

Sandhya Banerjee and ors. Vs. Sri Mahendra Nath Chatterjee

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Court : Kolkata

Decided On : Dec-11-2003

Reported in : (2004)1CALLT524(HC)

Judge : Arun Kumar Mitra, J.

Acts : [West Bengal Premises Tenancy Act, 1956](#) - Section 13(1) and 13(6); ;[Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 27 - Order 41, Rule 27 and 27(1)

Appeal No. : S.A. No. 726 of 1995

Appellant : Sandhya Banerjee and ors.

Respondent : Sri Mahendra Nath Chatterjee

Advocate for Def. : Arabinda Chatterjee and ;Kakali Dutta, Advs.

Advocate for Pet/Ap. : Ashis Bagchi and ;Amal Saha, Advs.

Disposition : Appeal dismissed

Judgement :

A.K. Mitra, J.

1. This second appeal has been preferred by the defendants/appellants challenging the judgment and decree dated 14.7.1994 passed by the learned Assistant District Judge, 4th Court, Alipore in T.A. No. 7 pf 1993 reversing the

judgment and decree dated 26.11.1992 passed by the learned Munsif, 3rd Additional Court, Alipore, in Title Suit No. 41 of 1987.

2. This second appeal originates from suit for ejectment and for damages and/or mesne profit. The case as has been made out by the plaintiff in the plaint is inter alia as follows:

The plaintiff purchased the house at 18, Bechu Doctor Lane, Dhakuria, P.S. Kasba, District-24 Parganas, Calcutta-700 031 with four tenants therein on 02.12.1981 from its previous owner, Smt. Bijali Mondol, and took possession of the same. The defendant one Mr. Ratish Banerjee (since deceased) was a tenant under the said previous owner in respect of one bed room, a bath room, one kitchen and a common latrine in the ground floor of the two storied building being the said premises 18, Bechu Doctor Lane. The defendant was a monthly tenant at a monthly rental of Rs. 95/- payable according to English calendar month. The plaintiff is a retired Gazetted Officer of the Government of India and his family is fairly large consisting of himself and his wife, four sons and one daughter-in-law and one grandson, besides two whole-time maid servants. All the four sons of the plaintiff lived jointly with their parents in the suit premises. Total number of heads living with the plaintiff is ten.

3. The plaintiff occupies two bed rooms one drawing room on the 1st floor, one bedroom and one tiled shed used as kitchen on the ground floor. Of the two bedrooms on the 1st floor one is occupied by the plaintiff and his wife and other is occupied by his married son with his wife and son. The other three sons of the plaintiff all of whom are major, and suitably employed are still unmarried, because the plaintiff, for want of suitable accommodation in his house for married couple, could not settle the marriage of his sons who are all of marriageable age. Out of four sons of the plaintiff, two are engineers and one is a medical representative. One of the two engineer is doing private business as an architectural engineer and he has to receive so many clients in the drawing room on the 1st floor. Similarly, the other son who works as a medical representative has also to receive his parties in the same drawing room on the 1st floor. Besides this, the plaintiff is a retired Gazetted Officer of the Government of India and a man of sociable

treatment as such he has also to receive many local friends and visitors in his drawing room on the 1st floor. So the drawing room on the 1st floor of the said house is very essential for plaintiff's family and it cannot be put to any other use. All the three unmarried sons of the plaintiff have to be huddled together in the solitary bedroom in the occupation of the plaintiff on the ground floor of the said house.

4. The plaintiff also stated in the plaint that if only one son of the plaintiff is given marriage, there is no suitable and sufficient accommodation to provide the married couple. In fact, all the three unmarried sons of the plaintiff have come off age and they are suitably employed also. The plaintiff requires room for getting his son's married. The plaintiff is owner of the suit premises but the plaintiff is not in a possession of any other reasonably suitable accommodation anywhere else for the above purpose.

5. The plaintiff through his lawyer issued a letter of request dated 22.3.1985 requesting him to vacate the room in his occupation so that the plaintiff might accommodate at least one son in that room after his marriage. But the defendant did not care to give a reply (o that letter of request. Then the plaintiff caused an ejectment notice dated 22/23.05.1985 to be served upon the defendant through his lawyer under registered post with A/D calling upon the defendant to quit and vacate the suit premises on 1st August, 1985. The defendant received quit notice on 28.05.1985 by signing the acknowledgement receipt. The plaintiff further stated that the cause of action of this suit arose on/and from 1st August, 1985.

