

**(2013) 09 CAL CK 0093**

**Calcutta High Court**

**Case No:** S.A. No. 46 of 2003 and C.A.N. No. 7875 of 2013

Parul Bala Das and Others

APPELLANT

Vs

Sourendra Kumar Bhowmik

RESPONDENT

**Date of Decision:** Sept. 3, 2013

**Citation:** (2014) 1 CALLT 209 : (2014) 1 CHN 669

**Hon'ble Judges:** T.K. Dutt, J

**Bench:** Single Bench

**Advocate:** Amal Krishna Saha and Mr. Souvik Sarkar, for the Appellant; Mukul Lahiri and Mr. Subhendu Banerjee, for the Respondent

**Final Decision:** Disposed Off

### **Judgement**

T.K. Dutt, J.

The learned Advocate for the appellant submits that even though the appeal was admitted on certain substantial questions of law by an order dated 13.05.2002 passed by a learned Division Bench of this Court the following substantial questions of law are required to be considered by this Court as according to the said learned Advocate the following substantial questions of law are very relevant for the purpose of deciding the instant appeal. Such substantial questions of law are formulated as indicated below:

(i) Whether or not the learned Court below was right in affirming the judgment and decree passed by the learned Trial Court when neither of the Courts below considered the extent of requirement of the plaintiff and neither of the Courts below considered the question as to for what purpose such plea of requirement has been advanced by the plaintiff?

(ii) Whether or not the learned Courts below were right in granting a decree for ejection in favour of the plaintiff when a combined notice of suit was issued on behalf of the plaintiff and it was stated in such notice that one of the two rooms is being occupied by the defendant as a licensee and thus the notice u/s 13(6) of the

West Bengal Premises Tenancy Act, 1956 was applicable in respect of only one room and not in respect of the other room in respect of which the plaintiff had alleged that the defendant had occupied the same as a licensee?

(iii) Whether or not the learned First Appellate Court was right in dismissing the appeal upon finding that the plaintiff requires the suit premises for his business purpose when there is no such pleadings in the plaint, that is, with regard to the alleged business purpose?

After the above grounds have been formulated the hearing of the appeal is proceeded with as jointly prayed (or by the learned Advocates for the respective parties.

2. This Court has heard the learned Advocates for the respective parties. The hearing is concluded and the Court now proceeds to deliver the following judgment.

3. The facts of the case, very briefly, are as follows:

The plaintiff/respondent filed a suit for eviction against the defendant/appellant alleging that the defendant/appellant is a tenant in respect of "A" Schedule property to the plaint and a licensee in respect of the "B" Schedule property to the plaint. It appears that a notice u/s 13(6) of the West Bengal Premises Tenancy Act, 1956 was issued by the plaintiff/respondent to the defendant/appellant whereby the defendant/appellant was asked to vacate both the aforesaid rooms but the defendant/appellant did not vacate and the suit for eviction was instituted by the plaintiff/respondent. It further appears that the suit was brought against the defendant/appellant by the plaintiff/respondent on the ground that the defendant/appellant is defaulter in payment of rent and also on the ground that the plaintiff/respondent reasonably requires of the suit premises for own use and occupation. In paragraph 4 of the plaint, the plaintiff/respondent pleaded that he requires the suit premises for residential purpose but it does not appear from the plaint that any requirement with regard to any business purpose was pleaded in the plaint. The plaintiff/respondent also alleged that the plaintiff/respondent does not have any reasonable suitable accommodation elsewhere and such allegation was made in the pleadings by way of amendment of the plaint. The suit was contested by the defendant/appellant by filing a written statement and also the additional written statement. It was the defendant's contention that the defendant/appellant is a monthly tenant in respect of both the rooms. The said suit came up for hearing and the learned Trial Court, 1st Court of Civil Judge (Junior Division) at Sealdah, by judgment and decree dated 31st May, 2000 decreed the said suit and directed the defendant/appellant to give vacant possession of the suit property to the plaintiff/respondent. The said learned Trial Court came to the findings that the plaintiff/respondent is the owner of the suit property. The learned Trial Court found that the plaintiffs mother lived in one room and there are two other shop rooms in the suit holding and it has not been controverted that the plaintiff/respondent lives

in the suit holding and the plaintiff's daughter stays in the "matrimonial house" as the plaintiff/respondent has no accommodation in the suit premises. The learned Trial Court considered the evidence of the plaintiff/respondent that he needs the suit premises for expansion of business and for residence. The learned Trial Court found that the defendant/appellant is a tenant in respect of one room and a licensee in respect of other room and the plaintiff/respondent has proved his personal requirement of the suit premises.

