

(2023) 10 CAL CK 0072
In the Calcutta High Court
Case No : S.A. No. 88 Of 2012

Dilip Kumar Sinha, Since Deceased, Smt. Nandita Sinha &
Ors.

APPELLANT

Vs

Sanjoy Sinha

RESPONDENT

Date of Decision : 19-10-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Section 105(2), Order 41 Rule 22(1)
West Bengal Premises Tenancy Act, 1956 — Section 13(3A), 13(1)(f), 13(1)(ff), 17(2),
17(4), 18A

Citation : (2023) 10 CAL CK 0072

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

**Advocate : Rudrajyoti Bhattacharyya, Sayani Roy Chowdhury, Partha Pratim
Roy, Dyutiman Banerjee**

Final Decision : Dismissed

Judgement

Ajoy Kumar Mukherjee, J

1. This second appeal has been preferred against the judgment and decree dated 03.11.2011 passed by the learned Additional District Judge, 9th court at Alipore in Title Appeal No. 123 of 2010. By the impugned judgment the learned Court below affirmed the judgment and decree dated 9.04.2010 passed by learned Civil Judge (Junior Division) 1st Court, Alipore, in Title Suit No. 28 of 2005.

2. Brief background of the present case is that initially Plaintiff/Respondent herein filed a suit for eviction of the Defendant/ appellant herein on the ground of default on 05.04.1991. During pendency of the said suit an application for amendment, of plaint was filed on 7.11.2000 and by the said amendment grounds of building and rebuilding and reasonable requirement was incorporated in the plaint, alleging that in order to fulfil plaintiffs requirement the suit premises has to be reconstructed. The defendant/appellant herein contested the said suit but said suit was dismissed by the Trial Court with the observation that

the plaintiff could not prove his case beyond reasonable doubt and on the contrary defendant is entitled to get protection under section 17(4) of the West Bengal Premises Tenancy act 1956(Act of 1956) on the ground that the defendant complied with the order passed under section 17(2) of the said Act.

3. The plaintiff/respondent herein being aggrieved by that judgment and decree preferred an appeal before the appellant court being Title Appeal No. 23 of 2006 and learned Appellate court has been pleased to set aside the judgment and decree passed by the learned Trial court and remanded the suit to the Trial court for fresh disposal in the light of the observation made in the body of the judgment, in accordance with law.

4. The defendants/appellants thereafter preferred a first miscellaneous appeal being no. FMAT 2948 of 2007 against the aforesaid judgment of remand dated 31.07.2007 before this Court. However the said appeal was thereafter dismissed for being not pressed by the defendants/appellants.

5. Thereafter the original suit being Title Suit No. 28 of 2005 was heard as remanded and the Trial Court after hearing afresh decreed the suit on the ground of reasonable requirements under section 13(1) (ff) of the Act of 1956. However the learned Trial Court disbelieved the plaintiffs/respondents case for requirements of his business and as such refused to grant decree on the ground of building rebuilding under section 13(1) (f) of the Act of 1956.

6. Being aggrieved by that order passed by the Trial court the defendants / tenants preferred an appeal before the court below i.e. first appellate court and the same was renumbered as Title Appeal No. 123 of 2010. Id. Court below by its order dated 3rd November, 2011 was pleased to dismiss the said appeal with the observation that the plaintiff has succeeded in proving his case of building and rebuilding under section 13(1) (f) and also the ground of reasonable requirement under section 13(1) (ff) and as such plaintiff is entitled to get decree of eviction on both the grounds.

7. Being aggrieved by said judgment and decree the defendants/tenants filed the present second appeal and while admitting the second appeal the Division Bench of this court by its order dated 21.03.2012 has been pleased to formulate following substantial question of law:-

Whether the Id. Court of appeal below committed substantial error of law by reversing the finding of the Id. Trial judge with regard to the ground of building and rebuilding as enumerated in section 13(1) (f) read with section 18A of the west Bengal Premises Tenancy Act 1956.