6. Defendant Mr. Ratish Chandra Banerjee alias Mr. Ratish Banerjee contested the suit by filing Written Statement. In the Written Statement the defendant stated in the manner inter alia as follows:

The suit is not maintainable, the suit is male fide, vexatious and harassing and is liable to be dismissed with costs. The suit is speculative and purposive. The suit is barred by the principles of waiver, estoppel and acquiescence. The defendant denied the allegations made in the plaint. The defendant has further stated in his Written Statement that there is a separate Electric Meter used by the defendant. The plaintiff has taken water connection from the corporation, but the plaintiff did

not allow the defendant and his family members to use the corporation water and the defendant has been compelled to bring water from the outside. There is a well in the suit house but the water of the said well could not be used for any domestic purpose. The defendant further stated that the plaintiffs sons are not dependent on their father and they are having in their respective place of employment. Defendant stated that there is no whole-time maid servant in the plaintiff's family. At present the plaintiff and his family members have been occupying 12 (twelve) rooms in all, three bedrooms, and one bat and privy in the first floor and four bedrooms, two kitchen, bath, privy and covered varandah in the ground floor of the suit house.

7. The defendant denied that the plaintiff could not settle the marriage of his sons for want of accommodation. The defendant also stated that the plaintiff has got more than sufficient accommodation at his disposal. The defendant further stated that in the year 1987 one of the tenants in the ground floor has vacated his tenancy comprised of two bedrooms, one kitchen and bath and the plaintiff has got the said additional accommodation for his family members. The defendant specifically denied that premises in question is reasonably required by the plaintiff and the members of his family. The defendant in his Written Statement, submitted that the alleged reasonable requirement is pretentious to vacate the defendant somehow. The defendant further stated that in the moth of July 1984 on demand of the plaintiff the defendant enhanced the rate of rent from Rs. 75/- to Rs. 95/- per month. The defendant denied the other allegations made out in the plaint.

8. The defendant further stated that the defendant paid rent to the plaintiff till May 1985 and got rent receipt and thereafter the defendant deposited rent before the Rent Controller, Calcutta after valid tender since the plaintiff wrongfully refused to accept rent from July 1985 to April 1986. The defendant could not deposit rent for the months of May and June 1986 before the Rent Controller due to unavoidable circumstances. The defendant has already deposited said two months* rent including interest in Court after appearance and has been depositing current rent month by month in Court.

9. The defendant further stated in the Written Statement that the alleged notice of ejectment was not served upon the defendant on 28.05.1985 or any other date. The alleged notice of ejectment is illegal, invalid, insufficient and inoperative and by the same the tenancy of the defendant has not been terminated and the cause of action never arose on 01.08.1985 or any other dates as alleged or at all.

10. On the above pleadings the learned trial Judge framed the following issues:

1. Is the suit maintainable in its present form and law?
2. Is the plaintiff/owner of the suit premises? Or has the plaintiff cause of action?
3. Has the plaintiff any other suitable alternative accommodation elsewhere?
4. Does the plaintiff reasonably require the suit premises?
5. Is the notice of ejectment legal, valid or sufficient? Or was it duly served upon the defendant?
6. Is the plaintiff entitled to the decree as prayed for?
7. To what other relief or reliefs the plaintiff is entitled?

11. On contest the learned trial Judge dismissed the suit. The learned trial Judge found that the plaintiff do not reasonably require the suit premises.

12. Appeal was preferred by the plaintiff/landlord, the learned Appellate Court below allowed the appeal on contest setting aside the judgment and decree passed by the learned Munsif. The Appellate Court below decreed the suit on contest with cost and also granted decree for mesne profit against the defendant. The learned Appellate Court below directed the defendant to deliver khas possession of the suit premises in favour of the plaintiff within sixty days from the order failing which the plaintiff was granted liberty to get the decree executed through Court.

