

WBPS010004322018

West Bengal Form No. 3701

HIGH COURT FORM NO. (J)

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

DISTRICT : KOLKATA

**IN THE COURT OF : JUDGE, 4TH BENCH,
PRESIDENCY SMALL CAUSE COURT, CALCUTTA**

PRESENT : SRI. BIPLAB SHEE

Ejectment Suit No. 330 of 2011(4545 of 2014)

CIS NO : WBPS01-000497-2011

DATE: 29th day of July, 2026

Indrajit Kumar & another ... Plaintiff

-VERSUS-

Soumen Dutta and others ... Defendant

**This suit coming on for final hearing on
11.05.2026 in presence of**

Debojyoti Mondal ... Advocate for Plaintiff

Tapasi Chatterjee ... Advocate for defendant

**and having stood for consideration to this day, the Court
delivered the following Judgment:-**

**This is a suit for eviction of tenant and for recovery of
Khas possession valued at ₹ 1800/- and damages valued at
Rs.50/-.**

EXORDIUM :

1. This is a suit for decree for eviction and recovery of possession, valued at Rs.1800/- for recovery of vacant and khas possession of the suit premises by evicting the defendant and Rs.50/- for damages filed by plaintiff.

Suit property :-

2. All that two rooms at the rear portion of the ground floor of the premises No.60, S.N. Banerjee Road, P.S. Taltolla, Kolkata - 700014 within the Kolkata Municipal Corporation.

The facts

3. Trimming out the unnecessary details, the facts leading to this suit are appended hereunder:-

Pleading of the plaintiffs

4. One Satya Bhusan Kumar was the owner of premises no.60,S.N. Banerjee Road, Kolkata-700 014 and said Satya Bhusan Kumar died testate leaving behind a Will bequeathing his properties being back portion of premises no. No.60, S.N. Banerjee Road, Kolkata – 700014 in favour of Ranjit Kumar and front portion of No.60, S.N. Banerjee Road, Kolkata – 700014 in favour of Kartick Kumar and by dint of said Will Satya Bhusan Kumar appointed Sachindra Nath Kumar and Kartick Kumar as the executor to the Will left by Satya Bhusan Kumar. It is the further contentions of the plaintiffs that Manik Lal Dutta was a monthly tenant in respect of two rooms with one common bathroom situated on the ground floor of 60,S.N. Banerjee Road, Kolkata-700 014 at a monthly rent of Rs.150 per month payable according to English calendar month.

4(a) After demise of Manik Lal Dutta he left behind Laxmi Dutta his wife, Sri Soumen Dutta and Sanjoy Dutta as sons and Srabony Dutta as daughter to inherit the said tenancy and death of Manik Lal Dutta the defendants as legal heirs, inherited and/or succeeded the said tenancy and become monthly tenants in respect of the said two rooms with

common bathrooms situated on the ground floor of premises no.60,S.N. Banerjee Road, Kolkata-700 014.

It is further contended by the plaintiffs that the plaintiffs being the executor of the deceased Satya Bhusan Kumar entitled to exercise the right of landlord and to file the suit against the tenant of premises no.60,S.N. Banerjee Road, Kolkata-700 014. The defendant are habitual defaulter and defaulted in payment of rent since January, 2008 ie more than three months within the period of 12 months.

It is further contended by the plaintiffs that the suit premises reasonably required by Ranjit Kumar and his family. The back portion of premises no.60,S.N. Banerjee Road, Kolkata-700 014 consist of seven rooms being three rooms in the ground floor, three rooms in the 1st floor and one room and one bathroom in the 2nd floor. In the front portion of premises no.60,S.N. Banerjee Road, Kolkata-700 014 there are two rooms in the ground floor, one room on mezzanine floor, two rooms on the 1st floor and two rooms in the 2nd floor and there is one bathroom in each floor of the said premises. It is also contended that Ranjit Kumar and his family has accommodation of four rooms being three rooms on the 1st floor and one room of the 2nd floor of the rear portion of premises no.60,S.N. Banerjee Road, Kolkata-700 014 and apart from that all other rooms of premises no.60,S.N. Banerjee Road, Kolkata-700 014 are in occupation of tenants whereas in the front portion of premises no.60,S.N. Banerjee Road, Kolkata-700 014 only two rooms are in occupation of Kartick Kumar and rest are in occupation of tenants.

