

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

**S.A. 325 of 2009
With
IA. No. CAN 7 of 2022
With
IA No. CAN 8 of 2022**

**Amit Sen & Ors.
Vs.
Asish Roy & Ors.**

For the Appellant : Mr. Probal Kumar Mukherjee
Ms. Shebatee Datta

For the Respondents : Mr. Iftekar Munshi
Mr. A.S. Tarafdar

Heard on : 20.11.2025

Judgment on : 17.02.2026

Dr. Ajoy Kumar Mukherjee, J.

1. Being aggrieved by and dissatisfied with the judgment and decree of eviction of premises tenant, dated 30th August, 2006 passed by learned 3rd Additional Civil Judge (Junior Division), Alipore in Title Suit no. 1 of 2005, the opposite parties herein preferred Title Appeal no. 23 of 2007 before learned Civil judge (Senior Division) 5th court, Alipore, who by the impugned

judgment and decree dated January, 14, 2009 has allowed the appeal on contest, thereby set aside the judgment and decree passed by the trial court.

2. The brief background of the suit for eviction is that plaintiff/appellant herein claiming themselves as sole land lords filed the aforesaid ejection suit against the defendants/respondents herein, on the ground of reasonable requirement. Plaintiff case is that the original owner, who is the predecessor of the plaintiff, Sri Manmatha Nath Sen during his lifetime executed a trust deed on 30.01.1956. Said settlor of the trust named his wife Smt. Pramila Bala Sen as the trustee and clause 7 of the said trust deed states that Rs. 100/- would be drawn by the said trustee Pramila Bala towards her monthly maintenance from the income of the trust properties. She was also given the right to act as a trustee to collect rent and to induct tenants in the trust property. The distribution of other portion of the income from the trust property has also been mentioned in the trust deed. As per clause 13 and 14 of the trust deed, the trust would come to an end with the death of Smt. Pramila Bala and with the death of trustee, the trust properties will be vested upon his five sons as follows:

(a) Chandi charan Sen: 27 A Chakraberia Road

(b) Bibhuti Bhusan Sen: 27 B Chakraberia Road

(c) Gopal Chandra Sen: 27 C Chakraberia Road

(d) Santosh Kumar Sen: 32 D Sarat Bose Raod

(e) Deb Kishore Sen: 32E Sarat Bose

3. Further plaintiff case is by the said trust deed, the predecessor of the present appellant Bibhuti Bhusan Sen after demise of his mother Pramila Bala became absolute owner of the suit premises namely 27 B Chakraberia

Road, where the respondents herein were inducted as tenant and against whom the plaintiff filed the aforesaid eviction suit.

4. The plaintiffs further case is that they are at present residing as licensee in the above mentioned 32 E Sarat Bose Road, under the owner of said premises Santosh Kishore Sen and Deb Kishore Sen. Plaintiffs further case is his family consists of himself, his wife, four sons, married daughters and two unmarried daughters and that the suit property i.e. 27B Chaknaberia Road, consists of two rooms in the ground floor two rooms in the first floor and two small tiled rooms in the second floor. Plaintiffs require the entire suit property for personal use and occupation as plaintiff's licensee has already revoked the license.

5. Defence contention on the other hand is that though a trust deed was executed by Manmatho but the same was not acted upon and Pramila used to collect rent from the defendant not as a trustee but in her individual capacity. Upon the enactment of Hindu Succession Act w.e.f. 17.06.1956 and upon Promulgation of section 14(1) of the Hindu Succession Act. 1956, the limited interest of Pramila Bala Sen created by virtue of the trust deed, in lieu of maintenance ripened into full ownership and she became the absolute owner of the property of late Manmatho nath Sen. Therefore, after the death of Pramila Bala on 09.02.1976, all her sons and daughters including the original plaintiff Bibhuti Bhusan Sen became the joint owners in respect of all the above mentioned properties mentioned in the alleged trust deed, each having 1/8th share in all those properties. Therefore, since the plaintiffs have alternative suitable accommodation, they do not

reasonably require the suit property and as such plaintiffs' suit for eviction is not sustainable.