13. The defendant/tenant preferred this second appeal. Subsequently, during the pendency of this second appeal the defendant/tenant who is the appellant herein

expired and in his place his heirs Smt. Sandhya Banerjee (1) (wife of the deceased appellant) (2) Smt. Mahua Banerjee (daughter) and (3) Sri Rupam Banerjee (son) have been substituted,

14. During hearing of the first appeal the tenant/respondent therein filed an application under Order 21 Rule 27 of the Code of Civil Procedure stating that during the pendency of the first appeal the plaintiff has got two other rooms left by tenant in his favour amicably, Thereby the respondent wants to adduce evidence to establish the same. The learned Appellate Court below observed that in the application the defendant/tenant has alleged that one Mr. Jyotish Chandra Dey who was also a tenant, left his tenanted portion in the month of October, 1993 the first appeal preferred on December, 1993 and tenant has filed the application under Order XLI Rule 27 of the Code of Civil Procedure on 28.6.1994 during the hearing. The learned Appellate Court below found the application being not bona fide and rejected the application and found that the learned trial Judge committed error in holding that the plaintiff has no other requirement for his family, On such finding the learned Appellate Court below decreed the suit.

15. Now, before hearing the second appeal finally this Court is to find as to whether there is any substantial question of law involved in this appeal inasmuch as during the hearing of this second appeal under Order XLI, Rule 11 of the Code of Civil Procedure, the Hon'ble Division Bench did not formulate any substantial question of law.

16. On perusal of the judgment and order of the Court below as well as the evidence on record, in my opinion, the following questions of law which are substantial in nature should be decided in this second appeal:

1. Whether the notice issued under Section 13(VI) of the West Bengal Premises Tenancy Act on its proper interpretation can be accepted as a valid notice. Whether the appellant can be permitted to raise this objection regarding validity of the said notice for eviction in this second appeal.

2. Whether the learned Appellate Court below rightly rejected the application under Order XLI Rule 27 of the Code of Civil Procedure filed by the tenant who is the

respondent in the first appeal, during the course of hearing of the first appeal.

17. The learned counsel for the appellant submitted that notice to quit served under Section 13(6) of the West Bengal Premises Tenancy Act is not valid in its proper interpretation and the notice being invalid, the suit filed on the basis of this notice is also liable to be dismissed. The learned counsel for the appellant pressed the notice and submitted that the notice has been issued on 22/23.5.1985. The language of the notice shows that the tenant has been asked to quit and vacate on expiry of 1st August, 1985, but the month empries as per English calendar on 31st July and not on 1st August. In that view of the matter the date of determination of tenancy does not stand after the expiry of the month. The learned counsel for the appellant in support of his contention relied on a decision reported in AIR 1975 SCC page 1111 (Dattonpant v. Vithal Rao). The learned counsel submitted that in this decision the Hon'ble Apex Court observed 'By holding over the tenancy from month to month started from 10th April, 1946 ends on the 9th day of the following month. The view finds support from the rent receipt Exts. D-1 and D-1(a). The evidence on behalf of the respondents that there was a mistake in those receipts is not correct as the said receipts are in conformity with Ext. P-12. On the other hand Exts. P-13 and P-14, the other two rent receipts, being not in accord with Ext. P-12 could not be relied on in Ext. P-16 the Controller by his order dated 29.09.1963 while fixing the fair rent of the suit premises at Rs. 1050/- per year has fixed it with effect from 10.04.1963. That also shows that the tenancy month commenced from 10th day of a month and ended on 9th day of the following month'. The learned counsel for the appellant submitted that here the tenancy was sought to be terminated at the end of 1st August which is not the end of English calendar month, accordingly the notice is bad. The learned counsel for the appellant in this context also relied on decision reported in 48 CWN page 76 (Calcutta Landing & Shipping Co. Ltd. v. The Victor Oil Co. Ltd.). The learned counsel submitted that in this decision one Hon'ble Division Bench of this High Court observed 'That the tenancy is one from month to month commencing from the 1st June and the notice is bad in law, since the period thereof expired not with the end of a month of the tenancy but on the date when another month had commenced.' The learned counsel for the appellant strongly relied on this decision and submitted that the notice as on its proper interpretation is bad in law,