It is the contention of the plaintiffs that the family of Ranjit Kumar consists of Ranjit Kumar himself and his wife, two sons namely Indrajit Kumar and Praserjit Kumar. Indrajit Kumar has also got his wife and one daughter where as Praserjit Kumar is also married and has got his wife. It is contended by the plaintiffs that Ranjit Kumar is the man of 68 year and he is a cardiac patient and has advised not to move through stair cases. The portions in occupations of defendants, being two rooms are reasonably require for the use and occupation of Ranjit Kumar and his wife. Ranjit Kumar has been advised to live in the ground floor and his wife to look after him and for that reason one room in the ground floor is required for the bed room of Ranjit Kumar and one room in the ground floor for dining room, drawing room for meeting with guests etc of

Ranjit Kumar. The requirement of Ranjit Kumar cannot be fulfilled with the eviction of the defendant from the ground floor of premises no.60,S.N. Banerjee Road, Kolkata-700 014 at rear portion of the said premises and apart Ranjit Kumar also requires one room as Thakurghar, one store room cum kitchen and one room for maid servants and for other purposes.

It is also contended that the two sons of Ranjit Kumar with the family are at a tussle with each other and they want to be separated with their families and as such the two sons of Ranjit Kumar require three rooms each, one bed room is required for the eldest son of Ranjit Kumar mainly Indrajit Kumar for his wife and daughter, one room as dining cum store room, one room for drawing room and one room for reading room, one room for guest room etc. Besides that he requires room for servant, cook etc. Wife of Indrajit Kumar has passed M.A and she teaches student as such she also requires one room for that purpose.

It is further contended that younger son of Ranjit Kumar namely Praserjit Kumar requires one bed room for himself and his wife, one room as dining cum drawing room, one room for Thakurghar and one room for drawing cum reading room cum guest room. Apart from this Ranjit Kumar is a teacher by profession attached an English Medium School and requires two rooms for his private tuition.

It is also contended the requirement of plaintiff and his family cannot be satisfied without the eviction of the defendant from the suit premises. The defendants are residing at 60,S.N. Banerjee Road, Kolkata-700 014 but they are presently residing at 2/1/2 Deb Lane, Kolkata-700 014 and they have kept the suit premises being no.60,S.N. Banerjee Road, Kolkata-700 014 under lock and key for about 7 to 8 years as the defendants have purchased a flat on ownership at 2/1/2 Deb Lane but unnecessary and with a view to mala fide game has kept the suit premises under lock and key.

It is also contended that the defendants are causing nuisance and annoyance by keeping various goods and articles in the staircase leading from ground floor and 1st floor and thereby causing hindrance and obstruction and nuisance for ingress and egress of the plaintiffs and their family members and also for others who used the said staircase that by keeping the goods and articles which are of foul nature insects

have made their nest and said goods and articles are regular source of various diseases including mosquito and said acts are Act of nuisance and annoyance of the plaintiffs and their family members and to the neighbours on surrounding persons. It is also contended that Ranjit Kumar and his family have got no accommodation in Kolkata and elsewhere besides the aforesaid accommodation.

The tenancy of the defendants was duly terminated by a notice to quit dated 10/12/2010 issued by the plaintiffs through their Advocate, asking the defendants to quit, vacate and deliver up the peaceful possession of the suit to the plaintiff on the expiry of the last day of January, 2011, i.e. 31.01.2011 and it was specifically mentioned in the said notice that if the defendants fail to comply with the said notice, then a suit for eviction will be filed by the plaintiffs against the defendants after the expiry of the notice period. The notice was sent to the defendant by registered post with Acknowledgment due and the defendant duly received the said notice, in fact said reply vide dt.16/01/2011 but in spite of service of said notice as aforesaid, the defendant failed and neglected to vacate the suit premises on the expiry of the notice period and as such the defendant is in wrongful possession of the suit premises on and from 2nd February, 2011 which compelled the plaintiff to file the instant suit for eviction of defendant.

