

(1965) 05 CAL CK 0017

Calcutta High Court**Case No:** Appeal from Original Decree No. 795 of 1961

Oversees (India) Pvt. Ltd.

APPELLANT

Vs

United Bank of India Ltd.

RESPONDENT

Date of Decision: May 14, 1965**Citation:** 70 CWN 67**Hon'ble Judges:** P.N. Mookerjee, J; B.N. Banerjee, J**Bench:** Division Bench**Advocate:** R.C. Deb and P.N. Chunder, for the Appellant; A.K. Dutta and S.K. Dutta, for the Respondent

Judgement

P.N. Mookerjee, J.

This is the defendant's appeal and it arises out of a suit for ejectment. The suit is in respect of the portion of the fourth floor of Municipal Premises No. 4, Clive Ghat Street, Calcutta, (now known as the United Bank of India Buildings), occupied by the defendant as a monthly tenant under the plaintiff Bank (The United Bank of India Ltd.), at a monthly rental of Rs. 192/8/- (inclusive of Rs. 5/- as cleaning charges). The suit was instituted on February 4, 1957, after service of a notice of ejectment, expiring with the end of May 1956, on April 25, 1956. The undisputed facts are:--

That the above premises No. 4, Clive Ghat Street originally belonged to the Comilla Banking Corporation Ltd., under whom the defendant's above tenancy started.

That, in or about December 1950, the said Comilla Banking Corporation Ltd. and two other Banks, the Comilla Union Bank Ltd. and the Hooghly Bank Ltd., were amalgamated with the plaintiff Bank and, thereupon, the plaintiff Bank became the owner of the above building or Municipal Premises and the defendant became or continued as the tenant of the suit portion of the same under it.

The plaintiff claims that, as a result of the above amalgamation, the plaintiff had to shift its registered office and also its head office and various central departments to the above Premises No. 4, Clive Ghat Street and this, along with the heavy increase

of its business and necessary further expansion thereof, made it imperative for the plaintiff Bank to have larger accommodation for its increasing staff and expanding office requirements. For that purpose, the plaintiff has been endeavouring to have vacant possession from its tenants of the above building and has succeeded in getting such possession except from four tenants, against one of whom a decree for ejectment has been obtained and two others, after receiving notices of ejectment, have promised to vacate and the fourth is the present defendant.

The plaintiff's specific case is that it is in dire need of further accommodation for its business and staff and the suit portion of the above premises is urgently required by it for the said purpose.

The material defence was a denial of the plaintiff's allegation that the accommodation, available to it, was insufficient for its purpose and a specific plea that it has obtained possession of various portions of the above building and the total accommodation, available to it, including the said portions, was enough for its purpose. There was also a plea of invalidity of the notice of ejectment but that does not appear to have been pressed at the hearing.

2. The question, therefore, which really arose for decision was whether the plaintiff reasonably required the suit premises for its own use and occupation, on which depended the plaintiff's case for ejectment and the defendant's claim for protection from ejectment under the relevant statute, the West Bengal Premises Tenancy Act, 1956.

3. The above question falls to be judged from two angles--

(1) as a matter of pure law, and

(2) as a matter of fact, or, for the matter of that, a mixed question of law and fact, the legal element being involved in the conception of "reasonableness of the requirement."

4. On the second of the above two aspects, the point raises no difficulty on the materials before us. There was a local inspection by a pleader commissioner for ascertainment of the plaintiff's reasonable requirement for further accommodation. His report overwhelmingly shows the existence of such requirement. The accommodation, at present available to the plaintiff Bank, is the whole of the ground floor measuring 7030 sq. ft., the mezzanine floor and the whole of the first floor, measuring 1666 sq. ft. and 6873 sq. ft. respectively, portion of the second floor, measuring 2070 sq. ft., the whole of the third floor, measuring 6908 sq. ft., portion of the fourth floor, measuring 4117 sq. ft., and the fifth floor, having an effective area for the purpose, measuring 961 sq. ft. The evidence in the case, including the commissioner's above report, which was marked as exhibit on waiver of formal proof, convincingly shows that the said accommodation is insufficient for the plaintiff's purport.

5. The balance sheets (Exts. 3 series) unfailingly demonstrate that the volume of business of the plaintiff Bank has increased enormously since 1949. The attendance rolls (Exts. 4 series) show that the staff of the plaintiffs' head office has nearly doubled. The increase in the volume of business, the increased staff and the additional furniture requirement, commensurate with the same, amply justify the evidence of p.w. 1 (plaintiff's Principal or Chief Accountant) that the whole of the above Municipal Premises is reasonably required for purposes of the plaintiff's banking business. That some of the plaintiff's central departments, which the plaintiff can reasonably claim to be parts of its head office and to have them located in the same building from the business point of view, are now in rented premises (22 Strand Road, 22 Canning Street and 67A Netaji Subhas Road) cannot be denied on the evidence before the Court (Vide the p.w.s. and Exts. 8 series). Indeed, in the face of the above undisputed or undisputable facts, the defendant could only point to one room in the plaintiff's occupation, which is, admittedly, used as the recreation room of the plaintiff's staff and the only contention it could put forward was that that room may be used by the plaintiff for its business purposes to solve its accommodation problem, if any. This contention, however, as rightly pointed out by the learned trial Judge, cannot stand on the evidence. Under the present-day conditions, a recreation room may be claimed as a reasonable amenity by the plaintiff's staff and a staff recreation room may be claimed as a reasonable necessity by the plaintiff for maintaining normal relations with its staff and thus the plaintiff may well claim it reasonably required for the said purpose in connection with business. The size of the said room also is not such as to affect the plaintiff's reasonable requirement of the defendant's premises for its business, or, in other words, even conceding that the said staff recreation room may be used by the plaintiff for its business purposes, its reasonable requirement of accommodation under that head would still extend to the defendant's rented premises this view, the second part of the above question must be answered against the defendant and in favour of the plaintiff.

