

(2000) 05 CAL CK 0005

Calcutta High Court

Case No: A.P.O.T. No. 160 of 1997

Radhe Shyam Ruia and Others

APPELLANT

Vs

Smt. Tara Devi Jalan

RESPONDENT

Date of Decision: May 18, 2000

Acts Referred:

- West Bengal Premises Tenancy Act, 1956 - Section 13(1), 13(6)

Citation: (2001) 2 CALLT 9

Hon'ble Judges: Satyabrata Sinha, J; Mahemmad Habeeb Shams Ansari, J

Bench: Division Bench

Advocate: S. Sarkar, for the Appellant;

Final Decision: Dismissed

Judgement

Satyabrata Sinha, J.

The appeal is directed against the judgment and decree dated 19.2.97 passed by a learned single Judge of this Court in Suit No. 180 of 1992 whereby and where-under the suit of the plaintiff for "Khas" possession was decreed with mesne profit calculated @ Rs. 3 per sq. ft. from 4th March, 1992 till the defendant remains in occupation. The defendant is the appellant in the instant appeal.

2. The suit was filed, Inter alia, for a decree for "Khas" possession of the Premises No. 68/1B, Nimtala Ghat Street, Calcutta. The said reliefs were claimed, Inter alia, on the ground that the defendant was a tenant of the premises in question under a registered Deed of Lease for a period of 21 years commencing on and from 1st January, 1970, which having come to an end by efflux of time on 31st December, 1990. The Plaintiff became entitled to Khas possession, as the lease being for more than 20 years, the provision of West Bengal Premises Tenancy Act, 1956 had no application in relation thereto. The suit premises it was also averred in the plaint, was reasonably required by the plaintiff for her own occupation as well as the occupation of her family members viz. her younger son Promod Kr. Jalan, his wife

and only daughter. Neither the Plaintiff nor her said son or family members, it was asserted are in possession of any reasonable and suitable occupation. The Plaintiff was in occupation of the 2nd floor of the building and a Katcha room, with two other married sons of plaintiff and their respective wives, two grand sons and one grand daughter. The area in occupation of the plaintiff and her family members comprised of 3 small bed rooms, 1 Kitchen divided into 2 bath rooms. The plaintiff and her three married sons have separate kitchens and there are 4 servants. The said occupation, it was stated, was wholly inadequate. The plaintiff and her younger son together with the members of his immediate family required a bed room for the occupation of the younger son and her wife, a separate room for the daughter, an office-cum-study room, a drawing room, dining room, a kitchen room, store room and two bath rooms and one servant room. The said premises in the occupation of the defendant has a carpet area approximately 1100 sq. ft. and comprises of one big bed room, three small bed rooms, on hall used as sitting-cum-dining space, one kitchen, one bathroom and a store room converted into a bath room. Despite notice served upon the defendant to make over peaceful possession of the suit premises, the defendant having failed to comply with, the suit in question was filed.

3. The original defendant died on 21.12.1993 and the appellants were substituted in his place and brought on record.

4. In the written statement filed by the defendant/appellant herein, it was stated, that they are entitled to the protection under the provision of West Bengal Premises Tenancy Act, 1956 and therefore, the suit was not maintainable. It was specifically denied that the premises is reasonably required as alleged.

5. The learned trial Judge framed several Issues as suggested by the defendant.

Issue No. 1: Related to the applicability of the provision of the West Bengal Premises Tenancy Act, 1956. It was held that the same applied to the case on hand.

Issue No. 2: With respect to the reasonable requirement and is a pivot on which the case revolt, the learned trial Judge held that the suit premises is required by the plaintiff for her own occupation as well as for the occupation of the members of her family.

Issue No. 3: Related to termination of tenancy, the learned trial Judge held that the notice dated 5th March, 1991 was duly served and the plaintiff had thereby terminated their tenancy and upon expiry for the specific date for vacating the suit premises, the defendant continued to be in wrongful possession. Accordingly, the same was decided in the affirmative.

6. The learned trial Judge also held Inter alia;

Issue No. 4 : In the affirmative and granted mesne profit.

Issue No. 5 : In the negative and in favour of the defendant as to whether the defendants were guilty of causing of waste and/or negligence and/or default.

