IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Md. Shabbar Rashidi

SA No. 459 of 2008

CAN 2 of 2019 (Old CAN 1807 of 2019)

Babul Atarthi

Versus

Anita Bhattacharya

For the Appellant : Mr. Kumaresh Dalal, Adv.

For the Respondent : Mr. Bhaskar Ghosh, Adv.
: Mr. Dilip Kumar Maity, Adv.
: Mr. Siddhartha Paul

Hearing concluded on : August 01, 2023

Judgment on : September 22, 2023

Md. Shabbar Rashidi, J.

1. The instant Second Appeal is in assailment of judgment and decree dated November 07, 2006 and November 13, 2006, respectively passed in Title Appeal No. 54 of 2005 by learned Civil Judge (Senior Division), Ranaghat, Nadia affirming the judgment & decree dated

July 29, 2005 and August 08, 2005 in Title Suit No. 142 of 1988.

2. The suit premises originally belonged to one Nirmal Banerjee who died, survived by his widow Biva Rani Banerjee, son Tapas Banerjee and his daughter Snigdha Mukherjee.

3. The defendant/appellant was inducted as tenant in the suit premises in respect of one bed room and one kitchen at a monthly rental of Rs. 20/- according to English calendar months.

4. The heirs and successors of Nirmal Banerjee sold out the suit premises to the plaintiff/respondents by dint of three deeds of conveyance dated May 06, 1985. One small room in the suit premises was under khas possession of the vendors of the plaintiff/respondents. The said small room and personal belongings of Bivarani, kept in the said room, was also sold out and possession thereof was handed over to the purchasers i.e. the plaintiff.

5. The plaintiff/respondent also claimed that though, the sale was duly notified to the appellant/defendants, nevertheless, the defendant put another padlock over the lock of the plaintiff/respondent on the small room. He also constructed a wall on the passage of the plaintiff.

6. It was further case of the plaintiff/respondent that her family consisted of her husband, two unmarried daughters and a son. The children of the plaintiff were students. Besides, one unmarried brother of the husband of the plaintiff used to reside with the plaintiff's family. The husband of the plaintiff was a Sanskrit Pandit and used to run private coaching at his house.

7. The plaintiff came up with a case that she required four bedrooms, one kitchen, one study room, one drawing room and a small room for the deity. As such, the suit premises was reasonably required by the plaintiff/respondent for her own use and occupation as the existing accommodation of the plaintiff at her in-law's house was not at all sufficient to meet her requirements.

8. Moreover, the defendant did not pay any rent for the suit premises to the plaintiff since her purchase and as such he was a defaulter in payment of rent.

9. The appellant/defendant contested the suit for eviction. It was the case of the defendant that the entire suit premises consisted of one big room, one small room, one kitchen, privy and well was tenanted in favour of the defendant and his two brothers jointly. The defendant and his two brothers namely, Shyamal and Bimal used to pay rent duly through their brother, sent through 'Money Order' and as such they were not defaulters in payment of rent. It was also stated that the aforesaid two brothers of the defendant were still living in joint mess with the defendant.

10. At the same time, the defendant also made out a case that as the defendant along with his two brothers Shyamal and Bimal were joint tenants in respect of the suit premises, notice to quit served upon the defendant alone, was not valid, bad in law and cannot be held to be a sufficient notice.

11. The defendant/appellant also came up with a case that after purchase, the plaintiff/respondent gave a proposal through one Jyotish Sen and Hiranmoy Banerjee, for the enhancement of rent. Such proposal was accepted by the defendant but ultimately, the proposal was not accepted by the plaintiff.

12. The defendant also made out a case that the plaintiff had sufficient accommodation in her existing abode and as such, she did not reasonably require the suit premises for her own use and occupation. Besides this, the defendant also challenged the maintainability of the original suit and stated that there was no cause of action for filing the suit.

13. Upon trial of the suit, the learned Trial Court, by its judgment dated January 31, 1996 decreed the suit in part passing a decree for eviction of the defendant/ appellant from the small room. It was held that the small room in the suit premises was not tenanted to the defendant. However, the prayer of the plaintiff for a decree for eviction of the defendant from the tenanted

portion on the premises of own use and occupation, was negated.

14. Challenging the judgment and decree passed in Title Suit No. 142 of 1988, the plaintiff/respondent carried an appeal being Title Appeal No. 17 of 1996 which was disposed of by learned Civil Judge (Senior Division), Rananghat, Nadia by judgment and order dated September 18, 1998. The appeal was allowed by setting aside the order of the learned Trial Court. The suit was sent back on remand to the Trial Court for fresh adjudication.

