**Geeta Bose and Another Vs. Machine Tools of India Ltd**

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**SooperKanoon Citation** : sooperkanoon.com/853699

**Court** : Kolkata

**Decided On :** Apr-12-1990

**Reported in** : AIR1991Cal116,(1991)1CALLT206(HC),1990(1)CHN526,94CWN1018

**Judge** : A.M. Bhattacharjee and ;Amulya Kumar Nandi, JJ.

**Acts** : Code of Civil Procedure (CPC), 1908 - Order 2, Rule 2 and 2(3) - Order 23, Rule 1(3);; West Bengal Premises Tenancy Act, 1956 - Section 13, 13(1), (3A) and (6);; West Bengal Premises Tenancy Act, 1950 - Section 12(1)

**Appeal No.** : Civil Revn. No. 1389 of 1988

**Appellant** : Geeta Bose and Another

**Respondent** : Machine Tools of India Ltd

**Advocate for Def.** : Gautam Chakravarty, ;Aloke Chakraborty, ;Jayanta Bhattacharjee and ;K.P. Tiwari, Advs.

**Advocate for Pet/Ap.** : B.C. Dutt,; D.K. Banerjee, ;T.K. Ghosh and ;P.C. Matila, Advs.

**Judgement** :
ORDER

**A.M. Bhattacharjee, J.**

1.Theapplication filed by the plaintiffs for leave to withdraw from the present suit with liberty to sue the defendant afresh ought to have been allowed and the impugned order, giving rise to this revision, rejecting the application, must be quashed.

2. The plaintiff-petitioners, after acquiring the house in 1981, have filed the present suit in 1982 for eviction of the defendant-respondent on the ground of unauthorised subletting and several other grounds. The suit having been filed within three years of the acquisition of the house by the plaintiffs, could not be grounded on the reasonable requirements of the plaintiffs for own occupation, even if such a ground was then existing, in view of the provisions of subsection (3 A) of Section 13 of the West Bengal Premises Tenancy Act, 1956, countermanding institution of suit on that ground before the expiry of such period. The period of three years has however expired during the pendency of the suit and on such expiry theplaintiffs applied to amend the plaint to include the ground of reasonable requirement; but the application was rightly rejected as any such amendment, if allowed, would have rendered the mandate of Section 13(3A) almost infructous and the position in law on this point is now absolutely well settled. To allow the plaintiff to include the ground of reasonable requirement in a plaint in a pending suit, instituted before the expiry of three years after acquisition, even though the period of three years has expired when the amendment is applied for, would virtually enable him to do precisely what the law prohibits him from doing.

3. The plaintiffs then have applied for leave to withdraw from the present suit with liberty to sue the defendant afresh on the grounds sued upon as well as the ground of reasonable requirement. The Court below has rejected that application and has ruled that the plaintiffs cannot be granted that liberty. We do not know why.

4. The plaintiffs can obviously proceed with the present suit founded on the grounds of subletting etc. Even if the suit fails, there is nothing in law to prevent the plaintiffs to sue the defendant again for eviction on the ground reasonable requirement and the provisions of Order 2, Rule 2 of the Code of Civil Procedure

cannot obviously stand in the way for more reasons than one. Firstly, the claim for ejectment on the ground of reasonable requirement was not legally available to the plaintiffs at the date when the present suit was instituted much within three years from the date of acquisition because of the prohibition contained in Section 13(3 A). The view of the Court below, that the grounds of ejectment specified in Section 13(1) of the Act do not constitute the cause of action for ejectment, but the cause of action is the determination of the tenancy is wholly erroneous and must be rejected. But even accepting the same arguendo, since the plaintiffs could not, in view of Section 13(3A), include the ground of reasonable requirement in the plaint when the present suit was instituted, the provisions of and the prohibition in Order 2, Rule 2 cannot obviously operate in respect of any subsequent suit for eviction on that ground. Secondly, sub-rule (3) of Rule 2, Order 2 disentitles a plaintiff from suing for a relief in a subsequent suit if the same was available to him in an earlier suit in respect of the same cause of action. But cause of action for a suit for eviction on the ground of unauthorised subletting and for a suit for eviction on the ground of reasonable requirement are not the same.

5. The position under the preceding Act of 1950 and that under the present Act of 1956 are quite different. Under the Act of 1950, the cause of action for a suit for eviction of a tenant was still the determination of the tenancy under the general law of landlord and tenant and all that the proviso to Section 12(1) of the Act of 1950 provided was that no eviction could be decreed unless any of the conditions mentioned therein was also satisfied. But under the present Act of 1956, a determination of the tenancy is not at all a sine qua non and, as pointed out by the Supreme Court in the Seven Judge Bench decision in Dhanapal Chettiar, : [1980]1SCR334 , a termination of the contractual tenancy is no longer necessary for a suit for eviction under the various Rent Control Acts operating different States, unless any of those Acts clearly provides for such termination. Under the West Bengal Premises Tenancy Act of 1956, the position must now be taken to be settled that a notice of termination of tenancy is no longer required and the notice required under Section 13(6) of the Act is a notice, not of termination of tenancy, but of the intended suit and the cause of action therefor, which must obviously precede the notice of suit, is one or more of the grounds mentioned in Section 13(1), like unauthorised subletting by the tenant or the reasonable requirement by

the landlord. Therefore, cause of action for a suit founded on the ground of unauthorised subletting by the tenant and that for a suit instituted on the ground of reasonable requirement by the landlord are not the same cause of action.

