Amiya Charan Law and Others Vs The Indian Jute Company Limited

Court: Calcutta High Court

Date of Decision: June 19, 1989

Acts Referred: West Bengal Premises Tenancy Act, 1956 â€" Section 13(1)(ff), 13(3)(3A)

Citation: 94 CWN 19

Hon'ble Judges: Shamsuddin Ahmed, J; Pabitra K. Banerjee, J

Bench: Division Bench

Advocate: S.N. Mukherjee and Bhaskar Ghose, for the Appellant; Sudis Dasgupta and Amiya Kumar Banerjee, for the Respondent

Final Decision: Allowed

Judgement

Prabitra Kumar Banerjee, J.
This is an appeal from the order of remand of the appellant Court reversing the decree for eviction passed by

the Learned Subordinate Judge, 6th Court, Alipore in Title Suit No. 14 of 1984 of the said Court.

1. The Indian Jute Company Ltd. (hereinafter called the Company) filed a suit for eviction against the defendant-tenants Amiya Charan Law and

two others from premises no. 2, Palm Avenue, Calcutta on the ground that the Company reasonably required the said premises for its own

occupation and for the occupation of its Senior Staff. A notice to, quit preceded the institution of the Suit. The defendants contested the suit by

filling a joint written statement in which, amongst other grounds, they denied the company''s case of reasonable requirement. The said suit was

initially registered as Title Suit No. 66 of 197 3 and it was decreed by the Subordinate Judge 2nd Court, Alipore by his judgment and order dated

7th March, 198l. On appeal by the tenants, the Learned Additional District Judge 10th Court, Alipore by his judgment and order dated 23rd

November, 1981 set aside the decree and sent the case back on remand to the trial Judge for disposal after framing of an additional issue as to

whether the plaintiff was in possession of any other, reasonably suitable accommodation. After the order of remand, the plaint was amended, an

additional issue was framed and the suit now. re-numbered as Title Suit No, 14 of 1984, was heard and disposed of by the Subordinate Judge,

6th Court, Alipore (Transferee Court) by passing a decree for eviction and mesne profits. The defendants preferred an appeal and the Appellate

Court against set aside the judgment and decree under appeal and remitted the case to the lower Court for hearing in the light of the directions

incorporated in the body of the judgment. Both the parties felt aggrieved by the aforesaid order of remand and while the defendants preferred the

second appeal pressing for the dismissal of the suit, the plaintiff company filed cross objection and insisted on the restoration of the decree for

eviction. The only question which lies at the root of the controversy is whether on the materials on record he company could successfully make out

the ground of ""reasonable requirement"" within the meaning of Section 13(1)(ff) of the West Bengal Premises Tenancy Act, 1956 (hereinafter

referred to as the Act) and an answer to this would be decisive of the appeal. A conclusion in either way in respect of the problem aforesaid would

then lead us to further enquiry as to whether in the facts and circumstances of the case the order for remand impugned was proper or not.

2. We propose to look into the plaint first. The relevant paragraph is paragraph 3 of the plaint which, after the amendment, reads as follows:

The plaintiff reasonably equires the said premises for their own use and occupation and for the occupation of is staff in as much as the plaintiff failed

to provide with the reasonable and suitable accommodation to its senior staff and the plaintiff has not, nor is in possession of any other reasonably

suitable accommodation.

We next turn to the evidence on record. The Company acquired the suit premises by a registered deed of conveyance dated 19th October, 1968

and this was followed by the letter of attornment Ext. 1 served upon the defendant-tenants. In this Way the company became the owner-landlord

in respect of the suit premises of which the defendants, were the tenants. At the trial court the company examined its Secretary (PW 1), Mercantile

Officer (PW 3) and Commercial Executive (PW 5) to prove the case of its ""reasonable requirement"". It has produced a resolution dated 23rd

October, 1968 Ext.2 and relied upon the report"" of the. Pleader Commissioner Ext. 8.

