

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya, J**

FMA No. 1765 of 2025

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CAN 1 of 2025

Malek Sultan

Vs.

Zeenat Khanum and others

For the appellants	:	Mr. Arif Ali, Mr. Yusuf Ali Mirza, Mr. Sarban Bhattacharya, Mr. S. Dutta
For the respondent	:	Mr. Sourav Sen, Sr. Adv., Ms. Adrisnata Chakraborty, Ms. Subhangi Bhattacharya
Heard on	:	15.12.2025
Judgment on	:	15.12.2025

Sabyasachi Bhattacharyya, J.:-

1. Since questions of both fact and law are involved in the present appeal, which has been preferred against an order of remand passed by the learned first appellate court, we admit the appeal to be heard on the grounds taken in the Memorandum of Appeal.
2. In view of the short conspectus of the appeal and since the same can be decided on the basis of the pure questions of law raised by the learned Advocate for the appellant upon scrutiny of the judgments of

both the courts below without entering into further materials or evidence, we take up the appeal itself for disposal.

- 3.** The matter arises out a suit for eviction filed under Section 6 of the West Bengal Premises Tenancy Act, 1997 (in short “the 1997 Act”) by the plaintiffs/respondents primarily on the grounds of reasonable requirement and default in payment of rent.
- 4.** The suit was dismissed by the learned trial Judge on both the grounds. In so far as default is concerned, the learned trial Judge opined that since relief has been given to the defendant/appellant under Section 7(4) of the 1997 Act, no eviction decree on the ground of default in payment of rent could be passed.
- 5.** While dealing with the ground of reasonable requirement, the learned trial Judge returned the finding that the leave and license agreement in the name of plaintiff nos. 2 to 4 merely proved that they reside at a different place other than the suit premises, but from nowhere it can be presumed that they are landlords of the defendant no. 1 and due to paucity of accommodation they reside somewhere else other than the suit premises.
- 6.** The learned trial Judge further opined that only the reasonable requirement of the plaintiff no. 1 is to be taken into consideration.
- 7.** The learned trial Judge proceeded further to observe that the plaintiffs had relied upon the Commissioner’s report filed in a different suit, bearing Title Suit No. 25 of 2010 (marked as Exhibit- 8) but from

the perusal of the report it appeared that the proforma defendant no. 2, namely, Showkat Hossain Khan was a party to the said suit and he was a tenant with respect to some portion of the suit premises situated on the fifth floor whereas the instant suit has been filed with respect to a piece and parcel of land on the fourth floor of the suit premises. On such ground, the learned trial Judge discarded the Commissioner's report filed in Title Suit No. 25 of 2010, which was marked as Exhibit-8 in the present suit and was prepared with regard to the fifth floor, since the same had no relevance in the instant suit.

- 8.** It was further observed by the trial Court that no proper explanation or reason had been shown by the plaintiffs as to why a prayer for appointment of Learned Advocate Commissioner for conducting a local inspection with respect to the suit premises was not sought by the plaintiffs in the instant suit. At the same time, it was held that the oral testimony of PW1 and PW2 does not disclose about the accommodation of the plaintiff no. 1 over the suit premises.
- 9.** In the first appellate court, the plaintiffs/respondents took out an application for local inspection of the suit property as well as an application under Order XLI Rule 27 of the Code of Civil Procedure for production of certain documents such as Aadhar card, etc. as additional evidence.
- 10.** The learned first appellate court, after considering several judgments cited by both the parties, ultimately came to the conclusion that the

true test is whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

- 11.** It was further observed by the learned first appellate court that allowing the documentary evidence and holding of local inspection will lead to complete and proper adjudication of the issue no. 6, that is, whether the plaintiffs reasonably require the suit premises for their own use and occupation.
- 12.** On such ground, the first appellate court allowed the application under Order XLI Rule 27 of the Code of Civil Procedure, whereby the plaintiffs/respondents sought to bring additional evidence as Aadhaar Card and Death Certificate, in order to prove the addresses of the plaintiffs.
- 13.** Going further, the first appellate court set aside the judgment and decree of the learned trial Judge, granting liberty to the plaintiffs (appellants therein) / present respondents to move the application for local inspection before the learned trial Judge and directing the learned trial Judge, after giving opportunity to the defendants to file objection or additional points, to consider the said application in the light of the discussions made in the appellate court's judgment.
- 14.** The learned trial Judge was further directed to take additional evidence on matters which were set forth by the appellants in their application and also in connection with the report of local inspection,

if submitted, and to pass a judgment afresh taking into consideration the additional evidence, if led by the appellants.