6. The Trial court decreed the suit on the ground of reasonable requirement observing that after demise of Pramila Bala, in terms of the deed of settlement, the suit property was mutated in the name of plaintiffs' predecessor Bibhuti Bhusan only, as appearing from exhibit 3 to 3(f) and that the defendant having paid rent to Bibhuti Bhusan after demise of Pramila Bala and that the other properties mentioned in the trust deed are not the properties of the plaintiffs and in view of the fact that plaintiff is residing elsewhere along with his family, as licensee, plaintiff has succeeded in proving reasonableness of his requirement.

7. However, when the defendants preferred first appeal the appellate court reversed the eviction decree upon coming to a conclusion that the trust deed conferred upon Pramila, a monthly maintenance of Rs. 100/- which is a pre-existing right and as such the limited interest conferred upon her by virtue of the trust deed being in lieu of maintenance and recognition of her pre-existing right, transformed into absolute right under section 14(1) of Hindu Succession Act and section 14(2) of the said Act has no application. Thus, Pramila bala during her life time became full owner of all the aforesaid five properties owned by her husband Manmatho Sen on and from 17.07.1956 and after her death all her legal heirs became owner of all the properties mentioned in the trust deed and therefore plaintiff failed to prove bonafideness of his requirement and as such plaintiff is not entitled to get decree as prayed for.

8. Being aggrieved by the said judgment passed by the first appellate court, the present second appeal has been preferred by the plaintiff/appellant. At the time of admission of this second appeal a Division Bench of this Court vide order dated 21.08.2009 framed following substantial questions of law for adjudication

- (i) *Whether the learned judge of the First Appellate Court below was right in coming to the conclusion that Late Bibhuti Bhusan Sen cannot be a licensee of 32E, Sarat Bose Road and he is the cosharer of the same and also Co-sharer of the other property left by Manmatha Sen?*
- (ii) *whether the learned Judge of the First Appellate Court was right in coming to the conclusion that the provisions contained in sub-section (2) of section 14 of the Hindu Succession Act, 1956 has no application in the Instant Case?*
- (iii) *Whether the learned Judge of the First Appellate Court committed substantial error in law in not holding that the plaintiffs reasonably require the suit premises for their own use and occupation and also for the use of their family members as they have no other alternative accommodation save and except the suit premises?*

9. This court vide order dated 28th April,, 2025 decided aforesaid first two substantial questions of law as follows:-

“Accordingly both the aforesaid substantial questions of law are answered in favour of plaintiff/appellant with the specific observation that as per trust deed, after the death of Pramila the trust extinguished and in terms of trust deed plaintiff became owner only in respect of the suit property and no other property mentioned in the trust deed.

Let the matter be listed in the monthly list of June 2025 for hearing the substantial question of law no (iii) namely

Whether the learned Judge of the First Appellate Court committed substantial error in law in not holding that the plaintiffs reasonably require the suit premises for their own use and occupation and also for the use of their family members as they have no other alternative accommodation save and except the suit premises?”

10. Further it appears from the record that Respondent/Defendant /tenant had assailed the aforesaid order dated 28th April, 2025 before Supreme Court in Special Leave to appeal (c) No. 197875/2025 and the Supreme Court dismissed the said appeal on 01st August, 2025 observing

“having considered the matter , we do not find any merit in the matter warranting interference by this court. Accordingly, the Special Leave Petition stands dismissed.

11. Therefore, as state above I now need to consider only the third substantial question of law namely:-

(iii)Whether the learned Judge of the First Appellate Court committed substantial error in law in not holding that the plaintiffs reasonably require the suit premises for their own use and occupation and also for the use of their family members as they have no other alternative accommodation save and except the suit premises?