8. While adjudicating the issue of building and rebuilding as well as reasonable requirement of the suit premises by the plaintiff, the Trial court clearly held that plaintiff succeeded in proving his case of reasonable requirement but so far as the issue of building rebuilding is concerned the Trial court held in the relevant portion of judgment as follows:-

"The alleged fact of having tele-serial studio/production business is denied by the defendant. So it was upon the plaintiff to establish the fact of his having the said business. The plaintiff tried to discharge his burden of proof by adducing oral evidence and by producing a trade licence (exbt. 7) while the fact of having business is specifically denied mere production of trade licence does not ipso facto establishes the fact conclusively. Existence of trade licence does not automatically prove the running or existence of the business. The plaintiff tendered the evidence of P.W. 3 & 4 who claimed themselves as employee under the plaintiff in the alleged business but not a single scrap of document is submitted to show that the business actually exists. No roll of the employees or accounts of the business or even tax return certificate is submitted by the plaintiff which he claimed in his evidence to be existing.

Therefore, I am inclined to hold that the fact of having business of tele serial production is not proved by the plaintiff.

The plaintiff did not adduce any evidence to prove that total demolition of existing suit premises is necessary for the construction.

Moreover the plaintiff himself admitted that even by the construction for which he got his plan sanctioned, he shall not be able to satisfy his requirement as stated in the plaint. So, there remains no logical ground for getting eviction on the ground of building and rebuilding."

9. While dealing with the issue of building and rebuilding learned First Appellate Court disagreed with the view taken by the Trial court and observed that plaintiff has succeeded in proving his ground of building and rebuilding as well under section 13(1) (f) and inter alia made the following observation:-

"The requirement of building and re-building for own occupation can co-exist. The landlord who is the owner of the premises may reasonably require the premises for his own occupation by making necessary additions or alternations to satisfy his needs as observed in the decisions cited in AIR 1977 Cal 167. AIR 1968 Cal 49. That the two requirement namely, one for building or re-building and the other for own use and occupation were not mutually exclusive and a composite or amalgam requirement (namely) building and re-building for making the premises fit for the land lords own occupation would be quite relevant for the purpose of this section has been approved in several decision as observed in the decisions cited in AIR 1977 Cal 167, 63 CWN 29, The supreme Court has also approved this view in the decisions cited in AIR 1964 SC 1976 and 1987 (1) RCJ 102. It has been observed that once the landlord establishes that he bonafide requires the premises for his own use and occupation he satisfies the condition to evict the tenant irrespective of the fact whether he would occupy the premises either without making any addition or alteration therein or after making (Page.22) necessary additions and alterations to satisfy his own needs. When the landlord filed a suit for eviction on the grounds that he reasonably requires the premises for his son who is now living separately from his so that he can live

with him for that purpose additions or alterations will be necessary and a plan was got sanctioned from the Municipality, the plaintiffs suit has been decreed as the Court has found that his requirement is reasonable and that he has sufficient means and the requirement for the building or rebuilding on the basis of the sanctioned plan is also reasonable as observed in the decision cited 71 CWN 174."

10. It is admitted position in the present case that the land lord/respondents purchased the suit property on 11.08.1989 and he initially instituted the eviction suit on 05.04.1991 on the ground of default of payment of rent only. After more than 9 years on 07.11.2020 the plaint was amended and the amended plaint has been filed by the plaintiff/ respondent on 14.11.2000. Mr. Bhattacharya learned Counsel appearing on behalf of the Appellant strenuously argued that even if the said amendment was allowed on 07.11.2000, but it is well settled that even in case of such amendment, the date of original presentation of the plaint continues to remain the date of the suit or in other words the amendment will relate back to the date of institution of the suit, since the date of institution of the suit is not altered on the amendment of the plaint, meaning thereby the amendment relating to the ground of building rebuilding and the ground of reasonable requirement deems to have been incorporated in the plaint on the date of institution of the suit i.e. within the moratorium period which is not permissible in the eye of law, being violative of section 13(3A) of the Act of 1956 and as such suit on those two grounds becomes not maintainable and the decree passed on such plaint must be held to be void . In support of his contention that the amendments in such cases relates back to the date of presentation of the plaint, he relied upon following judgments:-

- (i) AIR 1982 Cal 407, (Smt. Sirdha Mukherjee Vs. Sankar Chatterjee).
- (ii) AIR 1985 Cal 218, (Inder Sengupta Vs. Sm. Prova Rani Chakraborty and Another).
- (iii) AIR 1985 SC 376, (Anandilal Bhanwarlal and Another Vs. Smt Kasturi Devi Ganeriwala and Another).
- (iv) AIR 1975 SC 1146,(B. Banerjee Vs. Anita Pan (SMT)).
- (v) 1990 (1) Cal.L.J. 455, (Geeta Bose and Another Vs. Machine Tools of India Ltd.)

