

High Court Form No. (J) 2

Heading Of Judgment In An Original Suit/Case

District :24 Parganas (South)

In the Court Of :Additional District Judge, Fast Track,
II Court, Sealdah,Present :Parna Bhattacharjee
J.O. Code :WB01015.Tuesday, 30th day of June, 2026.**Ejectment Appeal No.02/2025.****C. I. S. No.5 of 2025.****CNR No.WBSP07 001020 2025.**

Smt. Manju Srimal and Another.....Appellants.

-Versus-

Sri Subrata Kumar Saha and 02 Others.....Respondents.

This appeal coming on for final hearing on **30.03.26, 22.04.26, 02.06.26 and 15.06.26** in the presence of**Sri Abhishek Gupta, Sri Sandip Kumar Bhattaryya and Sri Sagnik Kumar Bhattacharyya.**

..... Advocates for the Appellants

AND

Sri Bithin Kumar Das.

.....Advocate for the Respondents

-and having stood for consideration to this day, the Court delivered the following judgment.

Being aggrieved and dissatisfied with the Judgment and Decree dated 11.02.2025 passed by Ld. Civil Judge (Junior Division), 2nd Court, Sealdah in the Ejectment Suit No.44/2013 on the following grounds:

Grounds for Appeal:-

1. That the Ld. Trial Court did not apply judicial mind at the time of passing of the Judgment and Decree.
2. That the Ld. Trial Court did not consider the pleadings, evidence and documents filed by the appellants/defendants.
3. That the impugned Judgment and Decree as passed by Ld. Trial Court is based on surmise and conjecture.

Brief Facts:-

Details apart, the plaintiffs/appellants case in succinct form is that originally the suit premises was a five storied building belonging to Leelamoyee Roy Chowdhury who gifted the northern portion of the suit premises to the plaintiffs/appellants including Amita Saha, now deceased in the year 1975. Accordingly, they became the joint owners of the northern portion of the suit premises. The name of the plaintiffs/appellants were mutated before KMC and the same was renumbered as premises no.101F, Raja Dinendra Street, Kolkata-6. The joint owners sold and transferred the second floor of the northern portion at premises no.101F, Raja Dinendra Street, Kolkata-6, to one intending purchaser in the year 1991 and the third and fourth floor were still under direct occupation of the plaintiffs/respondents. The ground floor of the northern portion of a commercial tenant ABP press and Publication for a long period since the purchase of the suit premises and the first floor is under occupation of the defendants/respondents. The southern portion of the suit premises retained at 101A, Raja Dinendra Street. Sometimes in the year 1996 Leelamoyee Roy Chowdhury gifted and transferred the ground floor and third floor of premises No.101A, Raja Dinendra Street to Sukla Saha and her daughter Sandhatara Saha the wife of the plaintiff/respondent no.1 and they became the joint owners of the

ground and third floor of premises No.101A, Raja Dinendra Street. The ground floor was under the occupation of commercial tenant 'ABP Press and Publication' for a very long time. The third floor was under the occupation of Sukla Saha and her daughter Sandhyatara Saha through plaintiff/respondent no.1. Leelamoyee Roy Chowdhury gifted and transferred the forth floor of premises no.101A, Raja Dinendra Street to her daughter Namita Saha, since deceased and her son Achintya Saha in the year 1993 and gifted the second floor to her other two daughters Sabita Saha and Sujata Saha. The first floor of premises no.101A Raja Dinendra Street was sold and transferred to another intending purchaser by Leelamoyee Roy Chowdhury in the year 1996. The suit property as morefully described in the schedule of the Plaint was initially let out to the present defendants/appellants at a monthly rental of Rs.300/- excluding service charges for facilities @ Rs.285/- totalling to Rs.585/- per month according to English Calender Month. It is the categoric contention of the plaintiffs/respondents that the defendants/appellants did not pay any rent to the plaintiffs/appellants since December, 2009 till date and is a defaulter in payment of rent. The defendants/appellants are also defaulters in payment of maintenance charges @ 10% of the rent and the defendants/appellants did not pay the maintenance charges to the plaintiffs/appellants. Besides, the defendants/appellants made additions and alterations and erected permanent structures to the suit premises without any permission and consent from the plaintiffs/respondents. The defendants/appellants have caused nuisance to the plaintiffs/respondents and the defendants/appellants were not keeping the entrance to the suit premises let out to them in a clean and hygienic condition. This apart, plaintiffs respondents require the suit property for their own use and

