
Dhananjoy Chongdar Vs Parul Bala Koley and others

S.A. No. 775 of 1999

Court: Calcutta High Court

Date of Decision: May 10, 2012

Acts Referred:

West Bengal Premises Tenancy Act, 1956 – Section 13(6), 17(4)

Citation: (2012) 5 CHN 284 : (2012) 2 RCR(Rent) 295

Hon'ble Judges: Tapan Kumar Dutt, J

Bench: Single Bench

Advocate: S.P. Roy Chowdhury, Mr. Subhas Ch. Karar and Mr. Surajit Roy, for the Appellant; Debasish Roy and Mr. Md. Basha Mir, for the Respondent

Judgement

Tapan Kumar Dutt, J.

Today learned Advocate for the respondents has made and completed his submissions. Learned Advocate for the

appellant has also made his submissions in reply. Hearing is concluded.

2. This court now proceeds to deliver the following judgement. This court has heard the learned Advocates for the respective parties. The facts of

the case, briefly, are as follows.

3. The plaintiff/appellant along with his brother Paresh Chandra Chongdar jointly purchased the suit holding, that is, 20/1, "R" Road, P.O. Netaji

Nagar, P.S. Liluah, District" - Howrah which has since been re-numbered as holding No. 20/1/1 Road. The plaintiffs case is that the plaintiff has

become the absolute owner of the suit holding by a registered deed of partition between himself and the said brother.

4. The plaintiffs further case is that originally Khagendra Nath Koley was inducted as a premises tenant by the erstwhile landlord Kasi Nath

Banerjee in respect of the suit property which is one bed room of brick built wall covered with pan tiles situated within the aforesaid premises. The

said Khagendra Nath Koley died leaving behind the defendants/respondents as his heirs and legal representatives. The plaintiff/appellant filed a suit

being Title Suit No. 409 of 1984 against the defendants/respondents praying, inter alia, for a decree for eviction of the defendants/respondents

from the suit premises and recovery of peaceful khas possession of the suit premises and also mesne profits.

5. The said suit was filed, inter alia, on the ground of default in payment of rent, reasonable requirement of the suit premises for the plaintiffs own

use and occupation and also building and rebuilding of the suit premises. The defendants in the said suit filed a written statement denying the

material statements made in the plaint and contested the said suit.

6. The said suit came up for final hearing when the parties adduced their respective evidence and the learned Trial Court by judgement and decree

dated 25.02.1993 dismissed the said suit by holding, inter alia, that the plaintiff has failed to prove the alleged ground of reasonable requirement for

his own use and occupation and that the defendants are entitled to get protection u/s 17(4) of the West Bengal Premises Tenancy Act, 1956.

7. It appears that the ground of building and re-building was not seriously pressed by the plaintiff in the suit and it has been submitted by the Mr.

Karar, learned Advocate, today when he made his submissions in reply, that the plaintiff/appellant also did not and does not even today press the

ground of building and re-building.

8. The Learned Trial Court further held that the suit fails also on the ground of invalidity of the notice u/s 13 (6) of the West Bengal Premises

Tenancy Act.

9. The plaintiff/appellant, being aggrieved by the aforesaid judgement and decree passed by the learned Trial Court, filed Title Appeal No. 99 of

1993 and Appellate Court by the judgement and decree dated 26th April, 1999 dismissed the said appeal after having found that the plaintiff has

failed to prove the ground of reasonable requirement for own use and occupation.

10. However, Appellate Court found that the learned Trial Court was not correct in holding that the notice u/s 13(6) of the said Act of 1956 was

bad in law.

11. Being aggrieved by and dissatisfied with the impugned judgement and decree passed by appellate court, the plaintiff has filed the instant appeal

in this Court. In the instant appeal none of the parties have made any submission with regard to the point of notice u/s 13(6) of the said Act of

1956 and thus the finding of Appellate Court stands and it has already been indicated above that Appellate Court was of the view that the notice

u/s 13(6) of the said Act of 1956 was not bad in law.