4. Challenging the said judgment and decree passed by the learned Trial Court, the defendant/appellant preferred Title Appeal No. 91 of 2000 which was placed before the learned Civil Judge (Senior Division), Sealdah and the learned First Appellate Court by judgment and decree dated 19th February, 2002 dismissed the said appeal and affirmed the judgment and decree passed by the learned Trial Court.

5. Challenging the judgment and decree passed by the learned First Appellate Court, the defendant/appellant has preferred the instant second appeal and by order dated 13.05.2002 the appeal was admitted for hearing by a learned Division Bench of this Court on certain substantial questions of law.

6. The learned Advocate appearing on behalf of the appellant submitted that he is not pressing the substantial questions of law formulated at the time of admission of the appeal but he submits that the other substantial questions of law are relevant for the purpose of deciding the present second appeal. After having heard the learned Advocate for the appellant, this Court has formulated the aforesaid substantial questions of law as already indicated above.

7. The learned Advocate for the defendant/appellant submitted that only one notice was issued by the plaintiff/respondent u/s 13(6) of the West Bengal Premises Tenancy Act, 1956 and in such notice the plaintiff/respondent alleged that the defendant/appellant is a tenant in respect of the aforesaid Schedule-"A" property and a licensee in respect of the aforesaid Schedule-"B" property. The said learned Advocate submitted that the provisions of section 13(6) of the said Act of 1956 is not applicable in a case where the plaintiff/respondent files a suit for eviction of a licensee and thus in respect of Schedule-"B" property no notice u/s 13(6) of the said Act is required. The said learned Advocate submitted that the learned Trial Court found the allegation made by the plaintiff/respondent in this regard is correct but the learned First Appellate Court came to the conclusion that the defendant/appellant is a tenant in respect of both the rooms. The said learned Advocate contended that if the finding of the learned First Appellate Court has to be upheld then in that event the pre-condition of filing a suit for eviction of a tenant has to be met, that is, issuance of notice u/s 13(6) of the said Act, 1956. According to the said learned Advocate, since in the notice it was alleged that the defendant/appellant was a licensee in respect of the Schedule "B" property, there was no proper notice for eviction of a tenant in respect of such property preceding the filing of the suit and, therefore, the learned Appellate Court's judgment to the

extent it grants a decree in respect of the said Schedule-"B" property is bad in law.

8. The learned Advocate appearing on behalf of the plaintiff/respondent submitted that since the notice covered both the Schedules "A" and "B" properties and sufficient time was granted by the plaintiff/respondent for the defendant/appellant to vacate, that is, the statutory period required, it cannot be said that the notice is bad in law.

9. The learned Advocate for the defendant/appellant submitted that there is nothing on record to show that the tenancy in respect of Schedule-"B" property was a monthly tenancy and therefore it cannot be said that the notice was a good one. According to the said learned Advocate, it could have been a yearly tenancy or half-yearly tenancy and thus in so far as the Schedule "B" property is concerned no decree for eviction could have been granted as granted by the learned First Appellate Court.

10. This Court is unable to accept the submissions made by the learned Advocate for the defendant/appellant in this regard for the reason that the notice u/s 13(6) of the said Act of 1956 was issued in respect of both the rooms and in respect of both the rooms it was stated that the defendant/appellant should vacate the premises on the expiry of the period of notice failing which the plaintiff/respondent will file a suit for eviction. It is nobody's case that any yearly tenancy or half-yearly tenancy was contemplated. Reading the notice as a whole, it appears to this Court that such notice, even though it describes the defendant/appellant as a licensee in respect of one room, gave the defendant/appellant the statutory period of time to vacate. The defendant/appellant has not come forward with any case that the tenancy in respect of the Schedule-"B" property, as pleaded by the defendant/appellant in his written statement, was a tenancy of any description other than a monthly tenancy. Reading the pleadings of the parties and considering the materials on record, as a whole, one gets the impression that the defendant/appellant could not have treated the tenancy in respect of the Schedule-"B" property as a tenancy other than a monthly tenancy. Thus, the point of the notice raised by the learned Advocate for the defendant/appellant is without any substance. The other point raised by the learned Advocate for the defendant/appellant is that neither of the Courts below considered the extent of the alleged requirement of the plaintiff/respondent. It appears that such submission is of substance. Even though the learned Trial Court has granted a decree for eviction, it appears from the said judgment passed by the learned Trial Court that the learned Trial Court has not considered the specific requirement of the plaintiff/respondent in respect of the suit premises. The learned Trial Court proceeded on the basis that the plaintiff/respondent requires the suit premises for residential and also for business purpose. But, the learned Trial Court did not consider the fact that there was no pleadings by the plaintiff/respondent in respect of the alleged requirement for business purpose and thus no evidence in respect of such business purpose could have been taken into consideration by the learned

