
(2018) 03 GAU CK 0147
In the Gauhati High Court
Case No : CRP 203 of 2010

ARATI BARUA and 2 ORS.

APPELLANT

Vs

BHUBAN MOHINI SARMA and ORS.

RESPONDENT

Date of Decision : 29-03-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 115

Assam Urban Areas Rent Control Act, 1972 & madsh; Section 5, 5(4), 5(4)(1), 5(a)(f)

Citation : (2018) 03 GAU CK 0147

Hon'ble Judges : SUMAN SHYAM

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. D. Mazumdar, learned senior counsel assisted by Mr. B. Kaushik, learned counsel appearing for the revision petitioners. I have also

heard Mr. S. K. Medhi, learned senior counsel assisted by Mr. H. Das, learned counsel representing the respondents.

2. This Revision Petition is directed against the concurrent judgment and decree dated 04.06.2009 passed by the learned Civil Judge No.2, Kamrup at

Guwahati in Title Appeal No.35/2008 affirming the judgment and decree dated 16.06.2008 passed by the learned Munsiff No.2, Guwahati in Title Suit

No.356/2006(new)/Title Suit No.139/2000(old) decreeing the suit filed by the respondents/plaintiffs for ejectment of the revision petitioners from the

tenanted premises and for recovery of arrear rent.

3. The facts of the case, in brief, is that the predecessor-in-interest of the revision petitioners, viz., Late Gopal Baruah had originally entered as a

tenant under the plaintiffs in respect of the tenanted premises described in the schedule to the plaint which includes the entire first floor area

measuring 1486 Sq. ft. and another room measuring 10 ft. x 10 ft. situated at the ground floor, in the south eastern corner of the RCC building covered by Holding No.80 of Ward No.31 (new) of the Gauhati Municipal Corporation situated at Panbazar, Guwahati, on condition of paying monthly rent as per English calendar. Initially the rent payable for the tenanted premises was fixed at Rs.3000/- per month. However, with effect from the month of January, 1997 the rent was revised to Rs.4500/- per month as per the terms of the compromise decree passed in Title Suit NO.142/1988 by and between the same parties. As per the agreed terms, the rent would become due on the first day of each month and the same used to be collected by the plaintiff No.7 i.e. Sri Jagadish Prashad Sarma on behalf of the plaintiffs, who claimed to be the joint owners of the property.

4. It is the case of the plaintiffs, as projected in the plaint, that there was an understanding between the parties that the rent would be revised on the expiry of every three years and since the existing rent of Rs.4500/- took effect from the month of January, 1997, hence, according to the plaintiffs, the monthly rent was due for further revision with effect from the month of January, 2000, i.e. on the expiry of three years. But when the defendants came to offer the rent for the month of December, 1997, the plaintiffs told them that the rent cannot be less than Rs.8000/- with effect from the month of January, 2000. At that the defendants refused to pay the amount and later on deposited the rent for the months of January, February and March, 2000 in the Court on 01.03.2000 by filing one Misc. N. J. Case No.83/2000.

5. It is also the case of the plaintiffs that the plaintiff No.3, who is a member of the joint family, is an unemployed person and was desirous of starting a Fast Food center and a PCO in the room measuring 10 ft. x 10 ft. located in the ground floor of the RCC building. The plaintiffs have also pleaded in para 12 of the plaint that a music school, in the name of 'Brajabala Sangeet Vidyalaya', was planned to be started in the first floor portion of the tenanted premises which was occupied by the defendants and hence there was a bona fide requirement of the tenanted premises for the own use of the plaintiffs and their family members. On the basis of such averments the plaintiffs had instituted the aforesaid Title Suit, inter alia, praying for a decree of ejectment of the defendants and for recovery of arrear rent of an amount of Rs.22,500/- on the ground that the defendants had become

defaulter and the suit property was required bonafide for the use of the landlords/ plaintiffs. After the death of the original tenant i.e. Gopal Baruah, his

wife and children were substituted in the Title Suit as defendant Nos.1 to 4.

6. The defendants had filed a joint Written Statement in the Suit, inter alia, challenging the maintainability of the same on the grounds stated therein.

