has been served upon the defendant.

On perusal of the copy of the judgment as passed by the Trial Court as well as the judgment of the First Appellate Court it appears to us that both the Courts below have rightly come to a conclusion with regard to

the sufficiency of service of notice upon the defendant/appellant herein by applying the provisions of Section 24 of the General Clauses Act inasmuch as both the Courts below have come to a concurrent finding that the envelope containing the said notice of eviction was correctly addressed, requisite postal charges have been paid thereupon and was sent under registered post.

In view of such, we thus find no cogent reason for interfering with such concurrent findings.

So far as the ground of reasonable requirement is concerned, we found that before the learned Trial Court, the plaintiff/respondent had adduced sufficient evidence that he requires the suit property for his own use and occupation as well as for his family members. It appears from the record that the plaintiff/respondent is a practicing Advocate of Howrah Bar and he with his family members are staying elsewhere apart from his own house and it is the further case of the plaintiff/respondent before the Trial Court that in the event he gets possession of the suit property, he could stay there, which would not only save his time but also same would be convenient for him as well as for his wife and little child, who is growing day by day.

It appears to this Court that the Trial Court has apprised this fact on the basis of the evidence of the plaintiff/respondent as well as on the basis of the evidence as adduced by the PW2 (learned Commissioner) vis-a-vis the inspection report as submitted by the said Commissioner being Exhibit-12 series. Such factual finding is found to be acceptable before the First Appellate Court also which we do not like to interfere sitting in second appeal in absence of involvement of any substantial question of law.

So far as the ground as mentioned in Section 6 (1)(c) of the West Bengal Premises Tenancy Act, 1997 is concerned, it appears to us that before the Trial Court, it was the case of the plaintiff/respondent that the

defendant/appellant and his wife are now residing in a newly purchased flat at 49/2, Makardaha Road, Howrah and to substantiate his contention that the plaintiff/respondent before the Trial Court has exhibited a deed of conveyance in the name of defendant's wife.

While appreciating the evidence as adduced by the parties, both the Trial Court and First Appellate Court are found to be correctly assessed the evidence and had come to a finding that the defendant/appellant has a separate place of accommodation and non-disclosure of the same invites an adverse inference to be drawn against him.

It further appears from the record that the claim for reasonable requirement of the plaintiff/respondent was founded upon the assertion that the plaintiff/respondent is residing in the house of his father as licensee and has acquired right, title and interest in respect of the suit premises on the strength of a deed of gift executed by his grandmother. It does not appear from the record that the plaintiff/respondent has any semblance of right in respect of the other house belonging to his father, as he is still alive.

Furthermore, if the plaintiff/respondent intends to live in his own house along with the family, the law does not put any deterrence or an obstacle in achieving such object, which appears to be laudable and reasonable. Furthermore, the distance between the Court and the suit premises is in the close proximity and, therefore, the plaintiff/respondent shall be able to run chamber from the said suit premises and, therefore, we do not find that such need can be termed as mere wish and/or desire.

In order to prove the ground of subletting, the plaintiff before the trial court not only adduced oral evidence but also proved the electoral roll which shows that the defendant/appellant and his wife are not resident of the suit property and on the contrary they are residing at premises no.49/2, Makrodah Road. It is

further found that in course of cross-examination of DW1 it has been categorically stated by him that his two brothers namely; Nepal Sett and Gopal Sett are residing in the suit property whereas the defendant's family consist of the defendant himself, his wife and his daughter only. Both the trial court and the First Appellate Court assessed such facts in the light of the two reported decisions namely; **Santosh Roy vs. Administrator General of West Bengal** reported in **AIR 1988 SC 396** and **Bhairab Chandra Nandan vs. Ranadhr Chandra Dutta** reported in **2021 (1) ICC 729 Cal** and came to a concurrent finding that the defendant/appellant before us shifted his residence elsewhere leaving the tenanted premises to his brothers without obtaining permission of the landlord and such act tantamounts to creation of sub-tenancy in view of the aforesaid two reported decisions.

We do not find any infirmity in such concurrent findings and in absence of any substantial question of law in such concurrent findings we do not find any requirement at all to interfere with the same.

We, thus, do not find any substantial question of law involved in the instant appeal. The appeal is dismissed.

In view of dismissal of the appeal itself, the connection application being CAN 1 of 2024 has become infructuous and the same is also dismissed.

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

(Harish Tandon, J.)

(Partha Sarathi Sen, J.)

