

## CIVIL APPEAL

Present:

The Hon'ble Mr. Justice Subhro Kamal Mukherjee

S. A. No. 415 of 1991

Debidas Roy ... Appellant

Versus

Ms. Sabitri Chatterjee ... Respondent.

Judgement on : January 5, 2010.

**Point:**

REASONABLE REQUIREMENT, INSTALLATION OF LIFT: Suit for requirement of the ground floor being incapable of climbing stairs- Whether Court can dismiss the suit suggesting installation of lift- The West Bengal Premises Tenancy Act, 1956- S13(1)(ff)

**Fact:** Suit for eviction for recovery of possession of ground floor flat on the ground of reasonable requirement was filed by the plaintiff since she occupying third and fourth floor of the suit building, virtually incapable of climbing of stairs.

Dismissing the suit Ld. Judge suggested plaintiff to install a lift. Appeal preferred by plaintiff was allowed and suit was decreed for recovery of khas possession. Defendant filed second appeal challenging the decree.

**Held:** The Courts are to consider the genuineness of the requirement of the plaintiff on the existing state of affairs. It is not permissible to suggest the plaintiff to install a lift when it is not known wherefrom the fund should come. The Court should not give gratuitous advice or indulge in fanciful speculation. (Paragraph – 17)

It is for the plaintiff to decide how and in what manner she should live as she is the best judge of her requirement. Once it is found that she requires accommodation under the occupation of the defendant, the decree for eviction must follow. (Paragraph – 20)

The West Bengal Premises Tenancy Act does not require an owner / landlord to change and alter the nature and character of her house. (Paragraph – 17)

For the appellant : Mr. S. P. Sarkar,  
Mr. Utpal Majumder,  
Mr. Sanjay Bose.

For the respondent : Mr. Ushanath Banerjee,  
Mr. Saptangshu Bose,

Mr. Aniruddha Chatterjee.

**The Court:** 1. This is an appeal against judgement and decree dated November 23, 1990 passed by the learned Additional District Judge, Seventh Court at Alipore in Title Appeal No. 15 of 1989 reversing the judgement and decree dated December 12, 1988 passed by the learned Munsif, Second Additional Court at Alipore in Title Suit No. 23 of 1987.

2. This appeal arises out of a suit for eviction, inter alia, on the ground of reasonable requirement.

3. The defendant is the appellant before this Court.

4. Shearing unnecessary details, the plaintiff, who has been an well-known film and stage artist and the owner of the suit house, filed this suit for recovery of possession of the ground floor flat, inter alia, on the ground that she has been suffering from osteo- arthritis and spondylitis and as such she needed the suit flat situated in the ground floor as she has been virtually incapable of climbing of stairs. On or about January 5, 1980 at the time of rehearsal of a drama, the plaintiff fell from the stage to the ground floor of the hall and sustained serious injuries, particularly, in the left side of her body. She was confined to her bed for some time. After the incident she was unable to climb stairs without difficulty. As she had regular pains in her legs, she consulted orthopaedic surgeon, who advised her not to climb stairs. At present, the plaintiff has been occupying the third and the fourth floor of the suit building. As she was facing immense difficulty in reaching her present accommodation by climbing of stairs, she needed the ground floor suit flat reasonably for her use and occupation.

5. The learned trial judge, by the judgement and decree dated December 12, 1988, dismissed the suit holding, inter alia, that the plaintiff was performing as an artist in stages and as

such it could not be said that she was feeling any short of difficulty in climbing of stairs as alleged by her. The learned judge suggested that a lift could be installed by the plaintiff for reaching her present occupation.

6. The plaintiff, being aggrieved by and dissatisfied with the judgement and decree passed by the learned trial judge, preferred an appeal in the court of the learned District Judge, District 24 Pargnas at Alipore. Eventually, the appeal was transferred to the court of the learned Additional District Judge, Seventh Court at Alipore.

7. The learned Additional District Judge by the judgement and decree dated November 23, 1990, allowed the appeal and consequently, decreed the suit for recovery of khas possession.

8. The defendant has filed this second appeal before this Court challenging the aforementioned decree.

9. Mr. S. P. Sarkar, learned senior advocate, appearing for the appellant, submits that the story of illness of the plaintiff is concocted for the purpose of this suit and she procured, being a well-known artist, tailor-made certificates from the orthopaedic surgeon for the purpose of this suit. Mr. Sarkar strenuously submits the plaintiff did not give up her profession either as a stage artist or as a film artist and, therefore, it is clear that the seriousness of her illness is nothing but a myth. Mr. Sarkar submits that the learned judge in the lower appellate court erroneously decreed the suit, relying upon certificates issued by the doctors long after filing of the suit regardless of the fact that she peruses an active career in the stage and in the film with a busy schedule even after her alleged illness. Mr. Sarkar submits that the requirement of the plaintiff is not genuine inasmuch as she inducts Calcutta Motor Training School, during the pendency of the present suit, at a monthly rental of Rs. 75/- ( Rupees seventy five ) only per month. Mr. Sarkar submits that as the plaintiff did

not utilize the available vacant space in the ground floor, it is impossible to believe that the requirement of the plaintiff is genuine.

10. The plaintiff deposed as plaintiff's witness no. 1 in the suit. She stated that in 1980 she used to perform as an artist in a drama, Amar Katak. On January 5, 1980, during a rehearsal at Netaji Mancha, she accidentally fell down on the ground from the stage. She sustained heavy injuries in the left portion of her body. She was treated by doctors including Dr. A. R. Sahu and Dr. Sunil Kumar Thakur. She could not attend her professional calls for about six months. Thereafter, she again joined the profession on the advice of her well-wishers as also for her subsistence. She was advised by her attending physician not to climb stairs.

