

(1968) 01 GAU CK 0007

In the Gauhati High Court

Case No : Letters Patent Appeal No. 2 of 1966

Chaturbhuj Kishenlal and Others

APPELLANT

Vs

Syedur Rahman and Another

RESPONDENT

Date of Decision : 09-01-1968

Acts Referred:

Assam Non-Agricultural Urban Areas Tenancy Act, 1955 — Section 5(3)
Civil Procedure Code, 1908 (CPC) — Section 148

Citation : AIR 1968 Guw 32

Hon'ble Judges : C. Sanjeevarao Naidu, C.J;P.K. Goswami, J

Bench : Division Bench

Advocate : S.K. Ghose, J.P. Bhattacharjee and S.N. Medhi, for the Appellant; B. Islam and S. Rahman, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Nayudu, C.J.—The Defendant is the Appellant. This appeal comes before us by virtue of the leave to appeal under the Letters Patent having been granted by the previous Chief Justice Hon. Mr. Justice G. Mehrotra, who passed the judgment complained against in this appeal on the 4th July 1966 in Misc. Appeal (S) 10/63.

2. The facts of the case briefly are that the Respondent brought a suit against the judgment debtor, Appellant before us, in the Munsiff's Court at Jorhat for ejectment and arrears of rent. This suit was decreed on 22nd December, 1959. Against this judgment and decree the Appellant preferred an appeal to the Subordinate Judge's Court at Jorhat and the learned Subordinate Judge held by his judgment dated 27th May 1960 that as the Defendant Appellant herein had erected a permanent structure the land in question, he was protected by the provisions of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955-Assam Act XII of 1955 (hereinafter called "the Act"), but that as the Defendant was in arrears of rent, he was liable to ejectment. The decree in appeal was prepared on 20th June 1960 and this judgment and decree of the learned Subordinate

Judge allowed thirty days time to the Defendant Appellant for depositing the arrears of rent decreed by him in terms of Section 5(3) of the Act, which is as follows:

No decree for ejectment passed on the ground of non-payment of rent shall be executed within a period of thirty days from the date of the decree and if the tenant pays into the Court Whose duty it is to execute the decree the entire amount payable under the decree within the aforesaid period, the Court shall record the decree as satisfied.

It may be seen from this that the deposit of the entire amount payable under the decree within the period given, namely thirty days, would entitle the judgment debtor to claim the satisfaction of the decree, so that no ejectment could take place thereafter. In the instant case the deposit of the entire decretal amount of Rs. 1,127.63 nP. was made by the judgment-debtor Defendant Appellant on 24-2-61, whereas before that, on 2-1-61 the present Respondent had taken out execution in pursuance of the decree passed by the first Appellant Court. It would appear that on 8-2-61 the Defendant had petitioned to the Subordinate Judge (the first appellate Court) for drawing up the decree in appeal, apparently because he had no knowledge whether the decree had been already prepared or not. Subsequently coming to know that a decree had been prepared as far back as 20-6-60, he deposited the amount payable thereunder on 24-2-61 in the executing Court and raised the objection to the execution, saying that he deposited the amount, and, therefore, full satisfaction should be entered. This was disallowed on 12-9-61 by the executing Court - the Munsiff's Court. Against this judgment the judgment-debtor filed Misc. Appeal No. 37 of 1961 in the Court of the Subordinate Judge, Jorhat, which was dismissed on 16-2-63 by the Subordinate judge, holding that the deposit was not made within time and he had no jurisdiction to extend the time. This order regarding the extension of time was made in an interlocutory application made by the Appellant for extension of time. Against this order of dismissal of the appeal, the Appellant preferred a second appeal to this Court, which was dismissed by Mehrotra C.J., as he then was, sitting single, as indicated above.

3. The learned single Judge held that the deposit was not made within the time allowed by the Subordinate Judge, namely within thirty days from the date of the decree and that, therefore, the Appellant before the learned single Judge was not entitled to the benefit of Section 5(3) of the Act. The learned single Judge also repelled the contentions that the time should be reckoned from the date of the knowledge of the decree and that as the Appellant knew that a decree had been passed only after 8-2-61 when he made an application for drawing up the decree and as payment had been made on 24-2-61 within a period of one month thereof, the deposit must be treated as coming within the meaning of Section 5(3) of the Act. The learned single Judge held that the knowledge of the drawing up of the decree is not relevant and that as the provision says that the deposit should be made within thirty days from the date of the decree and as this had

not been complied with, the Appellant was not entitled to the benefit of this provision.

4. Another contention raised before the learned single Judge was that the lower appellate Court was wrong in refusing to extend time for making the deposit by virtue of Section 148, Code of Civil Procedure. The learned single Judge held that as the Subordinate Judge had already disposed of the appeal before him and passed a decree, he is no longer in seisin of the matter and there is no question of granting extension of time. It is contended before us by Mr. Ghose, the learned Counsel for the Appellant that this, view is not correct and that as time was granted by the Subordinate Judge for making the deposit, he would have jurisdiction to extend the time u/s 148, Code of Civil procedure. This argument is sought to be based on the language of Section 148, Code of Civil procedure, which itself supplies the answer to the same.

Section 148, CPC reads allows:

Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

In the first place, we are clearly of opinion that section 148, CPC is not attracted in view of the fact that we are not concerned with any act prescribed or allowed by this Code, nor was any time granted by the court for completing that act. Hence the question of granting extension of time u/s 148 does not arise. Further, we feel that as the learned Subordinate Judge had already heard the appeal, decided it by a judgment and passed a decree, he becomes functus officio in the matter and he cannot go into it again, unless of course a properly constituted review petition had been brought before him, in which case It would have been open to the Subordinate Judge to go into the matter and consider whether the decree should be revised or not. But nip such review petition is filed and, therefore, the learned Subordinate Judge could not have any jurisdiction to pass any order in regard to a decree which he had made and signed and sent back to the Court below for the purpose of execution.

5. It is contended by Mr. Ghose that Section 5(3) of the Act merely places a fetter on a decree-holder, who had a decree for ejectment of the judgment debtor in his favour in executing it namely, that in case the deposit of the arrears is made by the judgment debtor tenant within days from the date of the decree, the decree Will be recorded by the Court to have, been satisfied and that it does not debar the court from granting further extensions of time for making the deposit. It is unnecessary for us to consider what would be the legal form of any extension that is granted in such cases for making payment. So far as Section 5(3) of the Act is concerned, unless the payment is made within thirty days of the date of the decree of all the of rent which is due under the decree, the judgment-debtor would not be entitled to the benefit of full satisfaction being

entered, which means the benefit of not being evicted from the suit property. In the instant case, as the provision of Section 5(3) of the Act has not been complied with, in our opinion, the judgment-debtor Appellant is not entitled to the protection under the section.

6. We accordingly see no substance in this Letters Patent appeal, which is dismissed, but we make no order as to costs.

7. Three months time from this date is granted to the Appellant to vacate the premises and hand it over to the Respondent.