

CASE NO.:
Appeal (civil) 9475 of 2003

PETITIONER:
SABITRI CHATTERJEE

RESPONDENT:
DEBI DAS ROY

DATE OF JUDGMENT: 01/12/2004

BENCH:
B.P.SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T

WITH C.A. NO.9476 OF 2003

In these two appeals by special leave the appellant is the landlord of the premises in question which is located in New Alipore in the city of Calcutta. The appellant has impugned the judgment and order of the High Court passed in Second Appeal No.415 of 1991 whereby the High Court remanded the matter by its judgment and order dated 28.7.1998 granting liberty to the parties to amend their respective pleadings, and to adduce further evidence. The other appeal is preferred by the appellant against the order passed by the High Court dismissing her review petition by order dated 7.8.2001.

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It is not necessary for us to refer to the facts in detail in view of the order we propose to pass.

The appellant filed a suit for eviction being Suit No.429 of 1984 against the respondent which was tried by the Second Court of Learned Munsif at Alipore. Eviction was sought on the ground of reasonable requirement and bona fide need of the appellant of the premises occupied by the respondent on the ground floor of the building owned by the appellant. The appellant is in occupation of the third and fourth floors of the building. According to her, she required the premises on the ground floor on account of her health condition, she having suffered an accident.

By judgment and order dated 12.12.1998 the Trial Court dismissed the suit. Against the order dismissing the suit the appellant preferred an appeal being T.A. No.15 of 1989 which was ultimately disposed of by the 7th Court of Learned Additional District Judge at Alipore. By judgment and order dated 23.11.1990 the appeal was allowed, the suit was decreed and an order for eviction was passed against

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the respondent on the ground that the appellant had established her plea of bona fide personal need.

The Second Appeal was preferred by the respondent before the High Court which was registered as Second Appeal No.415 of 1991. The Second Appeal finally came up for hearing before a learned Judge of High Court of Calcutta and by impugned judgment and order dated 28.7.1998 the Second Appeal was allowed and the matter remanded to the Trial Court as earlier noticed.

The submission urged on behalf of the appellant before us is that there was really no question of law which arose for consideration of the High Court. The finding of fact recorded by the Appellate Court as regards the bona fide personal need of the appellant was supported by evidence on record and therefore, there was no justification for the High Court to set aside that finding. In any event, it was submitted, there was no justification for an amendment of the pleadings and recording of further evidence in view of the fact that the matters sought to be

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brought on record by way of amendment and additional evidence were already before the Court and what was described as future developments were facts within the knowledge of the parties. We need not refer to the merit of the submissions urged before us by learned Counsel for the appellant. However, we notice that the High Court before disposing of the Second Appeal did not frame the substantial question of law as required by Section 100 of Code of Civil Procedure. Sub-section 4 of Section 100 CPC mandates that where the High Court is satisfied that a substantial question of law is involved in any case it shall formulate that question. The appeal shall then be heard on the question so formulated leaving it open to the respondent to argue that the case does not involve such question. No doubt the proviso to Section 100 CPC does not take away the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question. In the instant case the learned Judge has not formulated any question of law which require determination under Section 100 CPC. This Court in

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a series of decisions has insisted upon compliance with the mandatory requirement of Sub-section 4 of Section 100 CPC.

In these circumstances we set aside the judgment and order of the High Court and remit the matter to the High Court to dispose of the Second Appeal in accordance with law after complying with the requirement of Sub-section 4 of Section 100.

It will be open to the respondent to contend that a substantial question of law is involved in the second appeal, and for the appellant to controvert that plea. Nothing said in this order should be construed as an expression of opinion on the merit of the case so as to prejudice the case of the parties.

We notice that this suit was filed in the year 1984 on the ground of bona fide personal need and therefore, it merits a quick disposal. We have no doubt that the High Court will, keeping in view the necessity and compulsions of the appellant, dispose of the Second Appeal as soon as

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possible. These appeals are accordingly, allowed with no order as to costs.

Since we are setting aside the judgment passed in the Second Appeal, the order passed in the Review Petition is also set aside.

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JUDIS