15. Learned counsel appearing for the appellant argues that in the garb of proper and complete adjudication of the lis, the first appellate court ought not, in law, to have permitted the plaintiffs/respondents to fill up their lacunae in the first place by not bringing on record sufficient evidence to show the lack of suitable alternative accommodation of the plaintiffs, by way of local inspection.
16. Learned counsel appearing for the appellant places reliance on the judgments cited by the appellants in the first appellate court in that regard and also relies on the judgment reported at 2023 SCC OnLine SC 196 (Sirajudheen Vs. Zeenath and others). In the said case, the Hon'ble Supreme Court took into account several provisions, including the provisions of remand under Order XLI Rules 23 and 23-A as well as Rule 24 and Order XLI Rule 27, the principle governing production of additional evidence, as well as the powers of the court of appeal under Order XLI Rule 33 of the Code. While explaining the scope of Rules 23 and 23-A, the Hon'ble Supreme Court relied on its previous judgments and observed that a distinction must be borne in mind between diverse powers of the appellate court to pass an order of remand. The scope of remand in terms of Order XLI Rule 23 is extremely limited where the suit was not decided on a preliminary issue. It was held that in the said case, Order XLI Rule 23 was not

available and on what basis the secondary evidence was allowed to be led was not clear. Also, the High Court had not set aside the orders refusing to adduce secondary evidence.

- 17.** The Hon'ble Supreme Court, by further relying on the observations in the matter of Municipal Corporation, Hyderabad Vs. Sunder Singh reported at (2008) 8 SCC 485, observed that Order XLI Rule 23-A of the Code was also not attracted and the High Court had not arrived at a finding that a re-trial was necessary.
- 18.** In the present case as well, it is argued by the present appellant, the first appellate court has not arrived at any finding that the trial court's decree was otherwise liable to be reversed and a re-trial was necessary. Despite taking note of the judgments cited before it, the first appellate court, it is argued, completely overlooked the rigours of sub-section (aa) of Order XLI Rule 27(1) of the Code.
- 19.** It is argued that despite the plaintiffs having failed to establish before the learned first appellate court as to why the plaintiffs were not able, despite due diligence, to bring on record the report of an Advocate Commissioner with regard to the said building, the first appellate court reversed the findings of the learned trial Judge and remanded the matter to the trial court.
- 20.** It is further pointed out by learned counsel for the appellant that the learned first appellate Court, erroneously, observed that in the absence of any case of it being the first default having been made out,

the learned trial Judge was not justified in granting relief to the tenants/appellants under Section 7(4) of the 1997 Act, thereby coming to the conclusion that the decision rendered by the trial court negating the issue of default in payment of rent was not sustainable.

- 21.** It is argued that by granting the remedy of Section 7(4) of the 1997 Act, it was presupposed that the default was the first on the part of the appellant and as such, the said finding of the first appellate court is also erroneous.
- 22.** Both learned counsel for the parties before us concede that the finding of the first appellate court that the learned trial Judge further held that the suit was bad for mis-joinder as well as non-joinder of necessary parties is incorrect.
- 23.** Learned senior counsel appearing for the plaintiffs/respondents argues that in a suit for eviction on the ground of reasonable requirement, it is the duty of the court, till the very last date of passing of an eviction decree, even up to the appellate stage, to ascertain whether actually the plaintiffs require the suit premises for their personal use and occupation.
- 24.** Seen from such perspective, it is argued that the first appellate court was justified in observing that for a proper and complete adjudication of the suit, a local inspection was required to be held in respect of the suit property.