therefore, suit should have been dismissed by the learned Appellate Court below. The learned Appellate Court below according to the learned counsel for the appellant went on wrong in not observing that the notice to quit is invalid. The learned counsel for the appellant then submitted that the learned Appellate Court below ought not to have rejected the application filed by the tenant (respondent in the first appeal) under Order XLI Rule 27 of the Code of Civil Procedure during the hearing. The learned counsel submitted that the application for taking into consideration of subsequent events can be filed at any stage and that apart hearing was then continuing and not over. The learned counsel in this regard relied on a decision reported in : [1991]2SCR941 (Gulab Bai v. Nalin Narsi Vohra and Ors.). The learned counsel submitted that in this case the Hon'ble Apex Court observed 'In appropriate case events subsequent to the filing of the suit can be taken notice of and can be duly considered provided the same is relevant in determining the question of bona fide requirement. Therefore, the High Court was right in duty considering the new facts and circumstances that have been brought to the notice of the Court by the application for additional evidence filed under Order XLI Rule 27 of the Code of Civil Procedure and in coming to a firm finding that the plaintiff/appellant having constructed a Spacious Bungalow where she with the members of her family had been residing, there is no reasonable and bona fide requirement for the plaintiff to get decree of ejectment of the defendant from the suit premises inasmuch as the portion in possession of the appellant could be conveniently used for his office of Tax Consultancy.'

18. The learned counsel submitted that in the above view of the Hon'ble Apex Court, the learned Appellate Court below ought not to have rejected the application for additional evidence regarding subsequent events inasmuch as the other tenant vacated the room under his tenancy during the pendency of the suit, that is after filing of this suit.

19. The learned counsel also submitted that for the purpose of deciding the question of reasonable requirement the date which is to be taken into consideration will be the date on which the decree is passed and in this case the learned Appellate Court below was continuing with the hearing of the matter and did not complete the hearing and therefore, the learned Appellate Court below

acted not in accordance with law. The learned counsel for the appellant drew attention of this Court on Order No. 13 dated 18.6.1994 and Order No. 14 passed on 6.7.1994 from the order of Lower Court record, to establish that the application under Order XLI Rule 27 was filed during argument and not after the closure of the argument.

20. The learned counsel submitted, that, apart from this the learned Appellate Court below was wrong in finding the requirement of the plaintiff/landlord inasmuch as the plaintiff/landlord was in occupation of sufficient rooms and he did not require any further accommodation. The learned counsel submitted that on the above score the instant appeal should be allowed and the judgment and decree passed by the learned Appellate Court below should be set aside.

21. On the contrary the learned counsel for the respondent/ landlord submitted that the interpretation of the notice by the learned counsel for the appellant is not proper and the learned counsel for the respondent drew attention of this Court in so far as the language of the notice is concerned where it has been written 'By 1st August, 1985' and by 1st August means at the end of 31st July and the month expires on its last date. Therefore, the notice cannot be termed as bad in law. The learned counsel in this regard relied on a decision reported in : AIR 1982 AP186 (Potluri Subba Reddi P. Seshagiri Rao and Co. and Ors. v. Kalabari Rathi). The learned counsel submitted that this is a case which exactly tally's with the instant case. In this case it was held that after expiry of fixed period of lease the tenant firm was holding over on payment on rent. Tenancy month ending on last date of calendar month and the notice to quit by landlord terminating monthly tenancy is valid. In this decision it was also held that the provision regarding date of commencement of execution under Section 110 is not attracted to monthly tenancy by holding over. The learned counsel therefore submitted that the notice was absolutely legal and valid. The learned counsel then relied on another decision in this regard reported in AIR 1979 Patna page 6 (Madhu Sudan Prasad Agarwal v. Smt. Shushma Bala Dahi).

22. In this case the Hon'ble Division Bench of Patna High Court observed that lease expiring with the end of a month means when lease expiring/at midnight of

last date of month and the notice asking vacating of premises on the morning of next date is not invalid. The learned counsel submitted that in the instant suit the notice was to quit and vacate by 1st August and 1st August means at the end of 31st July. Therefore, the notice in any event cannot be said to be invalid. The learned counsel, thereafter, referred to another decision reported in : AIR1979 Cal97 (Baidya Nath Dutta and Ors. v. Radheshyam Dutta and Ors.). The learned counsel submitted that in this decision the Hon'ble Division Bench of this High Court observed 'The notice to quit directed the tenant to deliver up possession on the expiry of the 1st day of Kartic 1376 or alternatively, at the end of the month of the tenancy which would expire next from the day of service of the notice. Held the notice was valid.'