4(b) The plaintiff is the landlord of the premises no.60,S.N. Banerjee Road, Kolkata-700 014 and requires the suit premises for their business/office purpose

4(c) Cause of action:- The cause of action of the suit arose on 01.02.2011 at 60,S.N. Banerjee Road, Kolkata-700 014 as the defendants failed and neglected to vacate the suit premises. The plaintiffs have prayed for recovery of khas possession by evicting the defendants from the suit premises.

4(d) Prayer of plaintiffs :- The plaintiffs, therefore, pray for :-

a) A decree for recovery of khas possession in respect of suit property;

b) Mesne profit;

c) Such other further relief or reliefs to which the plaintiff is entitled to in law and equity;

Hence, the plaintiffs were compelled to file this suit for getting the decree as prayed for.

Pleading of the defendant

5. On the other hand, the defendant, entered appearance and submitted written statement and denied the contents of the plaint save and except specifically admitted by him in his written statement.

5(a) It is contended that the instant suit is not maintainable in law and facts and the plaintiff has filed the suit with mala fide intentions. The ground of default in payment of rent is also denied.

5(b) The defendants even further contended that it is admitted version the defendants are the bona fide tenants in respect of the suit premises.

The defendants contended as there is no cause of action to file the suit.

The defendants have prayed for dismissal of the instant suit.

From the rival contentions of the respective parties following issues had been framed for consideration and determination:

6. ISSUES FORMULATED:-

1. Is the suit maintainable in its present form and prayer ?
2. Have the plaintiffs any cause of action for this suit ?
3. Was any ejectment notice served upon the defendants? If so, is that valid, legal and sufficient?
4. Do the plaintiffs reasonably require the suit room?
5. Whether the defendants are defaulters in payment of rent?
6. Whether the defendant is responsible for any nuisance and nuisance to the suit premises as alleged?
7. Whether the plaintiffs are entitled to get the relief as prayed for?

8. To what other relief / reliefs, the plaintiffs are entitled to get in this suit ?

7. PROFILE OF EVIDENCE ON RECORD

Plaintiffs side -

Oral evidence

- 1. Kartick Kumar P.W 1
- 2. Indrajit Kumar P.W 2

8. Documentary evidence :-

<u>Sl no.</u>	<u>Documents</u>	<u>Marked as</u>
1.	The power of attorney	Exhibit-1
2.	The order of Ld. Chief Judge City Civil Court Calcutta, in Probate case 57/2013	Exhibit-2
3.	The original death certificate of Schindra Nath Kumar	Exhibit-3
4.	The letter dt.24/04/2009	Exhibit-4
5.	The property tax payment receipt	Exhibit-5
6.	The copy of eviction notice dt.10/12/2010	Exhibit-6
7.	The postal receipts along with the returned envelopes are	Exhibit-6/1
8.	The letter dt. 16/01/2011	Exhibit-7
9.	The certified copy of the deed	Exhibit-8
10.	The letter dt.06/01/2020	Exhibit-9
11.	The Aadhaar cards	Exhibit-10 collectively

9.Defendants' side - The defendants have failed to comply the obligation enshrined under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act and consequentially, their defence against delivery of possession has been struck out vide Order No. 38 dated 23.08.2024. Thus no evidence has been adduced by the defendants.

This being the situation, apart from the evidence that has come from the cross-examination of PW-1, and PW-2 there lies no independent evidence from the side of the defendant.

10. Decision with Reasons

The present suit was filed in the year 2018 hence, it is the West Bengal Premises Tenancy Act, 1997 (for short the WBPT Act), which has its application herein.

Issue Nos. 1 and 2

11. *Is the suit maintainable in its present form and prayer? And*

Have the plaintiffs any cause of action for this suit?

Since all the above two issues are inter connected, hence for the sake of convenience and to avoid repetition, both the issues are taken up together for consideration.

Plaintiffs have filed the suit for eviction having taken recourse to section 6 of West Bengal Premises Tenancy Act, 1997 for recovery of possession of the suit property, claiming themselves to be the owner cum landlord of the suit building whereas the status of the defendant is a monthly tenant.

Indrajit Kumar, son of Ranjit Kumar and power of attorney holder, herein plaintiff no.2 has been examined as PW-2.

