

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

SA/296/2002

IA NO: CAN/1/2001(Old No: CAN/9730/2001),

CAN/3/2004 (Old No: CAN/7015/2004),

CAN/4/2005 (Old No: CAN/2079/2005),

CAN/5/2005 (Old No: CAN/4290/2005),

CAN/6/2005 (Old No: CAN/5038/2005),

CAN/11/2025

CAN/12/2026

Sanjay Agarwal & Ors.

Vs.

Rita Deb

For the Appellants : Mr. Partha Pratim Roy, Adv.
Mr. S. K. Bhattacharya, Adv.
Mr. Sandip Das, Adv.

For the Respondent : Mr. Uttiya Ray, Adv.
Mr. A. Maiti , Adv.

Hearing concluded on : 19.02.2026

Judgment on : 24.02.2026

Sugato Majumdar, J :

The instant appeal is preferred against the judgment and decree in appeal passed by the Civil Judge, Senior Division, 2nd Court (Additional), Burdwan dated 27th June, 2001 wherein the Appellate Court upheld the judgment and decree passed by the Trial Court and dismissed the appeal.

The original Title Suit No. 86 of 1992 was filed for eviction of tenant and recovery of possession. One Khealiram Agarwal was the original tenant in respect of one room on the ground floor of the suit premises where the said Khealiram Agarwal used to run grocery shop. The suit premises was very old and dilapidated and required immediate repairing. That apart, the Plaintiffs/Respondent also required the suit premises for own use and occupation after building and rebuilding the same. The original tenant was asked to vacate the premises and the notice was issued under which on expiry of the month of January 1992, tenancy became determined. It was the plea of the Plaintiffs/Respondent that the husband of the Plaintiff No.1 was about to retire and hence needed the suit premises for running business. Postal article, namely, the said notice returned with endorsement “not claimed”. It was contended in the plaint that “not claimed” is a good service and in view of the service of the notice, the tenancy got determined from 1st February, 1992.

The Appellant/Defendants who are the legal heirs of the original tenant contested the suit by filing written statement denying the reasonableness of requirement of the Respondent/Plaintiffs. According to the Appellant/Defendants, there is sufficient place to accommodate the Plaintiff/Respondents’ family members. It was further pleaded that there was no need for building or rebuilding. According to the Appellant/Defendants, the suit was liable to be dismissed.

On the basis of rival pleadings, the following issues were framed:

1. Have the Plaintiffs any causes of action?
2. Is the suit maintainable in its present form?

3. Is the notice to quit valid, legal and sufficient? If so is the same duly served?
4. Are the Defendants defaulters?
5. Do the Plaintiffs reasonably require the suit premises for their personal use and occupation?
6. Is there any other alternative suitable accommodation of the Plaintiffs for their use than the suit premises?
7. Are the Plaintiffs entitled to get a decree as prayed for?
8. To what other relief, if any are the Plaintiffs entitled to?

The Trial Court decided all the issues in favour of the Respondent/Plaintiffs and decreed the suit and passed the decree of eviction and for recovery of possession. On being aggrieved and dissatisfied, an appeal was preferred by the Appellant/Defendants.

Both the Courts concurred that ejectment notice was properly served. The Appellate Court did not interfere with the finding of the Trial Court that the premises required reasonably by the landlord.

The Appellant/Defendants also challenged the judgment decree introducing a new ground under the Order XLI Rule 2 of CPC to the effect that the Defendant No. 7 expired on 08/04/1996 and in spite of that decree was passed on 31/05/2000 against the dead person which is a nullity.

The First Appellate Court, as stated above, confirmed the judgment and decree passed by the Trial Court in terms of the judgment and decree of the Appellate Court dated 27/06/2001. Against this judgment and decree the present

appeal was filed. At the time of admission of the appeal, the following three questions of law were framed:

“XIV. For that in the absence of any evidence regarding the date of retirement of the husband of landlady, both the Courts below ought to dismissed the suit on the ground that requirement of the Plaintiff being not immediate is not reasonable and *bone fide*.

XV. For that in absence of any finding to the effect that the service of the ejectment notice by registered post was not claimed inspite of several tenders to the documents the Learned Courts below ought to have held that presumption regarding service cannot be drawn.

XVI. For that judgment and decree of the Learned Court below are otherwise bad in law.”

Additional substantial question of law may be framed as submitted by the Learned Counsels as follow:

“XVII. Whether the First Appellate Court erred in law in upholding the judgment and decree wherein the Defendant No. 7 who had expired during pendency of this suit was not substituted by any legal heirs.

XVIII. Whether the Appellant Court, thus, committed any error in deciding applicability of the provision of Order XXII Rule 7 of the Code of Civil Procedure (CPC), 1908.”