23. The learned counsel submitted that the ratio of the decision reported in 48 CWN page 76 (supra) is not applicable in the instant case. The learned counsel also relied on another judgment reported in 61 CWN page 127 which also adopts the same principle that the period of tenancy means first day to last day of the month. The learned counsel for respondents also distinguished the judgment in : AIR 1975 SC1111 (supra) and : [1991]2SCR941 (supra). The learned counsel for the respondent then relied on a decision reported in 1997(2) CLT page 263 (Road Transport Corporation v. Sri Satya Narayan Prasad Bhagat). The learned counsel submitted that in this judgment in paragraph 15 one learned single Judge of this High Court observed in the manner is as follows:

'Needless to say that as regards the contents of the notice Ext. 1 asking to deliver khas possession of the premises by the expiry of the month of December 1979, there was no discrepancy raised whatsoever by the defendants-tenants. It was only with regard to the description of the address given in the notice that attempt was made on behalf the appellant to make out a mixed question of facts and law, but in view of what has been noticed with regard to the factual matrix of the case, I do not think, any such question could be validly raised in the instant case. It may also be recorded that the contention raised on this score by the appellants fails even to make out a fixed question of law fact and law.'

24. The learned counsel submitted that in this judgment the Hon'ble Judge also observed that the whole purpose of a notice of ejectment is to communicate the intention of landlord to the real tenant with regard to ejectment. The learned counsel then submitted that the ground of reasonable requirement is a pure and simple question of fact. The learned counsel submitted that the application under Order XLI Rule 27 was rightly rejected by the learned Appellate Court below inasmuch as the other tenant. Mr. Jyotish Chandra Dey left the premises in the month of October 1993. The first Appellate was preferred in December 1993 and when argument was going to be over that is on 28.06.1994. The application under Order No. XLI Rule 27 of the Code of Civil Procedure was filed. It was within the knowledge of the defendant/tenant, but he did not file the application and waited till June 1994 and this is only a harassing application filed with mala fide intention and this is not the scope and purport of the provision of Order XLI Rule 27 of the Code of Civil Procedure. The learned counsel further submitted that decision has been cited by the learned counsel for the appellant regarding scope of application under Order XLI Rule 27 reported in : AIR 2000 SC3613 (Vishwasrao Dada Saheb v. Shankar Rao D. Kalyankar, in which it has been observed that it is open to a Court to take into consideration any subsequent event while dealing with the matter relating to relationship of landlord and tenant as governed by law enacted in that regard for passing the appropriate order is not applicable in the instant case inasmuch as the factum of the surrender of tenancy by another tenant. Mr. Jyotish Chandra Dey was very much within the knowledge of defendant/tenant and it cannot be said to be a subsequent event after filing of the first appeal. The incident took place before the filing of the first appeal. The learned counsel for the respondent relied on a decision reported in : AIR 1999 SC1666 (Pratap Rai N. Kothari v. John Braganza). The learned counsel laid stress on paragraph 10 of this judgment where it has been observed 'The reliance was sought to be placed on the additional evidence admitted by the learned single Judge during the pendency of the appeal to prove that the appellant had title to the property. It is settled law that in the absence of any plea, no evidence is admissible. The single Judge of the High Court overlooked when there was not plea or issue on the question of title, no evidence can be adduced whatever was admissible regarding the same. He acted beyond his jurisdiction in permitting additional evidence to be filed in appeals.'

25. The learned counsel for the respondent submits that in so far as notice point is concerned finding of both the Courts below and the learned counsel in this regard relied on the decision reported in : [1999]2SCR728 (Kondiba Dagadu Kdam v. Sabitribai Sopan Gujar and Ors.) and the learned counsel submitted that in this decision the Hon'ble Apex Court has observed that the High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusion drawn by the Lower Appellate Court were erroneous being contrary to the mandatory provision of law applicable or its settled position on the basis of pronouncement made by the Apex court, or was based upon inadmissible evidence or arrived at without evidence. The learned counsel for the respondent further submitted that in the decision reported in : AIR 2001 SC2920 (Veerayee Animal v. Soonni Ammal). The Hon'ble Apex Court has deprecated liberal construction and generous application of provision of Section 100 by High Court.

26. Heard, the learned counsel for the respective parties. Considered the Judgments delivered by both the Courts below. Let me take the first point regarding the notice under Section 13(6) of the West Bengal Premises Tenancy Act and let me see what the language of the section itself says. For convenience of the discussion 13(6) is quoted hereinbelow:

'Notwithstanding anything in any other law for the time being in force, no suit or proceeding for the recovery of possession of any premises on any of the grounds mentioned in Sub-section (1) except the grounds mentioning in Clauses (j) and (k) of that sub-section shall be filed by the landlord unless he had given to the tenant one month's notice expiring with a month of the tenancy.'