occupation. They plaintiff/respondent no.1 is physically handicapped and paralytic and are facing accute difficulties for lack of space in the accommodation available to the plaintiffs/respondents and the members of their family. The plaintiffs/respondents further stated that they are not in possession of any other suitable accommodation elsewhere within 10 Kms. of the suit property within the area under KMC. The total room required by the plaintiffs/respondents are 19. The plaintiffs/appellants by a notice of ejectment dated 22.11.2012 sent through their Ld. Advocate by speed post with A/D Card determined the defendants/appellants tenancy of the said notice was duly received by the defendants/appellants. As inspite of due service of 'Notice to Quit' the defendants/appellants have failed to vacate the 'khas possession' of the suit property, hence the suit was initiated.

The Adversary:-

The defendants/appellants by filing Written Statement have specifically denied all the averments of the Plaint, including the ground of default, reasonable requirement of the plaintiffs/appellants and their family members. The defendants/appellants also denied of receipt of any valid 'Notice to Quit' and prayed for dismissal of the suit.

Argument:-

Heard Ld. Advocate of both sides at length.

Ld. Advocating representing the appellant has stated that the Notice to Quit (Exbt.-7) is defective as the plaintiff as mentioned all the grounds of defaulter, additions alterations of the suit property and causing nuisance in the suit property by the tenant along with the ground of reasonable requirement of the plaintiffs/respondents, but in course of argument the plaintiffs/respondents have only pressed for the ground of reasonable requirement. Also,

no Power of Attorney is filed on behalf of PW-1, even the PW-1 has not filed any authorization to act on behalf of the plaintiff and the said action of the plaintiff/respondent is barred under Order 3 Rule 2 of CPC. Ld. Advocate of the appellant also submitted that as the Notice to Quit sent by the plaintiff is defective so the plaintiffs have no cause of action to bring this suit. Moreover, all the issues framed by the Court should be decided.

Ld. Advocate representing the respondent in course of his argument has stressed upon the point that the defendant/appellant is a pre-suit defaulter and the decree for eviction of the appellant is attracted within the purview of Sec.6(1)(b) of WBPT Act, 1997. Moreover, the suit premises is reasonably required by the plaintiff for their own use and accommodation and that the plaintiffs/respondents have no other suitable alternative accommodation within the Municipal Corporation area of Kolkata.

Ld. Advocate on behalf of the respondent in course of his argument as relied upon the following decisions as reported in :-

- 1> **2010 (2) RCR 595;**
- 2> **1998 (1) RCR 232;**
- 3> **2017 (2) RCR 72;**
- 4> **1993 (2) CLJ 248 and**
- 5> **1998 (2) RCR 515.**

Points for Determination:-

Whether the Judgment and Decree as passed by Ld. Civil Judge (Junior Division), 2nd Court, Sealdah is erroneous and liable to be set aside?

Decision with Reasons:-

From the four corners of the pleadings of both parties I do not find that this suit is not barred by any prevailing legal statutes or principles of Res-judicata or principles of Estoppel, Waiver and

Acquiescence. So, I find that this suit is well maintainable in the eyes of the law.

As far as cause of action is concerned, it is a bundle of facts through which the plaintiff presents his case before the Court of law and tries to establish his case before the Court of law in order to get the desired relief in his favour. In the Ejectment Suit it is the specific case of the plaintiff that the defendant/appellant is a defaulter in respect of payment of rent and that the plaintiffs respondents reasonably require the suit property for their own use and accommodation. On the other hand, the defendants/appellants have denied all the contentions of the plaintiffs/respondents. Thus, the rival contention of both the parties is a clear indication that the plaintiffs have a cause of action to sue the defendant/appellants.

