

AR

2020
HIGH COURT AT CALCUTTA
APPELLATE SIDE

Dated, Calcutta, the 29th February, 2020

Memo No. 1180 R (JS)

From:
Shri Bibhas Ranjan De,
Registrar (Judicial Service),
High Court, Appellate Side, Calcutta.

To:
The Ld. District Judge,
Alipore, 24-Parganas (South).



In re.: FMA 266 of 2012
Bimala Tiwari & Ors. Vs. Rizia Begum (since deceased) represented by Eleja Begum & Ors.

Sir,

In enclosing herewith the order dated of the Judgement dated 14.02.2020, passed by the Court of Hon'ble Justice Bibek Chaudhuri, in the above referred matter, which will speak for itself, I am to request you to communicate the order to Sri Lilamay Mondal, ADJ, FTC-I, Sealdah, 24-Parganas (South) for his information and reference.

Yours faithfully,

Sd/-

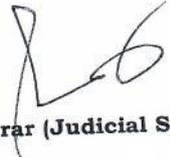
Encl: As stated.
(14) fourteen pages.

Registrar (Judicial Service)

Memo No. 1181R(JS)

Copy to Sri Lilamay Mondal, erstwhile CJ(JD), 1st Court, Rampurhat, Birbhum, now posted as ADJ, FTC-I, Sealdah, 24-Parganas (South) for information and future reference.

Dated 29.02.2020


Registrar (Judicial Service)

*System of files to
upload scanned copy and circulate
same also
02.03.2020*

2020
HIGH COURT AT CALCUTTA
APPELLATE SIDE

Dated, Calcutta, the 29th February, 2020

Memo No. 1180 R (JS)

From:
Shri Bibhas Ranjan De,
Registrar (Judicial Service),
High Court, Appellate Side, Calcutta.

To:
The Ld. District Judge,
Alipore, 24-Parganas (South).

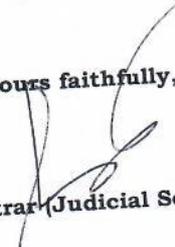
In re.: FMA 266 of 2012
Bimala Tiwari & Ors. Vs. Rizia Begum (since deceased) represented by Eleja Begum & Ors.

Sir,

In enclosing herewith the order dated of the Judgement dated 14.02.2020, passed by the Court of Hon'ble Justice Bibek Chaudhuri, in the above referred matter, which will speak for itself, I am to request you to communicate the order to Sri Lilamay Mondal, ADJ, FTC-I, Sealdah, 24-Parganas (South) for his information and reference.

Yours faithfully,

Encl: As stated.
(14) fourteen pages.


Registrar (Judicial Service)

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present: The Hon'ble Justice Bibek Chaudhuri

FMA 266 of 2012

**Bimala Tiwari & Ors.
Vs.
Rizia Begum (since deceased)
Represented by Eleja Begum & Ors.**

For the Appellants : Mr. Dibyajyoti Raha
For the Respondents : Mr. Sourav Kumar Mukherjee
Mr. Kaushik Chowdhury
Heard on : 14.02.2020
Judgment on : 14.02.2020

Bibek Chaudhuri, J.:

This is an appeal against the judgment and order of remand passed in Title Appeal No.6 of 2010 dated 10th November, 2010 by the learned Additional District Judge, Rampurhat, Birbhum. By passing the impugned judgment, the learned Judge in First Appellate Court set aside the judgment and decree of dismissal of Title Suit No.219 of 2005 passed by the learned Civil Judge (Junior Division), 1st Court, Rampurhat, Birbhum. The learned Judge remanded the suit back to the trial court with a direction to decide an issue as to whether the defendant had sublet the suit shop room in favour of defendant No.2 or not.

Before dealing with the respective cases of the parties, I am inclined to record at the outset that on perusal of the judgments passed by both the Courts below I find that the judgment and decree passed by the learned trial court as well as the judgment and order of remand passed by the First Appellate Court suffer from gross perversity, non consideration of the principles of statute and lack of fundamentals of legal principles.