11. In Pravarani Chakraborty Vs. Inder Sengupta, civil appeal no. 1921, judgment delivered on 5th March, 1991 the Apex Court held that it is permissible on the part of the landlord who has purchased the property and instituted a suit for eviction within a period of three years on other grounds, to apply for amendment and ask for relief on the ground of eviction mentioned in section 13(1) (ff) of the Act of 1956.

12. Relying upon said judgment in Uma Mishra (Sanyal) Vs. Monoranjan Sinha and others, reported in 1991 SCC Online Cal 242 a Division Bench of this Court held in paragraph 6 as follows:-

"6. Accordingly, we hold that the plaintiff-landlady was entitled to invoke the ground of eviction as mentioned in clause (ff) of sub-s. (1) of s. 13 of the said Act by amendment in suit which was filed within the prohibited period mentioned in sub-s. (3A) of s. 13 of the said Act and the decree passed by the court below on the basis of the additional ground for eviction as provided under clause (ff) of sub-s.(1) of s. 13 is valid and cannot be challenged on this ground.

13. The same principle was reiterated by a Division Bench of this court in a judgment reported in (2015) 4 CHN 515 (Bapi Chatterjee Vs. Arati Halder)

14. In Bhagwan Shaw Vs. Mr. Ram Bahadur Shaw and another reported in 2015 SCC Online Cal 10421 another Division Bench of this High Court held in paragraph 10 as follows:-

"10. In fact, this point is no longer a res integra as an identical contention was raised in a civil revisional application being CO. No. 1859 of 2009 (Dr. Shekhar Roy Chowdhury v. Syed Bahaiddin) wherein this Court on 9th September, 2009 held as follows:—

"For finding out the law which is now prevalent on this subject, this Court is required to take note of an unreported decision of the Hon'ble Supreme Court in the case of Civil Appeal No. 1521 of 1984 Smt. Prova Rani Chakraborty v. Inder Sengupta wherein it was held that an additional ground of reasonable requirement which was made available during the pendency of the eviction suit after the expiry of the prohibited period under Section 13(3A) of the West Bengal Premises Tenancy Act, 1956, can be introduced in the plaint by way of amendment. In fact, by relying upon the said unreported decision of the Hon'ble Supreme Court a Division Bench of this Hon'ble Court in the case of Smt. Uma Mishra (Sanyal) v. Monoranjan Sinha, reported in 1992 (2) CHN page 407 held that the landlord is entitled to invoke the ground of eviction as mentioned in Section 13(1)(ff) of the West Bengal Premises Tenancy Act, 1956 by amendment of plaint which was filed within the prohibited period as mentioned in Section 13(3A) of the said Act and the decrees passed by the Court below on the basis of the additional ground of eviction as provided in Section 13(1)(ff) are valid and cannot be challenged on the ground that since the said suit was filed within the prohibited period, eviction cannot be sought for on the ground of reasonable requirement in the said suit after the expiry of the prohibited period. Even in the following subsequent decisions, identical views were expressed by this Hon'ble Court:—

1. In the case of Satya Gopal Saha v. Snehalata Saha, reported in (1989) 1 CLJ page 256

2. In the case of Samar Kr. Sarkar v. Asit Kr. Sarkar, reported in 1990 (1) CHN page 107."

15. A single bench of this court in Bela Ghosh Vs. Swapan Kumar Ganguly reported in 2012 SCC Online Cal 8079 has also endorsed the same view that

after expiry of the prohibited period from the date of acquisition of the interest by the landlord, application for incorporation of the ground of reasonable requirement for eviction of the tenant is permissible.

16. In view of aforesaid judgments, it is no more *res integra* that the land lord after expiry of prohibited period is entitled to incorporate in the plaint the ground of eviction as mentioned in clause (ff) and/or clause (f) of sub-section (1) of section 13 of the Act of 1956 by way of amendment, in a suit which was filed on any other lawful ground, within the prohibited period mentioned in subsection 3A of section 13 of the Act and the decree of eviction passed on the basis of such amended ground is valid and is not liable to be assailed on the ground that with the amendment the date of the institution of the suit cannot be altered or that the institution of the suit cannot be made post-dated by such amendment.