3. The resolution Ext. 2 reveals that in October 1968 it was felt that the company needed a suitale building to accommodate its officers. P.W. 3

has stated that the officers made representation before the Company and the latter gave an assurance for providing them with some

accommodation. It transpired during the trial that at the material time there were 13/14 Senior staff and 50/55 subordinate staff in the employment,

of the company. It is alleged that the officers staying outside Calcutta were experiencing difficulty in returning homes at 9.30 P.M. after office hours

and so they made a representation to the company for their accommodation in Calcutta. That was perhaps the reason, as the trend of evidence

indicates, why the company was anxious to provide the senior staff with some accommodation in Calcutta. But was the company really keen for

securing any such accommodation in Calcutta for that purpose? Perhaps not, and this will be borne out by the facts which we would like to discuss

presently. The suit property was acquired on 19th October. 1968, but the notice was not issued prior to 23rd June, 1972 and the suit was

instituted about a year thereafter. It would be appropriate to note that section 13(3)(3A) of the Act had not came into force in October 1968.

Under the service contract the company was under no obligation to provide its staff with residential accommodation in Calcutta. None of the

employees for whose benefit the suit property is stated to be required by the Company has been exmained in the suit. None of the outsiders has

come forward and said that he Is willing to shift to Calcutta, if accommodation is available. Of the three witnesses examined, two (PWs 1 & 5) live

in Calcutta. The third witness living in Chandannagar does not press for any accommodation in Calcutta. The Chairman or the Director of the

Company has not been examined to prove whether the company in fact made any commitment to its staff to provide them with residential

accommodation in Calcutta. These persons would be the fittest persons to give an account of the company-staff relation on the question of

residential accommodation in Calcutta. No register showing the names of the employees with their addresses is forthcoming. P.Ws. 1, 3 and 5

could given the names of only 3 employees who attend the company office from Srirampore and Chandannagar. Of the 3 persons named, Mahabir

Prosad joined the company in 1977, 4 years after the suit. It is true that a company may require a premises for the use and occupation by its

employees, but that requirement, in order to have the force of ""reasonable requirement"", must have close relation to ""genuine present need"". This

element of need must be something more than a mere wish, convenience or fancy but something less than absolute necessity. Again,

reasonableness of requirement is an objective determination of facts. The aforesaid legal principles explaining the connotation of the expression

reasonable requirement"" have been consistently expounded by the Courts of Law. Upon application of the above tests to the facts of the instant

case, we are convinced that the company has failed to prove that it reasonably requires the suit premises for the use and occupation of its

staff/senior staff.

4. We have so long dealt with the first part of section 13(1)(ff) and we next pass on to the concluding Dart of it because, as pointed out by the

Division Bench of this Court in the case of Sonabati and Ors. v. Achutananda Dey & Anr, reported in 87 CWN 278, ""in deciding the question of

reasonable requirement the Court is bound to deride among other things whether the present accommodation by the landlord is reasonably

suitable"". The decision in the case of Rajkumari v. Ashalata, reported in 68 CWN 29 was followed in Sonabati''s case (supra). In the case at hand

barring the solitary statement of P.W.5 that the plaintiff has no other reasonably suitable accommodation in Calcutta, there is no other evidence in

support of that contention. The company has its office a 16 Strand Road and a factory premises in Calcutta. In the absence of any satisfactory

evidence in that regard we are unable to hold that the plaintiff is not in possession of any other reasonably suitable accommodation.

5. It has been contended by Mr. Mukherjee in the last resort that the extent of accommodation required by the company has neither been pleaded

nor proved and there is no evidence how the extra space could be utilised. There is much force behind the contention put forth by Mr. Mukherjee,

at least on factual basis. From the report of the pleader commissioner Ext. 8 it appears that the suit property, having an area of more than 2 bighas

or 5 Cottas comprises one big masonary structure having 14 rooms in the ground floor and 11 rooms in the first floor and substantial portion lying

vacant. Evidence discloses that 5 or 6 families can be accommodated for which substantial structural alteration is necessary. In the above context it

is impossible to hold that the requirement of the company, if any, extends to the entire suit property (vacant land and structure). It is not dispouted

that the landlord can make out a case of his own use and occupation of the premises with a further case that on obtaining possession of the

premises he will make additions and alterations or even renovation to make it suitable for such use and occupation. (See Jogesh Chandra Sen Vs.

