



2024:CHC-AS:1624-DB

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE MADHURESH PRASAD

SAT 186 of 2022
CAN 1 of 2022

Tarak Nath Jaiswal
Vs.
Uttam Chatterjee

Appearance:

For the Appellant	:	Mr. Kushal Chatterjee, Adv. Mr. Oishik Chatterjee, Adv. Mr. Subrata Bhattacharjee, Adv.
For the Respondent	:	Mr. Kartick Mondal, Adv.

Judgment on	:	19.07.2024
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Harish Tandon , J.

The suit for eviction of the appellant on the ground of reasonable requirement stood decreed by the Trial Court and such decree is affirmed by the First Appellate Court. Both the Courts held that the plaintiff/respondent has been able to prove the requirement to be reasonable and therefore, became entitled to evict the appellant from the suit premises.



The relationship of landlord and tenant is not disputed. The plaintiff case vividly reflects that the family of the plaintiff/respondent consists of himself, his wife and a son who is of marriageable age. It is averred that the 1st floor and the 2nd floor of the entire house is occupied by the plaintiff/respondent and the ground floor was let out to the defendant/appellant. It is further averred that because of the insufficient accommodation, the son could not be given in marriage but in course of the pendency of the suit admittedly the son has been given in marriage. The requirement was pleaded to the effect that the wife is running a music school on the 1st floor of the said house whereas the residence is restricted to the 2nd floor which comprised of two rooms with bath, privy and kitchen. The requirement is pleaded to the effect that one bed room is required for the plaintiff and his wife, another bed room for his son and in addition thereto one drawing room, one store room, one guest room and two rooms are required for running the music school apart from the kitchen and the guest room. The requirement is vividly pleaded in Paragraph 7 of the plaint which is dealt by the defendant/appellant in the written statement to the effect that he denies and disputes the contentions made therein with the assertion that the plaintiff/respondent has a sufficient accommodation whereas the defendant/ appellant has no accommodation except the tenanted premises in the country. A point is sought to be argued before this Court that in absence of any commission of inspection, both the courts ought not to have decreed the suit for eviction on the ground of reasonable requirement. It is further urged by the appellant that the suit for eviction is filed as a counterblast to a refusal to enhance rent and therefore, there is a lack of genuine need. It is further urged that the court failed to take into



consideration that the partial eviction can satisfy the requirement as pleaded and having not done so it raises a substantial question of law to be decided in the instant appeal.

So far as the last plea is concerned i.e. the partial eviction, it can only be taken recourse to in the event, the court found that the eviction of a tenant from a portion of the tenanted premises would satisfy the requirement of the landlord but cannot be resorted to in a situation, the landlord has proved the entire tenanted premises to be required for meeting his accommodation which he considers to be reasonable. The evidence of the plaintiff's witness clearly revealed the number of the rooms occupied by him which has not been denied and/or disputed by the defendant in his evidence. In the cross-examination, the defendant/appellant showed his ignorance on the number of the rooms and clearly stated that he never went to the roof top of the 2nd floor. Thus the evidence of the plaintiff/respondent with regard to the number of the rooms occupied by him remained unchallenged and uncontroverted. The inspection of the premises is necessary in case of a reasonable requirement to ascertain whether the accommodation available to the landlord is reasonable suitable or not. The moment there is no dispute to the existence of the accommodation available to the landlord, the lack of inspection cannot be fatal. It is a specific case of the plaintiff/respondent that the entire 1st floor is used for running a music school by his wife and the residential accommodation is only available on the 2nd floor which consists of two rooms, kitchen, bath and privy. The requirement as pleaded in the plaint as well as in the evidence is not only restricted to an expansion of the music school but also for the purpose of



residence. What appears from the stand of the plaintiff/respondent that the requirement was pleaded to shift the school from 1st floor to ground floor so that the residence can be enjoyed in the first and second floor without any intervention of an outsider and to maintain the privacy of the family. The family composition is undisputed; rather the defendant/appellant have accepted the composition of the family of the plaintiff in the cross-examination. It is also not disputed that each floor consists of two rooms, kitchen, bath and privy.

Going by the fact that the family of the plaintiff consists of himself, his wife, son and daughter-in-law, two bed rooms are the bare requirement to accommodate the plaintiff and his son. Apart from the same, there is a requirement of a drawing room, dining room and the guest room which cannot be denied. The landlord is the best judge for the requirement which he need to live in a reasonable manner. The privacy of the family is also one of the important factors as it is inconceivable that the commercial and residential activity should be allowed to continue in an adjacent room. Apart from the same it is specific case of the plaintiff/respondent that the music school is run in two rooms available on the 1st floor and the entire 2nd floor is used for the residential purposes. The plaintiffs have proved by documentary evidence the number of the students, the fees collected for the same which are marked exhibits in the suit. The documents revealed that there are 30 students at that relevant point of time in the said school and it is inconceivable and improbable that the same would not increase in future. It has also come up in the evidence that the said school is in existence for more than a decade. The second witness of the plaintiff was firmed on a



stand that on account of an increase of the student capacity in the said school there is a requirement of the suit premises which cannot be overlooked. We thus do not find any justification in the stand of the counsel appearing for the appellant that both the courts below ought to have considered the case of a partial eviction.

It is undeniable that during the pendency of the suit the only son of the plaintiff was given in marriage. The court cannot overlook the forceable future that the composition of the family may increase and the requirement cannot be squeezed by overlooking the said fact. We are conscious of the proposition of law that in order to succeed in a case of a reasonable requirement, the requirement must be genuine, honest and *bona fide* as held by the Apex court in ***D. Devaji vs. K. Sudarashana Rao, reported in 1994 Supp (1) SCC 729***. From the overall consideration of the pleadings as well as the evidence adduced by the respective parties, we do not find that there is any substantial question of law involved in the instant case. The appeal is dismissed under Order 41 Rule 11 of the Code.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Harish Tandon, J.)

I agree.

(Madhuresh Prasad, J.)