

(1987) 08 CAL CK 0015

Calcutta High Court

Case No: A.O.D. No. 409 of 1984

Haridas Chowdhury

APPELLANT

Vs

Priti Choudhuri Alias Pritimoyee
Chaudhury

RESPONDENT

Date of Decision: Aug. 24, 1987

Citation: 92 CWN 530

Hon'ble Judges: A.M. Bhattacharjee, J; A.K. Nayak, J

Bench: Division Bench

Advocate: T.K. Pal and Sekhar Pal, for the Appellant; Arun Matilal, D.K. Das and Chandra Sekhar Das, for the Respondent

Final Decision: Dismissed

Judgement

Ajit Kumar Nayak, J.

This is a tenant-defendant's appeal and is directed against the judgment and decree dated 19.5.1984, passed by Judge, City Civil Court, Calcutta, Bench 11, in ejectment suit No. 302 of 1980 brought by the plaintiff-repondent on the ground of reasonable requirement for her own use and occupation by evicting the tenant-defendant from the suit premises No. 9, D.L. Roy Street, Calcutta-6. The case of the plaintiff as made out in the plaint is that she is the owner or land lady of the premises in suit. The defendant was a monthly tenant under the plaintiff in respect of the entire first floor and one room in the ground floor on the southern side of the suit premises at a monthly rental Rs. 160/- according to English Calendar month. The tenancy of the defendant was determined by an Advocate's notice dated 21st November, 1979 calling upon the defendant to quit and vacate the suit premises on the expiry of the last day of the month of December, 1979, which was duly received by the defendant. Despite the determination of the tenancy by such registered notice the defendant failed and neglected to deliver up vacant and peaceful possession of the tenancy on the expiry of the month of December, 1979. So the plaintiff was compelled to bring the suit as she is in need of this entire accomodation for her own use and

occupation as well as for the members of her family.

2. The defendant contested the suit by filing a written statement on 5.1.1980 denying all the material allegations of the plaintiff. The defendant denied categorically the plaintiff's case of reasonable requirement for her own use and occupation and the members of her family. Asserting that there was no genuine requirement at all and that the plaintiff brought the suit motivated by the greed to let out the suit premises at a higher rate of rent and at a premium if she succeeded somehow in evicting the defendant from the same. The notice determining the tenancy was also challenged to be invalid, insufficient and illegal.

3. Parties went to trial on the following issues being framed by the Trial Judge:

1. Has the tenancy of the defendant duly determined by the service of a valid ejectment notice?

2. Does the plaintiff reasonably require the suit premises for his/or his family members use and occupation?

3. Has the plaintiff any reasonably suitable accommodation to suit his requirements other than the suit premises?

4. Is the plaintiff entitled to a decree as prayed for?

4. The learned Trial Judge found the notice served by the plaintiff-respondent upon the defendant-appellant as valid and legal and thereby determining the tenancy of the suit premises. He further found that the plaintiff was not in possession of reasonably suitable accommodation at the material time and that she reasonably required the same and therefore decreed the suit in favour of the plaintiff. Being aggrieved by such judgment and decree of eviction and mesne profits the defendant-tenant has preferred this present appeal.

5. Undisputedly the plaintiff-respondent is the owner of the suit premises having acquired the same from her brother by deed of gift dated 23.5.1957. Undisputedly also the defendant is a monthly tenant in respect of the suit premises at a monthly rental of Rs. 160/- according to English Calendar month since 1956. It is also an undisputed fact that the plaintiff's husband is a senior Advocate of the Calcutta High Court and also a lecturer of the University College of Law, Calcutta. It is the specific case of the plaintiff that she herself is living in a tenanted house with acute shortage of accommodation having only two bed rooms on the first floor and one small servant's room on the ground floor. The family of the plaintiff consists of the plaintiff herself, her husband Shri Nirmal Chowdhury, her eldest son, Shri Subir Chowdhury married and having a child and posted for the time being as a Senior Scientific Research Officer at Hyderabad and the unmarried youngest son, Shri Sumanta Chowdhury aged 24 years at the material time and working as an Engineer at Crompton Greaves and posted at Calcutta. The plaintiff has no drawing room at the tenanted premises No. 5/1/1, Akrur Dutta Lane, Calcutta and has not a separate