- 25.** It is next argued that in view of the provisions of Order XLI Rule 27(1) (b) of the Code, the first appellate court was justified in remanding the matter, directing a local inspection to be held.
- 26.** Also, the production of the Aadhaar Card and Death Certificate was necessary to ascertain the issue as to whether the plaintiffs live elsewhere and/or in the suit property.
- 27.** Upon careful consideration of the arguments made by the parties, we are unable to accept the contentions of the appellant for the following reasons:
- 28.** It is undoubtedly true that under Order XLI Rule 27(1)(aa), the party seeking to produce additional evidence has to establish that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, even after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed.
- 29.** However, Clause (b) of Order XLI Rule 27(1) categorically empowers the appellate court, if it requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, to allow such evidence or document to be produced or witness to be examined.
- 30.** Clauses (aa) and (b) operate in different spheres. In the event the court allows production of additional evidence without any further finding that such evidence is otherwise required by the appellate court

to pronounce judgment or for other substantial cause, the party seeking to produce additional evidence has to establish that despite exercise of due diligence, such evidence was not within his knowledge or could not, even after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed. However, Clause (b) is a power vested in the appellate court itself to direct any evidence or document to be produced or witness to be examined if such court is of the opinion that it requires any document to be produced or any witness to be examined to enable it to pronounce judgment or any other substantial cause.

- 31.** Learned counsel for the appellant, apart from relying on *Sirajudheen* (supra) also relies on a judgment of a learned Single Judge in the matter of *Basanta Kumar Mehrotra (Dead) through L.Rs. Vs. Ram laxman Janki Virajman Mandir through its...* Sarvarkar, reported at 2017 SCC OnLine All 3018, where the learned Single, while discussing the scope of Order XLI Rule 27, had arrived at the conclusion that the expression “to enable it to pronounce judgment” has been interpreted so as to mean that when the appellate court finds itself is unable to pronounce judgment owing to a lacuna or defect in the evidence as it stands, it may admit additional evidence; but that does not mean that the clause should be resorted to in order to patch up the weakness of the evidence of the unsuccessful party before the trial court, though if the court requires the evidence to do justice between the parties, it

may accept it. The Hon'ble Supreme Court held further that the ability to pronounce a judgment is to be understood as the ability to pronounce a judgment satisfactorily to the mind of the court delivering it. But a mere difficulty in coming to a decision is not sufficient for admission of evidence under this rule.

- 32.** The provision, it was held, does not entitle the appellate court to let in fresh evidence only at the appellate stage where, even without such evidence, it can satisfactorily pronounce judgment in the case.
- 33.** It was further held that it does not entitle the appellate court to let any fresh evidence only for the purposes of pronouncement of judgment in a particular way.
- 34.** Learned counsel for the appellant before us argues, on the strength of such judgment, that even if the first appellate court was of the opinion that it requires further evidence to pronounce judgment, it could not be for pronouncement of the judgment in a particular way in favour of the plaintiffs.
- 35.** It is contended that the plaintiffs/respondents, despite having ample opportunity, failed to seek any local inspection or to produce before the court any evidence as to their current accommodation in the suit building.
- 36.** Thus, the first appellate court, in defiance by the tenor of Order XLI Rule 27(1) (aa), resorted to Clause (b) of the said provision, which was unwarranted in the facts of the present case.

- 37.** However, from the language of Section 6(1)(d) of the 1997 Act, it is evident that the stage at which the ground of eviction has to be established is not the point of time when a suit for eviction is instituted but the juncture at which the final decree is passed by the last court of appeal. By applying the legal fiction that an appeal is a continuation of the suit, thus, it is the last court of appeal which, while passing a decree of eviction on the grounds as stipulated in Section 6, has to satisfy itself that the grounds were available as on that date. Going by such principle, Section 6(1) of the 1997 Act stipulates that no order or decree for the recovery of possession shall be made unless the grounds stipulated therein, including the ground of reasonable requirement, is established, meaning thereby that the ground has to be satisfied even at the date when the final court of appeal passes a decree of eviction under the said provision.
- 38.** We also have to keep in mind that the first appellate court was the last court of facts and was empowered under several provisions, akin to the trial court, to enter into questions of fact as well as questions of law.
- 39.** Apart from Section 107, Order XLI Rule 33 of the Code of Civil Procedure permits the first appellate court to enter into the factual domain which could be entered into by the court of first instance, for satisfying itself that the ground pleaded by the plaintiffs (in the

present case reasonable requirement) was available as on the date of passing of the decree by the first appellate court.