12. Mr. Probal Mukherjee, learned Senior counsel argued in support of appellant/plaintiffs case that the suit was filed only on the grounds of reasonable requirement of plaintiff and his family members. In the written argument he states even at present plaintiffs family comprising of following members namely (i) Shri Amit Sen (unmarried) (ii) Shri Ashim Sen, his wife, daughter aged about 17 years old and his mother in law, (iii) Shri Joy Sen (unmarried), (iv) Smt. Subhra Sen (unmarried) (v) Smt. Ratna Roy (married) and (vi) Smt. Jayati Sen (unmarried). He further submits that from the plaint case it remains uncontroverted that there are 6 rooms in the suit property which are fully occupied by the tenant/respondent. He further submits that though the respondent by filing an application under order XLI rule 27 sought to bring on record certain subsequent fact and alleged that there lies a vacant land behind premises no. 32 D and 32 E Sarat Bose Road, Kolkata and apparently the vacant land behind the premises no. 32 D Sarat Bose Road as well as the building at premises no. 32 E Sarat Bose Road have been demolished for development of said premises, but the appellants herein have no nexus with the said development of the premises

as they are not the owners of the same, and as such their requirement of the suit premises still prevails. He further submits that it is well settled principle of law that the rights of the parties crystallised as on the date of the institution of the suit and therefore the decree in a suit should be in accordance with the rights of the parties as they would at the commencement of the lis. In this context he relied upon the judgment of **Gaya Prosad Vs. Pradeep Srivastava** reported in **(2001) 2 SCC 604**. He also relied upon the judgment of **Atma bear Vs. Muktiar Singh** reported in **(2003) 2 SCC 3** and **Protap Ray Tanwani Vs. Uttam Chand** reported in **(2004) 8 SCC 490**.

13. Mr. Aniruddha Chatterjee and Mr. Iftekar Munshi learned counsel for the respondent argued that the appellants as plaintiffs had failed to prove by documentary or oral evidence that the plaintiffs are residing at present at 32E Sarat Bose Road as licensee under his brother Santosh Kishore Sen or that said Santosh Kishore Sen had revoked the license or constantly pressing the plaintiffs to quit or vacate the said premises. In this context neither any notice of revocation of license was exhibited nor the same was proved by oral evidence.

14. Respondents further case is that the plaintiffs/appellants have sufficient accommodation available to them at 10 B Nafar Kundu Road, Kolkata and at Mirza Galib Street, Kolkata. However, neither the trial court nor the appellant court considered regarding the sufficiency and the suitability of the accommodation already available to the plaintiffs and for which they have filed application under order XLI rule 27 of CPC.

15. Further case of the respondent is that both the courts below have erred in law in not considering that a decree of eviction on the ground of reasonable requirement cannot be passed by the court without making any local inspection under order XXXIX rule 7 of the Code of Civil Procedure, which is a sine qua non for passing a decree of eviction solely on the ground of reasonable requirement. Learned counsel for the respondent further pointed out that during cross examination, Bibhuti Bhusan Sen admitted that there was no inspection of the ancestral dwelling house and PW 2 namely aforesaid Santosh Kumar Sen admitted that eight people stay in one room at 32E Sarat Bose Road which is a two storied building and there is no room on the terrace and no commissioner was appointed to inspect the house. He further submitted that nevertheless the defendant tenant had made endeavour to file application under order XXXIX rule 7 and get it heard before the trial court as well as before the first appellate court. However, said application was rejected by the said court by an order dated September, 12, 2005 and being aggrieved by the said order the respondent/defendant preferred CO 3612 of 2005 and this court while disposing such application was pleased to pass an order holding that prima facie onus of reasonable requirement of the suit premises is to be discharged by the plaintiff before the court below. Even after passing of the said order and though it was upon the plaintiff/Appellant to file an application under XXXIX rule 7 but they have miserably failed to do the same.

