



2019:CHC-AS:1257

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

Present:

The Hon'ble Justice Sugato Majumdar

**SA/168/2012
IA NO: CAN/3/2025**

**ANJALI PANJA & ORS
VS
SATYABALA DAS**

For the Appellants : Mr. Arup Krishna Das, Adv.
Mr. R. Ghosh, Adv.

For the Respondent : Mr. Arup Banerjee, Adv.

Hearing concluded on : 26.02.2026

Judgment on : 12.03.2026

Sugato Majumdar, J :

The instant second appeal is filed against the judgment and decree dated 15/07/2011 passed by the Additional District Judge, Fast Track 1st Court, Burdwan. The original suit being Title Suit No. 116 of 2001 was filed by the Appellant/Plaintiffs against the Defendant, praying for decree of eviction and other prayers.

The sum and substance of the plaint case is as follow:

- a) Property described in Schedule 'Ka' of the plaint belonged to one Icchamoyi Dasi who divided the property in three parts specified as 'Kha', 'Ga' and 'Gha' Scheduled of the plaint, and transferred to Dulu Bala Dasi, Nagendra Bala Dashi and Kalimoti Dasi respectively by way of registered



deed of gift dated 09/07/2009. Subsequently, the said Kalimoti Dasi transferred '*Gha*' Scheduled property to Shyamapada Panja in terms of registered deed of gift dated 27/07/1957. On death of the said Shyamapada Panja, the Plaintiffs became the legal heirs of '*Gha*' Scheduled property.

- b) '*Gha*' Scheduled property has no toilet or latrine at the ground floor for which the tenants of the Appellant/Plaintiffs had to use the toilet of '*Kha*' Scheduled property. The owner of the said property raised objection leading the Appellant/Plaintiffs to file civil suit being TS No.25 of 1995 against the said owner, praying for declaration and permanent injunction restraining him from raising any obstruction in using the said toilet. The suit was decreed on compromise on 21/01/1996 under which the Appellant/Plaintiffs were allowed to use the latrine situated in '*Kha*' Scheduled property for another six months. On expiry of said time scheduled, the Plaintiffs requested the owner of '*Kha*' Scheduled property namely, Tarapada Panja to allow them to use the latrine for some more time. Though accommodation was made but said Tarapada Panja asked the Plaintiffs to make separate arrangement for '*Gha*' Scheduled property.
- c) The Appellant/Plaintiffs selected '*Kha*'-1 Scheduled room to construct a latrine to the tenants on the ground floor. Since the Appellant/Plaintiffs did not have enough funds to make a new latrine, the scheduled portion of '*Gha*' namely '*Gha*'-1 was selected to be converted into a toilet by making addition and alteration. It was further explained that if '*Gha*'-1 Scheduled property is converted into a toilet then the waste could be



connected with the safety tank already situated in the premises more conveniently and economically.

- d) The Defendant was inducted as a monthly tenant on payment of rent of Rs.350/-. The tenancy was valid for twelve months according to Bengali calendar. On expiry of the said period, the Appellant/Plaintiffs asked the Respondent/Defendant several times to vacate the said 'Gha' premises for the purpose of construction of latrine and bathroom as by that time the Appellant/Plaintiffs gathered enough fund for this purpose.
- e) After expiry of one year, the Appellant/Plaintiffs did not receive any rent from the Respondent/Defendant in respect of the tenanted room and also refused money order of rent for the month of Chaitra, 1407 B.S.
- f) Notice to quit dated 30th April, 2001 was sent by the counsel for the Appellant/Plaintiffs asking the Respondent/Defendant to quit and vacate 'Gha'-1 scheduled property with expiry of *Jaistha*, 1408 B.S. The said notice to quit was received by one Badal Chandra Das brother of the Defendant who signed the A/d card.
- g) In spite of service of notice, the Respondent/Defendant vacate the 'Gha' Scheduled property for which the Plaintiff was constrained to file the original suit.

The Respondent/Defendant contested the suit by filing written statement. Sum and substance of the written statement as well as additional written statement filed subsequently was as follow:

- i) The Respondent/Defendant stated that the Appellant/Plaintiffs have reasonable and suitable accommodation within the portion in their *khas*



possession. Therefore, the Appellant/Plaintiffs are not entitled to get decree against the Respondent/Defendant on the ground of reasonable requirement. The Appellant/Plaintiffs, rich persons, have vast landed properties and other sources of income. The Appellant/Plaintiffs have sufficient place within premises for construction of alternative privy.