PW-2 repeated the contents of the plaint during his examination in chief. As documentary evidence, Property tax receipt issued by KMC were marked as Exhibit-5 .

It is important to note here that as the instant suit come within the purview of West Bengal Premises Act, 1997 therefore it is only to be seen by the Court as to whether the plaintiff has been able to substantiate that the defendant is a tenant under the plaintiff or not. The question of title is not germane to the proceeding as is in the declaratory suit.

During the course of argument, Ld. Advocate for the defendant that the suit premises was allotted to Ranjit Kumar by executor of the Will Satya Bhusan Kumar and said Will was duly probated but in cross examination PW-2 stated that he was not in a position when the said Will was probated. Ld. Advocate for the defendant further drawn my

attention to cross-examination of PW-2 and stated that PW-2 in cross-examination admitted that there are four daughters and four sons two were beneficiaries of Will but neither in the pleading the said fact has been brought to the notice of Ld. Court and the said beneficiaries four daughters and three sons save and except Ranjit Kumar Ghosh had not been made party to the suit and as such the present Ejectment Suit is not maintainable.

Countering the aforesaid argument of his adversary Ld. Advocate appearing on behalf of the plaintiff submitted the relation between the plaintiff and the defendant is admitted and in the entire cross examination of PW-2 there is no such suggestion as regard to the Will or beneficiaries of the same.

Ld. Counsel for the plaintiff at the time of advancing of argument submitted that the plaintiff has duly proved his case and it has already been proved that the notice has already duly been served upon the defendant and there is nothing in the entire oral and documentary evidence adduced on behalf of the defendant to substantiate that the notice of eviction served upon the defendant is not legal or valid.

In the instant case by filing the petition under section 7(1) and 7(2) of West Bengal Premises Tenancy Act, 1997 the defendant has accepted the plaintiff as his landlord. So in the instant case there is nothing on the record which has substantiate the claim of the defendant that the suit is not maintainable in it's present form. So far as the legality of the ground of eviction is concerned this question has been thoroughly discussed in the later part of this judgment.

Now the cause of action may be described as bundle essential fact which is necessary for the plaintiff to prove before he can succeed and which gives the plaintiff the right to relief against the defendant.

The cause of action means every material facts which it traversed, it would be necessary for the plaintiffs to prove in order to support their right to judgment. It refers entirely to the grounds set forth in the plaint as a cause of action, or, in other words to the media upon which the plaintiffs asked the Court to arrive at the conclusion in their favour.

A cause of action in a suit for eviction of a tenant is a legal basis on which the landlord seeks for remove the tenant from the rented property. It consists of the facts and grounds that justify the eviction.

The termination of tenancy through notice forms the basis of cause of action in an eviction suit. However, it is not the sole cause of action, it is a precondition for filing eviction suit. Cause of action materializes if the tenant refuses to vacate after notice period expires. In other words, in a suit for eviction filed by landlord against the tenant the right to sue and to get judgment arises from the determination of the tenancy by expedition of the notice to quit.

Term "Cause of Action" has acquired a settled judicial meaning. It refers to the necessary conditions for maintenance of suit, including not only the infraction of the right but infraction coupled with the right itself. "Cause of action" consists of bundle of facts which gives ground to enforce a legal injury for redressal in the court of law. It refers judgment in his favour.

In A.B.C. Laminart Pvt. Ltd. & Anr. Versus A.P. Agencies, Salem (1989) 2 SCC 163, the Hon'ble Apex Court explained the meaning of "**cause of action**" as follows:

".....A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove the enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff....."

It is also useful to refer the judgment in **Bloom Dekor Ltd. Vs. Subhash Himatlal Desai & Ors. (1994) 6 SCC 322**, wherein a three Judges Bench of the Hon'ble Apex Court held that -

"....By "Cause of Action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right

to a judgment of the Court, (*Cooke V. Gill*, 1873 LR 8 CP 107). In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit”

The expression “cause of action” has thus acquired a judiciary settled meaning. In the restricted sense, it means the circumstances forming the infraction of the right or the immediate occasion for the conditions for the maintenance of the suit, including the infraction of the right. It would be just a surrogate approach. If we confine the meaning of ‘cause of action’ within a particular date or period. Therefore, the rivalry of the respective parties in respect of the subject involved in this suit, certainly, does not detain this Court more to hold that the plaintiff had no cause of action to initiate this suit against the defendants on and from the date as mentioned in the plaint and the suit is not maintainable merely on the pleadings. The onus is upon the defendant to prove that the instant suit is devoid of any cause of action and suit is not maintainable and/or barred under the provision of law.