6. As already pointed out, even if the present suit for eviction on the ground of subletting etc. fails, nothing would preventthe landlord from suing the tenant afresh on the ground of reasonable requirement. The ground of requirement could not be included in the present suit, either initially or even by subsequent amendment, in view of the bar contained in Section 13(3 A). The right to sue on the ground of reasonable requirement has in fact accrued in favour of the plaintiffs during the pendency of the suit. If a suit was premature when it was instituted, but the cause of action has matured during the pendency, that, in our view, should be treated as sufficient ground for allowing the plaintiff to withdraw from the suit filed prematurely and to permit him to sue afresh under the provisions of Order 23, Rule 1(3)(b). The present suit on the ground of unauthorised subletting and other grounds may or may not succeed. A fresh suit on the ground of reasonable requirement also may or may not succeed. But there can be no reason, in logic or in law, not to allow the plaintiffs to withdraw the present suit and to permit them to sue afresh on the earlier grounds as well as the new ground now available, which, as already noted, could not be included in the present suit by way of amendment in view of Section 13(3A). Such a course would also go a long way to prevent multiplicity of suits and that alone must be regarded to be a 'sufficient ground' within the meaning of the provisions of Order 23, Rule 1(3)(b) for allowing the plaintiffs to withdraw from the present suit and to institute a new one on all the grounds now available including that of reasonable requirement by the plaintiffs. We are clearly of the view that there is sufficient ground within the meaning of the provisions of Order 23, Rule 1(3)(b) to grant the prayer made by the plaintiffs and the Court below exercised its jurisdiction illegally in declining the prayer, thus warranting our intervention in revision. No citation should be necessary, but reference may still be made to a decision of the Madras High Court in Rangayya Naidu v. Basana Simon, AIR 1926 Madras 594 in support of the proposition that if a cause of action was premature when the suit was filed and could not be included by subsequent amendment even when it has matured during the pendency of the suit, there was 'sufficientground' to allow withdrawal of the suit with liberty to sue afresh.

7. There are, however, authorities for the view that the expression 'sufficient grounds' in Clause (b) of Rule 1(3) is to be construed ejusdem generis with the expression 'formal defect' in Clause (a) and that, at any rate, the ground to be sufficient within the meaning of Clause (b) must be akin or at least analogous to 'formal defects' and the Bombay Full Bench decision in Ramrao Bhagwant v. Babu Appanna AIR 1940 Bombay 121 and the Allahabad Full Bench decision in Abdul Ghafoor v. Abdul Rahman, : AIR1951 All845 are, among others, such authorities. There are contrary authorities also as would appear from, among others, the Gauhati decision in, Union of India v. Manoranjan Banik AIR 1956 Gauhati 1 and the Orissa decisions in Atul Krushna v. Ramkishore : AIR1956 Ori77 and in Duryodhan v. Satyabadi, : AIR1986 Ori58 . If it were necessary for us to finally decide the question, we would have respectfully dissented from the former view and agreed with the latter as we find no justification to restrict the meaning of the expression 'other sufficient grounds' in Clause (b) of Rule 1(3) of Order 23 only to formal defects as specified in Clause (a) or to grounds analogous thereto. The rule of ejusdem generis, as has been pointed out by the Supreme Court in a series of decisions, viz. K. K. Kochuni v. State of Madras, : [1960]3SCR887 , T. P. Nayyar v. Union of India, : [1970]2SCR732 , Mangalore Electric Supply v. Commr. of Income-tax, : [1978]113ITR655(SC) , has to be applied with care and caution. It is never a universal, inviolable or invariable rule of law and to borrow from Lord Scarman in the House of Lords in Quazi v. Quazi, (1979) 3 All ER 897 at P. 916, 'like many other rules of statutory interpretation, is a useful servant but a bad master'. The generality of the expressions used in the legislation is not to be cut down or circumscribed by the application of this rule as a matter of course, unless the legislation contains indications warranting its application and consequential circumscription. And then again, the rule is generally not to be applied, as pointed out by the SupremeCourt in Jagadish Chandra v. Kajaria Traders, : [1964]8SCR50 , if the preceding words do not constitute specifications of a genus, but constitute description of a complete genus. The principle enunciated by Lord Watson in the Judicial Committee in Sun Fire Office v. Hari, (1889) 14 App Cas 98 at P. 104 to the effect that there would be no room for the application of the Rule if the antecedent clause does not contain a specification of particulars, but the description of a complete genus, has also been referred to with approval by the

Supreme Court in Central Bank of India v. Hartford Fire Insurance, : AIR 1965 SC1288 . We do not, in Clause (a) of Rule 1(3) of Order 23, find any specifications of the particulars of a genus in the words 'the suit must fail by reason of some formal defects', but 'formal defects' leading to inevitable failure of the suit appear to constitute a complete genus. We therefore find no reason as to why the import and the amplitude of the general words 'sufficient grounds' in Rule 1(3)(b) of Order 23 should suffer any unwarranted confinement.

8. The revision accordingly succeeds, the Rule is made absolute, the impugned order of the Court below is quashed and the plaintiffs-petitioners are granted the permission to withdraw from the suit with liberty to institute a fresh suit on the ground on which the present suit is founded and also the ground of reasonable requirements and/or such other grounds as would be available to the plaintiffs under the law on condition that the plaintiffs-petitioners pay to the defendant-respondent a sum of Rs. 200/- as costs. No cost in this Court.

**Amulya Kumar Nandi, J.**

9. Iagree.

10. Revision allowed.