



**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

**SA/60/2004
IA NO: CAN/1/2008(Old No: CAN/5177/2008),
CAN/5/2025**

**RATAN KARMAKAR AND ORS.
VS
SMT. CHAINA DAS AND ORS.**

For the Appellants : Mr. Dipayan Kundu, Adv.
Mr. Subham Ghosh, Adv.
Mr. Agnik Moulik, Adv.

For the Respondents : Mr. P. R. Mitra, Adv.
Mr. Ashim Kr. Roy, Adv.

Heard on : 06.01.2026

Judgment on : 15.01.2026

Sugato Majumdar, J :

The instant Second Appeal is preferred against the Judgment and Decree dated August 30, 2003 passed by the Learned Additional District Judge, Fast Tract, 2nd Court, Suri, Birbhum passed in Title Appeal No. 34 of 2001 reversing the Judgment and Decree dated November 29, 2000 in Title Suit No. 121 of 1995.

The original suit was filed, praying for recovery of possession with other reliefs. The plaint case, in nutshell, was that the Plaintiffs are owners and the landlords of the suit premises which they purchased in terms of the registered deeds



of sale dated 06/11/1989 and 24/09/1991. Since then the Plaintiffs are in possession of the suit premises. The Defendant was a monthly tenant in respect of the suit premises at a monthly rental of Rs.105/- payable according to the English Calendar months. The Defendant defaulted in payment of rent from January 1981 to April 1995; the Defendant caused damage to the suit properties by keeping scrap irons on the floor of it. This apart, the Defendant used to operate gas-welding machine inside the premises with help of hammer and other tools creating nuisance and annoyance to the Plaintiffs and their family members. The Plaintiffs further alleged that they reside in the first floor of the suit premises and the Defendant occupies the ground floor by keeping a broken chassis in front of the entrance of the suit premises. The Plaintiffs have bakery business in another room of the ground floor. The Plaintiffs reasonably require the suit premises for their own use and occupation. The Plaintiffs served notice to quit under Section 13(6) of the West Bengal Premises Tenancy Act, 1956 read with Section 106 of the Transfer of Property Act, 1882 upon the Defendant on expiry of the month of June 1995 but the Defendant neglected and failed to do so. Therefore, the Plaintiff filed the suit for recovery of possession.

The Defendant contested the suit by filing the written statement denying all the materials allegations. Apart from raising, defenses of limitation, estoppel and waiver as well as denial of service of notice to quit under Section 13(6) of the West Bengal Premises Tenancy Act, 1956 pleaded that he was not aware of the purchase of suit premises by the Plaintiffs. The positive case of the Defendant was that he was a tenant in respect of one room on the ground floor at a monthly rent of Rs.125/- payable according to the English Calendar months and he paid rent up to May 1991 against duly issued receipt. Payments were made to Plaintiff No. 2. Subsequently the Plaintiffs refused to accept the rent although it was duly tendered by way of money order to the Plaintiff No. 2 from the months of June 1991 to October 1993.



The rent was refused to be accepted repeatedly. It was further pleaded in the written statement that the Plaintiff No. 2 took a loan of Rs.1420/- from the Defendant on condition to adjust the same against the monthly rent but the said had not been adjusted. For the purpose of livelihood, the Defendant runs a grill manufacturing business in one room in the suit premises with valid trade licence and electric connection in his own name. It was further pleaded that Plaintiffs including their family members have adequate accommodation and they do not require the suit premises reasonably. Accordingly, it was pleaded that the suit may be dismissed.

On the basis of rival pleading, following issues were framed:

1. Is the suit maintainable in its present form and prayer?
2. Is the notice under Section 13 (6) of the West Bengal Premises Tenancy Act legal and whether the same was duly served upon the Defendant?
3. Is the Defendant a defaulter in the payment of monthly rent of the suit premises?
4. Has the Defendant caused any damage to the suit premises?
5. Whether the Defendant has been causing any nuisance in the suit premises?
6. Are the suit premises reasonably required by the Plaintiffs and their family members for their own use and occupation?
7. Are the Plaintiffs owners of the suit premises?
8. Are the Plaintiffs entitled to get a decree, as prayed for?
9. To what other relief/reliefs, if any, are the Plaintiffs entitled?