At the time of hearing argument, learned advocate for the appellants draws my attention to the order dated 6th February, 2012 passed by the Division Bench of this Court admitting the appeal for hearing. However, the Division Bench of this Court has not framed any substantial question of law. It is now well settled in view of the provision contained in Order 43 Rule 1(u) of the Code of Civil Procedure that the first miscellaneous appeal is required to be heard on substantial questions of law. Therefore, before taking up hearing of the instant matter this Court has framed the following substantial questions of law invoking the principle of Section 100(5) of the Code of Civil Procedure.: -

- (i) Whether the learned Appellate Court substantially erred in law in remanding the suit for trial after formulating an issue of subletting when there is no pleading whatsoever against the defendant No.1 that she had sublet or parted with possession of the suit shop room in favour of the defendant No.2?
- (ii) Whether the learned Judge in First Appellate Court substantially erred in law in upholding the finding of the trial Judge on the issue of reasonable requirement?

The appellants as plaintiffs filed Title Suit No.219 of 2005 praying for eviction of the defendant No.1 with consequential reliefs.

It was alleged in the plaint that one Rabiul Islam, husband of the defendant No.1 was the original tenant in respect of the suit shop room at a monthly rental of Rs.85/- payable according to English calendar. After the death of said Rabiul Islam, his wife /defendant No.1 became tenant in respect of the suit property. The tenancy of the defendant No.1 is governed

under the West Bengal Premises Tenancy Act, 1997. The plaintiffs/appellants became the owner of the suit property by virtue of a deed of gift executed in their favour by one Krishna Singh. After transfer of the suit property in favour of the plaintiffs/appellants, tenancy of the defendant No.1 was duly attorned in favour of the present plaintiffs. It is alleged that the defendant No.1 was a habitual defaulter in payment of rent. Moreover, the plaintiffs/appellants reasonably required the suit shop room for their own use and occupation and they have no other alternative suitable reasonable accommodation elsewhere. The suit was preceded by an ejectment notice under Section 6(4) of the W.B.P.T. Act 1997 since the defendant No.1 failed and neglected to vacate the suit shop room in compliance of such eviction notice, the plaintiffs instituted the suit.

The defendant No.1 contested the suit by filing written statement denying all material allegations made out by the plaintiffs against her.

It is pertinent to mention that the lower Court record shows that by an order dated 5th July, 2006, one Asraf Ali was impleaded as defendant No.2 in the plaint. However, no allegation was made against the said Asraf Ali.

It is however, pleaded in the written statement that the husband of the defendant No.1 Rabiul Islam, since deceased used to carry on a business of selling clothes in the said shop room. After the death of Rabiul the defendant No.1 entrusted Asraf Ali to carry on the said business in the said shop room on behalf of the defendant No.1 as she is pardanashin mohammedan lady and cannot run the business independently. In order to run business the defendant No.1 also executed a power of attorney in favour of the defendant No.2.

On the basis of the pleadings of the parties, the learned trial Court framed as many as seven issues and dismissed the suit on contest. The appellants preferred an appeal before the Court of the learned Additional District Judge, Rampurhat at Birbhum being Title Appeal No.36 of 2008. The learned First Appellate Court was pleased to set aside the judgment and decree of dismissal passed by the trial Court, framed two issues, viz.

(i) *Is the suit premises required for the reasonable requirement for the plaintiffs?*

(ii) *Is the notice dated 12.02.2002 valid, proper and legal one?*

and sent the suit on remand for fresh trial. On the issue of service of notice the learned trial Judge held as hereunder: -

"In this suit, the Landlord is duty bound to send a notice to the tenant. It is a mandatory provision.

In this situation, I like to mention, the relevant Section of West Bengal Premises Tenancy Act. Section 6(4) "Notwithstanding anything in any other law for time being in force, no proceeding for recovery of possession of any premises on any of the ground as aforesaid, except on the ground mentioned in Clause (o) of Subsection 1 shall be instituted by the landlord unless he has given to the tenant one month's notice expiry with a month of tenancy."

Therefore in eviction suit one month notice is compulsory prior to institution of the suit.

From the expiry of such one month, the cause of action is arisen.

Now let me analysis and discuss what is the cause of action in this suit.

