

(2012) 01 CAL CK 0010

Calcutta High Court

Case No: S.A. No. 274 of 2009 with C.A.N. No. 6205 of 2010

Dibya Sundar Ghosh

APPELLANT

Vs

Sibu Kangsabanik

RESPONDENT

Date of Decision: Jan. 4, 2012**Acts Referred:**

- West Bengal Premises Tenancy Act, 1956 - Section 17, 17(2)

Citation: (2012) 2 CHN 648**Hon'ble Judges:** Subhro Kamal Mukherjee, J**Bench:** Single Bench**Advocate:** Probal Mukherjee and Uttiya Roy, for the Appellant; Jiban Ratan Chatterjee and Arup Banerjee, for the Respondent**Final Decision:** Dismissed

Judgement

Subhro Kamal Mukherjee, J.

Although the matter is appearing under the heading "application", by consent of the learned advocates appearing for the parties, the appeal itself is taken up for hearing by treating the same as on day's list and upon dispensation of all formalities. This is an appeal arising out of a suit for recovery of possession.

2. The plaintiffs are the transferee landlords. They purchased the property from the erstwhile rightful owner.

3. The defendant was inducted as a tenant in relation to the properties covered by schedule "A" to the plaint by the erstwhile owner at a monthly rental of Rs. 350/- (Rupees three hundred fifty) only payable according to English calendar. The defendant, it was alleged by the plaintiffs, took forcible possession of the "B" schedule property. The defendant, also, defaulted in payment of rent in spite of notice by the plaintiffs.

4. Therefore, the plaintiffs instituted the suit for recovery of possession upon issuing a notice to suit.
5. The defendant contested the suit claiming, inter alia, that the defendant was a tenant in respect of both schedules "A" and "B" properties. It was contended that the defendant never took forcible possession of the "B" schedule property.
6. When the suit was pending in the trial court, an application under Sub-section (2A)(b) of section 17(2) of the West Bengal Premises Tenancy Act, 1956, was filed.
7. The learned Trial Judge held that the defendant was a defaulter. The defendant was, however, directed to liquidate the arrears of rent with interest accrued thereon. The defendant regularly paid the current rent as, also, cleared the arrears and the interest accrued thereon.
8. Therefore, both the Courts below, in my view, rightly held that the defendant was entitled to protections under sub-section (4) of section 17 of the West Bengal Premises Act, 1956.
9. However, the defendant could not produce any scrap of paper to establish that he was inducted by the erstwhile owner in respect of both the schedules of properties although he suggested in his cross-examination that some people of the locality, namely, Lakshinarayan Hazra, Rabi Sarkar, Kartick Chandra Basu and the landlady herself, namely, Hiranmoyee Majhi, knew about the composition of his tenancy. They knew that he was inducted as a tenant in respect of the entire building. None of the persons, however, were cited; rent receipts were not filed to show that the erstwhile owner realised rent from the defendant in respect of the entire building.
10. Therefore, in my view, both the courts below rightly held that the defendant was a trespasser in respect of "B" schedule property.
11. The appeal was admitted for hearing on the ground as to whether the first appellate court committed substantial error of law in holding that the plaintiffs had reasonable requirement in respect of the property covered by "A" schedule property and that they had no other suitable accommodation elsewhere.
12. The learned judge in the lower Appellate Court, in my view, rightly held that the composition of the family of the plaintiffs was such that they required the entire premises. It was found, as findings of fact, that the families of the plaintiffs consisted of their parents, the plaintiffs themselves, their wives, and the daughter of the plaintiff No. 1. Moreover, the married sisters of the plaintiffs were in visiting terms with them as such the plaintiffs needed accommodations to accommodate them. It was found, as finding of fact that, in the meantime, the defendant had acquired sufficient reasonable accommodation in the town of Burdwan itself.
13. The plaintiffs' witness No. 1 categorically stated that the plaintiffs had no reasonable suitable accommodation excepting the suit premises. There was no

effective cross-examination of such witness by the side of the defendant on that point.

14. Considering the facts and circumstances of this case, I am of the considered opinion that the lower Appellate Court did not commit any substantial error of law in holding that the plaintiffs reasonably required the tenanted premises and rightly held that the plaintiffs had no reasonable and suitable accommodation elsewhere.

15. The appeal is, therefore, dismissed.

16. In view of dismissal of the appeal, the application for appropriate order filed under C.A.N. 6205 of 2010 becomes in fructuous and the same is, also, dismissed. I make no order as to costs.