
(2000) 05 CAL CK 0035

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction S.A. No. 11 of 1994

M/s. Sumit Chemicals

APPELLANT

Vs

Sri Gyan Nath Zutshi

RESPONDENT

Date of Decision : 05-05-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
West Bengal Premises Tenancy Act, 1956 — Section 13(1)

Citation : (2000) 3 CALLT 346 : (2000) 2 ILR (Cal) 441

Hon'ble Judges : Prodyot Kumar Sen, J

Bench : Single Bench

Advocate : Mr. Saktinath Mukherjee and Mr. Om. Prakash Jhunjunwala, for the Appellant; Mr. Amitava Chowdhuri, for the Respondent

Judgement

P. K. Sen, J.—This appeal is at the instance of a tenant defendant and is directed against the judgment and decree passed by Sri S. K. Das, Additional District Judge. 6th Court, All pore. reversing the Judgment and decree passed by Sri. S. Mukherjee, Subordinate Judge, 2nd Court, All pore.

2. In a suit by the plaintiff respondent for eviction of the defendant appellant, the plaintiff had alleged that defendant was a monthly tenant under him in the suit flat at a monthly rental of Rs. 2000/- payable according to English calendar month. The plaintiff reasonably and suitably requires the suit flat for his own use and occupation and for the members of his family as the plaintiff has no other suitable, reasonable accommodation elsewhere. The plaintiff is an Engineer under Kulglan D.C.P.L. and is now posted at Egypt He is scheduled to return to Calcutta soon. But he is not in a position to come to Calcutta as he has no other accommodation in Calcutta or anywhere. The plaintiff requires the suit premises and he had given a full description of his family in the plaint. The plaintiff also alleged nuisance. Accordingly plaintiff issued a notice of eviction calling upon the defendant to quit and vacate the suit premises but the defendant having failed the plaintiff filed a suit for eviction of the defendant.

3. In contesting the claim of the plaintiff the defendant has asserted in the written statement that the plaintiff does not require the suit premises as he has alternative accommodation elsewhere and the defendant also denied the case of nuisance. The defendant further asserted that the plaintiff cannot ask for a decree of eviction on the ground of simple anticipation of his transfer. In all 8 issues were framed upon the pleadings of the parties and both parties led evidence on such issues after having considered all aspects of the case and the evidence on record, the learned Subordinate Judge disbelieved the case of the plaintiff and come to a finding that the plaintiff has alternative accommodation at 4/2, Leonard Road and on anticipation plaintiff cannot ask for a decree for eviction. Thus, the suit of the plaintiff was dismissed.

4. The plaintiff respondent, on being aggrieved by such Judgment and decree of dismissal preferred a title appeal which was heard by learned additional District Judge, 6th Court, Alipore, which Court decreed the suit of the plaintiff requiring the defendant to quit and vacate the suit flat by 31.10.91. On being aggrieved and dissatisfied with the Judgment and decree of the lower appellate Court, the defendant appellant have come before this Court with this memorandum of appeal. By order dated 5.2.92, a Division Bench consisting of Justice A. M. Bhattacharyya and Justice S. K. Guln admitted the appeal on grounds Nos. 5 and 20 only. Those two grounds runs as :

Ground No. 5

For that the learned appellate Court erred in holding that if the plaintiff had any basis for his alleged anticipation about being transferred to india then such basis would "Justify a good ground for reasonable requirement" by the plaintiff for the suit flat.

Ground No. 20

For that the learned appellant Court substantially erred in law in holding that it was more important that the plaintiff had "every right to move to his own flat" than that the plaintiff had some alternative adequate and/or suitable accommodation available to him in the said rented house.

5. Thus a very short point is involved in this second appeal.

6. So far the notice of eviction is concerned, the controversy, with regard to the legality or insufficiency of the said notice was set at rest as learned advocate appearing for the defendant appellant before the first appellate Court conceded that the notice to quit was all right. The Court of first appeal also affirmed the findings with regard to absence of any nuisance so that the point was also not urged before this Court.