The instant suit is filed by the plaintiffs claiming themselves as the owners and joint landlords in respect of the suit property.

It is stated by plaintiffs that original defendant is monthly tenant in respect of the suit premises.

The plaintiffs have filed the instant suit for eviction of the defendants on the following grounds:-

1) That the plaintiffs reasonably required the suit property for their own use and occupation for business purpose as well for his use and occupation;

2) That the defendants are have defaulted in payment of rent since January, 2008;

3) That the defendants have committed nuisance in respect of the suit premises;

The plaintiffs have also complied this statutory obligation by issuing Ejectment notice to quit dated 10/12/2010 upon the defendants prior to filing of the instant suit.

The defendants appeared in the instant suit on receiving summons and filed two applications under Section 7(1) and 7(2) of the West Bengal Premises Tenancy Act and also filed the written statement

in their defense wherein defendant has denied and disputed all the facts as stated by the plaintiff in the plaint.

Claiming the ownership of the suit building and being the landlord in respect of the suit premises, the plaintiffs has asked eviction of the defendant on the ground reasonable requirement, subletting and nuisance in respect of the suit premises.

According to the plaintiffs, a notice of eviction has already been served upon the defendants prior to the filing of the suit.

On the contrary the defendants have not denied and dispute the service of notice of eviction. The defendants did not give the vacant possession of the suit premises on the expiry of the month of January, 2011 hence the right was accrued to the plaintiff to file the suit for recovery of khas possession after evicting the defendant from the suit premises.

Therefore, it is hold that the plaintiffs have the cause of action to file the suit.

Indrajit Kumar, P.W-2 has exhibited the copy of eviction notice dtd 10/12/2010 along with postal receipt, and returned envelope report that are marked Exhibit-6, 6/1 collectively respectively. It is mandatory requirement under section 6(4), W.B.P.T. Act, 1997 that a landlord must give eviction notice prior to institution of a suit for eviction against him. In this suit plaintiff being the landlord appeared to have duly complied with such provision of law. Defendants apparently did not comply with the demands made in such notice which compelled the plaintiffs to file this suit.

Therefor in view of foregoing discussion issues under consideration are decided in affirmative and thus in favour of the plaintiff.

ISSUE NO. 3 :

12. Was any ejectment notice served upon the defendant? If so, is that valid, legal and sufficient?

This issue is considered to be the most vital one because in a suit for eviction against the tenant the notice to quit can be considered as the backbone of the suit.

Section 6(4) of the West Bengal Premises Tenancy Act, 1997 makes it mandatory to send an eviction notice by the landlord to his tenant prior to institution of a suit.

Plaintiffs have duly complied with such requirement. However, it remains to be seen if such eviction notice is proper and valid, and if so whether it was duly served upon the defendant.

Regarding this issue, the Ld. Advocate for the plaintiff argued that the eviction notice dated 10/12/2010 was duly sent to the defendant through registered post with A.D. and the postal receipt along with returned envelope which has been marked as Exhibit-6 and 6/1 collectively respectively goes to show that the same has been duly sent to the defendants. It is also evident from Exhibit-4 which is the reply to the Exhibit-6 sent on behalf of defendant that the defendants duly received the Exhibit-6 and sent the reply of the aforesaid notice of eviction and the oral testimony of PW-2 also corroborates the aforesaid.

One of the essential ingredients for instituting a suit for eviction under West Bengal Premises Tenancy Act, 1997 is that the landlord / plaintiff prior to institution of the suit shall have to give one month notice to the tenant to vacate the suit premises.

Valid notice to quit upon the tenant is a condition precedent in a suit for eviction. It is based on public policy and cannot be waived – *Amarnath VS Sanjib Das* 2008 (3) CHN 962.