6. A point was taken by Mr. Deb, learned Counsel for the defendant appellant, that the commissioner's report should be rejected, first, because the commissioner was not examined, and, secondly, on the merits. As to the first objection, it is enough to point out that the report was taken into evidence on waiver of formal proof and so no objection lies merely on the ground of the commissioner's non-examination. On the merits, the report appears to be full, complete and satisfactory and suffers from no defect or infirmity and nothing particular could be pointed out against it. No objection also appears to have been taken to the commissioner's report, or to his findings, in the court below. In the circumstances, this point, raised by Mr. Deb, would fail. (Vide, in this connection, *Ranee Surut Soondree Debea v. Baboo Prosonno Coomar Tagore*, and, after his death, *Romanath Tagore and others*, 13 M.I.A., 607 at p. 617, *Seths Gujnull, Jeithnull, and Thannull and Mussumat Chahee Kowar and Another*, 2 I.A. 34, and [Krishna Reddiar and Others Vs. Ramanuja Reddiar](#)

[and Another](#),; see also AIR 1940 3 (Privy Council)). It is only necessary to add that the decision, cited by Mr. Deb on this part of the case, namely, Amulya Kumar Samaddar and Anr. v. Annada Charan Das, 37 C.W.N. 143, is distinguishable and has no application in the instant case. (See also in this connection Nkwantahene Nana Kwame Boakye Tromu II v. Bechemhene Nana Fosu Gyeabour II, AIR 1949 P.C. 291).

7. What we have said above is enough to justify a finding that the plaintiff's case of reasonable requirement of the disputed premises has been established as a fact, or, for the matter of that, even as a mixed question of law and fact, as explained hereinbefore, and to overrule the defendant's objection on the point.

8. On the other aspect, namely, the point of law or pure law, arising under this head, just a short discussion will be necessary, as Mr. Deb, learned Counsel for the appellant, did not really urge this point, presumably because of the reasons, which we shall presently state hereinbelow. Those also were probably the reasons why it did not figure as one of the grounds in the appellant's memorandum of appeal. As, however, the point appears to us to have some apparent support from certain English authorities under the English Rent Acts and as the point also arose in some subsequent cases before us and was elaborately argued there and has been fully considered by us, and as it concerns the scope and effect of the Act, under which the defendant claims protection, though, as we shall presently see, it will not help the defendant in the instant case, we would just indicate here our views on the same in brief details.

9. On the so-called English authorities [Vide, in particular, Skinner v. Geary, (1931) 2 K.B. 546, Reidy and others v. Walker and others, (1933) 2 K.B. 266, and Hiller v. United Dairies (London) Ltd., Lewis, (1934) 1 K.B. 57 ; see also Haskins v. Lewis, (1931) 2 K.B. 1], it will be enough to say that the same are all distinguishable, first, because they were all primarily concerned with the requirements of the tenant's claim for protection and not with those of the landlord's claim for possession, and, secondly, because of the relevant statutes there, under which, on their own terms,--the statutes in question, applying only to dwelling houses,--and in view of their scope and object, as read by the learned English Judges, the "domesticity" or the "home" element was the sine qua non of the validity of the relevant claim thereunder. The approach, then was fundamentally different from our Indian law and the point at issue also fundamentally different, as the English statutes in question applied only to dwelling houses and the particular claim under the said statutes had to be judged on that footing. Of lesser strength is the other possible argument under this head, namely, that the Rent Control legislation, using, as it does, the word "his" in the relevant clauses or sections, cannot apply to artificial persons, as, although the said word "his" will be wide enough to include "her" under the General Clauses Act, it will not include "its or their", the neuter gender, which alone would be appropriate to artificial persons. Support for this argument may be sought from the decision of the Supreme Court in [The State Trading Corporation of](#)

[India Ltd. and Others Vs. The Commercial Tax Officer, Visakhapatnam and Others,,](#) which, however, is clearly distinguishable, as the statutory provision, there in question, postulating and resting inter alia on "parentage" of a citizen, may well be held--as it was held in that case (vide p. 1824)--to apply only to natural persons.

10. In the above view, we are not inclined to hold that, under the Indian law, the Rent Control legislation does not apply to artificial persons. Moreover, if the above argument be accepted, it will exclude also the defendant here from its purview or protection, as it is itself an artificial person and can have no element of domesticity in its claim of occupation. Possibly, because of this, Mr. Deb did not urge the above point in the present case. In the premises, this appeal will fail and it will be dismissed. In the facts and circumstances of this case, however, in the light of the prevailing conditions in the city in the matter of accommodation, we would give the defendant tenant time till the end of November next for vacating the disputed premises on condition that it goes on paying or depositing, in the trial court, to the credit of the plaintiff-decree holder, month by month, regularly, according to the English calendar, a sum of Rs. 192/8/- (Rupees one hundred ninety-two and annas eight) per month, on account of current mesne profits, and, in default of any two of such deposits, this decree for eviction will become executable forthwith and the above provision for time or grace period will automatically lapse.

There will be no order for costs in this Court.

Banerjee, J.

I agree.