In the pleading the plaintiffs, stated that such type of notice was issued to the defendant the tenant on 12.02.2002.

In Evidence, P.W.1 stated that the plaintiffs sent Lawyer's notice to the defendant No.1 which was marked as Exhibit 1.

The Exhibit 1 disclosed the date as 27th day of January 2004.

And the suit was instituted on 16.12.2005. In this case the plaintiffs did not produce the notice dated 12.2.02. There is no explanation as to such non-production.

The exhibit 1 did not disclose the conditions laid down in Section 6(4) of West Bengal Premises Tenancy Act. After analysis of the fact and evidence adduced by the plaintiffs, I find that the technicality of the mandatory of notice is not complied with.

On the basis of such incomplete notice no cause of action is drawn up."

On the issue of reasonable requirement the finding of the learned trial Judge is quoted below: -

"The plaintiffs' case is that they are claiming the eviction for reasonable requirement of the plaintiffs.

What is reasonable requirement that depends upon the fact to fact and case to case. In this suit plaintiffs stated that they have unemployed sons. Their suit premises is situated in a business place. They demand such premises as they wish to run a business thereon and the suit property is the undivided property, if the suit premises be vacated then the partition can easily be possible.

On the other hand, the defendant No.1 is the widow pardanashin lady. Actually her husband was the tenant under the plaintiffs. Her husband ran a readymade garment business thereon at the monthly rent. After his demise, she runs the business employing defendant No.2.

In this case, the widow, the defendant No.1 earns her daily bread by running the business at the suit premises. If the suit premises be vacated by evicting the defendant No.1 then, she would be in insecure position and she became destitute. It is the principle of law that the female should be protected from destitution and vagrancy.

I am in opinion, in this case, the balance between the plaintiffs and defendants should be observed.

The plaintiffs' sons are educated and healthy persons. They can find their job anywhere. On the other hand, if at this stage, the defendant No.1 be waited then she will be destitute which law does not permit.

Considering, the materials and real picture, I am in opinion, that the defendant No.1 should not be evicted.

Being aggrieved by and dissatisfied with the said judgment and decree of dismissal of the suit the plaintiffs preferred Title Appeal No.6 of 2010 before the learned Additional District Judge, Rampurhat, Birbhum.

Unfortunately enough, the learned Additional District Judge proceeded absolutely in a wrong direction. Though there is no pleading whatsoever regarding subletting of the suit premises, the learned Judge in First Appellate Court framed one issue as hereunder: -

"Is the suit premises is subletted (sic) by defendant No.1 to defendant No.2?"

On plain reading of the impugned judgment passed by the learned Additional District Judge at Birbhum, it appears to me that the learned Additional District Judge probably was not aware of the principle as to when and how the issues are raised. It is needless to say that when a fact is asserted by one party and denied by other, issues of fact are raised. The object of framing issues is to focus upon questions on which evidence has to be led and to indicate the party on whom the burden of proof lies. Framing of issues in regular civil suit is the mandatory requirement of law. In **Sri Gangai Vinayagar Temple vs. Meenakshi Ammal** reported in **(2015) 3 SCC 624** it is held by the Hon'ble Supreme Court that the obligation and duty to frame issues is cast solely on the court which may, nevertheless, elicit suggestions from the litigating adversaries before it. Issues, settled by the court under Order 14 of the Code of Civil Procedure constitute the crystallization of the conflict or the distillation of the dispute between the parties to the *lis*, and are in the nature of disputed questions of fact and/or law. While discharging this primary function, the court is expected to peruse the pleadings of the parties in order to extract their essence, analyze the allegations of the parties the contents of the documents produced by them, and thereafter, proceed to frame the issues. When the plaintiff did not allege in the plaint, any case as to subletting against the defendant No.1, no issue can be framed on the basis of the statement made by the defendant No.1 in her written statement.