room for the worship of deities offending the religious sentiment of the family particularly the plaintiff and her husband. The youngest son of the plaintiff could not also be given in marriage for want of accommodation. It is the further case of the plaintiff that the existing tenanted premises with only two living rooms can somehow accommodate the plaintiff and her husband in one room and their married son in another. Although that son is posted now at Hyderabad, all his personal effects, furniture and fittings are kept in that living room for their stay during the frequent visits to Calcutta to see their parents and near relations. It is stated that the plaintiff's husband has ancestral house in premises No. 62, Ban-charm Akrur Lane, in which he has only one-ninth ($1/9$ th) share and his occupation of one room in the ground floor is being used as his chamber since the time of his father who was also a Senior Advocate of the Calcutta High Court. The other rooms of the said house are occupied by the brothers of the plaintiff's husband and their family members. According to plaintiff her husband also requires a chamber in the suit premises. It has been alleged that the plaintiff is having a strained relationship with the landlord of the tenanted premises No. 5/1/1, Akrur Dutta Lane and he has been threatening the plaintiff of evict her from the said premises. To purchase peace, the plaintiff's husband had to give up one big room to the landlady but even then it has become difficult for the plaintiff and her family to live peacefully in the said premises. The plaintiff's occupation in the tenanted premises has now become precarious on account of the persistent demand by the landlady to vacate the said premises. In view of this it has been urged that the plaintiff requires eight rooms in all in the following manner that:

1. One room for the plaintiff and her husband,
2. One room for the plaintiff's married son and his wife,
3. One room for her younger son,
4. One drawing room,
5. One room for chamber of plaintiff's husband,
6. One kitchen room.
7. One store,
8. One Thakur Ghar.

6. The alleged requirement of the plaintiff for her own use and occupation and the members of her family has been challenged to be highly exaggerated and has been further assailed among other grounds that the accommodation as presently enjoyed by the plaintiff in the tenanted house and that at her husband's ancestral house taken together are more than sufficient for which the plaintiff's husband surrendered one room of the tenanted premises to the landlord. The eldest son of the plaintiff is said to be posted and living at Hyderabad with his family and as such

it is alleged that there was no requirement of the plaintiff for such son or any member of his son's family. It is further submitted that had the plaintiff any genuine need or requirement to any further accommodation, she, could have availed of the same when another tenanted portion in the ground floor fell vacant in 1970, but instead she chose to induct a new tenant by reletting such portion at a higher rate of rent. The learned Trial Judge, be it stated here, has considered the entire Defence version by carefully examining the evidence adduced by the parties in respect thereof and we find no reason to differ from the findings arrived at by the said Court.

7. Regarding the first point raised by the defendant about the genuineness of the requirement of the plaintiff, it is submitted by Mr. Paul, Learned counsel for the appellant that the existing accommodation enjoyed by the plaintiff in her tenanted house as well as in the ancestral, house, of her husband is sufficient to nullify her claim at the material time. Mr. Paul however is fair enough to concede that the alternative accommodation available to the plaintiff is her capacity as a tenant, by itself, will not be a bar in getting a decree on the ground of reasonable requirement in respect of the premises owned by her. But, according to him, such possession in a tenanted house will be a bar if it is found to be sufficient.

8. The position of law after the West Bengal Premises Tenancy Amendment Act of 1969 is clear on the question of reasonable requirement of the landlord in a case if he is not in possession of a reasonably suitable accommodation in tenanted premises. No hard and fast standard or rule can be laid down as to what constitutes suitable accommodation. This may vary from case to case according to the facts and circumstances of each particular case. What the Court is to weigh and consider is a bundle of facts and circumstances viz. the "extent and the character of the plaintiff's existing accommodation, convenience, comfort, desirability etc." Our attention has been drawn in this connection by the learned counsel for the appellant to the Division Bench decision reported in 87 CWN page 278, Sonabati Devi and Ors. v. Achyutananda Dey and Anr. In short, we are in respectful agreement with the view expressed therein to the extent that possession of a tenanted premises by a landlord by itself without proving something more ought not to be taken as unsuitable so as to entitle him to recover possession of his own premises let out to a tenant. In other words, Courts will consider if landlord claiming possession in his own house on the ground of reasonable requirement is already in possession of a reasonably suitable accommodation in the tenanted premises occupied by him. But we want/ to make it clear, at the same time, that we are not inclined to accept and uphold the extreme proposition that a landlord who is in suitable accommodation in a tenanted premises cannot get a decree at all in respect of his own house. Mere sufficiency in accommodation is not exactly the same thing as suitability of such accommodation. Sufficiency is undoubtedly a vital element but suitability is something more than that. They relate to two aspects of the question of accommodation. One is quantitative the other qualitative. As such, proper emphasis