In this context it is pertinent to point out that the perusal of Exbt.7 Series, ie the Notice to Quit dated 22.11.2012 has been properly served upon the defendants, as DW-1 Manju Srimal has stated that the AD Card bears the signature of her husband and apart from his husband no other person in the name of Ujjwal Singh Srimal resided in the suit building and she reside at the address mentioned in the letter an AD card (Exbt.7 Series).

Furthermore, it appears that the said Notice to Quit has been drafted in proper format, describing the suit property in respect of which the defendants/appellants are tenants. Thus, the Notice to Quit is legal and valid.

In this context, I hasten to add that on close scrutiny of the Trial Court record as well as Rent Control challans (Exbt.A Series), I do not find that the appellants/defendants have paid the arrear rent to the tune of Rs.8,910/- along with the rent for the month of December, 2009, January and February, 2010 as directed by the Court vide Order dated 19.03.2018. So, the defendants/

appellants are clearly defaulters (pre-suit defaulter) in respect of payment of monthly rent.

It is the categoric contention of the plaintiffs/respondents that originally the suit premises was a five storied building belonging to Leelamoyee Roy Chowdhury who gifted the northern portion of the suit premises to the plaintiffs/appellants including Amita Saha, now deceased in the year 1975. Accordingly, they became the joint owners of the northern portion of the suit premises. The name of the plaintiffs/appellants were mutated before KMC and the same was renumbers as premises no.101F, Raja Dinendra Street, Kolkata-6. The joint owners sold and transferred the second floor of the northern portion at premises no.101F, Raja Dinendra Street, Kolkata-6, to one intending purchaser in the year 1991 and the third and forth floor were still under direct occupation of the plaintiffs/respondents. The ground floor of the northern portion of a commercial tenant ABP press and Publication for a long period since the purchase of the suit premises and the first floor is under occupation of the defendants/respondents. The southern portion of the suit premises retained at 101A, Raja Dinendra Street. Sometimes in the year 1996 Leelamoyee Roy Chowdhury gifted and transferred the ground floor and third floor of premises No.101A, Raja Dinendra Street to Sukla Saha and her daughter Sandhatara Saha the wife of the plaintiff/respondent no.1 and they became the joint owners of the ground and third floor of premises No.101A, Raja Dinendra Street. The ground floor was under the occupation of commercial tenant 'ABP Press and Publication' for a very long time. The third floor was under the occupation of Sukla Saha and her daughter Sandhyatara Saha through plaintiff/respondent no.1. Leelamoyee Roy Chowdhury gifted and transferred the forth floor of premises

no.101A, Raja Dinendra Street to her daughter Namita Saha, since deceased and her son Achintya Saha in the year 1993 and gifted the second floor to her other two daughters Sabita Saha and Sujata Saha. The first floor of premises no.101A Raja Dinendra Street was sold and transferred to another intending purchaser by Leelamoyee Roy Chowdhury in the year 1996.

As far as the ground of reasonable requirement is concerned. It is the specific case of the plaintiff that they reasonably require at least 19 rooms to meet their requirements of the rooms, as the plaintiffs being brothers have their respective families. Moreover, plaintiff no.1 is a permanently disabled person and requires a room as the first floor of premises No.101A, Raja Dinendra Street, Kolkata – 6, which is the suit property and the plaintiffs/respondents have also filed his disability certificate, Exbt-5 Series. The plaintiffs no.1 also requires one room for his wife and his married daughter and her family. Besides, plaintiff no.2 also requires one room for himself and his wife and another room for his son and his family members, as the son of the plaintiff no.2 stays at Bengaluru for the purpose of his job. Similarly, plaintiff no.3 also requires one room for himself and his wife and another room for his son and his family members, as the son of plaintiff no.3 resides at USA, being a Microsoft Engineer. This apart, the plaintiff requires three separate living cum dining room, three separate kitchen, three separate guest rooms, two store rooms and three separate Puja rooms.