16. Their further argument is that the First appellate court was not at all justified also in rejecting the respondents prayer for amendment of the memo of appeal incorporating the ground that the learned court below ought

not to have rejected the application for local inspection. However for abundant precaution they have filed an application under order XXXIX rule 7 because the exercise of local inspection is a sine qua non for passing a decree of eviction solely on the ground of reasonable requirement. In this context they also relied upon section 103 of the Code and argued that this High Court in a second appeal exercising the power under section 103 could have heard such point of law and fact as to whether there is an element of reasonable requirement of the landlord with respect to the suit property or not because evidence on record are not sufficient to decide the issue of reasonable requirement of the landlord and as such the same needs to be remanded back for fresh trial on such issue after allowing a local inspection.

17. He further argued that in view of the facts and circumstances of the case, this court invoking power under order XLI rule 25 of the Code may frame an issue with respect to such question for effective and complete adjudication of the suit. He further submits that the trial court erred in law in passing decree in the eviction suit on the sole ground of reasonable requirement without first conducting a local inspection to ascertain the true nature, sufficiency and suitability of the accommodation allegedly available to the plaintiffs to determine the appellants *bonafide* requirement. Accordingly he prayed for dismissal of the appeal.

Decision

18. It is clear from the language of section 13 (1) (ff) of the West Bengal Premises Tenancy Act, 1956 that on satisfaction of the following conditions

plaintiff is entitled to get a decree on the ground of reasonable requirements:-

- (i)** Where the premises are reasonably required by the land lords for their own occupation
- (ii)** Where they are the owner or requirement is for the occupation of any person for whose benefit the premises are held
- (iii)** Where such persons are not in possession of any reasonable suitable accommodation.

19. The expression “reasonable requirement” in clause (ff) has not been defined in the Act. The words “*if he is owner*” in the statute of 1956 indicates that legislative intention is that land lord is required to be owner in order to get decree for eviction on the ground of reasonable requirement, which is the first condition as mentioned above. In the instant case in view of aforesaid judgment of affirmation, it has been settled that plaintiff became owner only in respect of the suit property and no other property mentioned in the trust deed, after extinguishments of trust created by Manmath. Therefore, plaintiffs being landlord have succeeded to prove their ownership in respect of the suit property

20. Now so far as the other condition which states that the premises are reasonably required by the plaintiffs for their own occupation, it is well settled that such a requirement in order to be reasonable must have some relation to the actual need of the person for such kind of occupation and the test must relate to the standard of requirement of a reasonable man under circumstances occurring in the particular case. Nevertheless the landlord must prove a genuine present need for the house for his own occupation

and the words “*reasonably required*” connotes something more than desire but something much less than absolute necessity.

21. Coming back to the instant case the plaintiff in his plaint has averred in para 11 onwards that the family of the plaintiff consists of himself his wife, 4(four) sons and 2 (two) aged unmarried daughters and 2 (two) married daughters and the suit building consists of two rooms in the ground floor, two rooms in the first floor and two small tile shaded rooms in the second floor. Such averment has not been seriously challenged anywhere either in the pleading or in the evidence. Even plaintiff's case as on this date is that the suit building at 27B Chakraberia Road is wholly occupied by the tenant and the plaintiff's family is comprising of two unmarried son, one married son who stays with his wife daughter and mother in law, two unmarried daughters and one married daughter. It further appears that the learned appellate court below though reversed the judgment passed in favour of the plaintiff by the Trial Court but he has not disagreed the bonafideness of the plaintiff's requirements or the existing structure in the suit house but his sole consideration for setting aside the decree is that since the plaintiff's are also co sharer of other trusted properties so they have reasonable alternative accommodation elsewhere and therefore their requirement is not *bonafide*.