27. In the instant case the tenancy admittedly was according to English calendar month and the notice was issued on 22/23.05.1985 and the tenant was to quit and vacate by 1 August starts and month of tenancy means from the first day of the month to the last day. The clear intention of this section is to provide the tenant with a notice for one clear month and that is not broken month, a month starting from the beginning to end. Now, if the tenant is allowed to reside till 31st July, the tenant is to vacate obviously on 1st August. 'By 1st August' written in the notice did not want to mean that after 1st August tenant is to quit. By 1st August obviously

means after the end of 31st July. Therefore, no defect is found in the notice and in this regard I respectfully disagree with the contentions of the learned counsel for the appellant.

28. The first question of law in that view of the matter goes in favour of the respondent when it is found that the notice to quit is valid in law.

29. Now, let me come to the second question as to whether the Appellate Court below acted rightly in rejecting the application under Order XLI Rule 27 of Code of Civil Procedure. Application under Order No. XLI Rule 27 is not a matter of course that is as and when a party to the proceeding thinks that he has missed something, he would include missing subject and create a link. This is for production of additional evidence in Appellate Court, but this provision is subject to certain conditions. For the sake of discussion the provision of Order No. XLI Rule 27 of the Code of Civil Procedure is quoted hereinbelow:

'27.(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if--

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercises of due diligence, such evidence, not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Wherever additional evidence is directed or allowed to be produced, by an Appellate Court, the Court shall record the reason for its admission.

30. In the instant case the appellant was a tenant and he wanted to adduce evidence regarding subsequent event which is surrender of one tenancy occupying two rooms after the filing of the suit by the plaintiff/respondent. Since in one building the plaintiff/tenant and the other tenant Mr. Jyotish Chandra Dey who surrendered the tenancy and left away, were living side by side, naturally it was very much within the knowledge of the appellant/tenant that Mr. Jyotish Chandra Dey is surrendering the tenancy. He could have very well filed the application under Order XLI Rule 27 at that time but did not. When the appeal was filed by the respondent in the Appellate Court below then also it was within his knowledge but he did not do anything. He filed the application during the course of conclusion of hearing. Therefore, the action of the defendant/appellant would to establish that inspite of his exercise due diligence such evidence was not within his knowledge or could to after exercise of due diligence be produced by him at the time when the decree appealed against was passed. Therefore, the provision of Order XLI Rule 27(1)(aa) is attracted here and the same stands as a bar before the appellant/tenant. That apart, through evidence the tenant could not establish that it is not within his knowledge that the said Mr. Jyotish Chandra Dey surrendered his tenancy or he exercised due diligence but could not having knowledge of the incident. It appears from the judgment and decree passed by the Appellate Court below that the requirement of the plaintiff/landlord respondent herein was considered and discussed and scanned. It cannot be said that the Appellate Court did not consider or discuss the requirement of the number of rooms of the plaintiff/landlord. It is not at all question of law, far less a substantial question of law. The number of required rooms and number of existing rooms in the availability of the landlord is to be considered or are to be considered by the fact finding Courts and the Appellate Court below is the last Court of fact and when the Appellate Court below on consideration of evidence of record decided the number of rooms required by the plaintiff then in any event that cannot be disturbed by the second Appellate Court since it is purely a question of fact. It also appeared from the judgment of the Appellate Court below that if the rooms and number of rooms surrendered by other tenant Mr. Jyotish Chandra Dey are also taken into consideration then and then also the requirement of the landlord is not satisfied and in such observation made by the Appellate Court below, the second Appellate

Court cannot interfere in this question of fact. In that view of the matter the second question of law as to whether the application under Order No. XLI Rule 27 should have been allowed by the Appellate Court below in proper reading of the provision of the section, in my opinion also tends to tilt in favour of the respondent and not in favour of the appellant herein and I respectfully disagree with the submission of the learned counsel for the appellant in this regard also.

31. In view of the above discussion the instant appeal, therefore, fails and is dismissed. The judgment and decree passed by the Appellate Court below is affirmed, the respondent is to get a decree or eviction against the appellant/tenant. The tenant is given three months time to vacate the suit premises failing which the plaintiff/ respondent will be entitled to execute the decree through Court. Considering the facts, I direct the parties to bear their own costs.

Let a decree be drawn up accordingly. L.C.R. be sent down to the Courts below forthwith.

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