

(2003) 12 CAL CK 0031

Calcutta High Court

Case No: F.M.A. No. 130 of 1995 with C.A.N. No. 8404 of 2002

Smt. Monika Bose and
Others

APPELLANT

Vs

Shib Sankar Das

RESPONDENT

Date of Decision: Dec. 11, 2003

Acts Referred:

- Transfer of Property Act, 1882 - Section 108
- West Bengal Premises Tenancy Act, 1956 - Section 13(1)

Citation: (2004) 2 CALLT 122

Hon'ble Judges: Amitava Lala, J

Bench: Single Bench

Advocate: Bhudeb Bhattacharjee and Sajal Pandit, for the Appellant; Pallab K. Chakraborti, for the Respondent

Judgement

A. Lala, J.

It appears to this Court that the First Miscellaneous Appeal has been preferred from the order of remand of the first Appellate Court dated 25th April, 1980 for retrial of the matter by the learned Munsif. The controversy before this Court is whether any evidence is needed to be adduced by the licensor/son in respect of occupying his portion in the facts and circumstances of the case. Although a defence was taken in the written statement but no such issue was framed nor such point was taken into consideration before the Court of first instance. The Court of first instance was pleased to pass a decree on the ground of reasonable requirement as well as the provisions of Clauses (m), (o) and (p) u/s 108 of the Transfer of Property Act.

2. The learned counsel appearing for the respondent-opposite party contended before this Court that due to certain change of scenario the ground of reasonable requirement has to be established on the basis of the last available fact. Even to that extent, he contended that there might be necessity of amendment of plaint to which the learned

counsel appearing for the appellants-petitioners joined issue by saying that on whatever affidavit has been filed in the application in connection with the subsequent events pending before the Court, the Court can proceed. The learned counsel appearing for the respondent-opposite party further contended that on the ground of damages no order of inspection was made. However, since at the initial stage a question arose as to whether the matter will be remanded back to the Court of first instance or it will be heard by the first Appellate Court, I have not entered into such controversy. Therefore, the same is kept open. The learned counsel appearing for the appellants-petitioners cited a judgment reported in [Gaya Prasad Vs. Sh. Pradeep Srivastava](#), to enlighten the Court to the extent of observation that the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension, the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. It is pernicious, and unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous leaves of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.

3. This judgment gives an indication how the matter between the landlord and the tenant are being proceeded in the Court of law. This Court cannot refrain from taking a judicial notice, the West Bengal Premises Tenancy Act, 1956, which was existing prior to amendment is much more beneficial to the tenants. In many occasions, misuse of right was caused by the long pendency of the proceedings. Possibly, these are the reasons for which the West Bengal Premises Tenancy Act as well as the CPC are amended. But, mere amendment will not suffice if the true reflection of people's mind, is not read out about expeditious disposal of the proceedings. When the amendment has been caused with the legislative intent technical or conservative outlook it should be discouraged by the Court of law irrespective of date and time of the causing of amendment to make equilibrium. The Court should realise the true spirit of new law and its effectivity in the society. The first Appellate Court while considering the decree must be very much cautious to uphold or dismiss the decree or order finally instead of making the order of remand very often. If it is remanded back then further few years will be lapsed and one of the parties could have got benefit of time. This is not the sincere desire of the judiciary particularly when the Code of Act are amended. Therefore, my sincere desire is that the lower Appellate Court instead of passing the order of remand shall decide the issue once again for the purpose of shortening the time. Accordingly, the order of the first Appellate Court is set aside. However, the lower Appellate Court will consider the matter on the appreciation of the facts and law in the subject as expeditiously as possible preferably within a period of six months from the date of communication of this order or receiving the lower Court Record whichever is later. Now-a-days, making a time bound programme is also becoming desire of the superior judiciary for the purpose of expeditious hearing and for the same, such period is to be made effectively available to the parties for early disposal. All the courses are open to the lower Appellate Court to adjudicate the matter on the basis of the available materials.

4. The appeal is, this, disposed of. There will be no order as to costs.

In view of the above observations, the application; being C.A.N. No. 8404 of 2002, also stands disposed of. There will be no order as to costs.

Let the lower Court Records be sent down to the Court below as expeditiously as possible preferably within a period of one month from this date.