- ii) It was further contended by the Respondent/Defendant that the Appellant/Plaintiffs have suitable and reasonable accommodation elsewhere; without giving a scheme under Section 18 of the West Bengal Premises Tenancy Act, 1956 they are not entitled to get decree and *khas* possession. It was further contended that 'Gha'-1 scheduled room is only eight feet long and six and half feet wide which cannot be converted into a bathroom. More so, there was no sanctioned plan passed by the Burdwan Municipality for such construction. It was further contended that there is a separate bathroom for the use of the tenants.
- iii) Denying all other allegations and contentions of the plaint, the Respondent/Defendant contended that the suit may be dismissed.

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

1. Have the Plaintiffs any cause of action to file this suit?
2. Is the suit maintainable in its present form?
3. Is the notice to quit of the Plaintiffs is legal, valid and binding upon the Defendant?
4. Have the Plaintiffs any reasonable and suitable accommodation within their *khas* possession?



5. Is the suit bared by estoppel, waiver and acquiescence?
6. Are the Plaintiffs entitled to get any other relief as prayed for?
7. Whether the Plaintiffs have any other reasonable suitable accommodation?
8. Whether the Plaintiff have any reasonable requirement for eviction of the Defendant for own use and occupation of the suit premises?
9. Whether the tenancy was terminated on efflux of tenancy agreement or not?
10. Whether partial eviction of tenancy is possible or not?

The Trial Court observed that notice to quit under Section 13(6) of the West Bengal Premises Tenancy Act, 1956 was duly served on the Respondent/Defendant and they are asked to vacate the premises on expiry of Bengali month of *Jaistha*, 1408 B.S. The Trial Court also decided that the Appellant/Plaintiffs reasonably required the premises for construction of bathroom. While coming to this conclusion, the Trial Court, among others, considered admission of the Defendant of the necessity of a bathroom in a suit property. The Trial Court decreed the suit in favour of the Appellant/Plaintiffs and allowed the decree for eviction and recovery of *khas* possession in respect of 'Gha'-1 scheduled property, against the Defendant in terms of the Judgment dated 31st March, 2010.

An appeal was preferred against the Judgment and Decree of the Trial Court which was registered as Title Appeal No. 20 of 2010. The Learned Additional District Judge, Fast Tract 1st Court, Burdwan reversely Trial Court's judgment and



decree in terms of its own judgment dated 15/07/2011. The First Appellate Court found that as per agreement between the Appellant/Plaintiffs and the Respondent/Defendant (Ext.5a), the Respondent/Defendant was a tenant in respect of the suit premises up to the month of Falgoon, 1407 B.S. but in the notice under Section 13(6) of the West Bengal premises Tenancy Act, 1956 (Ext.6), there is no mention that the Appellant/Plaintiffs used to occupy the suit premises as trespasser beyond the period of *Falgoon*, 1407 B.S. It was observed further that Ext. 6 showed that beyond the month of *Falgoon*, 1407 B.S., the tenancy of the suit premises continued till the month of *Jaistha*, 1408 B.S., having no agreement to that effect. The Defendant/Respondent continued to stay in the suit premises even after the month of Falgoon, 1407 B.S. which was determined by the notice to quit. It was further observed that though necessity of construction of toilet had not been contemplated in agreement of tenancy, it surfaced in the notice to quit. It was further observed by the Appellate Court that the notice to quit was received by an independent tenant. It was also observed by the Appellate Court that the Appellant/Plaintiffs with mal-intention refused to accept the rent tendered by the Respondent/Defendant while the latter had rightfully and lawfully deposited the rent with the Rent Controller. According to the Appellate Court, determination of tenancy remained questionable. Another observation was that the requirement of the tenants other than the Respondent/Defendant led to the Appellant/Plaintiffs to file the suit; according to the Appellate Court, this case does not fall within ambit of “reasonable requirement” for own user of the landlord. Then the Appellate Court considered the decisions of the Supreme Court reported in **Netaram Vs. Jiwanlal [AIR 1963 SCC 499]** and **Dinanath Vs. Gopal Krishna [1990 SCC 1355]** to for clarification and elucidation of the expression “reasonably” and “*bona fide*”. In



nutshell, the First Appellate Court set aside the Judgment and Decree passed by the Trial Court.