15. By a fresh judgment dated September 26, 2000, the suit being Title Suit No. 142 of 1988 was disposed of in a decree for eviction of the appellant/defendant from the suit premises.

16. The appellant/defendant again preferred an appeal challenging the judgment and order of the Trial Court after remand in Title Appeal 07 of 2001**.**By judgment dated April 24, 2003, in such appeal, the learned Civil Judge (Senior Division) set aside the judgment passed by

the learned Trial Court and sent the suit on limited remand with a direction to write out a fresh judgment upon a decision on the issue of default in payment of rent in consideration of certain documentary evidence adduced by the parties.

17. Upon such remand, the learned Trial Court, upon consideration of the documents directed in the judgment in appeal, considered the documents referred to and decided issue No. 3 against the defendants. Consequently, by a fresh judgment dated July 29, 2005, Title Suit No. 142 of 1988 was again decreed in favour of the plaintiffs/ respondents.

18. Challenging the judgment and order so passed on July 29, 2005, the defendant/appellant preferred another appeal by Title Appeal No. 54 of 2005. In course of hearing of the aforesaid appeal, learned First Appellate Court, by its judgment dated November 07, 2006 concurred with the findings of learned Trial Court and dismissed the appeal. The judgment and decree of learned Trial Court was upheld.

19. It is this judgment dated November 07, 2006 and decree dated November 13, 2006 which has been challenged in the present Appeal.

20. It has been submitted on behalf of the appellant/defendant that learned First Appellate Court erred in law in deciding the issue of alternative accommodation without a specific issue in the suit.

21. It was also contended that in spite of arriving at a conclusion that the appellant/defendant was entitled to protection under Section 17(4) of the West Bengal Premises Tenancy Act, 1956, the learned First Appellate Court erred in affirming the judgment dated July 29, 2005 and decree dated August 08, 2005. According to the appellant, since the appellant defendant duly complied with the provisions of Section 17 (2) and Section 17 (2A) of the Act of 1956, the learned Court was not justified in holding the defendant/appellant a defaulter in payment of rent.

22. It was contended that the learned First Appellate Court committed error in holding the judgment of the

learned Trial Court as judgment on limited remand as the same was delivered without following the provisions envisaged under Order XLI Rule 25 of the Code of Civil Procedure, 1908. The learned First Appellate Court also erred in taking into consideration the findings which were otiose to the specific issues framed in the suit.

23. From the pleadings put in by the parties in the original suit, it transpires that the plaintiff brought the suit seeking eviction of the defendant/appellant from the suit premises, mainly on the ground of :

i. Reasonable requirement;

ii. Default in payment of rent;

iii. Unauthorized construction in the suit premises causing nuisance and annoyance.

24. On the basis of the pleadings put in by the parties, the learned Trial Court framed as many as 9 (nine) issues for the adjudication of the suit viz:

(1) Is the suit maintainable?

(2) Is the notice to quit legal, valid and served upon the defendant?

(3) Is the defendant a defaulter in payment of rent?

(4) Is the plaintiff entitled to decree as prayed for?

(5) To what other relief is the plaintiff entitled?

(6) Does the plaintiff require the suit premises for her own use and occupation?

(7) Whether the defendant has made any addition and alteration without the consent?

(8) Whether the Shyamal and Bimal brothers of defendant were inducted as tenants jointly with the defendant over the suit premises?

(9) Whether the entire holding was let out to defendant?

25. Upon admission of the instant Second Appeal, the following substantial questions of law were framed for consideration by this Court, namely: -

(a) Whether the learned Court of appeal below committed substantial error of law in

interfering with the finding of the learned Trial Judge on the question of reasonable requirement not on merit but on the ground that the previous judgment of the Appellate Court dated 24th April, 2003 while remanding the matter back was binding by totally overlooking the fact that by the judgment and decree dated 24th April, 2003 the first Appellate Court set aside the entire decree and, as such, the finding on the reasonable requirement cannot be binding upon the learned trial judge?

(b) Whether the learned Court of appeal below committed substantial error of law in holding that the order of remand dated 24th April, 2003 constituted res judicata as regards the finding on the question of reasonable requirement by overlooking the fact that the entire judgment and decree were set aside and, therefore, the finding recorded on the question of reasonable

requirement in the said judgment could not operate as res judicata?

26. In order to elucidate the substantial question of law as framed for adjudication of the instant Second Appeal, it would be convenient to discern the findings of the Trial Court as well as that of the First Appellate Court on the issue of 'reasonable requirement' at different stages of the proceeding.