7. The appeal is fought only on this ground of reasonable requirement. While the plaintiff respondent's case is that he requires the suit premises for his bona fide requirement the case of the defendant is that the plaintiff cannot ask for a decree on the ground of reasonable requirement The plaintiffs case is that he is

an Engineer serving under Development Consultant Ltd. and is posted at Egypt. The said company had given him to understand that he will be sent back to Calcutta very soon and on anticipation that he will be posted at Calcutta, he asked the defendant to quit and vacate the suit premises as he reasonably required the suit premises for his own use and occupation. There is no dispute that the plaintiff bought the disputed flat but had to reside at Egypt in connection with an assignment. He anticipated a transfer to Calcutta and take steps that is, the present suit in advance to have vacant possession of the disputed flat on his return to india. The learned advocate appearing for the defendant appellant contended that the plaintiff cannot have a decree for eviction simply on the ground of an anticipated transfer. The learned advocate for the defendant appellant further contended that such anticipation has no basis. At the time of hearing of the second appeal, the plaintiff respondent had shown an affidavit stating that he will retire after attaining the age of superannuation on J8.7.2000 and therefore, the requirement is bona fide as he has no other suitable reasonable accommodation elsewhere. The Court of first appeal below found that the plaintiff had no other reasonable suitable accommodation and the only accommodation that can be made available to the plaintiff is the suit flat. The learned advocate appearing for the defendant appellant has contended that such affidavit should be ignored as according to him to tends to introduce some new fact which are against a series of decisions of the Supreme Court. In this connection the learned advocate has referred to decisions of the Supreme Court starting from (88) (3) SCC 131 to the most recent decision reported in M/s. Modern Insulators Ltd. Vs. The Oriental Insurance Co. Ltd., . In all those judgment the Supreme Court discouraged introduction of new facts in pending proceeding. But, here a new fact is not introduced, the plaintiff only wants that the Court should take notice of subsequent events which the plaintiff can always asked for. Subsequent events is that he is going to retire in July, 2000.

8. The learned advocate for the appellant submits that a decree for eviction cannot be granted on the ground that plaintiff anticipated his transfer to Calcutta.

9. In a decision reported in Mono Ranjan Dasgupta Vs. Suchitra Ganguly and Others, a Division Bench of this Court held that in a suit for eviction on the ground of bona fide requirement of premises by landlord u/s 13(I)(f) of the Act a requirement even though not immediately existing, may still be good enough for the purpose of section 13(1)(f) if it is certain to arise in a reasonably foreseeable future. If the requirement is otherwise reasonable, it would be good enough to sustain a decree for ejectment even though it has not come into immediate existence at the date of the trial, but is certain to arise in reasonable time in the near future. it appears that the plaintiffs anticipation that he would be transferred was correct and furthermore, he is going to retire in July, 2000. in that circumstances, his anticipation that he would be back to india is a good ground for reasonable requirement. Actually, homelessness is not required in a suit by this nature. if the prospect of being without shelter is certain, the landlord can claim vacant possession of his house on the ground of reasonable

requirement. It would not be expected that the person having a flat at Calcutta will run after tenanted accommodation elsewhere. The learned advocate for the appellant submits that the Court should not take notice of the fact of his requirement, but the respondent cannot wait for his retirement and then will come to Calcutta and shall then file a suit for eviction. Therefore, his anticipation being reasonable and he must make it clear that he will get the suit flat on his return to Calcutta, and so he can ask the appellant to quit and vacate otherwise on returning to Calcutta the respondent will be stranded.

10. The Court of first appeal rightly found, that the plaintiff had no other reasonable suitable accommodation elsewhere and he requires a suit premises for his own use and accommodation. I also agree with the findings of the first appellant Court below.

11. The appellant has raised another point that the plaintiff respondent had a rented house inasmuch as he had share in that property. To this, the respondent replied that the said property is a rented one and the accommodation there is small. Now, when the respondent has a personal property, he is within his right to claim vacant possession of the said property. So the learned Court of first appeal has rightly overruled the contentions of this appellant.

12. Upon a consideration of the facts and circumstances of the case and the materials on record, I agree that the findings arrived at by the Court of first appeal below and I do not find any substantial question of law in this appeal.

In the result, this appeal fails. The appeal is accordingly dismissed with costs throughout.

The appellant is directed to quit and vacate the suit premises within 31st July.

13. Appeal dismissed