The Trial Court decided the suit against the Plaintiff. Issue No. 3 and 8 were decided in favour of the Plaintiff. The Trial Court came to the conclusion that the Defendant was a monthly tenant and the notice to quit under Section 13(6) of the West Bengal Premises Tenancy Act, 1956 had been duly served upon the Defendant. Issue No. 1, 2, 4, 5, 6, 7, 9 and 10 were decided against the Plaintiff. The Trial Court observed that the suit room cannot be made suitable for habitation. It was further observed that at the time of letting out the suit premises to the Defendant, the Plaintiffs had been residing in the staircase room leading to the conclusion that they are existed no *bona fide* personal requirement of the Plaintiffs. The suit was accordingly dismissed.

The Plaintiffs preferred an appeal. The Appellate Court set aside the judgment and decree passed by the Trial Court and granted a decree for recovery of *khas* possession of the suit property.

On being aggrieved, the instant appeal was filed by the Defendant/Appellant. At the time of admission of the Second Appeal, the Division Bench ordered that the instant appeal should be heard on Grounds -VIII, XII, XIII & XIV. These apart the Division Bench also framed some other substantial questions of law.

Ground No. VIII: The lower Appellate Court erred in law in not taking into account the extent of habitation in *Chiley* room or *Thakurghar* or staircase room.

Ground No. XII: The lower Appellate Court erred in law in not accepting the reports of two different Pleader Commissioners about the staircase room but himself holds that the said room is having very low height and not in equal in length, thereby making observation on the basis of surmise and conjectures.



Ground No. XIII: The Lower Appellate Court while holding that the staircase room cannot be converted into bed room, erroneously holds that the suit room under the tenant can be converted into a bed room which the learned Pleader Commissioners in their reports observed not habitable for the purpose of residence and having no window or ventilation.

Ground No. XIV: The Lower Appellate Court erred in law in not accepting the views of the Learned Trial Court that at the time of the letting out of the suit premises the Plaintiffs were residing at the staircase room and, as such, at the time of letting out, the Plaintiffs did not feel requirement of the suit room for their own purpose and, therefore, the suit room is not required reasonably by the Plaintiffs for their accommodation.

Other substantial questions of laws are:

Whether in view of the fact that admittedly the Plaintiff was in possession of another residential houses near by the suit premises but the suit house has been sold during the pendency of the suit when the witnesses were examined, the alleged requirement of the Plaintiff of the suit premises can be said to be reasonable and *bona fide*. This is an aspect which was never considered by the court of appeal below.

Whether the alleged requirement of the suit premises of the Plaintiff can also be said to be reasonable and *bona fide* when the suit premises is situated in industrial area and there is no residential building and the suit rooms have been found to be unfit for habitation by the learned Commissioner appointed by the court having no window and when the



witnesses of the Plaintiff could not also explain satisfactorily when he was confronted with such fact.

While it cannot be the duty of the court to advise the Plaintiff as to what should be the proper accommodation of the Plaintiff, whether in view of the undisputed fact that the suit room is unfit for habitation having no window and the suit premises being in the industrial area, the same are relevant facts to be taken into consideration for determination whether the alleged need of the Plaintiff for such premises is reasonable and *bona fide*.

Whether or not the learned First Appellate Court is justified in granting the decree in favour of the Plaintiff/Respondent on the ground of reasonable requirement.

One thing must be kept in mind that the proceeding was initiated under the West Bengal Premises Tenancy Act, 1956. The concept of reasonable requirement should, therefore, be considered in the context of the Act.

