

AD-24
Ct No.16
08.04.2025
TN

SAT 208 of 2024
IA No: CAN 1 of 2024

Beleghata Nabamilan Club
Vs.
Smt. Purnima Kunda and another

Mr. Aniruddha Chatterjee, Ld. Sr. Adv.,
Mr. Abir Lal Chakraborti

....for the appellant

Mr. Probal Mukherjee, Ld. Sr. Adv.,
Mr. Kaushik Dey,
Mr. Soumen Banerjee,
Mr. Debdipto Banerjee

....for the respondents

1. Learned senior counsel appearing for the appellant submits that the deficit court fees were deposited on October 04, 2024.
2. The office shall give a revised report in that regard.
3. Leave is granted to the learned Advocate-on-record for the appellant to carry out the necessary corrections to the surname of the first respondent in the memorandum of appeal during the course of the day.
4. The present second appeal has been preferred against a judgment of affirmance passed in an eviction suit filed under the West Bengal Premises Tenancy Act, 1997.
5. Both the learned courts below passed a decree of eviction against the defendant/appellant on the ground of reasonable requirement of the plaintiffs/respondents.

6. The suit premises is comprised of a single room on the ground floor of the concerned premises, measuring about 16 ft. 9 inches x 8 ft. 10 inches, having a height of 7 ft. 10 inches, as apparent from the Commissioner's report which was filed in the court below and annexed to the stay application filed in connection with the present appeal.
7. From the Commissioner's report and from the admission of the plaintiff's witness, it is evident that there is a difference in height of about 3 ft. 2 inches between the footpath, which is above the suit room, and the suit room itself. Also, in front of the room, there are 5 steps from the pedestrian pathway to the floor of the room.
8. Learned senior counsel appearing for the appellant argues that it is evident from the above facts that the purported requirement of the plaintiffs is a ruse for obtaining a decree of eviction on the ground of personal requirement whereas it is not feasible, architecturally or otherwise, to convert the said room into a garage or use it for such purpose.
9. It is contended that the steep gradient between the adjacent footpath and the suit room is itself a deterrent to user of the said room as a garage.
10. That apart, it is pointed out from the evidence of the plaintiffs' witnesses that admittedly there is an open space in the suit building, which is being rented out

temporarily to a third party for user as a car parking space. As such, the ground of reasonable requirement, it is argued, should also fail on account of availability of a suitable alternative accommodation. Apart from the fact that the plaintiffs/respondents have not been shown to own any car at present, the above factors clearly lead to patent perversity, which is argued to be a substantial question of law for the purpose of admission of the second appeal.

11. However, upon a careful perusal of the judgments of the courts below and the documents cited by learned senior counsel for the appellant, including the Commissioner's report and the oral evidence of the parties, we are of the opinion that the grounds sought to be raised is at best a mixed question of fact and law and cannot be labelled outright as a patent or palpable perversity requiring interference by the Second Appellate Court.
12. Both the courts below have entered into the questions raised before this court and upon an independent assessment have arrived at the finding that the suit room can be used as a garage.
13. The trial court found, *inter alia*, that the plaintiffs have got the option to make adjustment unless it is shown by the defendant that such adjustments are totally impossible due to some structural constraint. That apart, it was found, the suggestion that the

plaintiffs can conveniently park their car in the open space inside the premises could not be accepted. The learned Trial Judge further observed that the structure of the suit property indicates that the same was built to park car and neither court nor the defendant can suggest that the plaintiffs should park their car in open space and that there is no evidence as to the incapacity of the plaintiffs to buy a car or maintain the same.

14. The learned First Appellate Judge found on the said issue that although it appears from the Commissioner's report that the floor of the suit room is 03 ft. 02 inches below the footpath level and at the front of the room there are 05 steps from the pedestrian path to the floor of the room, the Commissioner also mentioned that he ascertained that no obstruction would be caused for thoroughfare of a car from the road to the tenanted room (garage) due to construction of the shed. It was found by the First Appellate Court that it appears from the report of the learned Commissioner that the suit room can be used as a garage. The First Appellate Court also took into account that an open space cannot be a substitute of a covered garage, which the plaintiffs/respondents own but is in the possession of the defendant/appellant. The open space, it was observed, can be used as a parking space temporarily

but cannot be used as a permanent place for keeping the car.

15. We do not find any reason for interference with the aforementioned concurrent findings of fact by both the courts below on such count.
16. First, it is well-settled that the court has to sit in the armchair of the landlord while assessing the requirement of the landlord. Secondly, by use of certain small architectural measures such as creation of a ramp to cover the gradient upon removal of the staircase, it is not altogether impossible to use the suit room as a garage.
17. In fact, the Second Appellate Court does not have even the liberty to enter into such factual aspect of the matter in the teeth of the concurrent findings of fact of both the courts below.
18. Insofar as the availability of an alternative open space is concerned, we are ad idem with the opinion of the learned First Appellate Court that the open space cannot be a substitute for a covered garage. The argument of the appellant that the plaintiffs had not prayed for eviction on the ground of building and rebuilding does not hold good since the mere change of gradient is not of such a stature that the plaintiffs had to specifically take a ground of building and rebuilding for the purpose of conversion of the suit room to a garage.

19. As such, in view of the above findings, we are of the considered opinion that no substantial question of law has been made out by the appellant sufficient to admit the present second appeal.
20. Accordingly, SAT 208 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
21. Consequentially, IA No: CAN 1 of 2024 stands dismissed as well.
22. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)