

AD-29
Ct No.16
25.02.2025
TN

SA 7 of 2025

IA No: CAN 1 of 2024

Sri Banarashilal Gupta
Vs.
Dr. (Mrs.) Nirmala Pipara

Mr. Rahul Karmakar,
Ms. Sonia Sharma

....for the appellant

1. The defendant/appellant in a suit for eviction under the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as “the 1956 Act”) has preferred the instant second appeal against a judgment of reversal whereby the learned first appellate court granted a decree of eviction on the ground of reasonable requirement by upsetting the decision of the learned Trial Judge, who had dismissed the suit primarily on the ground of concealment of alternative accommodation by the plaintiff/landlady.
2. Learned counsel for the appellant primarily relies on three grounds.
3. First, it is argued that in view of the deliberate concealment of at least two alternative suitable

accommodations by the plaintiff/landlady which were subsequently brought to light upon the appellant having pleaded about the same, the requirement of the plaintiff/landlady ought not to be considered as “*bona fide*” and, as such, the suit was rightly dismissed by the learned Trial Judge.

4. Secondly, the grounds taken in the plaint vis-à-vis reasonable requirement of the landlady and relied on by the first appellate court were not substantiated in the evidence of the sole witness for the plaintiff, that is, the plaintiff/respondent herself. In her cross-examination, the plaintiff/landlady categorically admitted that she filed the suit because of the alleged nuisance and annoyance created by her tenant, the appellant. Thus, in the teeth of such specific admission as to the suit being for nuisance and annoyance, the ground of reasonable requirement was erroneously held to be established by the first appellate court.
5. Thirdly, learned counsel appearing for the appellant submits that the reasonableness and the suitability of the alternative accommodation, which is a qualitative adjudication and is amenable to challenge in a second appeal, was not properly appreciated by the first appellate court while reversing the judgment and decree of the trial court.

6. Insofar as the first ground is concerned, the remedy under Section 13 of the 1956 Act is not based on equity but is a statutory remedy. In fact, a landlady who would have been entitled otherwise to evict a tenant cannot do so in view of the cloak of protection granted by Section 13 of the 1956 Act. Thus, it is not a matter of a default right to stay on at the tenanted premises that the tenant enjoys in an eviction suit under the said Act but an additional beneficial cloak of protection is given to the tenant. Hence, the adjudication has to be from the view-point of the protection given to the tenant and whether the same is available, and not whether the plaintiff/landlady has a right to evict on equitable considerations.
7. Even if initially all the alternative accommodations of the plaintiff were not disclosed, subsequently those facts came on record and were considered by both the courts below and, as such, it cannot be said that at the time of passing of the final decree, the relevant materials were not before the courts. Moreover, the plaintiff/landlady took a plea that she had acquired the said other properties during pendency of the litigation, which could be a plausible explanation for those not being initially disclosed. In any event, the said ground does not afford a substantial question of law.

8. The second ground taken by the appellant is that the plaintiff/landlady could not establish her ground of reasonable requirement, since she admitted in her cross-examination that she sought eviction due to nuisance and annoyance created by the tenant/appellant.
9. However, we find from the evidence, which is placed before us, that the plaintiff/landlady substantially stood by her plaint case and led evidence on the question of reasonable requirement as well. A stray sentence cannot be culled out of her cross-examination to indicate that the rest of the case made out in the evidence is vitiated. In any event, the nuisance or annoyance value of the acts of the tenant might have been a perception of the landlady but her mere statement that the same prompted her to file the suit does not necessarily restrict the plaintiff's grounds to nuisance and annoyance which is beyond the pleadings and the evidence. Thus, the second ground urged by the appellant does not appeal to us as well.
10. The only question which is to be seriously considered is the third issue raised by the appellant, which is whether the reasonableness and suitability of the alternative accommodation was qualitatively appreciated by the learned Appellate Judge in right perspective.

11. Learned counsel for the appellant cites a judgment of a learned Single Judge of this court in the matter of *Bimalendu Bhusan Das vs. Firm Mitra and Ghosh*, reported at *AIR 1973 Cal 515*. The learned Single Judge, in the said judgment, observed that reasonable requirement within the meaning of Section 13 of the 1956 Act, in the view of the learned Judge, is not merely the subjective reasonableness from the stand point of the landlord, but it means objective reasonableness which should be ascertained by considering a subjective effect on the tenant as well along with the subjective requirement of the landlord. In other words, it was held, by weighing the genuine or real requirement of the landlord with the inconvenience that the tenant will suffer by effect of an eviction decree, reasonableness of the requirement of the landlord should be ascertained for its purpose as a ground for eviction.
12. Although the said judgment of the learned Single Judge has persuasive value, with utmost respect, the “live and let live” theory which was previously adopted at a juncture when there was a scarcity of accommodation, has undergone a sea change by evolution of the law on the subject. Even during the subsistence of 1956 Act, which has subsequently been superseded by its successor statute, the 1997 Act, the established theory which was evolved by

Judge-made law was that the court has to sit in the armchair of the landlord to assess the reasonableness of the requirement of the landlord. The tenant, it is well-settled cannot dictate the requirement of the landlord.

13. In the present case, undoubtedly the evidence indicates that the plaintiff/landlady has other accommodations which are located within the periphery of the city of Kolkata but at a distance from the suit premises itself.
14. The plaintiff/landlady (who is a gynecologist), conspicuously, runs a doctor's chamber on the first floor and a part of the second floor of the self-same building which houses the suit room.
15. The requirement in the present case is for extension of the said chamber for providing accommodation to invalid patients who come to see the landlady, for whom it would be difficult to climb stairs and reach the upper two floors. As such, it is the ground floor of the self-same property which houses the rest of the chamber of the plaintiff/landlady for which the landlady has a specific requirement in the present case.
16. The argument of the tenant/appellant that the landlady could very well run her chamber from the other accommodations in other parts of the Kolkata which are not far off, would not serve the purpose for

which the suit premises is required, which is specifically extension of the existing accommodation of the plaintiff's chamber at the suit premises itself, a part of which is already being used by the landlady for her chamber.

17. Even if the plaintiff/respondent runs doctor's chambers in other places of Kolkata, the requirement for extension of the already-existing chamber at the suit building cannot be met by such other chambers, located at a distance from the suit premises. It is the plaintiff's choice as to which places she would like to have chambers in and such freedom of choice cannot be curtailed according to the whims of the tenant.
18. Thus, we find no infirmity in the conclusion of the learned first appellate court as regards the suit premises being genuinely required by the plaintiff/landlady.
19. It is well-settled that the second appellate court shall not enter into a re-appreciation of evidence or a fact-finding enquiry as to the factual components of the requirement.
20. In such view of the matter, we do not find the involvement of any substantial question of law in the present second appeal.
21. Accordingly, SA No. 7 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. IA No: CAN 1 of 2024 is dismissed as well accordingly.

22. There will be no order as to costs.
23. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)