On being aggrieved and dissatisfied, the instant appeal was preferred. At the time of admission of the appeal, the following substantial questions of law were framed by the Division Bench:

- I. Whether the Learned Judge in the lower appellate court, substantially, erred in law in holding that in terms of the compromise decree tendered in evidence, the Plaintiffs were required to provide separate privy and bath to the tenants in the ground floor, who were using the bath and privy of the uncle of the Plaintiffs?
- II. Whether the Learned Judge in the lower appellate court, substantially erred in law in reversing the findings of the Learned Trial Judge, who found that it was obligatory on the part of the Plaintiffs to construct privy and bath for the use and enjoyment of the tenants in the ground floor?
- III. Whether the Learned Judge in the lower appellate court, substantially, erred in law in not accepting the decision of the Learned Trial Judge with regard to issues nos. 4, 8 and 9, when the facility for user of bath and privy by the tenants is a must?
- IV. Whether the Learned Judge in the lower appellate court, substantially, erred in law in holding that the Learned Trial Judge was not required to consider the issue of partial eviction, when it is



the bounden duty of the Learned Trial Judge to consider and decide such issue?

The principal limb of argument for the Appellant/Plaintiffs was that there is no dispute on necessity of a toilet in the ground floor; in fact, that is an admitted position. The Learned First Appellate Court committed error in appreciating this reasonableness and requirement of the landlord on which there is no contradiction or controversy.

The second limb of argument of the Learned Counsel for the Appellant/Plaintiffs was that the tenancy was duly determined and even it was in evidence that the Respondent/Defendant received a notice to quit. The findings of the First Appellate Court is erroneous and is liable to be set aside.

Thirdly, it was argued that the Learned First Appellate Court failed to appreciate the reasonableness and *bona fide* of the requirement of the landlord and erred in law in applying the provision of Section 13(1)(f) of the West Bengal Premises Tenancy Act, 1956.

The Learned Counsel for the Respondent/Defendant argued, on the other hand, that during pendency of the suit and continuation of the same in the form of appeal, the Appellant/Plaintiffs are in vacant and exclusive possession of one room on the right side of the stair case to go to the first floor of the Appellant/Plaintiffs, the said room is much bigger in size than the suit room. It was further contended that recently a new tenant has been inducted in another room which was also in vacant possession of the Appellant Opposite Parties. The Learned Counsel referred to CAN 3 of 2025 where a prayer has been made to admit the aforesaid facts as subsequent events and to take on record and consider the same at the time of disposal of the



instant appeal, in invocation of Order XLI Rule 27 of the Code of Civil Procedure, 1908.

This CAN 3 of 2025 is pending for hearing file under Order XLI Rule 27 of the Code of Civil Procedure, 1908.

Exchange of affidavit is also complete in terms of which the Appellant/Plaintiffs denied the same.

The Learned Counsel for the Respondent/Defendant, referring to the ratio and observations made in **Phiroze Bamanji Desai Vs. Chandrakant M. Patel & Ors. [AIR 1974 SC 1059]**, **P. V. Papanna & Ors. Vs. K. Padmanabhaiah [AIR 1994 SC 1577]** and **Baba Kashinath Bhinge Vs. Samast Lingayat Gavali & Ors. [(1994) Supp 3 SCC 698]** submitted that it is reasonableness and *bona fide* of the requirement which is of paramount importance. This is not a case where the landlord himself requires the premises for his own use and occupation. It is rather for the use of the tenants which does not satisfy the conditions mentioned in Section 13(f) of the West Bengal premises Tenancy Act, 1956. According to the Learned Counsel, the First Appellate Court correctly reversed the judgment and decree passed by the Trial Court.

I have heard rival submissions.

Although not framed as a substantial question of law, the issue of service of notice to quit on the Defendant was doubted by the First Appellate Court. The Defendant admitted in course of cross-examination that she had received the notice to quit, leaving no further doubt or space for surmise of service of the notice to quit. The First Appellate Court noted that Appellant/Plaintiffs with mal-intention refused to accept the rent tendered by the Respondent/Defendant and the later rightly and



lawfully deposited the rent for suit premises. This led to a conclusion that determination of tenancy was questionable. The reasoning and conclusion of the First Appellate Court is erroneous. It is not only misapplication of law but rather a failure to understand and apply law. A contractual tenancy came to an end in the month of *Falgun*, 1407 B.S. No rent had been accepted on behalf of the Appellant/Plaintiffs as he has right to refuse rent and the tenancy was determined with effect from the Bengali month *Jaistha*, 1408 B.S. After expiry of contractual tenancy, no renewal of tenancy took place, requiring a fresh termination. Therefore, the observation on the First Appellate Court is not only unsustainable but suffers from misconception. It was correctly decided by the Trial Court that the tenancy had been determined properly and notice to quit had been duly served.

It was pleaded in the plaint that the tenanted premises, namely, 'Gha' Scheduled property has no latrine and privy. This specific property, namely, 'Gha'-1 Scheduled property is required for construction of privy. DW-1 admitted that there was no latrine or toilet, leaving no scope to doubt the requirement.