In *Binavi VS Gulam Ali* AIR 1967 Cal 390, it has been observed that statutory notice is a condition precedent within order VI rule 6 of the Civil Procedure Code and should be implied in pleading and is also a part of a cause of action.

Notice as contemplated under section 6(4) is a notice of the suit. Therefore, it must contend a threat of suit in the event of the tenant not quitting or vacating the tenanted premises on the expiry of the notice – ***Surya Properties VS Bimalendu Sarkar* AIR 1964 Cal I.**

PW-2 has exhibited the copy of eviction notice dated 10/12/2010 along with postal receipt and returned envelope which has been marked as Exhibit-6 and 6/1 collectively respectively.

A perusal of eviction notice would show that it gives a clear one month's period to the defendant to comply with the demands made therein. Besides, the notice was shows that the plaintiff has threaten

the defendant of filing civil suit in the event he failed to comply with the demands made in such notice. Further, the eviction notice also details regarding the ground on which eviction is being sought.

From **Exhibit-6/1** it is quite evident that the said notice was posted addressing to the defendant and from Exhibit 7 it is evident that the notice was duly served upon the defendants and defendants duly sent reply to the aforesaid **Exhibit-6**.

In this suit, the plaintiffs have stated they have sent a notice of eviction dated 10/12/2010 to the defendant through their Ld. Advocate by registered post with A.D.

The **Exhibit-6** has properly described the suit premises and the language of the said notice is unambiguous and explicit about this purpose. So far as the legality and sufficiency of the notice of eviction are concerned, nothing is found adverse to that effect. The suit is filed after the statutory period of eviction of notice, which makes the notice of eviction valid.

The track report which has been marked as **Exhibit-6/1 collectively and 7** goes to show that the notice was duly been served upon the defendants.

Though the defendants have not denied the due service of notice upon him. The initial burden of proving the service of notice has successfully proved by the plaintiff.

Thus from such conduct of the defendants it would not be incorrect to hold that he has impliedly admitted the service of eviction notice upon him. Consequently, it would be proper to hold that the eviction notice sent by the plaintiffs to the defendants was proper, valid and it was duly served upon the defendants.

Accordingly, this particular issue is decided and disposed of in favour of the plaintiffs.

ISSUE NO. 4:

13. Do the plaintiff reasonably require the suit room?

The plaintiffs have stated that the suit property is reasonably and bonafidely required for use and occupation of the plaintiffs. It is the contention of the plaintiffs that the family of the plaintiffs consist of

several family members and the accommodation of the plaintiffs is not sufficient in the suit building and apart from the suit premises there are no other accommodation of the plaintiffs in an around Kolkata.

It is a settled position of law that in suit for eviction on the ground of reasonable requirement, the plaintiffs / landlords have to fulfill two ingredients which are as follows:

I. Requirement must be reasonable and bonafide?

II. No other suitable accommodation is available to the plaintiffs / landlords?

In the case of **Hasmat Rai VS Raghunath Prasad (1981)3 SCC 103** The Hon'ble Supreme Court has held that in order to successfully claim eviction for tenant on the ground of reasonable requirement the plaintiff / landlord must established that he bonafide requires possession of the suit property and that he has no other reasonably suitable accommodation of his own in his occupation.

The burden of prove always lies upon the plaintiffs.

The plaintiffs must proof his case on his own strength not upon the witness upon the defendant.

West Bengal Premises Tenancy Act, 1956 section 13 (1) (ff) – bonafide requirement- family- landlord having no son – landlords requirement for married daughter bonafide.

But it is pertinent to mention here that the requirement of the plaintiffs must be bonafide and genuine not just a desire.

PW-1 during his examination in chief has exhibited the **six Aadhar cards** of his family members which have been marked as **Exhibit-10 collectively**.

Here the requirement of the suit premises is for residential purpose. The landlord shall also be required to prove that they are not only reasonably requires the suit premises for their own purpose but they have no alternative accommodation is also by no means suitable and suppression of fact of any other accommodation, may invite the Court to draw and adverse inference against the landlord.