At the time of institution of the suit, the husband of the Plaintiff was about to retire in anticipation of voluntary retirement, he was looking for a room for running business. The Learned Counsel for the Appellant argued that future requirement is no requirement.

Per contra, the Learned Counsel for the Respondent/Plaintiffs submitted that a future requirement if reasonably be foreseen is definitely comes within ambit of reasonably requirement. He supported his submission and he referred to **Mono Ranjan Dasgupta Vs. Suchitra Ganguly & Ors. [MANU/WB/0004/1989]**. In **Mono Ranjan Dasgupta's** case the Division Bench of this Court held that the requirement even though not immediately existing may still be good enough for the purpose of Section 13(1)(ff), if it is certain to arise in reasonably forceable future. When the suit was filed, the husband of Plaintiff was about to retire. After lapse of couple of decades that specific requirement is possibly no longer in existence. However, need of the family can never be spoiled specially when it is only one room at ground floor is in question. What "reasonable requirement" contemplates is reasonableness of claim; not fantastic, exaggerated and fabulous claim which is not in present in this case. Therefore, this Court is of opinion that the Trial Court and the First Appellate Court did not commit any error in coming to the conclusion that the premises was reasonably required.

It was argued that the decree against the dead person is a nullity. Suit was filed against all the legal heirs of the original tenant including the widow. On death of widow, the suit did not abate because other legal heirs were on record. The argument that the suit was passed against dead person is a baseless and misconceived one. Since all the legal heirs of deceased were on record the suit did not abate and the same was not contrary to passing a joint decree. In **Suresh**

Kumar Kohli Vs. Rakesh Jain & Anr. [(2018) 6 SCC 708], the Supreme Court of India observed:

“24. We are of the view that in the light of *H.C. Pandey* [*H.C. Pandey v. G.C. Paul*, (1989) 3 SCC 77], the situation is very clear that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenants is occupation of all the joint tenants. It is not necessary for the landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not. It is sufficient for the landlord to implead either of those persons who are occupying the property, as party. There may be a case where landlord is not aware of all the legal heirs of the deceased tenant and impleading only those heirs who are in occupation of the property is sufficient for the purpose of filing of eviction petition. An eviction petition against one of the joint tenants is sufficient against all the joint tenants and all joint tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs. Thus, the plea of the tenants on this count must fail.”

In the instance case, all the legal heirs of the original tenant were made party. One of them, being the widow, expired leaving the others in the array of the parties. Therefore, it is wrong to say that the suit must fail on death of one of them, while the others are present.

It was argued that ejectment notice had not been served. Postal article returned with endorsement not cleaned. In **Madan & Company Vs. Wazir Jaivir Chand [AIR 1989 SCC 630]** which arose under the Jammu & Kashmir Houses and Shops Rent Control Act, 1966 and where the issue before the Supreme

Court of India was proper service of notice terminating tenancy which was sent through registered post on correct address. It was held that even if the letter was rendered for non-availability of addressee. Notice is deemed to have been served and is a valid notice. The following observation of the Supreme Court of India is relevant:

“The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal postal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not

possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant.”

Subsequently, in **Subhas C. Mitra [2004(2) CHN 679]**, ejectment notice returned with postal endorsement “not claimed” and question came up for consideration of the Hon’ble High Court at Calcutta is whether the notice was properly served or postal endorsement “not claimed” can be treated as a good service. The Hon’ble Court in this case observed:

“The Tenant was connected with the tenancy and it could not be presumed that he had never visited the suit premises when admittedly he was running a Boarding house in the suit premises, as was pleaded in the written statement and in the reply to the first notice and as well as in the evidence of the DW-1, given by his son. Therefore, the action of the postal authority, which is done in the usual course of business, is to be accepted as correct unless it is otherwise proved by the tenant to show that he had no occasion to be in the premises during that period or that he had left the suit premises altogether. When it is not recorded on the postal endorsement by the postal authority that the tenant was absent or has left, we cannot presume that the tenant was absent from the suit premises during the period when the notice was tendered or had left the same.”

There is no plea that recently by the time of service of notice the tenant was an absentee one. Therefore, for discussions stated above, this Court is of opinion that notice had been duly served.

On perusal the judgments passed by the Trial Court as well as the First Appellate Court, this Court is of opinion that both of them did not commit any error in law in passing impugned judgments.

Concurrent findings of both the Courts demand no interference and this appeal stands dismissed accordingly.

The Appellants/Defendants are directed to deliver the possession within sixty days from drawing up this appellate decree, in case of default of which, execution proceeding before the Trial Court may be initiated and the Appellant/Defendants shall be liable to pay mesne-profit, for which liberty is given to the Respondent/Plaintiffs to institute the separate suit.

The instant appeal is accordingly disposed of along with all pending applications.

Trial Court Records may be returned.

(Sugato Majumdar, J.)