Although there is no specific denial of the averments made in the plaint, yet, the stand of the defendants has been projected in para Nos.2(b) to 2(e) of

the Written Statement which are quoted herein below for ready reference :-

â??b. The answering defendants state that the plaintiff No.7 used to collect rent for the current month within the said current month.

c. That on refusal of the plaintiff No.7 to accept the rent of Rs.4,500/-for the month of January 2000, which was duly tendered by the defendant, the

said rent was sent to the plaintiff vide a cheque for Rs.4,500/- bearing No.495978 dated 07.01.2000 drawn on Bank of Baroda, Guwahati along with a

forwarding letter dated 07.01.2000, which was sent by registered post under registered post letter No.3949 dated 08.01.2000. The plaintiff No.7

received the said registered letter along with cheque as aforesaid on 10.01.2000, but in turn the plaintiff No.7 did not issue any money receipt. Under

similar circumstances, the defendant tendered rent to the plaintiff No.7 for the months of February 2000. But on refusal of the plaintiff No.7 to accept

the rent so tendered, the defendant again issued cheque No.495993 dated 07.02.2000 for Rs.4,500/- drawn on Bank of Baroda, Guwahati, for the

month of February 2000. The said cheque was sent by registered post along with a forwarding letter dated 07.02.2000, under registered post letter

No.5554 dated 07.02.2000. Once again the plaintiff No.7 did not issue rent receipt to the defendant.

d. Thereafter on 01.03.2000, the defendant through his staff had tendered rent for the month of March 2000 to the plaintiff No.7, but on refusal by the

plaintiff No.7 to accept rent from the defendant, the defendant verified his bank account, and it was revealed that the cheques bearing No.495978 and

495993 were not collected till 29.02.2000.

e. Hence the defendant deposited the rent for the months of January 2000, February 2000 and March 2000 in Court under the provisions of the Assam

Urban Areas Rent Control Act, 1972.â??

7. Based on the pleadings of the parties, the learned trial Court had framed the

following issues :-

- 1) Whether the suit is maintainable in the present form?
- 2) Whether the suit is barred by limitation?
- 3) Whether the suit is bad for non-joinder of necessary parties?
- 4) Whether there is any cause of action for filing the suit?
- 5) Whether the defendant is a monthly tenant under the plaintiffs in respect of the suit house described in the schedule of the plaint?
- 6) Whether the defendant has defaulted in payment of monthly house rent of the suit house?
- 7) Whether the suit house is bonafide required by the plaintiffs for their own use and occupation?
- 8) Whether the plaintiffs are entitled to a decree for eviction from the suit house?
- 9) Whether the plaintiffs are entitled to a decree for recovery of Rs.22,500/-on account of arrear rent?
- 10) To what relief or reliefs the plaintiffs are entitled?

8. The parties had lead evidence in support of their respective cases. On conclusion of the trial the learned trial Court had decided the Issue Nos.5, 6 and 7, which are the main issues, in favour of the plaintiffs and against the defendants. Consequently, all other issues were also decided in favour of the plaintiffs and the suit was decreed by granting the prayer smade in the plaint by the judgment and decree dated 16.06.2008.

9. Aggrieved by the decision of the learned trial Court, the defendants as appellants had preferred Title Appeal No.35/2008 before the Court of Civil

Judge No.2, Kamrup at Guwahati which was also dismissed by the impugned judgment and decree dated 04.06.2009. Aggrieved thereby, the present

Revision Petition has been preferred.

10. By inviting the attention of this Court to the findings and conclusions recorded by the learned Court below as regards the issue No.6, Mr.

Mazumdar, learned senior counsel appearing for the revision petitioners, submits that this is not a case where his clients had deposited the rent in the

Court without first tendering the same before the plaintiffs/landlords. By referring to the pleadings in the plaint Mr. Mazumdar submits that the lawful

rent due from the defendants was Rs.4,500/- per month but the plaintiffs had demanded Rs.8000/- as the monthly rent of the premises with effect

from the month of January, 2000 which was beyond the lawful rent due and payable by the defendants and when the landlords had refused to accept the rent of Rs.4500/- per month, two cheques for the said amount was sent to the plaintiff No.7 by a forwarding letter as the rent each for the months of January and February 2000. However, when the cheques were not sent for collection from the bank, the defendants had no other alternative but to deposit the rent in the Court by filing Misc. N.J. Case No.83/2000. Mr. Mazumdar further submits that it is the pleaded case of the plaintiffs that they had subsequently demanded the rents from the defendants for the months of January, February and March, 2000 showing their willingness to accept the same and therefore, the present is a clear case where the plaintiffs/landlords have waived their rights to prosecute the defendants seeking a decree of ejectment on the ground of default.

