

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FMA No. 121 of 2025

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CAN 1 of 2023

Sri Arun Kumar Gupta

-vs-

Smt. Sukla Basak and others

with

COT 78 of 2023

Smt. Sukla Basak and others

Vs.

Sri Arun Kumar Gupta

For the appellant
in FMA No. 121 of 2025

&

Respondent in COT 78 of 2023 : Mr. Souradipta Banerjee,
Mr. Arnab Roy,
Mrs. Fatima Hassan

For the respondents
In FMA No. 121 of 2025

&

Cross Objectors in COT 78 of 2023 : Mr. Rupak Ghosh,
Mr. Arnab Dutt

Heard on : March 19, 2025.

Judgment on : March 19, 2025.

Sabyasachi Bhattacharyya, J.:

1. In view of questions of both fact and law being involved, we admit the first miscellaneous appeal, to be heard on the grounds taken in the memorandum of the appeal.
2. The factual premise of the present *lis* is somewhat peculiar.
3. The plaintiff/appellant filed a suit for eviction of the respondents/tenants under the West Bengal Premises Tenancy Act, 1997 (in short “the 1997 Act”) on several grounds, including reasonable requirement and sub-letting.
4. The learned Trial Judge granted a decree of eviction on the grounds of both sub-letting and reasonable requirement.
5. There were two components of the requirement pleaded by the plaintiff/landlord – for residence of his 22 family members, and for the purpose of expanding his business.
6. It would not be out of place to mention that the suit premise is comprised of a single shop room.
7. The learned First Appellate Judge, while concurring with the findings of the learned Trial Judge on the issue of reasonable requirement, came to the conclusion that further hearing was

required and evidence was required to be considered on the ground of sub-letting, for which the matter was remanded to the learned Trial Judge.

8. Learned counsel for the appellant/landlord rightly contends that even if the plaintiff was entitled to get eviction on a single ground as contemplated in the 1997 Act, there would not arise any occasion to remand the matter in respect of the other ground, since the eviction decree would stand on such ground alone.
9. Accordingly, the First Miscellaneous Appeal, bearing FMA No. 121 of 2025, ought to be allowed on such ground alone, subject, of course, to the outcome of the cross-objection filed by the tenant-respondent whereby the respondent has assailed the finding of the first appellate court affirming the eviction decree passed by the trial court on the ground of reasonable requirement.
10. The present *lis*, thus, hinges on the fate of the cross-objection filed by the defendants/respondents/tenants.
11. In support of the cross-objection, which is in the nature of a second appeal in view of the concurrent findings on merits of both the courts below on the ground of reasonable requirement against the defendants, learned counsel appearing for the respondents /

cross-objectors argues that the burden was on the plaintiff to show that the plaintiff did not have sufficiently suitable alternative accommodation.

12. Learned counsel places particular reliance on the answer given by the plaintiff's witness to Question No. 23 of his cross-examination where it was categorically admitted that the plaintiff has a shop at 212, Vivekananda Road, Ground Floor, which is Mayuri Enterprise, which clearly indicates that there was another accommodation available to the plaintiff at 212, Vivekananda Road, regarding which there was no local inspection held at the instance of the plaintiff, nor was any independent proof adduced by the plaintiff to show that the said accommodation was not a suitably alternative accommodation to meet the plaintiff's requirement of running a business as held by the courts below.
13. However, we find from the materials on record that the question sought to be raised by the defendants in respect of the burden of the plaintiff does not amount to a substantial question of law for the following reasons:
14. Insofar as the alleged alternative accommodation of the plaintiff at 212, Vivekananda Road is concerned, it is only the stray admission in cross-examination of the plaintiff's witness which is

relied on by the defendants/respondents for arguing the question as to further alternative accommodation is available to the plaintiff.

15. However, it is trite law that an admission has to be taken as a whole and not in isolation or in part. In the absence of any further corroborative evidence being led on the part of the defendants/respondents with regard to availability of further alternative accommodation of the plaintiff, the only premise of such challenge is the statement in cross-examination of the plaintiff's witness that the plaintiff has a shop at 212 Vivekananda Road, Ground Floor.
16. However, such statement in cross-examination, taken in its entirety, indicates unerringly that a shop is already being run at the said premises by the plaintiff in the name of Mayuri Enterprise.
17. Hence, even if the plaintiff is in occupation of such alternative accommodation, the same cannot be construed to be suitable for the purpose as sought, that is, to run further business or to expand the plaintiff's business, in view of the other component of the admission being that a business by the name of Mayuri Enterprise is already being run by the plaintiff from such shop

room whereas the present requirement of the plaintiff is, apart from residence of the twenty-two members of the family of the plaintiff, for further expanding his business.

18. We find from the judgments of the courts below that both the courts have substantially dealt with the arguments of the parties in respect of reasonable requirement.
19. The issue of alternative accommodation at 212, Vivekananda Road, Ground Floor, has also been addressed by the learned First Appellate Judge; but after such consideration, ultimately came to the finding that requirement has to be determined on the basis of convenience of the landlord and his family members, including their professions, occupation, lifestyle, habits and backgrounds and “it is the prerogative of the landlord for what purpose he requires the premises-in-question”, here, expanding the business of the landlord. Upon sufficient consideration of the materials on record, the courts below arrived at the concurrent finding that the plaintiff has reasonable requirement for the suit room.
20. Thus, in the present case, both the courts below adverted to the points taken by the parties and decided in favour of the plaintiff insofar as the ground of reasonable requirement is concerned.

21. Thus, merely because another view is possible, it is not for the second appellate court to interfere with the concurrent findings of fact of the courts below, just to superimpose or replace its own views for those of the courts below. In any event, such question of availability of alternative suitable accommodation, even if germane, would be a mixed question of fact and law and cannot be elevated to the level of a substantial question of law.
22. Thus, COT 78 of 2023 is dismissed under the principle of Order XLI Rule 11 of the Code of Civil Procedure.
23. In view of the dismissal of the cross-objection, the outcome of the principal appeal against the remand order becomes a foregone conclusion since, as held earlier, even if the plaintiff/landlord succeeds on the sole ground of reasonable requirement as contemplated in Section 6 of the 1997 Act, irrespective of the landlord's failure or success on the other ground of sub-letting, an eviction decree had to be granted by this Court as a matter of course.
24. In the present case, the learned First Appellate Court completely overlooked such position of law and remanded the matter unnecessarily on the ground of sub-tenancy, whereas it affirmed

the finding of the learned Trial Judge regarding the plaintiff having reasonable requirement for obtaining an eviction decree.

25. Thus, on the ground of reasonable requirement alone, the plaintiff/appellant is entitled to a decree for eviction. As such, nothing further remains to be adjudicated in the appeal.
26. Instead of entering into an unnecessary rigmarole of procedure by mindlessly calling for the trial court records and directing paper books to be filed, as the materials on record are sufficient, we choose to dispose of the First Miscellaneous Appeal here and now in the light of the above observations.
27. Accordingly, FMA No. 121 of 2025 is allowed on contest, thereby setting aside the impugned judgment and remand order dated November 23, 2022 passed by the learned Judge, Ninth Bench, City Civil Court at Calcutta in Title Appeal No. 61 of 2018 and reviving and affirming the judgment and decree dated June 19, 2018 passed by the learned Judge, Fourth Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 6720 of 2014.
28. Accordingly, the plaintiff/appellant does get a decree of eviction against the defendants/respondents in terms of the judgment and decree of the learned Trial Judge.

29. CAN 1 of 2023 is accordingly disposed of as well.
30. There will be no order as to costs.
31. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)