17. There is another aspect in the present case which needs to be looked into. It is not in dispute that initially the suit was dismissed with the observation that the plaintiff could not prove his case beyond reasonable doubt against which plaintiff preferred first appeal and the first appellate court was pleased to set aside the said judgment and decree passed by the trial court and remanded the suit back for fresh trial and to dispose of the suit in the light of the observation made in the body of the judgment which relates to the ground agitated by the plaintiff under section 13(1) (f) and 13(1) (ff) of the Act of 1956. It is also apparent that the appeal preferred against said order of remand before this Court being FMAT No. 2948 of 2007 was ultimately dismissed for being not pressed by the defendants/appellants. Now Section 105(2) of the Code of Civil Procedure clearly postulates, where any party aggrieved by an order of remand from which an appeal lies does not prefer appeal therefrom, he shall thereafter be precluded from disputing its correctness. In the present context since the aforesaid appeal against order of remand was dismissed for being not pressed by the defendants/appellants herein they are precluded from disputing the correctness of the order by which the first appellate court directed the trial court to make fresh trial and to dispose of the suit considering the grounds of building rebuilding as well as the ground of reasonable requirements.

18. Mr. Bhattacharya on behalf of the appellant raised one more issue. Referring Order XLI Rule 22 (1) he contended that the Trial Court had rejected plaintiffs case of eviction under section 13(1) (f) of the Act of 1958 and the plaintiff did not prefer any cross appeal or cross objection against said refusal order within the statutory period and as such he cannot take the plea of building/rebuilding under section 13(1) (f) either before the first appellate Court or before this Court.

19. Under Rule 22(1) of Order XLI, when only a particular issue is found against the plaintiff/respondent and at the same time the whole suit is completely in his favour, the respondent without filing cross objection can support the decree on the ground of reasonable requirement and entitled to contend also that the issue of building re-building should have been decided in his favour. A respondent without filing cross objection can canvass the correctness of finding against him

in order to support the judgment that has been passed against the appellant. The provision made it clear that if the respondents want to support a decree but want to show that a certain finding against him should not have been recorded, he is not required to file any cross objection because a respondent challenging a finding which if accepted does not alter the ultimate decisions of the Trial Court. In fact Rule 22 (1) of order XLI applies to decree and not to mere findings, though cross objections can also be filed against findings. In the present case where the Trial court has passed the decree of eviction on the ground of reasonable requirement in favour of the respondent, he can support the decree in his favour passed by the Trial court on the ground of reasonable requirement and can oppose the finding made in respect of issue of building rebuilding which was decided against him without filing any cross objection. If the suit for eviction was not decreed in favour of the plaintiff/landlord against the tenant/defendant, then obviously the respondent could not challenge the same in appeal without filing cross objection.

20. In this context reliance has also been placed upon a Divisions Bench judgment of this court in Jyotsna Das Vs. Sailendra Nath paul reported in 2019 SCC Online Cal 9259 where in it was held in paragraph 9 as follows:-

"9. When a party is not aggrieved at all by the decree but is aggrieved by a finding on an issue rendered by the Trial Court, such party may than merely state that it assails the finding for the purpose of supporting the decree that is questioned in the appeal by another party. Such challenge is, ordinarily, indicated at the hearing of the appeal. However, if a party who has not preferred an appeal is partly aggrieved by the decree, instead of filing an independent appeal, such party may file a crossobjection. It is, thus, that the period of limitation applies to a party WHO intends to file a cross-objection to challenge any part of the decree, but not to a party who need not file a cross-objection but may assail a finding on an issue without assailing the decree."

21. In view of aforesaid discussion I do not find any substance in the argument advanced on behalf of the appellant. Apart from all this, plaintiff filed a suit for eviction on the ground of default, reasonable requirement and building and re-building, out of which plaintiffs suit for eviction on the ground of reasonable requirement has been proved before the Trial court and accordingly the suit was decreed and the appellate court affirmed the decree of eviction on the ground of reasonable requirements. In such view of the matter, even if I do not take the ground of building re-building into account, then also plaintiffs' decree of eviction on the ground of reasonable requirements remains unshaken. It is not the number of grounds that plaintiff could prove is relevant because out of various grounds if plaintiffs succeeded in proving a single ground he is entitle to get decree of eviction and from that view point also I do not find any merit in the present appeal.

22. S.A. 88 of 2012 thus stands dismissed. The lower court record be send at once to the court wherefrom it was requisitioned.

23. There will be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.