7. In the judgment under appeal, it has been observed that the plaintiff did not give evidence in Court and there was no cross-examination on the explanation offered therefore by filing medical certificate that has been disclosed by the plaintiff. The evidence on behalf of the plaintiff was principally given by her daughter-in-law. The learned trial Judge on the authority of the judgment reported in 1950 (85) CLJ 74 and 1977(2) CLJ 600, held that she, in the facts and circumstances of this case, was a competent witness to give evidence on behalf of the plaintiff as reasonable requirement pleaded in the plaint was for the plaintiff and also for the user and occupation of the younger son's family.

8. Mr. S. Sarkar, the learned counsel appearing on behalf of the appellant Inter alia, submitted that in the instant case, the plaintiff being in occupation of a flat measuring 1600 sq. ft, on the materials brought on records, the requirement of the landlord as envisaged u/s 13(l)(ff) of the West Bengal Premises Tenancy Act had not been fulfilled inasmuch as the plaintiff is also required to prove that she has no other sufficient occupation. According to the learned counsel, all the sons of the plaintiff are independent and she has also her independent income and, thus, the requirement of the plaintiff must be judged on that premise. Mr. Sarkar would urge that the learned trial judge has not considered the question as to whether the partial eviction of the defendant shall serve the requirement of the plaintiff or not which according to the learned counsel is mandatory in nature. Mrs. Sarkar submitted that the learned trial judge has committed an illegality in not arriving at a definite finding on the said question. Strong reliance in this connection has been placed on [Krishna Das Nandy Vs. Bidhan Chandra Roy](#), , Y.L. Agarwala and Ors. v. Commissioner of Income Tax Central Calcutta, reported in AIR 1978 SC 1413 and [Sashi Sekhar Bhowmick Vs. Smt. Susama Bose and Others](#), .

9. Mr. Chakraborty, the learned counsel appearing on behalf of the respondent, on the other hand, submitted that the question of partial eviction was not raised before the learned trial Judge and neither any question has been put in cross examination to the witnesses of the plaintiff in that regard nor the defendant in his evidence stated that he is ready and willing to give up a portion of the suit premises.

10. The learned trial Judge considered the evidence on record and came to the following finding of facts;

".....The plaintiff did not come to give evidence in Court on the ground that her mobility had been impaired and that she had been advised by her doctors, complete bed rest. Except for the evidence of the defendant No. 1B that he had seen the plaintiff, 7 or 10 days before, going up the stairs but had not exchanged any words,

which I am not inclined to accept, not even an attempt was made on behalf of the defendants to dispute or deny the recent illness of the plaintiff. To live comfortably in one's own house, one would reasonably require, and there was no reason why the plaintiff should not require, at least one bedroom of course with windows, one sitting room, one guest room and at least one toilet and one bath room. By reason of the illness of the plaintiff, it was possible that the plaintiff might even require a room for a nurse. From the plaint, however, it would appear that in addition to a bedroom for herself she required for the use of her youngest son and his family, two more bedrooms, a nursery-cum-bedroom and also a guest room, an office-cum-study, a drawing-room, a kitchen, a store room two bath rooms and one servant room which, it would appear to me would be enjoyed in common by the mother with the son."

11. It was further held :

".....In the decision cited on behalf of the plaintiff, this Court has dealt with the provisions of the West Bengal Premises Tenancy Act, and had attached a connotation of the words "his own" appearing in Section 13(ff) of the Code of Civil Procedure, (sic) favourably for the landlord, plaintiff, an aged widow suffering with such ailment which may seriously impair her mobility, at present does and in future may, for the rest of her life, require to be looked after-and by who better, than her own son and his family. In the circumstances, it would not be incorrect to assume, in my view, that this was a case of, an affectionate mother, owning a building consisting of several flats, residing with her sons and their families in the second floor flat desiring to spend the rest of days with her sons and their families and requiring both for herself as also for her sons and their families, the possession of the fourth-floor-flat. She has of course, preferred to live with her youngest son in the suit premises which would in effect afford more accommodation to the other two sons, in the second floor flat. Sons are the off springs of the mother, and the mother would reside and occupy the suit premises through her sons. Reasonable requirement of the son and his family would, therefore, naturally be that of the mother. Evidence has also been adduced before me, that the family has always been living as one unit and under one roof."

12. In view of the aforementioned rival contentions of the parties, two questions which arise for consideration in this appeal, are;

1. Whether the plaintiff has been able to prove her reasonable and bonafide requirement of the suit premises?
2. Whether the plaintiffs requirement would be met by partial eviction of the defendant?

