

05.03.2025
sayandeep
Sl. No. 02
Ct. No. 01

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

SAT 03 of 2025

With

CAN 1 of 2025

Amar Krishna Chowdhury

-Versus-

Sri Ganesh Tripathi

Dr. Pabitra Pal Chowdhury

Mr. Debanshu Modak

..... for the appellant

The suit for eviction on the ground of default and reasonable requirement was decreed by the trial Court and such decree is affirmed by the first appellate Court.

The plaintiff/respondent filed a suit for eviction under Section 6 of the West Bengal Premises Tenancy Act, 1997 basically on the ground of reasonable requirement that a son has no alternative suitable accommodation to run the business. Interestingly, after filing the written statement and the deposition on the part of the plaintiff was concluded, the attempt was made to procrastinate the proceeding which resulted into an order passed by the trial Court imposing costs as a condition precedent. It further appears that an affidavit as to examination-in-chief was filed by the sister of the present appellant because of the debility of the appellant which was turned down by the trial Court and the said order was assailed before the High Court. The High Court, however, observed that the necessity of giving evidence by the defendant/appellant himself cannot be ruled out and permitted him to adduce evidence with the direction

upon the trial Court to provide all assistance to him in this regard.

Reverting to the core issue since the costs which was imposed could not be deposited, the trial Court refused to accept the examination-in-chief filed by the appellant. The said order was assailed before the High Court under Article 227 of the Constitution of India but the revisional application was dismissed thereby the order stood affirmed. The trial Court proceeded to decide the suit on the basis of the evidence adduced by the plaintiff's witnesses and held that the plaintiff reasonably requires the suit premises and decreed the suit. The appellate Court also affirmed the said decree which is assailed in the instant appeal under Section 100 of the Code of Civil Procedure.

Learned counsel appearing for the appellant vociferously submits that both the Courts below have proceeded on the wrong premise that the second witness of the plaintiff has not deposed that the statements made in the evidence is false; rather it would appear from the cross-examination that the said witness clearly stated that whatever deposition he has made, are false. Though it is sought to be contended that the defendant/appellant being differently-abled person, earning his livelihood from the suit premises to cater the need of her spinster sister, the Court ought to have taken into account the aforesaid aspect.

So far as the second point is concerned, we are not impressed for the reason that the legislatures never incorporated the concept of comparative hardship within the circumference of the West Bengal Premises Tenancy Act, 1997. Though the aforesaid notions/ concept have been recognized in various others State legislations but the moment the legislation does not contain the express provisions,

the same cannot be taken as a concept to be brought into the said provision.

So far as the first plea is concerned, to which much emphasis is put upon, we noticed from the certified copy of the cross-examination of the second witness where we do not find the word “not” to have been incorporated in the suggestion part. Both the Courts have proceeded that the judicial officer have incorporated the word “not” which is conspicuously not reflected in the certified copy and in order to determine such point, one of the safest course which the Court should adopt, is to call for the record and find therefrom whether such word is incorporated or not. The discrepancy in the certified copy with the original record can be easily eradicated as the words or the sentences appearing from the record shall have primacy over the certified copy.

Be that as it may, we do not find that calling for the record is inevitable as the tenet of the evidence does not suggest any such admission having made by the said second witness. A mere procedural omission cannot stand as a barrier against the deponent, if the Court from the entire evidence can reasonably arrive at the conclusion that there appears to be a mistake which cannot be said to be fatal. It is the specific stand of the second witness that the suit premises is required for starting a business and, therefore, such statement has to be read conjointly with the other statements.

We are conscious that in order to succeed under Section 6 of the said Act on the ground of reasonable requirement, the landlord has to prove that he is not in possession of reasonable suitable accommodation apart from proving that the suit premises is reasonably required by him/them. It would appear from the cross-examination that the suggestion was made that the statement made in

paragraph 3, 4 and 5 of the affidavit as to examination-in-chief are false which is categorically denied by the said witness. The moment the said witness denied that the depositions recorded in the affidavit as to examination-in-chief is false, it is inconceivable that in the later part of the depositions, he would say that he has deposed falsely that he had no other suitable accommodation within the area of SMC. The aforesaid notion can further be strengthened from the answer given in the cross-examination immediately thereafter, wherein suggestion was made that the statement made in paragraph 6 of the affidavit of the examination-in-chief is false which is denied by him. If the Court finds a consistent stand taken by the said witness in refuting the suggestions made to it that whatever has been stated in the affidavit as to examination-in-chief is not false, it is inconceivable and improbable that he would contend that the statement with regard to the alternative suitable accommodation is false.

We thus do not find any substantial question of law involved in the instant appeal.

The appeal is thus dismissed without any order as to costs.

(Harish Tandon, J.)

(Apurba Sinha Ray, J.)