should be placed not only on the fact of alternative accommodation, but also on the points of suitability and further reasonableness of the same as specifically provided in the Act itself. So the interpretation of law on the point of requirement of a plaintiff-landlord, to recover possession of his house let out to a tenant, on the ground of his having mere sufficient alternative accommodation, regardless of the question of its suitability, will be a highly unreasonable proposition, as in that case landlord will never get eviction of his tenant in a house owned by him, although he satisfies that he reasonably requires the premises in occupation of the tenant. It is appropriate, therefore, to mention in this connection, the case reported in 1977(2) CLJ 19 at 26 and 27, Haraprasad v. Bamdev, wherein it has been held that the possession of the plaintiff-landlord as a tenant in the tenanted premises is somewhat vulnerable as he is potentially in the danger of being evicted from the rented premises. In fact this decision has followed the view expressed earlier in the case reported in 1974 1 CWN 123. Similar such view has also been followed in the case reported in 87 CWN, 92 Bharati Industries and Anr. v. Nirmal Kumar Bhattacharjee. It has been further held in the said case that financial benefit is also an important element in considering the genuineness of the landlord's requirement of his tenanted premises for his own use and occupation. So the sum total of the views expressed in these three decisions referred to above is that "due and proper weight" should be given to absolute ownership which has definitely an "edge" over the accommodation available as a tenant.

9. But even before we examine the question of suitability of an alternative accommodation available to a landlord as a tenant in a tenanted premises, the plaintiff-landlord to get a decree for eviction in such a case, must initially prove that he reasonably requires his own, for his own use and occupation and for the members of his or her family. It is well settled now by successive judicial pronouncements that such "requirement" as envisaged in the Premises Tenancy Act, must be a bona fide or genuine requirement. In other words, there must be an element of need in such requirement though the meaning of the same should not be stretched too far to defeat the purposes of the Act (" [Mattulal Vs. Radhe Lal](#) , at page 1603; 88 CWN page 905").

10. It will be pertinent, therefore, to consider and examine whether the plaintiff reasonably requires her own premises for her own use and occupation and for the members of her family and in that connection we may consider the suitability of an alternative accommodation available to her as a tenant in the tenanted premises at 5/1/1 Akrur Dutta Lane as well as in the ancestral house of her husband.

11. It has been urged on behalf of the plaintiff - respondent that her existing accommodation in the tenanted premises at 5/1/1 Akrur Dutta Lane consisting of two rooms in the first floor and one small room in the ground floor meant for a servant, is completely insufficient to accommodate the need of the plaintiff and her husband a senior Advocate of Calcutta High Court requiring a chamber; two sons,