From the closer glance of the Commissioner's Report [Exbt.10 collectively] it is evident that in respect of 101A Raja Dinendra Street, which is the suit property comprised of total three rooms, one kitchen, two bath and privy, one small store room and one dining cum drawing space. That apart, the premises no.101F,

Raja Dinendra Street, 3rd Floor, comprised of total three rooms, one kitchen, two baths and privy, one store room, one dining cum drawing space and fourth floor comprises of two rooms, one kitchen, two bath cum privy and dining cum drawing room. Moreover, the defendants/appellants have not categorically denied the requirement of rooms by the plaintiffs/respondents. It is needless to mention that as per settled principles of law that the averment of the fact in the plaint will be deemed to be admitted if not denied specifically in the written statement (Order VIII Rule 3 and 5 of CPC). Evasive denial of allegation would be deemed to be an admission on part of defendant, as per settled legal proposition. Also, it is the well settled position of law that bonafide requirement includes family of landlord and family includes near relatives of the head of family. Furthermore, bonafide requirement is not a static feature. It is bound to differ from time to time with the needs of growing children and advancement in the living of the family. Court is also not oblivious of the fact that reasonable requirement for personal occupation of the landlord is the discretion of landlord and court not to suggest were to stay.

It is well settled position of law that the landlord is the best judge of his necessity and the tenant cannot dictate the terms to the landlord regarding his necessity. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than a mere desire, which is an outcome of sincere, honest desire and not a mere pretense to the evict the tenants.....Once the Court is satisfied of the bonafide needs of the landlord by applying objective standards, his subjective choice shall be respected by the Court. There is no straight jacket formula in coming to the conclusion of the bonafide requirement of the suit

premises by a landlord for his own use and occupation, which is based on the realities of life [(1996) SCC 222].

At the same time the bonafide requirement of landlord requires practical approach as law does not demand that the landlord be prevented from living in comfort of his own house and be forced to live in inadequate premises in order that tenant's occupancy of tenancy premises may be protected (2001) 8 SCC 561. As it is well settled law that the landlord is the best judge of his requirement and necessity and he has got complete freedom in the matter, therefore a tenant cannot dictate the terms to the landlord regarding his necessity.

The essential ingredients which a landlord is required to show for the purpose of getting an eviction order for bonafide needs are i) the petitioner is the owner/landlady of the suit premises, ii) the suit premises are required bonafide by the landlord for himself/herself and any of his/her family members dependent upon him/her, iii) the landlord/landlady or such other family members have no other reasonable suitable accommodationIt is an honest requirement and not tainted with any oblique motive and is not a mere wish or desire [**Bhawani Shankar Vs. Nand Lal and Ors. 2021 SCC Online Del.4284**].

Thus, from the above initiated discussions I find that the current available accommodation of the plaintiffs/respondents, as evident from the report of Ld. Commissioner in respect of premises no.101A, Raja Dinendra Street, 3rd Floor and premises no.101F, Raja Dinendra Street 3rd Floor and 4th Floor are not sufficient to cater the need of the plaintiffs/respondents in respect of the rooms. So, the plaintiffs/respondents are entitled to get a decree on the ground of reasonable requirement also, beside the ground default as discussed above.

Before parting, I would like to add that this court is not oblivious of the fact that the plaintiff in an Ejectment Suit must succeeds on the strength of his own title. The plaintiffs have to stand upon his own legs to prove his title instead of shifting the burden of proof upon the defendants shoulder (**AIR 1954 SC 256**).

As the plaintiffs/respondents have not prays for decree on the other ground of addition, alteration, so the said ground is not discussed and is not taken into consideration.

As a result, I do not find any cogent reasons to interfere with the Judgment and Decree as passed by Ld. Civil Judge (Junior Division), 2nd Court, Sealdah as passed in Ejectment Suit No.44/2013.

Hence, it is,

O r d e r e d

that the Ejectment Appeal being No.02/2025 be and the same is hereby dismissed on contest.

There is no order as to costs.

The Judgment and Decree as passed in Ejectment Suit No.44/2013 as passed by Ld. Civil Judge (Junior Division), 2nd Court, Sealdah is hereby affirmed.

Memorandum of Appeal is correctly stamped.

Court Fees paid is found correct.

Let the TCR along with the Judgment be sent to the Court of Ld. Civil Judge (Junior Division), 2nd Court, Sealdah for information.

Dictated and Corrected by me

Additional District Judge,
Fast Track, 2nd Court,
Sealdah.

Additional District Judge
Fast Track, 2nd Court,
Sealdah