

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

Present:

The Hon'ble Justice Sugato Majumdar

SA/277/2013

SUDIPTA GHOSH

VS

BISWAJIT PRADHAN

For the Appellant : Mr. Anirban Mitra, Adv.
Mr. Amit Halder, Adv.
Mr. Amit Roy, Adv.
Ms. Madhumita Sadhukhan, Adv.

For the Respondent : Mr. Sandipan Pal, Adv.
Mr. Niladri Mondal, Adv.

Hearing concluded on : 09.06.2026

Judgment on : 18.06.2026

Sugato Majumdar, J. :

The instant Second Appeal was filed against the judgment and decree passed by the Learned Additional District Judge, Fast Track Court, Sealdah, dated 30/08/2012 in Title Appeal No. 54 of 2009 whereby the Learned Additional District Judge, Fast Track Court, Sealdah, being the First Appellate Court upheld the judgment and decree dated 21.08.2009 passed by the Learned Additional Judge, Junior Division at Sealdah.

The original suit was for ejectment of the tenant. The suit property comprises of three bed rooms, one kitchen with user bath and privy on the ground floor of the premises no. 23/A, Gope Lane, Kolkata – 700014. Originally one Lata Pradhan, since

deceased, had been inducted as tenant by the then landlady Radha Rani Dasi, in the suit property on payment of monthly rent of Rs.100/- per month, payable according to the English Calendar months. On death of the original tenant and the landlord their respective heirs stepped into the shoes. The original Plaintiff and the Defendant were the legal heirs of the original landlord and the tenant.

Tenancy was determined on the grounds that the original Defendant defaulted in payment of rent since the month of March, 2000; and that the original Plaintiff reasonably required the suit premises for his own use and occupation as well as for use and occupation of the members of the family. The family of the original Plaintiff consisted of the Plaintiff himself, his son (the present Appellant), daughter-in-law and one grand-daughter. Besides, the original Plaintiff had three married daughters. The original Plaintiff required at least four bed-rooms for family members and also for the married daughters who occasionally visit their parental home. The suit property was also required for the business purpose of his unemployed son, being the Appellant herein. The original Plaintiff, being a retired man used to run a small grocery shop in the suit building. The unemployed son, being the present Appellant wanted to run a grocery shop. The original Plaintiff had no other suitable accommodation to run business. These apart, the original Plaintiff, because of old age wanted to stay at the ground floor, as doctor advised him not to climb stairs.

In spite of receiving the notice to quit, the Respondent who was the Defendant in the suit, did not vacate the suit property. Hence, the original Plaintiff filed the original suit being Ejectment Case No. 224 of 2005 in the Trial Court praying for eviction along with other prayers.

The suit was contested by the Respondent/Tenant filing written statement, denying all the allegations. Apart from challenging the maintainability of the suit it

was averred that the notice to quit was illegal. The original landlord Radha Rai Dasi filed the Title Suit No. 103 of 1980 against the Original tenant but the same had been dismissed for non-prosecution. The original landlord inducted another tenant on the first floor of the building for a period of three years. Therefore, the ground taken for reasonable requirement was false and baseless. The main entrance of the suit building is very narrow. The original plaintiff occupied a portion of the suit building and fixed shutter, let out to the Respondent which was inconvenient. The description of the suit property was incorrect. The Respondent used to deposit rent with the Rent Controller month by month till January, 2005. Denying all the allegations and contentions, the Respondent pleaded that the suit should be dismissed.

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

1. *Is the instant ejectment case maintainable in its present form and in law?*
2. *Is the notice to quit valid, sufficient and operative in the eye of law and has the same been duly served?*
3. *Are the tenant/opposite parties defaulter in payment of rent?*
4. *Does the petitioner reasonably require the suit property for his own use and occupation and the use and occupation of his family members?*
5. *Is the petitioner entitled to get an order/decreed as prayed for?*
6. *What other reliefs is the petitioner entitled to?*

The Learned Trial Court decided the Issue No. 1, 2 in favour of the original Plaintiff but decided the Issue No. 3 against the original Plaintiff holding that there was no default in payment of rent.