13. Re. Question No. 1.

The plaintiff pleaded that she requires the suit premises for her own occupation as also for the occupation of her younger son Promod Kumar Jalan, his wife and only daughter thence aged 3 years. Plaintiffs two other sons are also married. She has two grand-sons, then aged 11 years and 8 years respectively and a grand-daughter aged 9 years at that time. The second floor which is in occupation of the plaintiff comprises of three small bed rooms, a kitchen divided into two bath rooms. One kitchen admittedly is on the terrace of the building which is in the fifth floor. It is also admitted that the plaintiff and her three married sons have separate kitchens. They have host of servants and although some of them are full time ones, they have no separate quarters and sleep in the lobby or in the corridor of the adjacent staircase. The suit premises consists of carpet area of approximately 1,100 sq. ft. and comprises of one master bed room, three very small bed rooms, one hall used as sitting-cum-dining space, two balconies, one kitchen, one bathroom and a storeroom covered into a bathroom.

14. It stands admitted that only her younger son looked after the plaintiff. It also stands admitted that the plaintiff, an ailing lady who had to be admitted to a Nurshing Home, lives in only a dingy small room which is without any window.

15. Sangeeta Jalan, the plaintiffs daughter-in-law admittedly was the main witness examined on her behalf. She was subjected to a gruelling cross examination. It may be true that according to the said witness the entire fourth floor had been allotted in their favour and as such she had been taking interest in the matter but she categorically stated that the requirement is also that of the plaintiff. The said witness as regard the requirement of the plaintiff and her family stated that one room is required for plaintiff because she really needs a specious room, one of them to be occupied by her husband and herself, one room for children, one room for being used as drawing room and the small open space can be used as dining space. She categorically stated that in the second floor the plaintiff and all her sons had separate kitchens. The kitchen on the fifth floor is being used by Promod Kr. Jalan and his family which is a kuocha room and there are three kitchens in the second floor. It is not difficult to visualise the difficulties faced by the family having a kitched in the fifth floor while living in the second floor.

16. It would be useful to quote the following from the evidence of Sangeeta Jalan.

"Q. You have told My Lord that this suit has been filed by the plaintiff for eviction. Why do you want to evict them from the fourth floor flat?

A. We are praying for eviction of the defendants, because we need it for ourselves. Because our children are growing older. As we the elders require the privacy, the children must have their privacy. Shortage of space is creating mental trauma and various other factors are there.

Q. If the flat is vacated by the defendants and the possession given to the plaintiff, what is the use of this flat made by you?

A. One room reserved for mother-in-law because she really needs spacious room, bedroom could be given her, one to be occupied by my husband and myself, one room for children, one room may be drawing room and the small portion could be dining space.

Q. Are all the kitchens located on 2nd floor?

A. Three kitchens are in 2nd floor and my kitchen is located on 5th floor. It is kuocha room which has been converted into my kitchen because lack of space in the 2nd floor.

Q. Where is your kitchen?

A. In the fifth floor.

Q. Where do you stay?

A. I stay on the second floor.

Q. Will you kindly take a piece of paper and draw a sketch of the second floor where you reside-any how I am showing you a rough sketch of the second floor and the relevant portions of the room-do you agree with this sketch?

A. I disagree.

Q. Which part do you disagree and in what way?

A. The kitchen portion is entirely wrong and then the bed rooms and then the bathroom.

Q. Who uses this kitchen?

A. It has been divided into two units-one unit is occupied by Sradhya Devi Jalan and the other is occupied by Manju Devi Jalan.

Q. What is the use of this area?

A. This area was previously known as Bhandar Ghar or Store room. After my father-in-law's death, my mother-in-law took up the practice for `ving food as Bhog to the family Deity and then consuming her food. So she has stopped taking garlic and onion and that is why this store room has been converted into her personal kitchen.

Q. According to you, why do you need an extra room-separate bed room, separate drawing room, separate kitchen?

A. Our children are growing up. We have no privacy and our children also do not have any privacy whatsoever.

Q. Anything else?

A. My kitchen is on the fifth floor. So even for heating milk for my baby I have to come down and climb up three floors.

Q. The need is confined to you?

A. Also to my mother-in-law. She lives in a room which cannot be called a living room but it has been converted into a room for her. It is blocked on all sides. No sunlight goes in there. Specially during the winters this room is very cold. Basically my mother-in-law needs fresh air and sunlight.