11. Referring to the findings recorded by the learned Court below as regards Issue No.7, which relates to the ground of bonafide requirement of the suit premises by the landlords, Mr. Mazumdar submits that the plaintiffs have failed to specifically plead the nature of their requirement nor did they lead evidence to establish the same. Notwithstanding the same, the learned Courts below have decided the issue No.7 in favour of the plaintiffs/landlords by ignoring the evidence adduced by the defendants opposing the same. In support of his aforesaid argument, Mr. Mazumdar has relied upon two decisions of the Supreme Court reported in (2001) 8 SCC 561 [Siddalingamma and another vs. Mamtha Shenoy] and AIR 2010 SC 2679 [Dinesh Kumar vs. Yusuf Ali] to contend that the plea of bonafide requirement must be one which is natural, real, sincere and honest and it must manifest in actual need of the landlord so as to convince the Court that it is not a mere fanciful or whimsical desire. In the present case, submits Mr. Mazumdar, there were other tenants under the plaintiffs and there is no explanation as to why the premises under the occupation of the defendants had alone been sought by the plaintiffs.

12. Mr. Mazumdar has also contended that the question of a defaulter in payment of rent would have to be determined with reference to the due date on which the rent becomes payable and since the plaintiffs have demanded rent for three months at a time, there was no fixed due date in this case for payment of rent by the plaintiffs. With the above arguments Mr. Mazumdar

submits that the decisions and conclusions of the learned Courts below on Issue Nos.6 and 7 are perverse in the eye of law and hence, are liable to be set aside by this Court.

13. Resisting the arguments advanced on behalf of the revision petitioners, Mr. Medhi, learned senior counsel appearing for the respondents, on the other hand, has argued that the Issue Nos..6 and 7 are the key issues in the Suit and the learned Courts below have recorded categorical findings of facts in favour of the plaintiffs in respect of both the issues after discussing the evidence available on record. There are concurrent findings of fact that the defendants had become defaulter and the tenanted premises are also bonafide required by the landlords. Since it is not a case of erroneous exercise of jurisdiction or a case where the decision of the learned Court below is vitiated by perversity, there is no scope for this Court to interfere with the concurrent decree in exercise of jurisdiction under Section 115 of the Code of Civil Procedure. Mr. Medhi further submits that on the strength of this litigation the defendants have continued to occupy the tenanted premises for nearly two decades by paying a paltry sum of rent although they are occupying a prime property in a commercial area situated in the heart of the City of Guwahati. He, therefore, submits that this Revision be dismissed with exemplary cost.

14. I have considered the submissions advanced on behalf of both the parties and have also examined the materials available on record.

15. Although as many as 10 issues had been framed in this case, the key issues are undoubtedly the Issue Nos.6 and 7. There is no dispute about the fact that the defendants had entered the tenanted premises under the plaintiffs on condition of payment of monthly rent and the rights and the premises are located in the heart of the City of Guwahati. Therefore, the right and interest of the parties are governed by the provisions of the Assam Urban Areas Rent Control Act, 1972 (hereinafter referred to as the Act of 1972).

16. Section 5 of the Act of 1972 creates a bar against passing an order for execution of a decree and order for ejection of any tenant in possession of any house subject to the exceptions indicated in section 5(a) to (f) as well as the provision of section 5(4) of the Act. As per clause (e) of Section 5, the protection would, however, not extend to a tenant who has not paid the rent lawfully due from him in respect of the house within a fortnight of its

falling due.

17. As per sub-section (4) of Section 5, where the landlord refused to accept the lawful rent offered by his tenant, the tenant may within a fortnight of

its becoming due, deposit in Court the amount of such rent together with process fee for service of notice upon the landlord and on receiving such

deposit the Court shall cause a notice of the receipt of such deposit to be served on the landlord and the amount of the deposit may thereafter be

withdrawn by the landlord on application made by him to the Court in that behalf. A tenant who has made such deposit shall not be treated as a

defaulter under clause (e) of the provision to sub-section(1) or Section 5(4) of the Act.

18. A plain reading of clause (e) of section 5 along with sub-section (4) of section 5 makes it abundantly clear that a tenant would be obliged to pay

rent lawfully due from him to the landlord within a fortnight of its falling due and if the landlord refuses to accept the lawful rent, then the same has to

be deposited in court, within a fortnight of its becoming due, by following the procedure mentioned in Section 5(4). It is only when the said procedure is

followed that the tenant would continue to enjoy the protection of Section 5 of the Act of 1972.

