
(2001) 09 GAU CK 0017
In the Gauhati High Court
Case No : Civil Revision No. 429 of 1995

Anil Kr. Saha

APPELLANT

Vs

Adir Kumar Deb

RESPONDENT

Date of Decision : 28-09-2001

Acts Referred:

Assam Urban Areas Rent Control Act, 1972 — Section 5
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2001) 3 GLT 402

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : N.M. Lahiri, N. Choudhury, H.S. Thangkhew and S.C. Kayal, for the Appellant; M.K. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—This revision petition u/s 115 read with Section 151 of the CPC had been directed against the Judgment and Decree dated 5.9.1995 passed by the Learned Assistant District Judge, Karimganj in Title Appeal No. 10/94. The Learned Munsiff Karimganj dismissed Title Suit No. 81/198 filed by the respondents for eviction of the revision petitioner from the suit premises. Learned Assistant District Judge by the aforesaid Judgment allowed the appeal, set aside the Judgment and Decree passed by the Learned Munsiff and decreed the suit for ejectment of the defendant with other consequential reliefs.

2. The respondent-plaintiff filed the suit alleging that the revision petitioner was a tenant in respect of the suit premises at a monthly rent of Rs. 50 initially and subsequently the rent was enhanced to Rs. 100 per month payable according to Bengali Calendar Month, The petitioner-tenant failed to pay the rent for the month of Paush and Magh, 1394 B.S. and became defaulter. Notice was served on the petitioner-tenant, hereinafter referred to as the tenant", to deliver vacant possession of the suit premises on or before first day of Falguna, 1394 B.S. and to pay arrear rent of Rs. 200. Besides bona fide necessity for opening a

pharmacy by the nephew of the respondent-landlord, hereinafter referred to as "landlord1 was also taken.

3. The tenant denied the allegations made by the landlord and submitted that he has been carrying on with his business of grinding mill of atta and spices and that he never violated any condition of the tenancy. On refusal by the landlord to accept the rent, he had deposited the same in the Court of Rent Controller in R.D. Case Nos. 25 and 29 of 1988. The plea of "bona fide necessity" and of "default" in paying rent have also been denied by the tenant.

4. The Learned Munsiff decided the principal issues against the landlord and dismissed the suit. On appeal, the learned Appellate Court reversed the finding of the Learned Munsiff and came to the conclusion that the defendant was a defaulter in respect of payment of rent for the month of Paush and Magh, 1394 B.S. The learned First Appellate Court also held that there is violation of the terms and condition of the tenancy as the tenant installed a grinding mill and converted it into a factory. On these findings, the appeal was allowed and eviction of the tenant had been ordered.

5. I have heard Mr. N.M. Lahiri, learned Counsel for the petitioner and also Mr. M.K. Choudhury, learned Counsel for the respondent.

6. Mr. Lahiri, learned Senior Counsel for the petitioner (tenant) submitted that the learned First Appellate Court overlooked that there was no fixed mode of payment and, as such, the finding that the petitioner is a defaulter is erroneous. Mr. Lahiri further submitted that there is no violation of the terms of the agreement of tenancy and the premises is now used as a candle industry. Mr. Lahiri, Learned Senior Counsel further pointed out that the plea of bona fide requirement was abandoned by the landlord during the course of trial.

7. Controverting the above contentions advanced by Mr. Lahiri, Mr. Choudhury, learned Counsel for the respondent-landlord submitted that the application filed by the tenant in R.D. Case Nos. 25 and 29 of 1988 would show that the rent is payable on the last date of the month tenancy and the tenant has undoubtedly failed to deposit the rent within permissible time. Shri Choudhury also pointed out that the landlord received a number of complaints from the residents of the neighbourhood to the effect that the grinding mill operated by the defendant is creating nuisance to them, pressing hard upon him for eviction of the tenant.

8. The plea of bona fide requirement has not been pressed by Mr. Choudhury, learned Counsel. His argument is confined to eviction on the ground of default as well as nuisance created by the tenant.

9. Insofar the default is concerned, it would appear that the petitioner deposited the rent in the State Bank of India vide Treasury Challan Exhibits-D and E long after the same became due. From Exhibit-2, copy of the application u/s 5(4) of the Assam Urban Areas Rent Control Act, 1972, we find that the tenant himself admitted that the rent for the month of the Magh is payable on the first day of

Falguna. This document Exhibit-1 was received by the landlord along with the notice Exhibit-1 from the Court. Therefore, it finally sets at rest the controversy raised by Shri Lahiri, Learned Senior Counsel about the mode of payment. The mode of payment as is evident from Exhibit-2 as well as from the evidence of the landlord is that the rent is payable on the first day of the next month as per Bengali Calendar. Therefore, the defendant having deposited the rent for Paush and Magh long after the statutory period is a defaulter as per the provisions of the Assam Urban Areas Rent Control Act. On this ground alone the landlord is entitled to a decree for his eviction.

10. On this context the judgments is Harish Ch. Ra, Kania Bhuiya and ors. v. Dr. Naresh Ch. Ghose and Anr (1985) 1 GLR 36 , Bhawani Sankar Sharma v. Laxmi Devi Garodia. 1984 2 GLR 182 , Ranjit Kr. Paul v. S.P. Sen & Company 1990 (1) GLJ 364; Abdul Jolil v. Girija Sankar Das and Ors. (1985) 2 GLR 66 and Upendra Deb Roy v. Smti Subhashini Dev and Ors. (1989) 2 GLR 7 referred to by Shri Lahiri, learned Senior Counsel loose significance. In a given case where there is a fixed mode of payment of rent and on refusal by the landlord to accept the rent, the tenant has to deposit the same within the statutory period of 15 days. Otherwise, he becomes a defaulter and is liable to be ejected.

11. I have examined the evidence on record. Insofar the allegation of violation of the terms of tenancy is concerned, the plaintiff has clearly evinced that the house was taken on hire for running a grocery shop. The tenant infact opened a grocery shop in the suit premises and, thereafter, installed a spice grinding shop mill without consent of the landlord. Although denied by the tenant, an abortive attempt was made before the court below to show that he had obtained written permission. The court after appreciation of the evidence on record came to the finding that the tenant has installed a factory without permission of the landlord. I do not find any reason to disturb the said finding as it appears to have been arrived at after evaluation of the evidence on record.

12. In a revision petition u/s 115 of the Code of Civil Procedure, the court with its limited power cannot reappreciate the evidence and interfere with the impugned order unless it is perverse or there has been non-application of mind or non-consideration of the material evidence on record by the court below. In the instant case. I do not find any such error resulting into miscarriage of justice.

13. This revision is devoid of merit and, hence, dismissed.