12. Appellate Court on the question of plaintiffs reasonable requirement of the suit premises for own use and occupation laid much emphasis on its

finding that the plaintiff has not been able to prove that the tenancy which was in the name of Sree Durga Engineering was actually surrendered to

the landlord of the premises concerned. At this juncture it is necessary to say a few words with regard to the plaintiffs case. The plaintiffs case is

that the plaintiff had a partnership business with his brother under the name and style of ""Ms. Sree Durga Engineering"" in a tenanted shed at holding

No. 69, Benaras Road, Belgachia, Howrah but the said partnership was dissolved by a deed of dissolution dated 20.11.1986 and the tenanted

shed of the partnership business was surrendered to the landlords concerned. The plaintiffs case was that as per the terms of the said deed of

dissolution, the plaintiff became the absolute and sole owner and proprietor of the said business i.e the Sree Durga Engineering. The plaintiffs

further case was that the plaintiffs wife Smt. Archana Chongdar has another tenanted shed in the holding No. 69 Benaras Road, under the landlord

concerned and she had allowed the plaintiff to temporarily run his business in such shed. The plaintiffs case was that the plaintiff has no room or

shed of his own to run his business and hence he required the suit premises. The plaintiff has also stated in the plaint that he has filed two suits for

eviction on the ground of reasonable requirement against the two tenants in the suit holding and there are altogether three tenanted rooms which are

situated in a compact block and in a row adjoining to one and another in the suit holding. The plaintiff has stated in its plaint that the plaintiff shall

convert the three tenanted rooms into one shed by removing the intervening partition walls for running his business (""Karkhana""). Appellate Court

came to the conclusion that Appellate Court would have believed the case of the plaintiff running his business in the tenanted room of his wife had

the plaintiff been able to establish that there was an actual surrender of the tenancy in the name of the Sree Durga Engineering. Appellate Court

found that the plaintiff has not filed any document to show that there was any such surrender of tenancy and the landlord of the premises concerned

has also not been examined to establish the fact of such surrender. However, Appellate Court observed that definitely an accommodation available

in a house owned by the landlord has an edge over a tenanted premises.

13. Appellate Court considered the exhibit-4 and came to the conclusion that even after the dissolution of the partnership the rent was paid on

20.12.1986 and another rent receipt (exhibit-8) is also on record showing that the plaintiffs wife paid rent in December 1991 in respect of another

tenanted room. Appellate Court came to a finding that there were two rooms at 69 Benaras Road one in the name of the tenant Shree Durga

Engineering and the another in the name of the plaintiffs wife. However, Appellate Court did not find any merit in the plaintiffs ground of reasonable

requirement of the suit premises for own use and occupation and thus dismissed the said Title Appeal.

14. The learned Senior Advocate appearing on behalf of the plaintiff/appellant submitted that it will appear from the judgements of the learned

Courts below that the plaintiff intends to run ""Karkhana"" i.e a workshop, for business purposes.

15. The learned Senior Advocate for the plaintiff drew the attention of this Court to the judgement of the learned Trial Court where the learned

Trial Court finds that there has been no challenge with regard to the fact that the plaintiff is the owner of the disputed premises and the plaintiff does

not have any alternative suitable accommodation and the defendants have admitted such facts.

16. The learned Trial Court has also found that the status of the plaintiff in respect of the tenancy standing in the name of the plaintiff's wife at 69,

Benaras Road is that of licensee. At least, the learned Trial Court has not made any adverse comment with regard to such status of the plaintiff in

the said tenancy.

17. The Learned Senior Advocate for the plaintiff/appellant submitted that since the defendant has not disputed that the plaintiff has no alternative

suitable accommodation then in that event the plaintiff's occupation of the tenanted shed in the name of his wife at 69, Benaras Road cannot be

treated to be an alternative suitable accommodation.

18. The learned Senior Advocate for the plaintiff/appellant further submitted that since the learned Trial Court has found that the plaintiff has no

alternative suitable accommodation it is immaterial whether the plaintiff has been able to prove the surrender of the tenancy in the name of Shree

Durga Engineering, and the plaintiff's occupation in a different premises either as a tenant or as a licensee is a precarious one.

19. The learned Senior Advocate for the plaintiff/appellant submitted that the deed of dissolution is dated 20th November, 1986 and the rent bill

concerned (exhibit-4) is dated 20th December, 1986. Therefore, the payment of rent was just after the month the partnership firm stood dissolved.

The said learned Advocate submitted that even though the deed of dissolution is dated 20.11.1986 some time inevitably is required to wind up

things and, therefore, it was not at all unnatural that the rent receipt dated 20th December, 1986.

20. The said learned Senior Advocate submitted that it will appear from the records that no further rent receipt/bill came into existence after 20th

December, 1986 and this shows that the said Sree Durga Engineering stood dissolved and the tenancy in the name of Sree Durga Engineering was

surrendered. The said learned Senior Advocate submitted that if the tenancy in the name of Sree Durga Engineering had continued even after the

dissolution then in that case there would have been in existence further rent receipts of subsequent dates in respect of Sree Durga Engineering. That

apart, the said learned Senior Advocate drew the attention of this Court to a very important fact and the fact is that the said exhibit-4 even though

it is dated 20th December, 1986, it is really a rent receipt which was granted in respect of the rent paid for the month of November, 1986.