22. However I have already stated above that the claim of co-sharership of the plaintiff's in other trust mentioned properties as made by the defendants/ respondents, has already been turned down by the Apex Court and this High Court as above. From the judgment of court below also it is clear that he rejected defendant's application under order XXXIX rule 7, where defendant sought to prove that plaintiff's existing accommodation at

Sarat Bose Road is sufficient and also to note the accommodation available at premises no. 27A Chakraberia Road and the number of rooms and its extent and measurement. Such rejection order is perfectly justified and no challenge has also been offered against that observation. Though plaintiff has also filed petition for local inspection commission and prayed thereafter to remand the case for fresh trial, but I do not find any substance in aforesaid prayer, since plaintiffs ownership in their present accommodation have already been disproved, so it is immaterial whether their accommodation at Sarat Bose Road is sufficient or insufficient. Though PW2 Santosh Kumar Sen has stated that the suit building is two storied and there is no room on the terrace but no credence could be given over such deposition firstly because said Santosh Kumar Sen having no ownership over the suit property is supposed to know the local feature of the suit building and his deposition is material only to the extent that he has revoked the license granted to the plaintiffs to reside at Sarat Bose Road. Secondly, whether there exists any room on the terrace of the suit building have hardly any impact in the merit of the case i.e. the bonafideness of plaintiffs requirements, considering number of family members of plaintiffs.

23. In view of case law reported in **Sajanendra Nath Tagore Vs. Barindra Kumar Dutta Gupta** reported in **92 CWN 758**, it is now well settled that in a suit for ejectment on the ground of reasonable requirement, the land lords requirement is to be tested from two angles **(i)** why does he require the suit premises **(ii)** how much of it does he require. The first question as to the quality or purpose of his requirement may very often give rise to a question of law, which would require the court to consider as to whether the avowed

purpose can in law be regarded to be a reasonable one. But once such purpose is found to be a reasonable one, the finding as to the quantity or extent of his requirement would by and large be a question of fact and not a question of law and far less a question within the meaning of section 100 of CPC as it stands now.

24. Therefore, when the trial court have come to a finding that the land lord/plaintiffs requirements is *bonafide* for their personal use and occupation and when such bonafideness of requirement has been interfered by the appellate court only with a preserve finding that the plaintiffs are also co sharer in respect of other trust mentioned properties, the tenant respondent hardly have any right to re agitate the matter in second appeal or to adduce additional evidence on subsequent event, if any.

25. It is true that though the right of the parties can be crystallised as on the date of institution of the suit and therefore the decree should be in accordance with rights of the parties as they stood at the commencement of the lis however, in the event, the court takes note of any subsequent fact to promote substantial justice, the court may mould the reliefs and in doing so it must take utmost caution. In **Gaya Prasad Vs. Pradeep Srivastava** (supra) the Apex Court observed that the crucial date for deciding as to the *bonafide* requirement of the land lord is the date of his application for eviction and it was further observed that for the subsequent events to overshadow the genuineness of the need must be of such a nature and of such dimension that the need propounded by the petitioning party should have completely eclipsed by such subsequent events. Here whatever subsequent events which the respondents have tried to brought before the court, even if

accepted in its entirety, does not eclipse *bonafide* of plaintiffs requirement, which still subsists.

26. In **Atma S. Berar Vs. Muktiar Singh** (supra) the Apex Court quoted an earlier Three Judges Bench decision in **Prateva Devi Case** where it was observed that the land lord is the best judge of his residential requirement and he has complete freedom in the matter. It is no concern of the courts to dictate to the land lord how and what manner he should live or to prescribe for him a residential standard of their own and the High Court need not be soliticized and venture in suggesting what would be more appropriate for the landlord to do as there is no law which deprive the land lord of the beneficial enjoyment of his property.

27. In **Pratap Ray Tanwani Vs. Uttam Chand** (supra) the Apex Court also made it clear that while considering the *bonafide* of the need of the land lord the crucial date is the date of the petition. The normal rule is that rights obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. Since in the instant case it has been well established that the plaintiffs do not have any right title interest in other trust mentioned properties except suit property and since there is nothing to show that they have any other property and on the contrary their present possession at Sarat Bose Road as a licensee, has already been revoked, their bonafideness of requirements still subsist and no subsequent events is coming before the court which can

be said to have an impact on the rights and obligations of the parties nor there appears to be any reason to mould the reliefs mentioned in the plaint.