I have already held that the learned Judge in First Appellate Court committed gross error in law in formulating an issue of subletting on the basis of the statement made by the defendant No.1 in her written statement to elucidate a fact as to how she has been running her business in the suit shop room by employing defendant No.2 who used to work in the said shop room from the time of her husband, since deceased. The issue of subletting cannot be framed on the basis of a statement made by the defendant in written statement because issues are framed on the basis of the dispute between the parties to the plaint pleaded in their pleadings. Since the plaintiffs did not raise any allegation as to subletting against the defendants, the learned Judge in First Appellate Court committed gross illegality in framing such issue and remanding the suit back to the trial court.

For the reasons stated above, the ground No.1 of substantial question of law is answered in the affirmative and the judgment passed by the First Appellate Court cannot be sustained due to the aforesaid reason.

The law is trite on the point that the question of reasonable requirement is a question of facts but reasonableness of requirement is a question of law. In a suit for eviction on the ground of reasonable requirement, the plaintiff is required to prove that the suit premises is reasonably required for own use and occupation of the landlord or any person for whose benefit the premises is held and secondly, such person is not in possession of any suitable accommodation within the same Municipal Corporation or Municipality or any other area within 10 kilometers from such premises where the act extends.

The plaintiffs have filed Title Suit No.219 of 2005 alleging *inter alia* that the suit shop room is reasonably required for his sons who are unemployed for the purpose of their business.

The learned Trial Judge held that the sons of the plaintiffs are well-educated and able-bodied. They can arrange for employment elsewhere. On the contrary, the defendant No.1 is Mohammedan pardanashin widow and if she is evicted from the suit shop room, she will have no source of livelihood. Thus he considered balance of convenience and inconvenience of the plaintiffs and defendant No.1 and held that it would be more inconvenient for the defendant No.1 if she is evicted on the ground of reasonable requirement.

In my considered view such finding is not only perverse but also de hors the basic requirements of statute enumerated in Section 6(1)(d) of the West Bengal Premises Tenancy Act, 1997.

This Court fails to understand how the learned Trial Judge had come to such decisions when the statute specifically provides that requirement of the plaintiffs will be considered in the light of his bona fide need and in order to arrive at such decisions future plight, if any, of the defendant if a decree for eviction is passed against her is not of any consideration to be adjudicated upon by the Court.

For the reasons stated above, the substantial questions of law formulated in ground No.2 is also answered in the affirmative.

As a result, the instant appeal is allowed on contest, however, without costs.

The judgment and order of remand passed by the First Appellate Court in Title Appeal No.6 of 2010 is set aside. The appeal is sent back on remand directing the learned Judge, First Appellate Court to adjudicate the issues on the reasonable requirement and service of notice under Section 6(4) of the West Bengal Premises Tenancy Act as well as validity, legality and sufficiency of the said ejectment notice afresh on the basis of evidence on record without being influenced in any way by the observation made in this judgment.

It is further directed that the appeal shall be disposed of within three months from the date of communication of this judgment to the learned First Appellate Court along with lower court record.

Office is directed to send down the lower court record forthwith along with a copy of this judgment.

Before I part with, I am of the view that, a copy of this judgment should be sent to the learned Trial Judge, namely, Sri Lilamay Mondal, who is now posted as Additional District Judge, First Track Court at Sealdah through the learned Registrar (Judicial Service), High Court at Calcutta to appraise him that in a suit for eviction on the ground of reasonable requirement consideration of balance of convenience can never be a deciding factor. The theory of "live and late live" comes into play only when the question of partial eviction is found to be adequately reasonable to satisfy the need of the landlord/plaintiff. There is no scope to consider as to whether the

defendant/tenant will be put in trouble if she is evicted ignoring bona fide need of the plaintiff.

A copy of this judgment duly countersigned by the Assistant Registrar (Court) be sent to the learned Registrar, Judicial Service, High Court, Calcutta requesting him to serve a copy of this judgment for service upon the concerned learned Judge.

A copy of this judgment be also sent to the learned Judicial Officers of the State with a view to appraising them about the basic considerations to be made while deciding a suit for eviction on the ground of reasonable requirement.

A copy of this judgment along with lower court record be sent to the Court of the learned Additional District Judge, Rampurhat, Birbhum along with lower court record for strict compliance of the direction passed by this Court.

Urgent photostat copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Bibek Chaudhuri, J.)