Q. Your mother-in-law needs a better bed room, according to you?

A. Yes.

Q. Have you got possession of any floor or part of the floor-what do you do with this?

A. I am not interested in possession of any other floor. I am interested in the possession of fourth floor.

Q. For your interest or for your mother-in-law's interest?

A. Certainly my mother-in-law's interest then my mother-in-law and myself are in total agreement that the fourth floor should go to me.

17. It is pertinent to note that the defendants in their cross examination did not suggest that the room occupied by the plaintiff is otherwise a good one for her own occupation.

18. As regard the necessity of plaintiff and her youngest son Promod Kr. Jalan, it is the positive case of the plaintiff that they look after her. In her evidence Sangeeta Jalan stated;

Q. You want forth floor?

A. Yes.

Q. Entire fourth floor?

A. Entire fourth floor for my mother-in-law and myself.

Q. This family has been living happily on the 2nd floor of these years--am I right?

A. I want to omit the word "happily".

Q. Your mother-in-law has decided to give this fourth floor to you?

A. With the condition that she would be accompanied with me.

Q. Has your mother-in-law said in the plaint?

A. She has stated that is for her own requirement and for her youngest son, her wife and their children.

19. In answer to a suggestion that the plaintiff has sufficient accommodation, she disagreed therewith.

20. On the other hand, the appellant sought to raise a contention that in the fifth floor there is a bed room. His evidence in this regard is interesting. He was shown a sketch map. ext.-I/C relating to fifth floor and the question and answers in relation thereto and in the following terms;

Q. Kindly look at the portion of the sketch (Ext. 1/c) where a room has been shown as measuring 14" x 11" and tell My Lord about the structure of this room?

A. There is a door and two windows in this room. First it was a bed room and after filing of the suit they are this room as a kitchen.

Q. How did you come to know that they were using that room as a bed room? Have you been up there before?

A. At first, we had good relation and at that time we used to go up there.

Q. And you used to go up to their bed room?

A. We did not go there, particularly in the bedroom. But we used to go up in the terrace for bursting of crackers and all that.

Q. In the sketch plan (Ext. 1/c) you will see that a kitchen has been indicated, measuring 15" x 5", to the sought of the staircase. For what purpose was this room being used?

A. At first, it was being used as a kitchen and later they used to keep some waste materials there.

Q. When was it being used as a kitchen?

A. Before 1992.

Q. And since when it is being used as a storing or dumping place?

A. After 1992.

Q. When after 1992? In February, March, April-When?

A. After that we did not go up.

Q. Then how did you know that it was being used as a dumping place?

A. At the Diwali time we went up there and when we had disputes we stopped going up there.

21. He, therefore, admitted that only one room which is on the terrace was being used as a kitchen.

22. There cannot be any doubt whatsoever that the requirement of plaintiff must be a reasonable one and also that he does not have any suitable alternative accommodation.

23. In the instant case, the requirement of the plaintiff and her family must be judged in a broad based manner. Admittedly, the plaintiff and her three sons had been residing in one floor comprising of three bed room and a small room. Admittedly, the two other sons of the plaintiff have their families and grown up children. They do not have any drawing room or guest room. Each son is separate and they are running their own kitchen. If by reason of some arrangement the plaintiff and her youngest son together with his family want to shift to the fourth floor, the same is our opinion cannot be said to be unreasonable. The plaintiff categorically pleaded in the plaint that the requirement is not only that of her but also her third son and his family.

24. The fact that a requirement of an owner would include the requirement of his/her family is neither in doubt nor in dispute. A family being owner of entire five storied building is entitled to use the same to their advantage in a best possible manner. The requirement of a family will have to be judged from their status.

25. In [Ragavendra Kumar Vs. Firm Prem Machinery and Co.,](#) , the apex Court has clearly held that the landlord is the best Judge of his requirement. As noticed hereinbefore, the plaintiff has been able to prove her requirement of separate bed room with a separate toilet and bath room as also a kitchen keeping in view the fact that she had been running her own kitchen for this purposes stated by Sangeeta Jalan.