So far as the Issue No. 4 is concerned, the Learned Trial Court held that no steps had been taken by the original Plaintiff for setting up a commercial unit; no application was made before the Corporation for conversion of the suit premises into a commercial unit. According to the Learned Trial Court came to the conclusion that reasonable requirement of the suit property for running grocery shop could not be regarded as a genuine plea. Accordingly the Issue No. 4, 5 and 6 was decided against the original Plaintiff and the suit was dismissed.

The Learned First Appellate Court affirmed the judgment and decree passed by the Learned Trial Court holding that there was no bona-fide requirement of the landlord.

On being aggrieved and dissatisfied, the instant appeal was preferred.

The Division Bench framed the following substantial question of law for hearing the Appeal:-

- I. Whether the learned courts below applied the correct principle of law in taking into account the alleged accommodation of the plaintiff-landlord on the first and second floor, in view of such accommodation being inappropriate to meet the requirement of ground floor rooms of the landlord for the purpose of garage and grocery shop?
- II. Whether the learned courts below adopted an erroneous legal approach in dictating to the landlord the mode of user of his own premises by refusing to grant eviction on the basis of the

observation that the landlord could convert his existing bedrooms to grocery shop?

The main thrust of argument of the Learned Counsel for the Appellant was that both the courts committed serious error in law in disbelieving the case of the Appellant and dictating the need to a landlord. Referring to different decisions of the Supreme Court of India and of this Court, the Learned Counsel argued that it is settled principle of law that the landlord is the best judge of his requirement; court cannot dictate the same. According to the Learned Counsel, both the judgments were decided on wrong principles of law demanding interference.

Per contra, the Learned Counsel for the Respondent argued that concurrent findings of two courts should not be interfered in second appeal. Both the court appreciated evidence and came to a correct conclusion holding the requirement as false and unsustainable.

I have heard rival submissions.

The Learned Trial Court came to the conclusion that the Appellants failed to prove reasonable requirement of the suit premises. Rather, there is no such need; the claim was false. Requirements pleaded in the plaint were two folds – residential and commercial. So far as the residential requirements are concerned, the Learned Trial Judge observed that the original Plaintiff failed to produce any medical certificate that he and his wife had arthritis disabling them to climb stairs. On this ground, the requirement of the ground floor accommodation was disbelieved by the Learned Trial Judge. Secondly, requirement of ground floor for garage was also disbelieved on the ground that the ground floor is situated in a narrow bye-lane for which it cannot be used as garage unless the whole building be demolished and reconstructed. The Learned Trial Judge observed there was no evidence that any

application before any authority for conversion of the residential portion into a garage accommodation

Thirdly, it was noted that the first floor was let out to one Ramji Lal Agarwal. Had there been a need of space, the first floor would not have been let out to the said tenant. Fourthly, it was observed that the granddaughter was six years old; she must be sleeping with her parents; though in future such need may arise, the need was not a too proximate. Yet the Learned Trial Judge held the claim as a reasonable one. Fifthly, the Learned Trial Judge observed that a room measuring less than hundred square feet is not fit for bed room. In observing such, the Learned Trial Judge considered the Report of the Advocate Commissioner. The Learned Trial Judge considered the fact that there was another licensee occupying another part of the premises. It was concluded that residential requirement was not a genuine one.

So far as the commercial requirement of running shop by the present Appellant is concerned, it was observed that the original Plaintiff did not take any step for setting up a commercial unit, though noted that there was an existing shop room, ran by the original Plaintiff. It was also noted that PW-1 did not apply for conversion of the business premises since the suit property had not been vacated. Since no step had been taken to convert the premises into a commercial one, the Learned Trial Judge refused to believe the claim that the ground floor was reasonably required for running shop. In the judgment itself, the Learned Trial Judge considered extensively the Report of the Advocate Commissioner, made strenuous attempt to conclude that there was no reasonable requirement, as claimed.

The Learned First Appellate Court observed that the original Plaintiff was in possession of seven rooms on the second floor but there was total concealment of such fact before the Court. It was also observed that since 1975, the original Plaintiff and the Appellant had been running a grocery shop. If the Appellant intended to

start any business of grocery shop, one bed room on the ground floor could be converted into a shop room. Absence of medical evidence had also been considered. The Learned First Appellate Court also concluded that there was no *bona fide* reasonable requirement of the landlord and upheld the judgement and decree of the Trial Court.