21. The said learned Senior Advocate submitted that from a perusal of the impugned judgements and the materials on record it will appear that

there is no dispute that the plaintiff is running a business. The question is from where the plaintiff should be allowed to run his business. The said

learned Senior Advocate submitted that the defendants in the suit have not shown anything to prove that the plaintiff is still running his business from

the tenancy which stood in the name of Sree Durga Engineering. According to the said learned Senior Advocate for the plaintiff/appellant both the

learned Courts below failed to take into consideration the material facts before coming to the conclusion on the issue of reasonable requirement of

the plaintiffs own use and occupation of the suit premises.

22. The learned Senior Advocate cited a decision reported a Mst. Bega Begum and Others Vs. Abdul Ahad Khan (Dead) by Lrs. and Others,

wherein the Hon"ble Court at Paragraph 13 of the said reports was pleased to observe that the connotation of the term ""need"" or ""requirement

should not be artificially extended nor its language so unduly stretched or strained so as to make it impossible or extremely difficult for the landlord

to get a decree for eviction, as such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the

landlord on certain specified grounds.

23. The said learned Senior Advocate submitted another decision reported at AIR 1995 Raj 5 (Sukhlal v. Legal Representatives of Narayan Das)

in support of his submission that if a member of a joint family for the purpose of carrying on business during the pendency of a suit takes a lease or

licence of a shop the need of such member does not become non - existent thereby.

24. It appears from the said reports that it was observed by the Hon"ble Court that the member concerned of the joint family was not supposed to

sit idle till he gets the suit shop for carrying on the business.

25. The said learned Senior Advocate cited another decision reported at Raj Kumar Khaitan and others Vs. Bibi Zubaida Khatun and another, in

support of his contention that the landlord even need not indicate the precise nature of business which he may intend to start in the premises

concerned.

26. The said learned Senior Advocate also cited a decision reported at 87 CWN 278 (Sonabati Devi And Ors. v. Achyutanand Dey And Anr.), It

appears that in Paragraph 17 of the said reports the Hon"ble Court was pleased to observe that it is unnecessary for the landlord to prove absolute

necessity and while determining the issue of reasonableness of the landlords requirement, the Courts of law have always considered whether the

landlord has need or necessity for occupying the premises let out by him in the light of the facts and circumstances of each particular case.

27. It further appears that in Paragraph 18 of the said reports the Hon"ble Court has been pleased to observe that the said Hon"ble Court finds no

reason to hold that regardless of other relevant facts the possession of a tenanted premises by a landlord ought to be always considered as

unsuitable and that without proving anything more, the landlord living in a tenanted premises would be entitled to recover possession of his own

premises let out to a tenant.

28. The learned Advocate appearing on behalf of the defendants/respondents submitted that not a single piece of paper has been brought on

record by the plaintiff with regard to the plaintiffs case of building and rebuilding and there is no evidence in this regard even though the plaintiff has

taken a ground of building and rebuilding in paragraph 6 of the plaint.

29. The said learned Advocate referred to paragraph 6 and 7 of the plaint. As noted above the learned Advocate for the plaintiff/appellant has

submitted that the issue regarding the building and rebuilding was not agitated by the plaintiff in the learned Courts below but it is the plaintiffs case

that the plaintiff would like to run a ""Karkhana"" by making a compact block in the suit holding by removing the intervening partition walls of the two

rooms and there are three rooms adjacent to each other in the said suit holding.

30. The learned Advocate for the defendants/respondents submitted that the plaintiff has not brought on record any sanctioned plan for building

and rebuilding and the plaintiff has failed to prove his case. Since the issue regarding building and rebuilding has not been pressed by the

plaintiff/appellant such submissions made by the learned Advocate for the defendants/respondents are of no consequences. It will appear from

perusal of the paragraph 6 of the plaint that two distinct grounds have been pleaded in the said paragraph i.e. the ground of reasonable requirement

for own use and occupation and the ground of building and rebuilding. Even if the plaintiff has not pressed the ground of building and rebuilding, the

plaintiff is entitled to press the ground of reasonable requirement of the suit premises for own use and occupation.

31. Thus it is necessary to ascertain whether the plaintiff has been able to prove the ground of reasonable requirement for own use and occupation

of the suit premises.

32. The learned Advocate for the defendants/respondents has submitted that the plaintiff has not filed any document to show that there was a

surrender of tenancy in respect of the Sree Durga Engineering and the plaintiff has not called the landlord as a witness to prove such surrender.

