

(2014) 03 CAL CK 0007
In the Calcutta High Court
Case No : S.A. No. 269 of 1996

Swaran Kaur Chandhak

APPELLANT

Vs

Biplab Mohan Ghosh

RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Citation : (2014) 4 CHN 367

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Jiban Ratan Chatterjee and Sanjay Mukherjee, Advocates for the Appellant; Hiranmoy Bhattacharya, Saunak Bhattacharya and Raghunath Das, Advocates for the Respondent

Judgement

Debangsu Basak, J.—The defendants' second appeal was against a judgment of reversal. A suit for eviction filed against the defendants was dismissed by the Trial Court. On appeal such suit was decreed. The defendants have come up on second appeal. The second appeal was admitted by an Order dated March 4, 1996. At the time of admission of the second appeal, however, substantial question of law arising out of the judgment impugned was not framed. During the pendency of the second appeal the parties applied for the Court to take into account subsequent events. By an order dated March 23, 2007 the two applications made by both the parties was directed to be taken up for consideration along with the second appeal. The second appeal as well as the two applications was directed to be listed for hearing.

2. The second appeal was dismissed for default on November 22, 2013. On an application for restoration the second appeal was restored on March 21, 2014. The second appeal was directed to be placed for hearing on March 24, 2014.

3. Mr. Jiban Ratan Chatterjee learned Senior Advocate for the appellants contended that, the Appeal Court was wrong in appreciating the reasonable requirement of the family of the respondents. He next contended that, events happening subsequent from the date of passing of the decree by the Appeal

Court till the date of disposal of the second appeal were required to be taken into consideration for the purpose of deciding the reasonable requirement of the respondents. He suggested that, all the other tenants of the premises vacated their respective tenancies and that the respondents were in possession of the entirety of the building save and except the top floor where the appellants were in occupation. He submitted that, the wife died during the pendency of the second appeal. One of the daughters was married and was living abroad. The respondents came into possession of other areas subsequent to the decree of the Appeal Court and as such did not reasonably require the tenancy area of the appellants.

4. He relied upon Govind Vs. Dr Jeetsingh, and Hiralal Roy Vs. Sm. Arati Chatterjee and Others, .

5. He submitted that, the question whether the respondents reasonably required the area occupation of the appellants as tenants due to the subsequent events or not was a substantial question of law required to be gone into in the second appeal. He referred to the supplementary paper book incorporating the two applications to emphasize the subsequent events.

6. Mr. Hiranmoy Bhattacharya learned Advocate for the respondents contended that, the Appeal Court found the family of the respondents to consist of the husband and wife and 3 daughters. The family required a permanent driver. One room was required for the husband and the wife, one room for eldest daughters, one room for the two other daughters, one dining room, one drawing room, one room for worshipping and one room for the permanent driver and two office rooms for the business of the family. Therefore, the family required nine rooms. Such reasonable requirement did not undergo any change subsequent to the decree passed by the Appeal Court. The fact that the elder daughter was married did not alter the scenario. She required one room when she would come back from her matrimonial home. In support of such contention reliance was placed on 2003 Volume 12 Supreme Court Cases page 127 (Ram Nath vs. Rajender Pershad).

7. It was submitted on behalf of the respondent that, the concept of bona fide need of a genuine requirement needed a practical approach instructed by realities of life. Reliance was placed on Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, in this regard.

8. I considered the respective submissions of the parties and the materials on record. The second appeal was admitted without formulating any question of law. For the Second Appeal Court to assume jurisdiction there must arise a substantial question of law from the facts substantiated. No question of law far less a substantial one was contended to arise from the judgment impugned. The appellant submitted that, the subsequent events demonstrated that, the requirement of the respondents was not bona fide. The appellants also suggested that whether the premises was required bona fide by the respondents for their

use and occupation based on subsequent events was a substantial question of law. They also submitted that, events subsequent to the passing of the judgment of the Appeal Court would demonstrate that the reasonable requirement of the respondents was not bona fide.

9. I am afraid that, I am unable to accept such contention of the appellants. Whether the respondents established reasonable requirement was a question of fact. In the facts of the instant case, the appellants established by evidence reasonable requirement of the tenancy of the appellants. The Appeal Court gave reasons for arriving at such finding. Nothing was demonstrated that the findings returned by the Appeal Court were perverse. All that was submitted was that, subsequent events made the reasonable requirement of the respondents no longer bona fide.

10. So far as subsequent events were concerned the appellants contended that, the daughters started a school business on the third floor after the tenant in respect of such floor vacated. In the application by the respondents to take note of subsequent events it was claimed that the daughters opened the school to augment the family income.

11. In Govind (supra) the Hon'ble Supreme Court was of the view that, the findings of the Appeal Court were findings of fact and could not be interfered with by the High Court in view the second appeal unless it was shown that in reaching it a mistake of law was committed or that it was such as no reasonable man could reach.

12. In the instant case noting was shown by the appellants that the findings of fact returned by the Appeal Court was reached on a mistake of law or that in reaching such findings a mistake of law was committed or that it was based on no evidence or that it was such as no reasonable man could reach.

13. Mr. Jiban Ratan Chatterjee relied on Hiralal Roy (supra) in such case the Division Bench of this Hon'ble Court held that eviction on the ground of reasonable requirement can be ordered after finding that the requirement was genuine. In the instant case, noting was demonstrated that the requirement of the respondents were not genuine. In Shiu Sarup Gupta (supra) the Supreme Court was of the view that a Judge of fact should take place himself in the arm chair of the landlord and then asks the question to himself whether in the given facts substantiated by the landlord the need to occupy the premises could be natural, real, sincere, honest. Nothing was demonstrated that the requirement of the landlord failed such test.

14. In Ram Nath (supra) the Supreme Court held that merely because the daughters were married, it could not be said that they did not come and stay with the parents even occasionally. The size of the family was found to grow the daughters given in married as to the married daughter and the son-in-law would require to visit or to stay.

15. Admittedly the premises consisted of four floors with two living rooms on every floor. The premises, therefore, was of 8 rooms. The requirement of the respondents was 9 rooms as found by the Appeal Court-Such finding was not assailed. Nothing was shown that such finding was perverse. In absence of any perversity in the findings returned by the Appeal Court, I am afraid that, no substantial question of law arose in the second appeal.

16. The monthly rent was Rs. 390/-. Such rent even if paid by the appellants would not in the present market scenario assist the livelihood of the respondents so as to make their endeavour to augment the family by running a Montessori school unreasonable and be fatal to a suit for eviction on the ground of reasonable requirement. The daughters could not be faulted for opening a Montessori school to augment the family income. Opening of Montessori school by itself did not take away the reasonable requirement of the respondents. If at all it merely reestablished such reasonable requirement.

17. None of the two applications filed by the parties gave rise to any substantial question of law.

18. The second appeal is, therefore, dismissed. There will be no order as to costs.

19. In view of the dismissal of the second appeal no order need be passed on C.A.N. No. 3197 of 2006 and C.A.N. No. 157 of 2002 which are accordingly disposed of without any order as to costs.

Later:

Stay of operation of this order was prayed for and the same is refused.