The Learned Counsel for the Appellant vehemently argued that the Appellate Court should take notice of the report of the Advocate Commissioner. Relying on the **Jagat Bandhu Batabayal v. Jiban Krishna Roy (AIR 2002 Cal 42)** he argued that the Court can look into comparative advantage and disadvantage of landlord and tenant while deciding the issue of reasonableness of requirements. It was further argued by the Learned Counsel for the Appellant that the Learned first Appellate Court has not taken into account that the 4 (four) other rooms and 1 (one) Chile Kotha room are available to the Plaintiffs/opposite parties herein which are sufficient for habitation of Plaintiffs.



The Learned Counsel for the Respondent, on the other hand, submitted that a mud house at village Lautor was more than two kilo-meter away from the suit property. The suit property was acquired for both residential and business purpose. The native residential unit at Lautor had been sold out during pendency of the suit. It was further argued and emphasized by the Learned Counsel for the Respondent that the landlord is the best judge of his own need. Observations of the Supreme Court of India in **Dinesh kumar Vs. Yusuf Ali [2010 (12) SCC 740]** was referred to by the Counsel.

I have heard rival submissions.

There is no cavil on the principal that the question of reasonable requirement should not be approached with pedagogic mindset in a hyper technical way. Reasonable requirement varies from family to family, time to time and situation to situation. Reasonable requirement is always a living need of a family. The Trial Court observed that at the time of letting out the premises the Plaintiffs were residing in a staircase room; therefore, according to the Trial Court, the Plaintiffs must not have needed the premises. This is an unreasonable presumption not warranted by law. The Trial Court also decided that rooms are not habitable. This inference led to the conclusion that the premises were not reasonably required, oblivious of the fact that a business is being carried out there.

In **Prativa Devi vs. T.V. Krishnan [(1996) 5 SCC 353]**, the Supreme Court of India held that the landlord is a best judge for his residential requirements. He has a complete freedom in the matter; it is no concern of the courts to direct the landlord how and in what manner, he should live or to prescribe for him a residential standard of its' own. There is no law which deprives the landlord of the



beneficial enjoyment of his property. In **Shiv Sarup Gupta vs. Mahesh Chand Gupta (Dr) [(1999) 6 SCC 222]** it was observed by the Supreme Court of India :

“14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and



his family members, their style of living, their habits and the background wherefrom they come.”

In *Ragavendra Kumar vs. Firm Prem Machinery & Co.* [2000 (1) SCC 689]

the Supreme Court of India reiterated the same principal and freedom of the landlord as postulated in **Prativa Devi's** case. In **Ragavendra Kumar's** case the landlord wanted eviction of the tenant from the suit premises for starting his own business. In **M.L. Prabhakar vs. Rajiv Singal [(2001) 2 SCC 355]** it was held by the Supreme Court of India :

“If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself tightly into lesser premises protecting the tenant's occupancy.”

The Trial Court committed error in passing the impugned judgment in these respects. The Appellate Court considered the need of the landlord in proper perspective without being swayed by the report of the Pleader Commissioners. Report of the Advocate Commissioner cannot construct the need of the landlord. It is the own need of the landlord himself. The need of a family may increase a person can need a room either for personal residence or for business purpose or for extension of his existing business. None can dictate or impose upon him in the specific use. The only thing that should be taken into consideration is whether the claim is unreasonable fantasy born or exaggerated which are not present in the instant case. The need for one room cannot be over emphasized. The landlords might have been staying in a staircase room at the time of letting out the premises, but that does not mean that they have to live uncomfortably and in a particular manner perpetually.



In nutshell, this Court concur with the view taken by the First Appellate Court and upheld the Judgment and Decree dated 30th August, 2003 passed by the Additional District & Sessions Judge, Fast Tract, 2nd Court, Suri, Birbhum.

The Appellant shall hand over the possession of the suit property within a period of sixty days from the date of drawing up of the decree in case of failure of which the Respondent/Plaintiff shall be at liberty to draw up execution proceeding before the Executing Court.

The instant Second Appeal stands disposed of along with all pending applications. L.C.R be returned.

(Sugato Majumdar, J.)