

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).8 6 6 4 / 2 0 0 6

(From the judgement and order dated 3 0/ 0 9 / 2 0 0 5 in SA No. 4 0 2 / 1 9 9 5 of
The HIGH
COUR T OF CALCU T T A)

SAN K A R CHAND R A KUNDU@ SAN K A R KUNDU Petitioner(s)
V E R S U S

SAR A J U GHOSH & ORS Respondent(s)

(With prayer for interim relief and office report)
[for final disposal]

Date: 20 / 0 7 / 2 0 0 7 This Petition was called on for hearing today.

CORAM :
HON' B L E MR. JUS T I C E ASHO K BHAN
HON' B L E MR. JUS T I C E V.S. SI R P U R K A R

For Petitioner(s) Mr. Ranja n Mukherjee,Adv.

For Respondent(s) Mr. Pra senjit Keswa ni, Adv. for
Mrs V.D. Kha nn a,Adv.

UPON hearing counsel the Court made the following
O R D E R
Leave granted.
The appeal is allowed in terms of the signed order. No order as to costs.

(J.S. Rawat) (Neeru Bala Vij)
AR- cum- PS Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3202 OF 2007
(Arising out of SLP(C) No. 8664 of 2006)

Sankar Chandra Kundu @ Sankar Kundu Appellant(s)

Versus

Saraju Ghosh & Ors.
Respondent(s)

ORDER

Leave granted.

The facts culminating in the filing of the present appeal by special leave in brief are that the appellant is the owner of the suit property by virtue of a deed of settlement dated 14th July, 1967. The predecessor in interest of the respondent, Maniklal Ghosh, was a tenant under the appellant-landlord in respect of the suit premises at a monthly rent of Rs.150/- excluding electricity and service charges. On 19th May, 1989, the appellant issued a notice of ejectment to the

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respondent-tenant inter alia on the ground of personal necessity.

The respondent having not acted thereupon and vacated the suit premises, appellant instituted a Suit for eviction being TS No. 314 of 1989 in the Court of Munsiff, Howrah on twin grounds, namely, (i) boanfide requirement under Section 13(ff) of the West Bengal Premises Tenancy Act, 1956 and (ii) violation of Clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act, 1882, committed by the respondent-tenant. Respondent filed his written statement.

After completion of the pleadings, the trial court framed the following eight issues:

- "1. Is the suit maintainable in its present form?
2. Is the suit bad for partial eviction?
3. Is the notice legal, valid and properly served upon the defendants?
4. Has the plaintiff required the suit premises reasonably for own use and occupation?
5. Is the defendant guilty of making unauthorized addition and alteration in violation of clauses (M), (O) and (P) of Section 108 of T.P. Act?
6. Is the defendant guilty of causing mischief, annoyance and nuisance?
7. Is the plaintiff entitled to get a decree or any other relief as prayed for, in law and equity?
8. Is the defendant a defaulter?"

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The Court Commissioner, having inspected the suit premises,

submitted his report dated 18th March, 1993, inter alia, recording that the appellant-landlord was in possession of one bed room, one study and one kitchen; that there was also an attic where old materials were found to have been stored. It was further recorded that the said attic was so small and low in height that neither one can sleep nor can the same be used for any purpose other than storing old materials. The said report was proved without objection.

While Issue No.2 relating to partial eviction was not pressed by the tenant before the trial court and the same was decided in favour of the appellant-landlord, Issue Nos. 5 and 6 relating to violation of clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act were decided against the appellant-landlord. Issue No.4 relating to bonafide need was decided in favour of the appellant-landlord and it was held that the appellant was a divorcee, his mother had died and he was living in the house all alone. He is an old man and suffering

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from various ailments, and wanted his nephew along with his family members to live in the appellant's house so that they could look after him at the old age. Trial court came to the conclusion that the requirement of the appellant was bonafide. The Suit was decreed. The respondents-tenants challenged the same by filing an appeal being T.A. No. 18/1994 before the First Appellate Court. The findings recorded by the trial court regarding bonafide requirement was affirmed by the First Appellate Court.

The respondents-tenants being aggrieved against the rejection of their appeal, filed a Second Appeal being SA No.402/1995 in the High Court of Calcutta. The learned Single Judge of the High Court partly allowed the Second Appeal filed by the respondents, against which the appellant-landlord has filed the present appeal.

Learned Single Judge framed the following four questions which, according to him, are substantial questions of law:

"1. Whether in the judgment of the lower courts, the onus has been properly placed.

2. If the learned courts below have properly considered the report of the Commissioner in arriving at their

decisions.

3. Whether the appellate court had properly followed the established legal tests particularly in determining the question under section 13(ff) of the Act and the provisions of clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act, and

4. Whether the courts below are always obliged to follow the mandatory provisions of Section 13(4) of the Act."

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Setting aside the findings recorded by the First Appellate Court, the High Court remitted the case back to the First Appellate Court with a direction to dispose of the appeal in accordance with law within 6 months from the receipt of the record and copy of the order containing such direction.

We have heard the rival contentions put forth by the learned counsel appearing for the parties.

Counsel appearing for the appellant-landlord, at the outset, advanced his submission that the questions, said to be the questions of law, formulated by the learned Single Judge were essentially questions of fact and the High Court has erred in upsetting the concurrent findings of fact recorded by the courts below without formulating substantial questions of law, a mandatory requirement of Section 100 of the Code of Civil Procedure. He further contented that, in any case, even if it is accepted that the 3rd question was a question of law, still there is no question framed regarding reasonable personal requirement of the landlord for his own use and occupation of the premises in question, on which the appellant-landlord had succeeded, and therefore, without framing a question on the point of personal requirement, the findings recorded by the courts below on this point, could not be set aside.

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Counsel for the respondents-tenants supported the findings recorded by the High Court.

We find force in the submissions advanced by the counsel for the appellant that the landlord had filed the suit for eviction on twin grounds, as aforesaid, and he succeeded on both counts; none of the questions framed by the High Court pertain to the findings recorded by the courts below regarding personal necessity and, therefore, in Second Appeal, without framing a substantial question of law on this count, the findings recorded by the courts below on Issue No.4 could not be set aside by the High Court.

In our considered view, without framing a substantial question of law regarding the personal necessity of the appellant-landlord, the High Court could not upset the findings recorded on Issue No.4. The High Court has clearly erred in setting aside the findings recorded by the courts below regarding the personal necessity.

For the reasons stated above, the appeal is accepted and the findings recorded by the High Court regarding personal necessity are set aside and that of the trial court and the First Appellate Court restored. As we are upholding the findings of eviction passed by the Trial Court on the ground of personal necessity, no purpose would be served in remanding the matter to the Appellate Court on other issues.

However, in the facts and circumstances of the present case, there shall be no order as to costs.

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.....J.

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(ASHOK BHAN)

New Delhi;
.....J.

July 20, 2007. (V.S. SIRPURKAR)