27. In the original judgment and decree in Title Suit No. 142 of 1988 passed on January 31, 1996 & February 07, 1996, the issue of reasonable requirement vide issue No. 6, the Trial Court was of the view that the plaintiff did not reasonably require the suit premises as she was held to be having suitable alternative accommodation, sufficient to cater to her needs. The Trial Court held that the plaintiff was not entitled for a decree of eviction on the ground of 'reasonable requirement'.

28. Such judgment and decree was challenged in Title Appeal No. 17 of 1996. In the said appeal, it was observed by the First Appellate Court therein that a document being

assessment register, filed on behalf of the plaintiff (Exhibit 6) was misconstrued by the Trial Court as that concerning some other plot of land instead of the suit premises. In such pretext, by its judgment and decree dated September 18, 1998 & September 19, 1998, the learned First Appellate Court remanded the suit back, for fresh adjudication upon giving the parties an opportunity to adduce further evidence.

29. The suit was again heard on remand by the Trial Court, in terms of the directions of the Appellate Court and was disposed of by judgment and decree dated September 26, 2000 & November 02, 2000. In the said judgment, the Trial Court, considered issue No. 6 & 7 together and upon detailed discussions with regard to the reasonable requirement of the plaintiff in respect of the suit premises, came to a decision that the plaintiff actually reasonably required the suit premises. Incidentally, in course of discussion, the extent of the families residing at the existing residence of the plaintiff vis-a-vis her requirements were discussed at length. Consequently, the suit was decreed in

favour of the plaintiff on the ground of reasonable requirement and on the ground of default as well.

30. The defendant/appellant again challenged the decree so passed on remand vide Title Appeal No. 07 of 2001 which was disposed of by judgment and decree dated April 24, 2003 & May 05, 2003. In the judgment in such appeal, learned First Appellate Court took note of the fact that eldest daughter of the plaintiff had expired diminishing her requirement. During hearing of the appeal, it was pointed out on behalf of the appellant/defendant that the learned Trial Court did not frame the specific issue with regard to availability of suitable alternative accommodation at the hands of plaintiff. The first Appellate Court noted that the parties had adduced sufficient evidence in this regard and the Trial Court, upon discussion in the judgment, had arrived at a conclusion that the plaintiff had no sufficient suitable alternative accommodation elsewhere other than the suit premises. Consequently, the learned First Appellate court upheld the finding of the Trial Court with regard to reasonable requirement. At the same time, the Appellate

Court also noted that there was no need to send the suit back on remand for the purpose of adjudication upon framing specific issue with regard to suitable alternative accommodation. In fact, such issue was decided by learned First Appellate Court upon extensive discussions, by holding that the plaintiff had no other suitable alternative accommodation other than the suit premises.

31. However, the First Appellate Court in the judgment & decree in Title Appeal No. 07 of 2001 held that the suit was liable to be sent back on limited remand just to find out whether the defendant was a defaulter or not upon consideration of challans (Exhits A to A/84). It was specifically directed that the Trial Court will dispose of the issue of default i.e. Issue No. 3 afresh after taking into consideration the challans (Exhits A to A/84) upon hearing arguments of both sides and to write out a fresh judgment. In view of such directions, the Appellate Court went on to set aside the judgment and decree passed by the trial court.

32. The original Title Suit No. 142 of 1988 was again decided heard by the learned Trial Court and was finally disposed of

in terms of judgment dated July 29, 2005. In the said judgment, the learned Trial Court decided issue of default in payment of rent i.e. Issue No.3 afresh, in terms of the directions of the First Appellate Court, against the defendant.

33. Since the learned Trial Court was directed to write out a fresh judgment, a judgment discussing all the issues, were delivered by the Trial Court. Issue No. 6, i.e. with regard to reasonable requirement, was also discussed by the Trial Court resulting in a similar finding to that in Title Appeal No. 07 of 2001 by deciding the same in favour of the plaintiff.

34. The appellant/defendant again assailed the judgment & decree passed on second remand, limited to the issue of default in Title Appeal No. 54 of 2005. The said appeal was disposed of by judgment & decree dated November 07, 2006 and November 13, 2006. The learned first Appellate Court, in the judgment considered the findings of the learned Trial Court in respect of Issue No.3 i.e. default in payment of rent at extenso. The Appellate Court upheld the finding of the

Trial Court with regard to first default of the appellant/defendant in payment of rent. However, it was held that the appellant/defendant was entitled for the benefits of the protection under Section 17 (4) of the West Bengal Premises Tenancy Act, 1956.