The application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 is filed herein to adduce the evidence that another room is available in the same floor where latrine and toilet could have been constructed. At his stage of second appeal, there is no scope to appreciate evidence further. The landlord is a best judge to decide which room will serve his purpose. The tenant cannot dictate that. It is in the plaint that the 'Gha'-1 Scheduled room can conveniently be converted into a toilet. Apart from this, the map filed by the Learned Advocate Commissioner shows that the specific room is nearest to the safety tank for which it is more suitable for the purpose. Consideration of availability of other room becomes redundant and this



Court is of view that the application filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908 comes to no help.

It was argued by the Learned Counsel for the Respondent/Defendant that the requirement, as pleaded, is that of the tenants not of the landlord. The reasonableness of requirement must pertain to the landlord's own use and occupation; that is the express phrases used in Section 13(1)(ff) of the West Bengal Premises Tenancy Act, 1956. Therefore, according to the Learned Counsel for the Respondent, the observation of the Appellate Court was correct. It was further argued that requirement must be distinguished from mere desire if there must be actual element of need which is absent there, as submitted.

It was admitted position as noted above that it is a case of actual need and requirement, admitted by the Defendant in course of cross-examination. When the tenanted portion, where several tenants are living, has no toilet or latrine, then construction of the same is a bare necessity and essentiality for proper use of the premises. In **Phiroze Bamanji Desai Vs. Chandrakant N. Patel & Ors. [(1974) 1 SCC 661]**, this principle was considered. The Supreme Court of India considered and observed that there must be an element of need before a landlord can be said to "require" premises for his own use and occupation. What is necessary as observed, is that he should need them for his own use and occupation. In **Joginder Pal Vs. Naval Kishore Behal [(2002) 5 SCC 397]**, after extensively referring to all the previous decisions, it was held that in interpreting "own use", the Court should adopt a practical and meaningful approach guided by the realities of life. The expression "for his own use" is not confined in its meaning to actual physical user by the landlord personally. The requirement should not only of the landlord himself but also all the normal "emanations" of the landlord is included therein. In **Joginder**



Pal’ s case, the Supreme Court of India considered the expression “for his own use” as occurring in Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949. It was held:

(ii) The expression — landlord requires for “his own use”, is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal “emanations” of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as interrelationship and interdependence — economic or otherwise, between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong.

(iii) The tests to be applied are: (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement; and, (ii) whether on the facts and in the circumstances of a given case, actual occupation and user by a person other than the landlord would be deemed by the landlord as “his own” occupation or user. The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as “his own” and the person who would actually use the premises; (ii) the circumstances in which the claim arises and is put forward; and (iii) the intrinsic tenability of the claim. The court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.



This judgment was followed by the Supreme Court of India in subsequent decisions in **C. Karunakaran Vs. T. Meenakshi [(2005) 13 SCC 99]** and **Gulraj Singh Grewal Vs. Harbans Singh [(1993) 2 SCC 68]**. In **Mehmooda Gulshan Vs. Javaid Hussain Mungloo [(2017) 5 SCC 683]**, the Supreme Court of India reiterated the same principal referring to the ratio of **Jaginder Pal's** case.

Evidence established that a toilet and latrine is need for the premises namely 'Gha' Scheduled property as the said 'Gha' Scheduled property is bereft of it. Any use of the said portion needs presence of toilet and privy as bare necessity. Though the tenants are residing presently, it may be used by the landlord in future. Need of the landlord should not be confined in this case to the narrow interpretation. The words "for his own use" as occurred in Section 13 (1) (ff) of the West Bengal Premises Tenancy Act, 1956 should receive wide, liberal and useful meaning in the present context. It is a bare essentiality for proper use of the property.

The Learned Trial Court's decision of allowing the decree was correct. The First Appellate Court in reversing the Trial Court's judgment committed error of law as well as of fact which demands setting aside.

For reasons stated above, allowing the instant appeal, the judgment and decree passed by the First Appellate Court, namely, the Additional District Judge, First Track 1st Court at Burdwan in Tile Suit Appeal No.20 of 2010 dated 15th July, 2011 is hereby set aside.

The Appellant/Plaintiffs are directed to deliver the possession within sixty days from passing off this appellate decree, in case of default of which, execution proceeding before the Trial Court may be initiated and the Respondent/Defendant



shall be liable to pay mesne-profit, for which liberty is given to the Respondent/Plaintiffs to institute the separate suit.

Accordingly, the instant appeal is disposed of along with all pending applications, if any.

Trial Court Records be returned.

(Sugato Majumdar, J.)