28. Now coming to the third requirement i.e. whether plaintiffs have any other reasonable suitable accommodation elsewhere save and except suit building. It appears that the respondent in this context tried to make out evasive allegations by filing connected applications CAN 7 and CAN 8 that during pendency of the second appeal the respondents have discovered that the appellants herein along with other members of the Sen family have undertaken to develop the premises no. 32D and 32E Sarat Bose Road Kolkata and that a portion allegedly forming part of premises no. 32E Sarat Bose Road have been significantly developed and the premises no. 32D Sarat Bose Road has been partly developed and there exists vacant land behind the existing building but the plaintiffs/appellants have categorically stated that they do not have any connection with the said properties nor they have ownership in the same which has also been affirmed in the above mentioned judgment and therefore he does not have any relation with the same.

29. Respondents in their connected applications further alleged that they have learnt that the sister of the predecessor in interest of appellant namely Purabi Sinha was sole owner of a building situated at 10 B Nafar Kundu Road, Kolkata 26, who died intestate and issueless and after her death the appellants have acquired right, title, interest in the said property. Such contention has been denied by the opposite parties in their affidavit in opposition contending that they do not have any right title interest either in the other trust mentioned properties or in the property at 10B Nafar Kundu

Road, which is the matrimonial home of late Purabi Sinha and as such appellants do not have any right title interest over the same, even if said Purabi Sinha died intestate and issueless, because under the Hindu Successions Act, the matrimonial property of late Purabi Sinha would evolve upon the legal heirs and representative of her husband line of succession and not hers. Therefore, mere mentioning of certain property to show that the plaintiffs have sufficient accommodation elsewhere, is not sufficient and in view of aforesaid oath Vs. oath the merit of the case does not call for local inspection commission or for adducing additional evidence and therefore the prayer made in connected applications being CAN 7 and CAN 8 are meritless and both connected applications are liable to be rejected.

30. In the instant case plaintiffs have sufficiently proved that PW2 who had granted them license have already revoked their license. Accommodation of the plaintiff as an licensee cannot be considered to be a reasonable suitable accommodation. If a persons is in occupation of some premises on sufferance i.e. to say under leave and license and which has already been revoked at the pleasure of the licensor, it can never be said that plaintiffs are in possession of reasonably suitable accommodation because his right to remain depends entirely on sufferance and his possession is precarious and unsecured in the extreme. This is also because from the evidence of PW2 it is clear that the plaintiffs/land lord is living in the house of their relative/brother and their relationships with relative/brother must have become strained for not vacating licensors property even after revocation of license and to that score also plaintiffs present

accommodation is precarious and does not call for any additional evidence to prove.

31. Therefore when the facts and circumstances of the case suggest that the plaintiffs are compelled to live in a house owned by another as a licensee, the possession of the plaintiffs being precarious cannot be said to be reasonable suitable accommodation elsewhere and the requirement of the premises occupied by their tenants must be held to be reasonable, as there is nothing to show that the plaintiffs have any other reasonably suitable accommodation elsewhere. As also the plaintiffs/land lord have no legal right to their present accommodation.

32. In view of aforesaid discussion I find that the plaintiffs have successfully proved all the three aforesaid requirements in order to get a decree for eviction on the ground of reasonable requirement under section 13(1) (ff) of the West Bengal Premises Tenancy Act, 1956 and the trial court was justified in granting decree to the plaintiff on that ground.

33. In view of above **SA 325 of 2009 is allowed.**

34. The impugned judgement passed by the court below dated January, 14, 2009 in Title Appeal No. 23 of 2007 is hereby set aside and the judgment and decree dated August, 30th, 2006 passed by learned 3rd Additional Civil Judge (Jr. Division) at Alipore in T.S. 1 of 2005 is hereby affirmed. All pending connected applications are also dismissed in view of aforesaid discussions.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)