35. In the judgment in Title Appeal No. 54 of 2005, it was also noted by the learned First Appellate court that by the judgment and decree passed in Title Appeal No. 7 of 2001, the suit was sent back on limited remand for a decision if the appellant/defendant was a defaulter in payment of rent in consideration of certain documents i.e. challans and to write a fresh judgment.

36. Learned First Appellate Court held that in spite of specific directions to decide Issue No. 3 afresh, the learned Trial Court, while writing a fresh judgment, went on to discuss all the issues afresh, which was never directed in the judgment dated July 29, 2005. Learned Appellate Court noted in his judgment that the observations made by the Trial Court in his judgment dated July 29, 2005 with regard

to the Issues except Issue No.3 were not considered by him, being beyond the scope of the limited remand.

37. This indicates that for consideration of the appeal being Title Appeal No. 54 of 2005, findings of the Trial Court with regard to Issue No. 3 only, in the Judgment dated July 29, 2005 were considered. So far as other issues were concerned, findings thereon in the earlier judgment of the Trial Court dated September 26, 2000 were considered to be final and binding.

38. The appellant/defendant, after the suit was sent back on remand in terms of judgment & decree passed in Title Appeal No. 07 of 2001, went back to the Trial Court and tried their luck with regard to the issue of default in payment of rent i.e. Issue No. 3. They never preferred any appeal before an appropriate forum as regards the findings of the learned Trial Court on other issues including that of 'reasonable requirement' which was upheld by the First Appellate Court attained finality and was binding.

39. In support of such contention, learned advocate for the plaintiff/respondent relied upon **AIR 1967 Supreme**

Court 1124 (Girijanandini Devi V. Bijendra Narain *Choudhary)*. *It was laid down in the said case that,*

> ***"12.The Trial Court, as we have already observed, on a consideration of the entire evidence and the subsequent conduct of the parties came to the conclusion that there was no severance of Bijendra Narain from his uncle Bidya Narain and with that view the High Court agreed. It is true that the High Court did not enter upon a reappraisal of the evidence, but it generally approved of the reasons adduced by the Trial Court in support of its conclusion.We are unable to hold that the learned Judges of the High Court did not, as is contended before us, consider the evidence. It is not the duty of the Appellate Court when it agrees with the view of the Trial Court on the evidence either to restate the effect of the***

evidence or to reiterate the reasons given by the Trial Court. Expression of general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice."

40. In such view of the facts and ratio laid down by the Hon'ble Supreme Court, the findings of the learned Trial Court in the judgment & decree passed on September 26, 2000 & November 02, 2000, which was upheld in the judgment and decree dated April 24, 2003 & May 05, 2003 passed in Title Appeal No. 07 of 2001, so far as the finding on the issue of 'reasonable requirement' is concerned, surely operated as res-judicata.

41. During the pendency of the instant appeal, the appellant/defendant came up with an application, being CAN 1807 of 2019 incorporating certain subsequent events and sought for adjudication on such points.

42. It was contended that, out of the family members who were considered for 'reasonable requirement' of the suit premises by the plaintiff, by the learned Trial Court and the

first Appellate Court, the eldest daughter, husband and brother of her husband had expired between the year 2000 and 2012. As such, it was alleged that due to such death of the family members of the plaintiff, her requirement had diminished. Therefore, it was prayed that the issue of reasonable requirement should be revisited in the light of subsequent events. In support of such contention, learned advocate for the appellant has relied upon **AIR 1981 Supreme Court 1711 (Hasmat Rai and another V. Raghunath Prasad).**

43. Upon exchange of affidavits, this Court, by order dated March 12, 2021 disposed of the CAN application with a direction that such facts may be agitated on the final hearing of the appeal.

44. The ratio in the case of **Hasmat Rai (Supra)** was laid down by the Hon'ble Supreme Court in the context that the landlord filed an eviction suit on the ground of reasonable requirement for starting a business in the suit premises and during pendency of the appeal thereof, the landlord obtained decree for possession of another premises which was found

to be sufficient for the nature of requirement of the landlord. The Hon'ble Supreme Court laid down that,

> ***"14. The definition of expressions..... If a landlord bona fide requires possession of a premises let for residential purpose for his own use he can sue and obtain possession. He is equally entitled to obtain possession of the premises let for non-residential purposes if he wants to continue or start his business. If he commences the proceedings for eviction on the ground of personal requirement he must be able to allege and show the requirement on the date of initiation of action in the Court which would be his cause of action. But that is not sufficient. This requirement must continue throughout the progress of the litigation and must exist on the date of the decree and when we say decree we***

mean the decree of the final Court. Any other view would defeat the beneficial provisions of a welfare legislation like the Rent Restriction Act. If the landlord is able to show his requirement when the action is commenced and the requirement continued till the date of the decree of the Trial Court and thereafter during the pendency of the appeal by the tenant if the landlord comes in possession of the premises sufficient to satisfy his requirement, on the view taken by the High Court the tenant should be able to show that the subsequent events disentitled the plaintiff, on the only ground that here is tenant against whom a decree or order for eviction has been passed and no additional evidence was admissible to take note of subsequent events. When a statutory right of appeal is

conferred against the decree or the order and once in exercise of the right an appeal is preferred the decree or order ceases to be final."

