

D/L.41.
April 16, 2025.
MNS.

SAT No. 79 of 2024
+
CAN 1 of 2024

Sri Pradip Kumar Sen
Vs.
Sri Kaushik Nandy

Md. Shahjahan Hossain,
Ms. Sanjida Sultana

... for the appellant.

1. Leave is granted to the learned Advocate-on-record appearing for the appellant to carry out necessary corrections to the Memorandum of appeals to rectify the defects pointed out by the Additional Stamp Reporter vide his report dated May 2, 2024 during the course of the day.
2. The appeal is taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.
3. The present second appeal has been preferred against a judgment of affirmance whereby both the courts below granted a decree of eviction against the defendant/appellant on the ground of reasonable requirement of the plaintiff/respondent to use the suit room as a garage.
4. Learned counsel for the appellant seeks to impress upon us that neither of the courts below considered the contention of the defendant/appellant that it is impossible for a car to take entry due to the limited width of the

entrance of the suit room and the absence of feasibility to use the room as a garage to that extent.

5. Moreover, it is argued that the courts below failed to take into consideration the difference of height of the suit room from the road level which makes it impossible for the suit room to be used as a garage. Also, it is contended that the plaintiff is in occupation of sufficiently suitable alternative accommodation, for which the suit should have been dismissed.

6. However, it transpires from the Advocate Commissioner's report, a copy of which is handed over by learned counsel for the appellant in Court and is kept on record, that the rest of the rooms owned by the plaintiff/respondent on the ground floor are occupied by other tenants. There is no other suitable alternative accommodation than the suit room available to the plaintiff/respondent at the suit premises.

7. Since the requirement of the plaintiff, as pleaded and proved, is for a garage to park his car, we cannot agree with the learned Advocate for the appellant that an accommodation, even if available elsewhere than the suit room, would suffice to meet such requirement, since no effective purpose would be served if the garage is located elsewhere than the residence of the plaintiff.

8. That apart, the difference in the plinth height of the room from the road level, being 2 feet 1 inch only, can very well be mitigated by the plaintiff, who is a Structural Engineer by profession (according to the findings of the

trial court and the first appellate court) and seeks to convert the room into a garage. Several architectural options are available for doing so, such as construction of a ramp or gradient and/or other ancillary measures, which the second appellate court need not go into in view of the concurrent finding in that regard returned by the courts below.

9. That apart, the dimensions of the required garage as pleaded by the plaintiff/respondent are 8 ft. x 12 ft., whereas the dimensions of the suit room are 9 ft. 2 inches x 13 ft. and the height of the said room is 9 ft.10 inches, which would be sufficient for parking a small car and would amply meet the requirement of the landlord.

10. In such view of the matter, we do not find any patent perversity in the impugned decisions of the courts below or any substantial question of law being involved in the present appeal.

11. Accordingly, SAT No. 79 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

12. CAN 1 of 2024 is consequentially dismissed as well.

13. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)