

FORM NO. J(2)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:
THE HON'BLE JUSTICE HARISH TANDON
And
THE HON'BLE JUSTICE APURBA SINHA RAY

SAT 14 OF 2024

WITH
CAN 1 OF 2024

SUBHASH GUPTA
Vs.
BEJAY GUPTA & ANR.

FOR THE APPELLANT : **MR. JISHNU CHOWDHURY, ADVOCATE**
MR. RITOBAN SARKAR, ADVOCATE
MR. ADITYA TIWARI, ADVOCATE
MS. SOMDUTTA PATRA, ADVOCATE

FOR THE RESPONDENT : **NONE**

HEARD ON : SEPTEMBER 4, 2024.

JUDGMENT ON : SEPTEMBER 4, 2024.

THE COURT:

1. Both the Courts below have concurrently held that the plaintiffs/respondents have been able to prove the case of eviction on the ground of reasonable requirement which is sought to be challenged by the defendant/appellant in the instant second appeal on two counts.

2. Firstly, there is a scanty finding in relation to a reasonable requirement and therefore, a perversity can be seen therefrom; secondly, both the Courts have proceeded to decide the case on the concept of comparative hardship which is inapplicable in view of the provisions contained in the West Bengal Premises Tenancy Act, 1997.
3. It is a specific case of the plaintiffs/respondents that they are the joint owners of a three-storied building situated at Plot no. 61 facing the main road in the town of Kalimpong on the basis of the registered deed of sale dated 11.11.2008. Admittedly, the defendant/appellant is a tenant in respect of the suit premises described in the schedule appended in the plaint at a monthly rent of Rs. 225/- payable according to English calendar. It is alleged in the plaint that the defendant/appellant failed and neglected to pay the rent on and from the month of October, 2012 and, therefore, exposed himself liable to be evicted on the ground of default in payment of rent. It is further averred that the plaintiff/respondent no. 2 has no fixed place of business though he is carrying business of handicrafts and gift items and, therefore, the suit premises is most suited place to enhance the business but because of the refusal on the part of the defendant/appellant to vacate the premises, the same is reasonably required by the plaintiffs/respondents. It is also averred in the plaint that the plaintiff/respondent no.

2 has separated himself from the family and is running the said business to sustain his wife and children and, therefore, is in dire need of the suit premises.

4. The defendant/appellant took a plea that he has paid rent to the plaintiffs except for the month of July, 2013, March and May, 2015 and June to September, 2017 and, therefore, cannot be said to be a habitual defaulter. Since the plaintiff refused to accept the rent, it was tendered in terms of Section 21 of the West Bengal Premises Tenancy Act, 1997 and upon refusal, started depositing with the office of the Rent Controller.
5. It is expressly stated in the written-statement that the plaintiffs have other shops at main road within 100 meters of the suit premises and also owned a multi-storied building located within 300 meters from the suit premises and, therefore, have a sufficient accommodation to cater the need as alleged in the plaint.
6. On the backdrop of the aforesaid facts pleaded in their respective pleadings the parties went for a trial and adduced evidence in support thereof. The first witness of the plaintiff who is Plaintiff no. 2 in the examination-in-chief, have categorically deposed that he has no shop-room to run his business and, therefore, is compelled to carry on the flying business of handicrafts and gift items obviously with the support of his father and the other brothers. He further deposed that he intended to set up

his own business not connected with the business of the families and the other members and, therefore, the suit premises is the most ideal to continue the said business therefrom. The said witness further disclosed that out of three shop rooms in the property where the suit premises is situated, one is in occupation of the plaintiff no. 1 and the other in possession of some other person and, therefore, the suit premises is the most suited place for running the business of the said deponent. So far as the other businesses as disclosed by the defendant/appellant in the written-statement are concerned, the said deponent clearly stated that one of such business is owned by the plaintiff no. 1 whereas the other business is owned by his father and his younger brothers and, therefore, denied the allegation as to the availability of the reasonable, suitable accommodation at the disposal of the plaintiffs.

7. Interestingly, there is no cross-examination with regard to the disclosure of the business which the Plaintiff no. 2 is carrying on nor we find any question being put with regard to the reasonable requirement so pleaded for running his own business. In the cross-examination, the first witness has categorically averred that one shop room in the name and style Art Emporium was originally owned by his grandfather and after his death it devolved upon his father and uncle who subsequently separated from the

said business and the father along with other younger brothers carrying on the said business. In the cross-examination, it is also admitted that the other business is managed and controlled by the plaintiff/respondent no. 1 and, therefore, he does not have any independent place to run his own business which he termed as a flying business by delivering the goods to various intending customers/purchasers.