Before further discussions, it is necessary to look into some authorities on the issue of reasonable requirement. In **Bega Begum v. Abdul Ahad Khan**, [(1979) 1 SCC 273] the Supreme Court of India observed:

“13. Moreover, Section 11(h) of the Act uses the words “reasonable requirement” which undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term “need” or “requirement” should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts prevalent in other States in the country. This Court has considered the import of the word “requirement” and pointed out that it merely connotes that there should be an element of need.”

In **Prativa Devi vs T.V. Krishnan** [(1996) 5 SCC 353], the Hon’ble Supreme Court of India held:

"The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.... There is no law which deprives the landlord of the beneficial enjoyment of his property."

In Ragavendra Kumar v. Firm Prem Machinery & Co. [2000(1) SCC 679]

it was held by the Hon'ble Supreme Court of India:

"It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. (See: *Prativa Devi (Smt.) v. T.V. Krishnan*, [(1996)5 SCC 353]. In the case in hand the plaintiff-landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted."

In **M.L. Prabhakar v. Rajiv Singal, (2001) 2 SCC 355**, the Hon'ble Supreme Court of India held :

"If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself tightly into lesser premises protecting the tenant's occupancy."

Reference may be made to the observation of the Supreme Court of India in **Deep Chandra Juneja v. Lajwanti Kathuria, [(2008) 8 SCC 497]:**

"**40.** In *Gaya Prasad v. Pradeep Srivastava* [(2001) 2 SCC 604] this Court held that the need of the landlord is to be seen on the date of application for release. In *Prativa Devi v. T.V. Krishnan* [(1996) 5 SCC 353] it was held that the landlord is the best judge of his requirement and the courts have no concern to dictate the landlord as to how and in what manner he should live. In *Rishi Kumar Govil v. Maqsoodan* [(2007) 4 SCC 465] this Court while dealing with the provisions of Section 21(1)(a) of the U.P. Urban Buildings

(Regulation of Letting, Rent and Eviction) Act, 1972 and Rule 16 of the U.P.

Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, held

that the bona fide personal need of the landlord is a question of fact and

should not be normally interfered with.”

Coming to the case in hand, the Report of the Advocate Commissioner (Ext. 9) shows that the Appellant is in occupation of the 2nd floor. The second floor has two full-fledged bed rooms measuring about 140 sq. ft. and 100 sq. ft. respectively. These apart, there is one small room measuring about 80 sq. ft. one kitchen measuring about 15 sq. ft. one room on the mezzanine floor measuring about 18 sq. ft. which was used as puja room and another very small block situated between the first and second floor, used as store room. These apart, there is another covered space measuring about 140 sq. ft. running along one bed room and kitchen used for egress and ingress and also used as drawing room. It can be said that there are two bed rooms available for living. At the time of the institution of the suit family members were the original plaintiff, his wife, his son, daughter-in-law and the granddaughter. This apart, the three married daughters used to visit their parental home occasionally and rooms were required for them. Ground floor room was required as the original plaintiff and his wife had arthritis making it difficult to climb upstairs. The Learned Trial Judge disbelieved this contention on the ground that no medical document was produced. This is a very wrong approach. It is a matter of common sense that aged persons suffer from various age-related ailments. They may not climb upstairs to reach the second floor every day. Apart from arthritis other health related issues may be there gradually. Both the courts below failed to take note of this. However, this ground is non-existent in view of the death of the landlord.

The Learned Trial Court also disbelieved the contention of the plaintiff that the original Plaintiff had three married daughters. The Learned Trial Court observed

that there was no evidence in support of this point being oblivious of the fact that this was not disputed. Though requirement of married daughters' stay cannot be the requirement of the landlord, yet it can be said that they may stay as a guest in the parental home and a guest room may be required for this purpose.

It was also the plaint case that ground floor rooms were required for the purpose of running a grocery shop, though one was in existence. The existing grocery shop might be extended or another shop may be started. It is a queer proposition of law that prior application is to be made before the competent authority for conversion of the premises into a commercial unit before filling a suit for eviction. The rooms are not available; claim of ejectment may be refused. How can the landlord seek for prior permission without obtaining possession? That was, in fact, stated by the PW-1 in the cross examination. There was already an existing grocery shop; nothing is there on record to show that the shop ran offending any rule or law. Letting out the first floor to other tenants cannot frustrate the claim of the landlord for the ground floor. It is a matter of common sense that grocery shop business can be successful only on the ground floor. When it is in the pleading that ground floor room was needed for running grocery shop, the claim is justified and proper. The Learned Courts below failed to apply the correct principle of law.

