

AD-35
Ct No.16
07.04.2026
TN

SAT 46 of 2026
IA No: CAN 1 of 2026

Poly Ghosh and others
Vs.
Smt. Jayashree Gurey @ Goure

Mr. Sharanya Chatterjee,
Mr. Subhajit Barman

.....for the appellants

Mr. Tarak Nath Halder

....for the respondent

1. The present second appeal has been preferred against the judgment of the First Appellate Court whereby the learned First Appellate Judge reversed the decision of the Trial Court dismissing the plaintiff/respondent's eviction suit and granted a decree of eviction primarily on the ground of reasonable requirement under the West Bengal Premises Tenancy Act, 1997.
2. Learned counsel appearing for the appellants argues that the case as made out in the plaint contemplated requirement of two rooms for the study of the daughters of the original plaintiff, since deceased.
3. However, the learned First Appellate Judge came to the finding that the daughters of the original plaintiff, whose wife is now the plaintiff after his demise, have since been married, which is a deviation from the original plaint case made out. It is submitted that the factum of marriage of the daughters has not been disclosed in the plaint, by way of amendment or otherwise. In the absence of any proof that each of

the said married daughters (who reside elsewhere in their respective matrimonial homes) require a room, the learned Appellate Judge erred in law in granting the prayer of reasonable requirement for such daughters.

4. It is further submitted that one room was allotted as per the plaint case for the purported business of the present plaintiff, that is, the wife of the original plaintiff, which business has long been discontinued. Thus, the purported requirement of the plaintiff on such ground was also erroneously allowed by the learned Appellate Judge.
5. It is next contended that the learned First Appellate Judge failed to look into the Commissioner's report from which it is evident that room no. 7, which is one of the seven rooms available to the plaintiff, is lying unused with refused articles and accumulation of dust therein. The proportion of the said room, it is submitted, is 9 ft.x11 ft. The fact that the said room is not being used despite being available goes on to show that the plaint case of requirement was fictitious.
6. Upon a perusal of the judgments of both the courts below, we find that the plaint case pleaded seven rooms to be required by the original plaintiff. One was apparently for the habitation of the plaintiff, in whose absence, for his wife, the present plaintiff/respondent. Two rooms were pleaded to be required for the daughters of the plaintiff, designated for their study. That apart, one room was required purportedly for the

business of the present plaintiff and one for the son of the plaintiff. There was another room required for the servants of the plaintiff.

7. Insofar as the Commissioner's report is concerned, the same was discussed by both the courts and it transpired that even in the opinion of the Trial Court, from the Commissioner's report it was reflected that all the seven rooms in occupation of the plaintiff were situated on the second floor of the suit building.
8. Out of those, three were found to be spacious, measuring more than 100 sq. ft. which were held by the learned Trial Judge to be ideal for habitation.
9. Thus, fact remains that the plaintiff, if the plaint case of requirement is to be believed, required at least the three rooms which comprise the suit premises, if not more.
10. Insofar as the argument of the appellants regarding the married daughters having no requirement for two separate rooms is concerned, we are unable to accept the same. The quality of requirement for two grown up daughters does not alter with the factum of their marriage simpliciter. Even married daughters are equally entitled to a room of their own when they come to visit their paternal house. Even otherwise, married daughters also have a right as co-owners of the parental property. If two daughters come simultaneously, they would, in any event, require the two rooms.

11. With regard to the business of the wife, the mere fact that there was a previous business which was discontinued cannot deter the said business woman from requiring a room for her business since it may very well be that due to want of a room for such purpose on the ground floor, the business cannot be run.
12. It is well-settled that in order to establish personal requirement in an eviction suit on the ground of business, no proof of running business *in praesenti* is required to be furnished by the landlord.
13. Insofar as non-examination of the “servants” or any documentary proof of the existence of the “servants” is concerned, it is within common knowledge that a family unit may very well require a domestic help for the purpose of catering to its daily needs, for which no separate proof was required to be furnished. The original plaintiff, in his evidence, clearly mentioned about a male and a female domestic help serving his family. It is not necessary for the domestic helps themselves to come and depose if the plaintiff corroborates the plaint case in his deposition. There is no cogent evidence to rebut such fact.
14. It is settled law that in a suit for eviction on the ground of personal requirement, the requirement of the landlords at the stage of passing of final decree by the final court of appeal has to be considered. Hence, in view of the marriage of the two daughters of the plaintiff/respondent being an admitted position and

since such fact does not alter the requirement on their count, the plaint need not have been amended on such count. The First Appellate Court was well within its jurisdiction to consider the requirement of the landlord till passing of its decree. The mere mention of requirement of the daughters for their study lost relevance upon the subsequent coming of age and marriage of the said daughters. However, even otherwise it is trite that the grown-up and married daughters are equally entitled to separate rooms to stay at when they come to their parental home.

15. Thus, we do not find any substantial error of law having been committed by the Appellate Court in decreeing the eviction suit by reversing the judgment of the Trial Court.
16. That apart, the learned First Appellate Judge rightly proceeded on the well-settled premise that the Court has to sit in the armchair of the landlord to decide as to what is his/her requirement and the requirement of the landlord cannot be determined by the tenant.
17. In any event, the location of the present accommodation of the landlord at the second floor of the premises also rules out user of any of the said rooms for the purpose of the respondent's business in any event.
18. In view of the above, we find that the questions sought to be raised by the appellants, even if those were to be accepted, range within the domain of pure questions

of fact and there is no element of substantial question of law involved in the present second appeal.

19. Thus, SAT 46 of 2026 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.
20. Consequentially, CAN 1 of 2026 stands dismissed as well.
21. There will be no order as to costs.
22. 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.)

(Supratim Bhattacharya, J.)