45. However, in the case at hand, it was specifically decided that the plaintiff/respondent reasonably required the suit premises and that she had no alternative suitable accommodation elsewhere except the suit premises. Moreover, the death of eldest daughter of the plaintiff in the year 2000, sought to be incorporated for consideration through CAN application, received consideration both by the Trial Court as well as First Appellate Court at appropriate stage of the proceeding and the same cannot be termed as subsequent event.

46. The death of the brother of plaintiff's husband is of no consequence. He was never considered either by the Trial Court or by the Appellate Court to be family member of the plaintiff/respondent within the meaning of the provisions contained in the West Bengal Premises Tenancy Act, 1956,

for the purpose of determining 'reasonable requirement' of the plaintiff/respondent.

47. The death of the husband of plaintiff in 2012 might be relevant but not of such magnitude so as to deny the plaintiff the fruits of long drawn litigations since 1988. In fact, since it was already held in the judgments under assailment that the plaintiff reasonably required the suit premises for her own use and occupation and that she has had no suitable alternative accommodation elsewhere, death of her husband in 2012 has an effect of augmentation of her requirement of suitable accommodation for herself and her family rather than diminishing it.

48. In the case reported in **2015 (3) CHN (Cal) 564 (Prasanta Kumar Kundu V. Kanailal Khan)** a single bench of this High Court denounced the exercise of the Trial Court and First Appellate Court embarked upon in permutation and combination with regard to the requirement of space claimed by the plaintiff. It was observed that it did not stood to reasons that both the

learned Trial Court and The Learned Appellate Court should exercise their mind to permutations and combinations allotting to the plaintiff the manner in which the Court thinks the rooms are to be used.

49. The plaintiff/respondent was under obligation to make out a case of her reasonable requirement, on the basis of evidence adduced. Such exercise was undertaken by the respondent/plaintiff, which was accepted by the learned Trial Court, of course, on the basis of evidence and later upheld by the learned First Appellate Court. There is no point in reopening the issue in the wake of deaths in the family of the plaintiff resulting in alleged diminishing of the requirement. It has already been noted hereinbefore that decrease in the requirement of the suit premises by the plaintiff/respondent on such account was substantially considered and decided.

50. In the case of **Ms. Labanya Niyogi v. W. B. Engineering Co.** reported in **AIR 1999 Supreme Court 3331**, the Hon'ble Supreme Court upheld the decision of the High Court in not interfering with the findings of the

learned Lower Appellate Court upon certain factual aspects based on evidence. As noted above, in the instant case as well, the learned Trial Court arrived at a decision on the basis of evidence adduced by the parties. Such findings were upheld by the first Appellate Court repeatedly and that was also not challenged by the appellant/defendant. No justifiable reason is brought forth warranting interference into the findings of the learned First Appellate Court with regard to the issue of 'reasonable requirement'.

51. Consequently, both the substantial questions of law framed for adjudication of the instant Second Appeal, stand decided. In view of the discussions made hereinbefore, it is decided that the learned Court of appeal below committed no substantial error in law in not interfering with the finding of the learned Trial Judge on the question of reasonable requirement on the ground that the previous judgment of the Appellate Court dated 24th April, 2003 while remanding the matter back was binding. It is further held and decided that the learned First

Appellate Court did not commit any substantial error of law in holding that the order of remand dated 24th April, 2003 constituted res judicata as regards the finding on the issue of reasonable requirement.

52. For the aforesaid reasons, I find no reason to interfere with the impugned judgment and decree dated November 07, 2006 and November 13, 2006, respectively, passed in Title Appeal No. 54 of 2005 affirming the judgment & decree dated July 29, 2005 and August 08, 2005 in Title Suit No. 142 of 1988. The same are hereby affirmed.

53. Accordingly, the instant appeal being **Second Appeal No. 459 of 2008 (SA 1820 of 2007)** along with **CAN 1807 of 2019** are dismissed. In the facts and circumstances of the case, however, there will be no order as to costs.

54. The order granting stay of the execution proceeding granted earlier shall stand vacated.

55. Urgent certified photocopies of this judgment, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J]