The original family members existing at the time of the institution of the suit are reduced now. There may be new requirements. However, certain requirements, as pleaded may subsist. Requirement of the ground floor for opening shop, requirement of rooms for the married daughters of the original plaintiff who frequently visited their parental home, need of room for the granddaughter of the original plaintiff, who must have been grown up now. As observed by the Learned Trial Court, only two bed rooms are available on the second floor; the other rooms of the second floor are small. The Learned First Appellate Court observed that there

was suppression of fact that seven rooms were available to the landlord on the second floor without caring to take note that out of the said seven rooms only two can be used as bedrooms. The Learned Trial Court as well as the Learned First Appellate Court also observed that one of the rooms on the ground floor may be converted into a shop room though it was in the pleading that a room is needed for living of the original Plaintiff.

Members of a family may change during protracted litigations, as happened in this case. The requirement must be looked into on the basis of pleadings and material evidences. As noted above, to understand the requirement of the landlord there is no need to take a pedantic approach. Observation of the Supreme Court of India in ***Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde*** [(1999) 4 SCC 1] is relevant here:

“8. When a landlord says that he needs the building for his own occupation there is no doubt he has to prove it. But there is no warrant for presuming that his need is not bona fide. The statute enjoins that the court should be satisfied of his requirement. So the court would look into the broad aspects and if the court feels any doubt about the bona fides of the requirement it is for the landlord to clear such doubts. Even in a case where the tenant does not contest or dispute the claim of the landlord the court has to look into the claim independently albeit the landlord's burden gets lessened by such non-dispute. In appropriate cases it is open to the court to presume that the landlord's requirement is bona fide and put the contesting tenant to the burden to show how the requirement is not bona fide.”

The Landlord is the best judge of his requirements. Court cannot dictate what should be the requirement of the landlord. Court should adjudge whether there exists a need of reasonable requirement and whether the requirement is fanciful or

extravagant. Both the courts below adopted a myopic view and pedantic approach with a mind-set of disbelieving the case of the landlord. Both the courts dictated the need of the landlord. Both the courts failed to apply the correct legal principle in adjudicating the case of the Appellant and erred in law thereby.

It is settled law that two concurrent findings should not be usually interfered with in a second appeal. High Court cannot re-appreciate evidence in second appeal. In **Gurdev Kaur & Ors. Vs. Kaki & Ors. [(2007) 1 SCC 546]** the Supreme Court of India observed that when Section 100 of the Code of Civil Procedure, 1908 is critically examined then according to the legislative mandate, the interference by the High Court is permissible only in cases involving substantial question of law. The substantial questions of law were framed at the time of admission of the appeal.

This Court, confining itself within the ambit of the substantial question of law, without re-appreciate evidence, can interfere when erroneous principles of law were applied by both the Courts and failed to adopt the correct principle of law.

In **K.G. Shivalingappa v. G.S. Eswarappa [(2004) 12 SCC 189]**, the Supreme Court of India held that in regular second appeal the High Court can interfere with the concurrent findings recorded by the courts below only on the substantial question of law either framed at the time of admission of appeal or reframed or substituted later on at the time of arguments.

As observed above, both the courts below failed to apply the correct principle of law in adjudicating the litigation. Hence, concurrent findings demand interference.

In view of discussions made above, the instant appeal is allowed.

Judgement and decree passed by the Learned Additional District Judge, Fast Track Court, Sealdah, dated 30/08/2012 in Title Appeal No. 54 of 2009 is hereby set aside. The Appellant is entitled to a decree of eviction against the Respondent.

The Respondent is directed to hand over the possession of the suit premises within sixty days from the date of drawing up of the decree in case of failure of which the Appellant shall be at liberty to draw up execution proceeding. The Appellant is given liberty to claim mesne profit.

The instant appeal is disposed of.

T.C.R be returned.

Let decree be drawn up.

(Sugato Majumdar, J.)