According to the said learned Advocate even after the deed of dissolution rent was paid in December, 1986. The said learned Advocate submitted

that the rent receipt granted in favour of the plaintiffs wife by the landlord concerned does not show that the plaintiff is running the business in his

wifes tenancy and the plaintiff has failed to prove the fact that he is running the business in his wifes tenancy. The said learned Advocate further

submitted that the plaintiff has not called his wife to give evidence regarding the plaintiffs running of business in his wifes tenancy. It appears to this

Court that such submissions made by the learned Advocate for the defendants/respondents are not of any substance. It is not known as to why the

fact that the plaintiff is running business in his wifes tenancy should be reflected on the rent receipt granted by the landlord concerned to the

plaintiffs wife in respect of the tile shed at 69 Benaras Road. The said tenancy is presumably an agreement between the plaintiffs wife and the land

lord concerned and it is not necessary that on such rent receipt it should be recorded that the plaintiff is running his business in his wife's tenancy.

33. This Court does not find any force in the submission that the plaintiff has been unable to prove his case because of the fact that he has not

called his wife to give evidence as a plaintiffs witness. With regard to the absence of any document showing surrender of the tenancy in the name of

Sree Durga Engineering, this Court is of the view, considering the facts and circumstances of the instant case, that there has been a surrender of

tenancy standing in the name of Sree Durga Engineering. The fact that there has been a deed of dissolution between the two brothers i.e. plaintiff

and Paresh Chandra Chongdar and such deed of dissolution is dated 20th December, 1986 and that after such deed of dissolution the plaintiff has

been carrying on the business all by himself and the last rent receipt in respect of the said Sree Durga Engineering has been for the month of

November 1986 shows that there has been a surrender of the tenancy in the name of Sree Durga Engineering. Had there been any continuance of

the said tenancy in the name of Sree Durga Engineering, further rent receipts in respect of the subsequent periods would have come on record but

the defendants have not been able to show that there has been any further continuance of the said tenancy in the name of Sree Durga Engineering.

34. Lower Appellate Court presumably thought that the rent receipt dated 20th December, 1986 was for the month of December, 1986 but it was

not so. Even if, for the sake of argument, rent had been paid for the month of December, 1986 it could not have meant, with certainty, that the

tenancy in the name of Sree Durga Engineering continued even after the partnership firm dissolved as it is common knowledge that some time may

be required for the purpose of winding up things completely. The documents already on record clearly indicate that there has been a surrender of

the tenancy in the name of Sree Durga Engineering. The argument made by the learned Advocate for the defendants/respondents that there is no

document to show the surrender of tenancy in the name of Sree Durga Engineering is not an argument of substance.

35. The learned Advocate for the defendants/respondents submitted that there is no threat of eviction by the landlord concerned against the

plaintiffs wife and, therefore, the possession, if any, of the plaintiff in his wifes tenancy is not precarious.

36. This Court is unable to accept such submission of the said learned Advocate as the plaintiff has clearly pleaded in his plaint that his wife has

allowed the plaintiff to temporarily run his said business in the tenancy which stands in the name of his wife. It has not been proved by the

defendants that the plaintiffs status is that of a tenant in respect of the wifes tenancy. It appears from the materials on record that the occupation of

the plaintiff in respect of his wifes tenancy can be described as that of a licensee. The plaintiff has already filed two suits for eviction against the two

other tenants in the suit holding.

37. This Court is of the view that the plaintiff should not be deprived of his right to pray for eviction so that he can do his business in the premises

which he owns. Appellate Court has already observed that definitely an accommodation available in a house owned by the landlord has an edge

over the tenanted premises. Even though both the learned Courts below have made the concurrent finding with regard to the issue of reasonable

requirement of the plaintiff for own use and occupation of the suit premises, this Court is of the view that both the learned Courts below have not

taken into consideration certain material aspects of the matter which have already been discussed above.

38. This Court is of the view that the impugned judgements and decrees should be set aside and the suit for eviction should be decreed.

39. Accordingly, the judgements and decrees passed by the learned Courts below are set aside and the present appeal is allowed. The said Title

Suit No. 409 of 1984 which was placed before the learned 1st Court of Munsiff, Howrah is decreed and, accordingly, the plaintiff is granted a

decree for eviction of the defendants from the suit premises and for recovery of khas and peaceful possession of the suit premises from the

defendants. The defendants are directed to vacate and deliver up the khas and peaceful possession of the suit premises in favour of the plaintiff

within 31st December, 2012 failing which the plaintiff/appellant will be entitled to put the decree into execution.

40. There shall be, however, no order as to costs. Let the Lower Court Records be sent down to the learned Court concerned immediately.