11. Dr. Amiya Ranjan Sahu, the plaintiff's witness no. 6, was a professor and Head of the department of the Radiology, R. G. Kar Government Medical College at Calcutta. Dr. Sahu opined that the plaintiff was a patient of osteo-arthritis and spondylitis of lumbo sacral spine.

12. Dr. Sunil Thakur, who deposed as the plaintiff's witness no. 4, possessed the following qualifications: M.B.B.S., M.S. (General Surgery), M.S. (Orthopaedic Surgery). The certificate issued by the Dr. Thakur was exhibited as exhibit no. 12 in the suit. Dr. Thakur stated that he advised the plaintiff not to do any strenuous work on the knees including climbing of stairs. He stated that he gave such advice to the plaintiff so that severity of her illness be not increased in future. Dr. Thakur emphatically suggested that climbing of stairs would aggravate disease of osteo-arthritis.

13. It was suggested that the certificate issued by the Dr. Thakur was tailor-made and was manufactured at the instance of the plaintiff for the purpose of the suit. The learned Additional District Judge, in my view, rightly held that there was no justification for Dr. Thakur to collude with the plaintiff and to issue certificate and prescription falsely. The learned Additional District

Judge scanned the evidence of the doctors, that is, plaintiff's witnesses nos. 4 and 6 and found that it could not be held that the prescriptions and certificates issued by the doctors were false and manufactured document created by the plaintiff for this suit.

14. From the materials on record, it is clear that the plaintiff is suffering from osteo-arthritis and spondylitis of lumbo sacral spine. The plaintiff categorically deposed that she was facing great hardship in climbing of stairs. Dr. Thakur, a reputed orthopaedic surgeon, advised the plaintiff not to climb stairs and to take rest as far as possible. Dr. Thakur suggested climbing of stairs by the plaintiff would aggravate the disease of the plaintiff.

15. The plaintiff is an aged lady. She is a patient of osteo-arthritis and spondylitis of lumbo sacral spine. I hold that she is in difficulty in climbing of stairs and as such she needs to stay in the ground floor. Her present accommodation in the third and the fourth floor of the building is not confluent with her health as she needs to climb stairs to reach the third and the fourth floor of the building.

16. Mr. Sarkar, learned senior advocate for the appellant, drew my attention that the plaintiff, in spite of her serious illness, did not give her profession either as a stage artist or a film artist. The plaintiff stated in her evidence that she resumed her profession after about a gap of six months on the advice of her well-wishers and for her subsistence. She is appearing in the stages and in the films for her maintenance. Such continuation of her professional career could not mean that she is not suffering from osteo- arthritis and spondylitis, particularly having regard to her age.

17. The learned trial judge suggested that the plaintiff could easily instal a lift for reaching her present accommodation in the third and the fourth floor of the building. It is easy to suggest somebody to instal a lift, but it is not easy to instal a lift. The Courts are to consider the genuineness of the requirement of the plaintiff on the existing state of affairs. It was not permissible to suggest

the plaintiff to instal a lift when it is not known wherefrom the fund should come. The court should not give gratuitous advice or indulge in fanciful speculation. The West Bengal Premises Tenancy Act does not require an owner – landlord to change and alter the nature and character of her house. Moreover, the plaintiff cannot be forced to spend a huge sum of the money for installation of a lift to accommodate a ground floor tenant, who has been paying Rs. 285/- ( Rupees two hundred eighty five ) only as the monthly rent for a self contained flat in a posh locality at Kolkata.

18. It is true that the plaintiff inducted a tenant, Calcutta Motor Training School, during the pendency of the suit, but such tenancy was created in respect of a garage. There are two garages by the side of the kitchen of the defendant and Calcutta Motor Training School was inducted in one of such garage. It is not expected, considering the status of the plaintiff, to ask the plaintiff to accommodate herself in the aforementioned garage.

19. The defendant is in occupation of a flat consisting of one bed room, one drawing room, one store-cum-dinning room, one kitchen and some oval shaped covered space. From the report of the learned Advocate Commissioner it is clear that such covered space cannot be used as an independent room. Considering the background of the plaintiff and the accommodation available with the defendant in the suit premises, there is no scope to grant a decree for partial eviction.

20. I found that the plaintiff is suffering from osteo-arthritis and spondylitis of lumbo sacral spine. She has difficulties in climbing of stairs. Her attending doctors advised her not to climb stairs as climbing of stairs shall aggravate her illness. She is an aged lady. She is reputed and well known film and stage artist. She is entitled to stay in the ground floor of her house. Her desire to stay in the ground floor is not a fanciful, but it is a genuine necessity in the present condition of her health. She has no other suitable accommodation. This eviction suit has been instituted on the ground of reasonable requirement of the plaintiff. The ground has been proved. Therefore, the plaintiff is

entitled to get a decree for eviction. It was for the plaintiff to decide how and in what manner she should live as she is the best judge of her requirement. Once it is found that she requires accommodation under the occupation of the defendant, the decree for eviction must follow.

21. The findings of fact by the learned judge in the lower appellate court in granting a decree for eviction on the ground of reasonable requirement are based on materials on record. It is not possible to upset such findings of fact under Section 100 of the Code of Civil Procedure. I am of the view that this appeal involves no substantial question of law requiring interference by this court in second appeal.

22. There the appeal is, therefore, dismissed. The judgement and decree passed by the learned judge in the lower appellate court are affirmed.

23. I, however, direct the parties to bear their respective costs in this appeal.

24. Xerox certified copy of this judgement and decree, if applied for, are to be supplied to the applicants expeditiously.

(Subhro Kamal Mukherjee, J.)