19. In the present case, it is not in dispute that the rent in respect of each month would fall due on the first day of the said month. Accordingly, the rent

for the month of January, 2000 had fallen due on the first day of that month. But as could be noticed from the materials available on record of this

case, the defendants had deposited the rent for the month of January, February and March, 2000, by filing one Misc. N.J. Case on 01.03.2000. Even if

the version of the defendants is to be believed that the landlords had refused to accept the rent when tendered by them for the month of January,

2000, even in that case the rent ought to have been deposited in the Court within the 15th day of January, 2000 in view of the categorical provisions

contained in Section 5(4) of the Act of 1972. But evidently and admittedly the same has not been done in the present case. Likewise, the rent for the

month of February, 2000 was also not deposited within 15th February. As such, the defendants had clearly become defaulters not only in respect of

the month of January, 2000 but also in respect of February 2000. Although the defendants have taken a plea that the amount of Rs.4,500/- being the

rent for the month of January was sent to the plaintiffs by means of an account payee cheque which they plaintiffs have not encashed, I am afraid, such an action would not save the defendants from the adverse consequences ensuing under Section 5 of the Act of 1972. Paying rent by means of an account payee cheque was not the agreed mode of payment of rent and therefore, it was not open for the defendants to send across the rent by means of cheque and that too by registered post. Since the defendants had failed to deposit the rent in the Court within the stipulated time, by following the prescription of Section 5(4) of the Act of 1972, I am of the view that they have become defaulters in the eye of law and hence, liable to be ejected from the tenanted premises.

20. It is the salutary principle of law that in the matter of landlord-tenant relationship once a defaulter, the tenant is always a defaulter for the purpose of the Act of 1972 and would be liable to be evicted from the tenanted premises by following the due process of law. Having regard to the facts and circumstances of the case as well as the findings recorded by the learned Court below I do not find any illegality in the findings of the learned Court below with regard to Issue No.6.

21. Coming to the next question raised by the petitionersâ?? counsel regarding the validity of the findings on issue No.7, what needs to be mentioned herein that the plaintiffs have laid the factual foundation in paragraph 3 of the plaint indicating the reasons why the premises were required and for what purpose. The said averments have been adequately supported by evidence led by the plaintiffs during the course of trial. Although it is a fact that the learned trial Court did not deal with the Issue No.7 in details and was rather perfunctory in approach while recording his conclusion with regard to the said Issue, yet, the same cannot be said in respect of the judgment of the learned First Appellate Court. The learned First Appellate Court had elaborately dealt with the evidence available on record so as to arrive at an independent conclusion as regards issue No.7 thereby affirming the decision of the trial Court. From a reading of the discussions and conclusions recorded by the learned First Appellate Court I find that the conclusions have been recorded on proper appreciation of evidence available on record. It is apparent from the materials on record that the plaintiffs have succeeded in demonstrating a bonafide requirement of the tenanted premises

and therefore, it cannot be said that the plea of the plaintiffs is mere fanciful or has been projected so as to make out a false case. In view of the above, the decisions of the Honâ??ble Supreme Court relied upon by Mr. Mazumdar, viz., Siddalingamma and another(supra) and Dinesh Kumar (supra) would be of no assistance to him in the facts and circumstances of the present case. In any event, once the defendants have been held to be defaulters, regardless of the outcome of Issue No.7 a decree for ejectment and recovery of arrear rent would still be maintainable.

22. For the reasons stated herein above, I am of the view that there is no merit in this Revision Petition and the same is accordingly dismissed.

23. At this stage, Mr. Mazumdar, the learned senior counsel appearing for the petitioners, submits that since the defendants have been occupying the tenanted premises for more than two decades, some time may be granted to them to vacate the same and to pay up the arrear rent. Mr. Mazumdar submits that if six months time is granted to his clients with effect from today then the decree will be satisfied by the petitioners. The aforesaid prayer has not been seriously opposed by Mr. Medhi, learned senior counsel appearing for the respondents.

24. In view of the above, the petitioners are granted six months time with effect from today to vacate the tenanted premises and to pay up the decretal amount, failing which the decree shall automatically become executable. Revision Petition stands disposed of.