

AD – 16  
Ct No.16  
05.05.2026  
(SSS)

SAT 278 of 2025  
with  
CAN 1 of 2025  
with  
CAN 2 of 2025

Mehtab Alam Khan  
Vs.  
Smt. Sabita Devi

Ms. Labanyasree Sinha,  
Mr. Prosun Mondal,  
Ms. Asha Kumari Majhi, Advs.  
.....For the appellant.

Mr. Subhendu Bandyopadhyay,  
Mr. Arindam Mitra, Advs.  
...For the respondent.

1. Learned counsel for the respondent seeks to use an affidavit-in-opposition. However, from the nature of the allegations levelled in the application for condonation of delay, it is evident that there cannot be any scope of the respondent having any personal knowledge regarding the same.
2. The appellant is a daily wager and a layman in law.
3. In the condonation application, it has been pleaded that the petitioner had certain communication gaps and despite having pursued

the matter with his learned advocate, was not in the know of the outcome of the suit from which the present appeal arises.

4. Learned counsel for the respondent opposes the same and argues that aspersions have been sought to be cast on the erstwhile learned advocate of the petitioner.

5. However, from the relevant paragraphs, that is, paragraph nos. 9 to 13 of the application, we find a quite plausible case of communication gap between the appellant/petitioner (whose mother-tongue is Hindi) and his erstwhile advocate (who is Bengali-speaking) having been made out, particularly in view of the language gap and the social position of the petitioner.

6. Hence, CAN 1 of 2025 is allowed without any order as to costs, thereby condoning the delay in filing SAT 278 of 2025.

7. The appeal is taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

8. The present second appeal arises out of an eviction suit filed by the plaintiff/respondent against the defendant/appellant under the West Bengal Premises Tenancy Act, 1997.

9. Learned counsel for the appellant argues that although the Trial Court granted the decree of eviction only on the ground of default in payment

of rent, which was reversed by the First Appellate Court, the First Appellate Court proceeded on the premise that the Trial Court had held the issue of reasonable requirement as well against the appellant, which is contrary to the records. Learned counsel takes us through the findings of the learned Trial Judge on the issue of reasonable requirement and argues that the learned Trial Judge ultimately dealt with the issue by observing that in view of an eviction decree having already been granted on the ground of default in payment of rent, the said issue need not have been further adjudicated.

10. However, the learned First Appellate Judge observed in several places of the impugned judgment that there is no need to “interfere with the findings of the Trial Court”, as if the issue of reasonable requirement was held by the Trial Court in favour of the plaintiff/respondent and against the appellant. It is, thus, submitted that the learned First Appellate Judge erred in law in acting *de hors* jurisdiction by proceeding on the premise that he was affirming the judgment of the Trial Court on the issue of reasonable requirement as well, whereas the Trial Court had refused to grant a decree on the ground of reasonable requirement.

11. Upon a careful perusal of the First Appellate Court's judgment, we find that the First Appellate Court independently applied its mind to the issue of reasonable requirement as well and only upon consideration of the evidence on record and appreciation of the same, arrived at the finding that the plaintiff/respondent was entitled to a decree of eviction, although not on the ground of default in payment of rent, but on the ground of reasonable requirement.

12. A conjoint reading of Section 107 and Order XLI Rule 33 of the Code of Civil Procedure clearly indicates that the Appellate Court exercises similar powers as the Trial Court *mutatis mutandis* and since the First Appellate Court is the last Court of facts, it can, even if a particular finding is not specifically challenged by the respondent by way of a cross-objection, look into the errors of the Trial Court and pass further or other decree or order and/or reverse the findings of the Trial Court even if the respondent has not challenged the same.

13. On such premise, we find no scope of interference with the First Appellate Court's finding, since the First Appellate Court has appreciated the evidence and come to its independent findings on reasonable requirement

in a particular manner and there is no error of law tainting such judgment. It is well-settled that the Appellate Court does not substitute its own views for that of the Trial Court merely because a different view might be possible on the facts of the case.

14. Insofar as the observations of the First Appellate Court that it was “affirming” the findings of the Trial Court, we do not find that such minor discrepancy vitiates the Appellate Court’s judgment or goes to the root of it, since, in the first place, there was some discrepancy in the judgment of the Trial Court in that regard as well. We say so because the Trial Court, while deciding the issue of reasonable requirement, observed that when one is “assailing” his/her requirement by way of a pleading and proof, it cannot be said to be unreasonable automatically without any strong and cogent defence on the part of the defendant. Although such reversal of burden of proof might not have been legally correct, the tenor of the said sentence indicates that the Trial Court was of the view that in view of the pleading and the proof of the plaintiff as to the plaintiff’s reasonable requirement having not been rebutted by the defendant/appellant, the issue of reasonable requirement otherwise could have gone

in favour of the plaintiff/respondent. However, ultimately the Trial Court did not decide the issue as such, since it had already decreed the suit on a different ground of default.

15. Accordingly, we do not find any substantial question of law involved in the present appeal.

16. Thus, SAT 278 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

17. CAN 2 of 2025 is disposed of accordingly.

18. There will be no order as to costs.

19. Parties shall act on the server copy of this order, duly downloaded from the official website of this Court.

(Sabyasachi Bhattacharyya, J.)

(Biswaroop Chowdhury, J.)