26. From the sketch map in respect of the second floor it appears that one bed room measures 13" x 20" and a bed room adjoining thereto measures 8" x 20". There is a common bath and toilet by the side of kitchen. There are two more bed rooms which measure 13" x 20" and 13" x 14" respectively. There is one bath room attached thereto. A puja room has been constructed which is very small by enclosing a part of the balcony. Apart from that, there is a drawing room measuring 10" x 8" and two kitchens measuring 9" x 11 and 9" x 9".

27. The plaintiffs Witness, as noticed hereinbefore categorically stated as regard their requirements in respect of the entire fourth floor.

28. So far as the 2nd floor is concerned, from the sketch plan, it appears that there are three small bed rooms and one big bed room. One kitchen has been sub-divided into three kitchens and there is only one dining room. . At the northern end of the flat there is one bath room and one toilet. The accommodation available to the plaintiff, her sons and their families to say the least is wholly inadequate.

29. In a case of reasonable requirement the Court has to see that element of need is satisfied. It has to determine the extent of the premises which the landlord reasonably requires.

30. It may be true as has been submitted by the learned counsel that the learned trial Judge went wrong in surmising that the plaintiff being ill, she would require a room for a nurse in respect whereof there is no pleading but such a finding ultimately would not lead to any different conclusion as it was noticed;

"From the plaint, however, it would appear that in addition to a bed room for herself she required for the use of her youngest son and his family, two more bed rooms, a nursery-cum-bed room and also a guest room, an office-cum-study, a drawing room, a kitchen, a store room, two bath rooms and one servant room which, it would appear to me, would be enjoyed in common by the mother with the son."

31. The learned trial Judge upon analysing the merit of the materials has arrived at the following findings;

"In the decision cited on behalf of the plaintiff, this Court has dealt with the provisions of the West Bengal Premises Tenancy Act, and had attached a connotation of the words "his own" appearing in Section 13(ff) of the CPC (sic) favourably for the landlord plaintiff, an aged widow suffering with such ailment which may seriously impair her mobility, at present does and in future may, for the rest of her life, require to be looked after and by who better, than her own son and his family. In the circumstances, it would not be incorrect to assume, in my view, that this was a case of, an affectionate mother, owning a building consisting of several flats, residing with her sons and their families in the second floor flat desiring to spend the rest of days with her sons and their families and requiring both for herself as also for her sons and their families, the possession of the fourth-floor flat. She has of course, preferred to live with her youngest son in the suit premises which would in effect afford more accommodation to the other two sons, in the second floor flat. Sons are the offsprings of the mother, and the mother would reside and occupy the suit premises through her sons. Reasonable requirement of the son and his family would therefore naturally be that of the mother. Evidence has also been adduced before me, that the family has always been living as one unit and under one roof."

32. The aforementioned findings of the learned trial Judge has been severely criticised by Mrs. Sarkar on the ground that she had become sentimental in arriving at the said finding. However, in our opinion, the approach of the learned trial judge in the peculiar facts and circumstances of the fact cannot be faulted.

33. In *Himanshu Bikash Das v. Ramendro Mohan Dutta*, reported in 1991 (1) CLJ 392, a Division Bench of this Court held that the term "family" has to be liberally and broadly construed so as to include the near relations of the head of the family.

34. As regard hardship of the tenant, the Division Bench held;

"There is another aspect of the matter that the landlord has only to establish that the suit premises was reasonably required for his own use and occupation. In such a case, the Court is required to direct its mind to the question of reasonableness. The landlord has to prove that the dwelling house is required for only reasonable accommodation and that there must be a genuine need at the time of hearing. It has to be established that something more than a desire, but something much less than absolute necessity. In considering the question of landlord's requirement, there may be a question of hardship of the tenant but the Court is powerless in this regard, inasmuch as, if the landlord has established that the premises is reasonably required, the Court is only required to see whether it so required on the basis of the evidence on record. The word "reasonable requirement" cannot be equated with the expression actual requirement. According to Webster: Third New International Dictionary the word "reasonable" means "being in agreement with right thinking or right Judgment; not conflicting with reason; not absurd; not ridiculous". Judging from this stand point the Court is only concerned to see whether such requirement is absurd or ridiculous. If sons and grand-sons can be regarded as members of the landlord's family and if for the purpose of resident and for other purposes of the sons and grand sons, the Court has empowered to pass a decree, in our view, in case of a landlord who no (sic) son, married daughters should be treated to be members of the landlord's family. Any other contrary would be against to the social order and would destroy the concept of equality between sons and daughters, between men and women. If the tenant's married daughter can claim a right of resident after the death of the tenant in view of the definition of the word "tenant" in our view, the plaintiff/landlord has right in claiming rooms for the purpose of stay of married daughters in his residence in the facts and circumstances of the case. Such requirement is reasonable and not ridiculous or absurd."