- 40.** On such premise, read in conjunction with Order XLI Rule 27(1)(b) of the Code, it was one of the plausible conclusions for the first appellate court to arrive at the finding that it required a commissioner's report by way of local inspection and the documents regarding residence by way of Aadhaar Card and Death Certificate and other documents sought to be produced by the appellants as additional evidence, to enable it to pronounce judgment.
- 41.** Hence, read comprehensively, we do not find that the view taken by the first appellate court was not one of the plausible views which could be taken.
- 42.** It is well-settled in law that where there is an overlap and/or a conflict between Clauses (b) and (aa) of Order XLI Rule 27(1) of the Code, the provisions of Clause (b) shall override the parameters of Clause (aa), since Clause (b) empowers the court itself to come to a finding that it requires some evidence for proper and complete adjudication of the lis whereas Clause (aa) only puts fetters to the rights of a party to produce additional evidence.
- 43.** Hence, seen from such point of view as well, the first appellate court was justified and took one of the plausible views in observing that for complete and proper adjudication, a local inspection was required to be held for the purpose of ascertaining whether the ground of

reasonable requirement was available to the plaintiffs/respondents as on the last date of passing of the final decree by the first appellate court.

- 44.** Thus, we do not find any illegality in the order of the first appellate court in having remanded the matter to the trial court for the purpose of permitting the plaintiffs to adduce additional evidence in terms of their application for such purpose made in the first appellate court, as well as to make an application for local inspection, upon granting an opportunity to the defendant/appellant to file objection or additional points in respect thereof.
- 45.** However, so far as the finding of the first appellate court is concerned, to the extent that the decision rendered on default in payment of rent by the trial court in favour of the defendants is not sustainable, we are unable to agree with such proposition since the said portion of the impugned judgment of the first appellate court is perverse, being patently contrary to law and the materials on record.
- 46.** Per se, once relief is granted under Section 7(4) of the 1997 Act, it presupposes that the default of rent was the first of such kind on the part of the tenant. Virtually, by its findings, the first appellate court reopened the order passed by the trial court granting relief under Section 7(4) of the 1997 Act to the defendant/appellant, although no challenge was preferred thereto at all.

- 47.** Hence, such portion of the findings of the first appellate court in the impugned judgment is required to be set aside.
- 48.** Also, it is nobody's case that the suit is bad for misjoinder as well as non-joinder of necessary parties. Such finding of the first appellate court was also perverse, being not borne out by the pleadings or evidence of either of the parties. Thus, the said portion of the findings of the first appellate court cannot also be sustained.
- 49.** In view of the above, FMA No. 1765 of 2025 is allowed in part, thereby setting aside the portion of the impugned judgment and decree dated April 25, 2025 passed by the learned Additional District Judge, Second Court, District – South 24 Parganas, in Ejectment Appeal No. 21 of 2023 whereby the said court had held that the decision rendered on issue no. 5 by the trial court is not sustainable. We set aside as well the portion of the impugned judgment of the first appellate court whereby it was held that the suit is misjoinder as well as non-joinder of necessary parties.
- 50.** However, we do not interfere with the rest of the impugned order of remand of the first appellate court and sustain the same.
- 51.** The plaintiffs/respondents will be at liberty to move an application for local inspection before the trial court.
- 52.** At this juncture, it is submitted by counsel that such application has already been filed in the trial court. Accordingly, we extend the time for the defendant/appellant herein to file objection thereto till the next

date of hearing fixed in the trial court after remand. Advance copy of such objection shall be given to the plaintiffs/respondents sufficiently beforehand.

- 53.** The portion of the impugned judgment of the first appellate court whereby the trial court has been directed to take additional evidence of the landlords in terms of the application of the landlords dated July 18, 2024 before the first appellate court and also in connection with the report of the local inspection to be held are also sustained. The learned trial Judge, in consonance with the impugned judgment and decree, shall pass a judgment afresh after taking into consideration such additional evidence if led by the landlords.
- 54.** CAN 1 of 2025 is consequentially disposed of as well.
- 55.** There will be no order as to costs.
- 56.** Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J)