8. It appears from the judgment of the Trial Court that a suggestion was given to the defendant/appellant that if he intends to shift to the second floor, the genuinity of the need shall be satisfied which was flatly denied by the defendant/appellant.
9. On the conspectus of the aforesaid evidence, let us see whether both the Courts have proceed on a wrong footing and have taken into consideration the extraneous factors which are conspicuously absent in the relevant provision so as to assume the character of substantial question of law under Section 100 of the Code of Civil Procedure.
10. The West Bengal Premises Tenancy Act, 1997 is a beneficial piece of legislation intended to protect the tenant from eviction from the hands of an unscrupulous landlord. It is expressly provided in Section 6 of the said Act that no tenant can be evicted from the suit premises except by an order of the Court or the authority as named therein on one or any of the following grounds

enumerated therein. It is no longer *res integra* that the default in payment of rent and the reasonable requirement on the grounds incorporated in Section 6 of the said Act and, therefore, the said legislature provides a decree for eviction on such grounds having proved by the landlord.

11. Since both the Courts have held that the defendant/appellant has complied the other statutory provisions relating to the protection against eviction on the ground of default, the decree on such ground cannot be passed but both the Courts found that the plaintiffs/respondents have been able to prove that the suit premises is reasonably required for setting up his business which he carrying on by delivery of the goods to the intending customers/purchasers.
12. Prior to coming into force of the West Bengal Premises Tenancy Act, 1997, the earlier repealed Act also contained the similar provisions but we could visualize a radical change in such ground on a bare comparison. Under the repealed Act i.e. West Bengal Premises Tenancy Act, 1956 in order to succeed in a suit for eviction against the tenant on the ground of reasonable requirement, the landlord has to prove three things. Firstly, he is the owner of a suit premises; secondly, he reasonably requires the suit premises for his own use and occupation and the occupation for his family members

and dependents and thirdly, he is not in possession of the reasonable suitable accommodation.

13. So far as the ground of reasonable requirement under the Act of 1997 is concerned, only two ingredients are required to be proved namely the landlord reasonably requires the suit premises for his own use and occupation and he is not in possession of reasonable suitable accommodation within a particular distance. It is the onus of the landlord to prove the aforesaid ingredients in order to succeed on the ground of reasonable requirement.
14. We are conscious that the requirement to be termed as 'reasonable', depends upon various factors and have to be determined both subjective and objective manner. It varies from the status of a person in the society and, therefore, in order to arrive at the conclusion that the requirement is genuine, the Court must take into account the other attending factors. We are conscious of the proposition of law that the requirement must be genuine having an element of need and should not be mere desire or fanciful. The moment the Court finds that the requirement is genuine, the inescapable conclusion to be arrived, is to pass a decree for eviction against the tenant. The tenant cannot dictate the landlord how to meet the requirement as the landlord is the best judge in this regard.

15. Reverting to the facts of the instant case, it is a categorical stand of the plaintiffs/respondents that the plaintiff no. 2 does not have a fixed place to run the business which he is carrying on as a flying business and the law does not act as a deterrent to such genuine wish or the need. It is undeniable that the plaintiff no. 2 is running a business but the defendant/ appellant has taken a stand that he being a part of the Hindu Undivided Family or a joint family is running the business from other places which belonged to such family.
16. As indicated above, the said plaintiff no. 2 has categorically deposed that though his father and the brothers are assisting him in carrying on his independent business but in absence of any fixed place from which he can carry out the said business more conveniently and can put a impetus into the income, the suit premise is the best suited place for running such business. It is also stated by the said plaintiff that the nature of the business makes it inevitable to run the business from any other places except from the suit premises accessible to the customers because of its accessibility into the main road of the said town.
17. Though both the Courts have used the term “comparative hardship” which in judicial parlance is considered to be a different concept but in order to understand the use of the said expression the Court must look into the context in

which it is so used. Admittedly, the West Bengal Premises Tenancy Act, 1997 does not contain any provision relating to comparative hardship in a suit for eviction against the tenant. It is thus improper on the part of the Court to treat the said concept as a part of the legislation when the legislation is lacking of such concept.

18. Our endeavour to find out the mind of the learned Judges while using such expression gives a clear indication that in order to arrive at the decision that the plaintiffs/respondents reasonably required the suit premises and in dire need thereof, the hardship was considered as a comparable component. The aforesaid expression could have been avoided by both the Courts below but while ascertaining the involvement of substantial question of law, the High Court shall read the judgments rendered by both the Courts below whether the ingredients required for passing the decree for eviction on the ground of reasonable requirement are eminently satisfied and/or discussed in the said judgment.
19. We find that both the Trial Court as well as the Appellate Court have categorically held that the first witness of the plaintiffs categorically deposed that he has no fixed place of business but still carrying on the business by visiting the customers, procuring the order, and delivering the goods purchased from different sources. In the event, the landlord intend to run the business from a fixed place

owned by it, the law does not stand as an obstacle in denying such need which, in our opinion, is reasonable. Every person in life has an aspiration to grow and, in the event, the landlord intended to give a steep rise in his business, such genuine need cannot be denied and, therefore, we do not find that there is any involvement of substantial question of law in the instant appeal.

20. The appeal being **SAT 14 of 2024** is thus **dismissed**. No order as to costs.
21. The connected application being CAN 1 of 2024 also stands dismissed.
22. Urgently Photostat certified copy of this order, be given to the parties, if applied for within three days of such application.

(HARISH TANDON, J.)

(APURBA SINHA RAY, J.)