35. In Krishna Das Nandy v. Bidhan Chandra Roy, reported in 63 CWN 29, it was held;

"The statute, as we have seen above, uses the phrase "reasonably required by the landlord for his own occupation" in the relevant provision (h) and to that proviso is appended an Explanation which lays down that, in judging this reasonable requirement, the comparative advantages and disadvantages of the landlord and the tenant should be taken into consideration. Bearing this in mind, we shall now examine the merits on the plaintiffs case on the point, leaving aside, for the present, the proviso which appears after the explanation and on which we shall only make Just a few preliminary observations at this stage.

36. It was further held;

"From what we have stated above, it is fairly clear that subject to the test of comparative advantage and disadvantage which we shall presently consider, the

plaintiff has made out a case of reasonable requirement of the dispute premises for his own occupation. Reasonable requirement is a relative term. What is reasonable requirement for A may not be so for B and, again, what may not be reasonable requirement for A may well be reasonable requirement for B. The status of the plaintiff, the nature of his work or avocation, the state of his health etc. all may be relevant considerations for judging his requirement and the reasonableness of it."

37. It is true that the plaintiff did not examine herself but sufficient reasons had been brought on records for her non-examination.

38. Mrs. Sarkar submitted that plaintiffs examination was necessary keeping in view the fact that she had filed another suit for eviction which had been decreed but now a judgment of the Appeal Court has been placed before us to show that the said decree has since been set aside. The appellant, therefore, cannot be said to be prejudiced by her non-examination. There cannot be any doubt whatsoever that normally the plaintiff should be examined in a case of bonafide requirement but illness and other grounds may be relevant factors for non drawing an adverse inference owing to non-examination of a party to the suit.

39. In *Bijan Behari Bhattacharjee v. Krishna Prakash Mitra and Ors.* , reported in 1977 (2) CLJ 600, a learned single Judge of this Court has held that the law does not require that the plaintiff himself must appear in Court to support his case.

40. For the reason aforesaid, the answer to the said question be rendered in affirmative.

41. Re. Question No. 2.

It is true in view of the decision of the apex Court in *M/s. Y.L. Agarwalla & Ors. v. Commissioner of Income tax Central Calcutta*, reported in AIR 1978 SC 1413, it is the duty of the Court to find out as to whether the requirement of the plaintiff can be met by partial eviction of the defendant. However, such a case has to be considered not only keeping in view the pleadings of the parties but also the fact that as to whether it is possible to meet the requirement of both the parties by such partial eviction. The answer to the said question in the facts of the case must be rendered in the negative.

42. It appears that there is only one entrance to the flat in question. It is further evident that there is one toilet. Thus, it is not a premises which can be occupied by two families particularly in view of the fact that the same is a flat.

43. Otherwise also the plaintiff has proved her requirement in respect of all the rooms of the fourth floor being in possession of the tenant-defendant.

44. In [Sashi Sekhar Bhowmick Vs. Smt. Susama Bose and Others](#), , upon which Mr. Sarkar had relied upon, a Division Bench of this Court rejected the claim of the plaintiff in the fact of the case as regard the additional requirement.

45. The question as regard the extent of the need must be determined in the context of the total requirement of the plaintiff. If after meeting the total requirement of the plaintiff, there remains some premises which may be allowed to be occupied by the defendant and if the defendant agrees thereto, a decree for partial eviction may be passed. A conclusion can safely be drawn on the basis of the materials on records that the plaintiff requires the entire fourth floor and in any event, in view of the available infrastructure, the suit premises will not be suitable for occupation of two families.

46. For the reasons aforementioned, we are of the opinion that no case has been made out for interference with the impugned judgment. Both the questions, therefore, must be answered in favour of the plaintiff and against the defendant-appellant.

47. For the reasons aforementioned, there is no merit in this appeal which is accordingly dismissed with costs. Counsels fee assessed at 200 Cms.

M.H.S. Ansari, J.

48. I agree.