Further in **Sitala Prasad Chakraborty VS Usha Devi Chatterjee (SA No.215 of 1997)** it was held that, “personal requirement – landlord is the best judge of his requirement- plea of

alternate accommodation- alternate accommodation must be reasonably suitable.”

Bona fide requirement of the landlord – it is opened to the Court to presume that the requirement of the landlord is Bona fide and put onus on tenant to establish that requirement of landlord was not Bona fide – there is no warrant for presuming that the landlord needs is not Bona fide – it is for landlord to clear such doubts.

It is the contention of the plaintiff that the plaintiff reasonably require the suit room for his own use and occupation. It is the version of the plaintiff that he is running business in a rented accommodation which is not sufficient to meet their requirements. The plaintiffs have no other suitable accommodation elsewhere.

On perusal of the entire evidence adduced on behalf of the plaintiffs and defendants and considering the facts, I find that the plaintiffs admittedly reside along with their respective family members.

The defendants have not stated anything about the alternative accommodation of the plaintiffs by saying any address in respect of the same.

I refer to some decisions on this point by the Hon’ble Courts.

(i) In the case Mrs R.G. Vakil and another VS Ramendra Nath Banerjee reported in 88 CWN 905 *the Hon’ble Calcutta High Court held that economic benefit is a ground for eviction of the defendant. It has been held in this case “where the pleading regarding reasonable requirement has been made with sufficient clarity in the plaint there is no necessity elucidation of the pleadings.”*

(ii) In the case of Siddalingamma and another Vs. Mamtha Shenoy reported in (2001)8 SCC 561 *the Hon’ble Supreme Court laid down the test for Bona fide requirement. The Hon’ble Supreme Court defined that for falling under Bona fide requirement, the proven facts on record needed to show that the requirement was natural, real, sincere and honest. It was also held that the practical approach instructed by realities of life should be adopted and the law does not demand that the landlord be prevented from living in comfort in his own house in order protect the tenants occupancy.*

(iii) In the case of **Atma S. Berar Vs. Mukhtiar Singh**, Hon'ble Apex Court held that "We need not remind ourselves of the observations made by three Judges Bench of this Court in Prativa Devi's Case(supra)---"the landlord is the best judge of his residential requirements. He has 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". The High Court need not be solicitous and venture in suggesting in what would be more appropriate for landlord to do. That was the look out of the appellant and not of the High Court. The gracious advice given by the High Court was uncalled for.... There is no law which deprives the landlord of beneficial enjoyment of his property"

(iv) In the case of **Kanhaiya Lal Arya Vs. Md. Ehshan and Ors** The Hon'ble Apex Court held that **"The landlord is the best judge to decide which of his property should be vacated for satisfying his particular need. The tenant has no role as to which premises the landlord should get vacated for his need alleged in the suit for eviction"**

Therefore on the basis of the above reason the Court is of view that plaintiffs reasonably requires the suit premises.

Hence issue no. 4 is decided favour of the plaintiffs and against the answering defendants.

ISSUE NO. 5 :

14. Whether the defendant is defaulter in payment of rent?

This issue is taken up for consideration.

The plaintiffs have filed the suit for eviction of the defendant also on the ground that the defendant is defaulter in payment of rent from the month of January, 2008 and thus the defendant is liable to be evicted from the suit property.

Defendant has denied and disputed the same in his written statement.

Defendants have denied the same and stated that plaintiffs willfully neglected to asset the rent.

After appearing in the suit the defendants have filed two applications under section 7(1) and 7(2) of West Bengal Premises Tenancy Act, 1997.

As per order no.29 dt. 27/06/2014 the application under section 7(1) and 7(2) of West Bengal Premises Tenancy Act, 1997 is disposed off by Ld. Chief Judge of this Court rejecting the petitions and thereby the provision of 7(3) of W.B.P.T. Act automatically comes into operation.

Accordingly the defence of the defendant was struck off against the delivery of the possession. The said order has not yet been set aside by any Higher Forum, and, as such, the said order is still in force having obtained finality.

Thus in view of the discussion above as well as on the basis of materials on record, there is no dispute that the defendant is a defaulter in the payment of rent.