one married and having a child, and another with marriageable age. It is in the evidence of P.W.1, the husband of the plaintiff, Nirmal Chowdhury that they are badly in need of a drawing room, a chamber for himself, one extra living room to give his younger son in marriage, a kitchen and a thakurghar which are absolutely wanting in the tenanted premises occupied by the plaintiff. The need for extra living room for the younger son has been disputed by D.W.1, the defendant in his evidence stating that the second room in occupation of the plaintiff in the first floor of her tenanted premises can well serve the same purpose. But even the defendant, D.W.1, cannot deny in his evidence as also established by the report of the Commissioner (Ext. 13) that there are many pieces of furniture and household articles in such second room which according to P.W.1 belong to his eldest son and his wife and that they stay in such room whenever they visit Calcutta to see their parents and their relations. We also have it on record that being a Senior Scientific Officer on transferrable service under the Government of India, his transfer to Calcutta at any time cannot be ruled out as a remote possibility. Under such circumstances, the second living room in possession of the plaintiff in a tenanted premises can not be availed of by the plaintiff to accommodate her younger son or to give him in marriage thereby. It has also not been disputed by the defendant that there is no kitchen or thakurghar in the tenanted premises and that a lobby has been converted into a dining space. Plaintiff's contention of paucity of existing accommodation at 5/1/1 Akrur Dutta Lane has been further assailed by the defendant in view of her husband's alternative accommodation in his ancestral house at Bancharam Akrur Lane. P.W.1 the plaintiff has been seriously cross-examined at length on this point. What has transpired ultimately in his evidence is that he has 1/9th share in such house with the only privilege of using one small room in the ground floor of that house as his chamber which was also used as such by his late father who was an Advocate of the High Court. In his evidence in detail P.W.1 the plaintiff's husband has narrated how the other rooms of such paternal house of P.W.1 are being used by his other brothers and the members of their families leaving no other living space or elbow room for anybody else to get into. The Advocate Commissioner in his report, exhibit 13 has also come to a similar finding. Nextly Mr. Paul, the learned counsel for the appellant has urged before us to disbelieve the plaintiff's case of reasonable requirement submitting that had there been any such genuine need then the plaintiff's husband would not have surrendered one big room of the tenanted premises in favour of the landlady and would not have let out a portion of the suit premises to a new tenant in 1971 after the eviction of the former tenant in 1970. In other words, reliance has been placed upon these two facts to point out that the plaintiff really has no genuine need or requirement to have a better and bigger accommodation than enjoyed at present. To this, the answer of the plaintiff is that she is already having a strained relationship with her landlady and her husband, to make peace, had to part with the possession of the big room in her favour. But even then there has been no marked improvement of the relationship and that they are still under constant pressure and

harassment leading to suspension of water supply followed by complaint before police and Magistrate. Even D.W.1 the defendant has been constrained to admit in his evidence that the plaintiff's husband was having troubles with the landlady of their tenanted premises. There is positive evidence of P.W.1 the plaintiff's husband on this point and the learned Trial Judge has rightly believed the same to be true. Regarding the next fact that of letting out a portion of the disputed premises in 1970, the plaintiff's husband P.W.1 has explained the same stating that at that time they had no bad relationship with their landlady and that it was the trouble time in naxalite period for which in stead of keeping that portion vacant, a tenant was inducted to occupy the same. The defendant has also admitted the same stating that it was he who advised plaintiff's husband to do so. So the two salient facts to which our attention has been drawn to create a cloud of suspicion about the genuineness of the plaintiff's claim for eviction have been amply explained by the evidence adduced by the plaintiff and as such they have been rightly ignored by the learned Trial Judge. We further find from the evidence that P.W.2, Sumanta, the younger son of the plaintiff, aged 28 years, lives with his parents and was a bachelor at that time. Much has been argued by Mr. Paul, that the residential address of P.W.2 in his deposition having been shown at 62 Bacharam Akrur Dutt Lane, the plaintiff's case of their son living with them cannot be believed to be true. But there cannot be any sort of controversy over this in view of the specific evidence of P.W.2 that he is living with his parents in the same house. We are, therefore, inclined to believe, as also persuaded to do so on behalf of the plaintiff, that the P.W.2 cannot be given in marriage for want of accommodation in the tenanted premises. It is the evidence of P.W.2 that he is not entitled to any quarters from his employer even if he gets married, and, that his marriage negotiation was going on at the relevant time. As against this we find from the evidence as well as from the report of the Commissioner which is also an undisputed fact that the defendant is in occupation of four rooms in the disputed premises. There is nothing on record to substantiate the contention of the defendant that the plaintiff is having a more commodious and luxurious accommodation than that of the defendant. Judged from any angle, the plaintiff-landlady, appears to be placed in a definitely disadvantageous position than the defendant in the matter of requirement of accommodation in both aspects qualitative as well as quantitative. The learned Trial Judge carefully considered all these facts and circumstances in the light of the evidence adduced by both the parties and rightly came to the conclusion that the plaintiff has the genuine need and that her requirement of the suit premises for her own use and occupation and the members of the family is bona fide and genuine.

12. No other point has been urged before us on behalf of the appellant.

13. We find, therefore, no reason to interfere with the decision arrived at by the lower appellate Court and uphold the same.

The result is the appeal fails and the same is dismissed accordingly. Considering everything, we make no order as to costs. Defendant-appellant is given time till the end of this year to vacate the premises in suit.

A.M. Bhattacharjee, J.

I agree.