Sm. Kiron Bala Saha,). Similarly in another case reported in AIR 1976 SC 479 (M/s. Maulin Abdur Rub Firieze Ahmed and Co v. Joy Krishna

Arora). There Lordships held that it is the choice of the landlord how the premises will be put to use. But in the instant case no such averment has

been made in the pleading. So also no issue has been framed and no evidence has been led to that effect. In the above premises the Court, is

reluctant to take note of the possibility of the suit property being renovated by substantial additions or alterations or by making new constructions

on the vacant space. These facts would be relevant while considering as to whether the company''s requirement could be fulfilled by partial

eviction. On the existing pleadings and evidence these aspects could not be looked into for which the company and the person who drafted the

plaint under the instruction of the Company (Officer?) seem to be responsible. The trial Judge failed to consider all these aspects and the decree

for eviction was passed almost mechanically.

6. Ironically, though, the First Appellate Court found that there had been delay in filing the suit, that no case for the requirement of the premises on

the ground of building and rebuilding was made out, that the names of the senior staff who are likely to be provided with the accommodation have

not been given at the trial and that it was difficult to evalute the exact extent of alleged reasonable requirement with reference to the quantum of

accommodation to be given to each officer. The First Appellate Court further found that in the suit, based on badly drafted plaint, the conclusion

reached by the learned Subordinate Judge was without due consideration of the materials on record. The Appellate Court was thus constrained to

hold that from the technical stand point the suit merits dismissal. Inspite of all these findings, the First Appellate Court, completely out of context,

set aside the judgment and decree and passed an order for remand with the pious wish of not forcing the respondent Company to a fresh litigation

starting from square one. Accordingly, plaintiff-Company was given ""an opportunity to incorporate in the plaint, the details for reasonable

requirement for its own use and occupation and the case of building and rebuilding so that the Company''s suit could be made fool-proof"". The

conclusion reached by the Appellate Court is inconsistent with the findings arrived at earlier in the same judgment the impugned order for remand

cannot under any circumstances be sustained. At this juncture it would be appropriate to refer to a few judicial pronouncements where the Court''s

power to pass order for remand was discussed. In the case of Secretary of State for India v. Ananda Mohan Roy, reported in AIR 1921 Cal 661

(at page 667) their Lordships found that whilst it might have been a matter of doubt whether when a particular piece of evidence was put forward

as available, the Court should allow a remand seeing that no evidence was offered in the lower Court, it is also clear that such a remand should not

be allowed at the present time after so long a trial merely for the purpose of making an enquiry whether there is any evidence to be produced. In

the instant case there had earlier been an order of reman in November 1981 and the plaintiff got enough opportunity to amend the plaint and

adduce fresh"" evidence in support of the ground of reasonable requirement of the suit premises. The suit was instituted in July 1973 and an order

for remand alter 16 years would be certainly prejudicial to the interest of the defendants-tenants who could take advantage on account of the

laches on the part of the plaintiff-company. In the case of State of West Bengal Vs. Lakshmi Narayan Singh and Another, a Division Bench of this

Court held that an order for remand to cover up deficiencies due completely to the laches on the part of the Government was bad in law and

Government cannot be allowed to fill in the gaps in the evidence. In the facts and circumstances of there reported decision, there was no scope for

passing an order for remand only to afford fresh opportunities to adduce fresh evidence and to have a new trial. In the case of Kalipada Dinda and

Others Vs. Kartick Chandra Hait and Others, both the parties had sufficient opportunity to prove their cases by evidence in the trial court. The

Court below allowed the parties while remanding the case to adduce further evidence on the ground that there was insufficient evidence. It was

held by his Lordship that mere insufficiently of evidence is no ground for allowing any party to adduce further evidence. If there is insufficient

evidence for any party to prove his case, he will suffer.

7. From the ratio and principles emerging out of the reported decisions, it can be safely concluded that in the instant case the First Appellate Court

erred in passing an order for open remand. The suit was instituted 16 years back and that should be the main reason why there should not have

been an order of remand.

8. In the light of all that has been stated above the appeal succeeds and the cross objection fails. The appeal is allowed with costs. The cross

objection is disallowed without costs. The intergrated order of remand is set aside. The suit is dismissed on contest with costs.

Shamsuddin Ahmed, J.

I agree.