Trial Court. The learned First Appellate Court also did not advert to such aspect of the matter, that is, there was no pleadings by the plaintiff/respondent with regard to alleged requirement for business purpose. There is also no discussion by any of the Courts below as to what is the specific requirement of the plaintiff/respondent in respect of the suit premises and for what purpose the plaintiff/respondent requires the suit premises even though there is only a general observation that the suit premises is required by the plaintiff/respondent for residential and business purpose. The learned First Appellate Court being the last Court of facts ought to have made a conscious application of mind to the facts and circumstances of the case before holding that the plaintiff/respondent requires the suit premises for own use and occupation. It appears from the Commissioner's report and also from the observations made by the learned Court in its judgment that the plaintiff/respondent is in occupation of a portion of the suit holding but there is no discussion by any of the Courts below as regards the extent of further requirement of the plaintiff/respondent on the ground of own use and occupation. The learned Advocate for the plaintiff/respondent submitted that it cannot be said that the learned Courts below did not consider this aspect of the matter in an appropriate measure. The said learned Advocate submitted that the learned First Appellate Court and also the learned Trial Court did make a conscious application of mind while making the finding with regard to the plaintiff's requirement for own use and occupation. He cited a judgment reported at [Firojuddin and Another Vs. Babu Singh](#), in support of his contention that concurrent finding of fact made by the learned Courts below should not be upset by this Court in second appeal.

11. This Court is of the view that neither of the learned Courts below considered the entire aspect of the matter while dealing with the question of plaintiffs requirement for own use and occupation. That apart, the defendant/appellant has filed the application for taking note of subsequent events and in such application it has been stated that the mother of the plaintiff/respondent and also the daughter of the plaintiff/respondent have died. It has been further stated in such application that the plaintiff/respondent and his wife are residing at the present address, that is, in the suit holding. Thus, the allegation made by the plaintiff/respondent that the plaintiff/respondent is residing in a tenanted premises elsewhere is also a matter which requires consideration in greater details. It was submitted by the learned Advocate for the plaintiff/respondent that the plaintiff/respondent did not wish to file any affidavit-in-opposition to such application.

Be that as it may, this Court is of the view, particularly taking into consideration the subsequent events, the matter should be remanded back to the learned Trial Court for a fresh decision.

12. In view of the discussions made above, the judgments and decrees passed by the learned Courts below are set aside and the suit is remanded back to the learned Trial Court for a fresh decision after the learned Trial Court gives appropriate

opportunities to the parties to amend their respective pleadings and also adduce further evidence in support of the pleadings as it appears to this Court that subsequent developments which have taken place in the litigation are required to be considered by the learned Trial Court on the basis of appropriate pleadings and evidence. Accordingly, the present second appeal is disposed of by sending the said suit back on remand to the learned Trial Court. Parties will be at liberty to make application for amendment of the pleadings within six weeks from the date on which the lower Court records reach the learned Trial Court and if such application is filed by any of the parties to the litigation such application will have to be disposed of by the learned Trial Court in accordance with law after giving appropriate opportunity to other side to oppose such application. The learned Trial Court, if the pleadings are amended, shall give appropriate opportunities to the respective parties to adduce their respective evidence in support of their respective pleadings. Parties will also be at liberty to make an application for appointment of local inspection commissioner for holding local inspection on relevant points to enable the learned Trial Court to pass an appropriate judgment. As and when such exercise is completed, the learned Trial Court shall make all endeavour to dispose of the suit in accordance with law as early as possible.

13. Let the lower Court records be sent back to the learned Trial Court concerned by Special Messenger and the Special Messenger cost for such purpose shall be put in by the appellant within one week from this date, as prayed for by the learned Advocate for the appellant. The application being C.A.N. 7875 of 2013 is also disposed of accordingly.

Urgent certified xerox copy of this judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of necessary formalities.