It is pertinent to mention here that under section 7(3) of West Bengal Premises Tenancy Act, 1997 order of striking out of the defence against delivery of possession has been done in the present case vide order no.51 dt.09/01/2018 wherein the defence of the defendant against delivery was struck out in terms of provision of 7(3) of West Bengal Premises Tenancy Act, 1997.

*To conclude it would not be out of place to mention that as the default on behalf of the defendant is established without any dispute defendant is not entitled to get any protection as enshrined in section 7(4) of West Bengal Premises Tenancy Act, 1997 which reads as follows:- **“If the tenant makes deposit or pay any amount as required by subsection (1) or sub-section (2), no order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant shall be made by the controller, but he may allow such cost as he may deem fit to the landlord. Provided that the tenant shall not be provided to any relief under the sub-section if, having obtained such relief once in respect of the premises, he again makes default in payment of rent for four months within a period of 12 or for three successive rental period where rent is not payable monthly”** and, in such, facts and circumstances, and order for delivery of possession of the suit premises to the landlord can be passed on the ground.*

This being the present scenario, it can be hold that the defendant is liable to evicted on the score in terms of section 6 of West Bengal Premises Tenancy Act.

Accordingly this issue under consideration is decided in favour of the plaintiffs.

ISSUE NO. 6 :**15.*****Whether the defendants are responsible for any nuisance and nuisance in respect to the suit premises as alleged?******The issue is taken up for the sake of convenience and brevity.***

According to the plaint case, the plaintiffs have stated that the defendants are also creating nuisance and annoyance in the suit premises and thereby disturbing the peace and tranquility and he has also sublet the tenanted premises.

On the other hand, the defendants, have denied the fact of the causing nuisance and annoyance in the suit premises and also the allegation of subletting as alleged by the plaintiffs by stating that the above grounds have been set up only for the purpose of this suit.

No stress has been led on these issues from the side of the plaintiffs during the course of argument.

Nothing has been done by the plaintiffs to substantiate the above grounds. Moreover, the pleadings of the plaintiffs do not even specify the nature of the act allegedly done by the defendants constituting the acts of nuisance and annoyance to the landlord.

No evidence is forth coming from the side of the plaintiffs to substantiate the above grounds and the defendants have not even been cross examined on this point.

In sought, the material on record clearly shows that both the pleadings as well as the evidence is deficient from the side of the plaintiffs with regard to the above grounds and the result is obvious that the plaintiffs have measurably failed to substantiate the above grounds.

Accordingly the plaintiffs are not entitled to get any decree on the above ground.

Hence, the issue under consideration are decided against the plaintiff.**ISSUE NO. 7&8:*****16. Whether the plaintiffs are entitled to get the relief as prayed for?***

To what other relief or reliefs, if any, the plaintiffs are entitled to get?

Both the issues are taken up for the sake of convenience and brevity.

It is evident that the suit has been properly valued and the court fees has properly been paid.

Plaintiffs have been successfully established the suit.

Hence, plaintiffs is entitled for decree of eviction on the ground that the defendants have made default in payment of rent and the plaintiffs require the suit premises for their reasonable requirement and other reliefs as per prayer of the plaint.

Adhering the conspectus factual matrix and earlier decided issues, these two issues are decided accordingly.

The issue no.7 and 8 are decided in favour of the plaintiffs.

DECISION :

17. The plaintiff succeeds to substantiate his case.

EPILOGUE :

18. In result, the plaintiff succeeded to bring home the bacon.

Court fess paid are found to be proper in terms of section 7(i) of the West Bengal Court Fees Act, 1970.

Hence, it is

ORDERED

*that the suit being Ejectment Suit **no. 330 of 2011** be and same is decreed on contest against the defendants but without order as to costs.*

The plaintiffs do get a decree of recovery of khas possession of the suit premises as mentioned the schedule of the plaint after evicting the defendants and their men and agents therefrom.

The defendants are hereby directed to quit and vacate the suit premises and delivered the khas possession of the same in favour of the

plaintiffs within 60 days from the date of this order, in default the plaintiffs are at liberty to put it into execution according to law.

D/C by me

Judge 4th Bench

Judge 4th Bench

Presidency Small Cause Court

J.O Code no. WB001232

