
(1982) 04 GAU CK 0001
In the Gauhati High Court
Case No : Civil Revision No. 55 of 1982

Hazi Mahmed Jafor

APPELLANT

Vs

Dr. Imran Hussain Choudhury

RESPONDENT

Date of Decision : 12-04-1982

Acts Referred:

Assam Urban Areas Rent Control Act, 1946 — Section 5(4)

Citation : AIR 1983 Guw 92

Hon'ble Judges : K.M. Lahiri, J

Bench : Single Bench

Advocate : K.C. Bezbaruah, C.K.S. Baruah, B.N. Sarma and B.P. Kataki, for the Appellant; A.R. Barthakur, P. Barthakur and S.B. Zaman, for the Respondent

Final Decision : Dismissed

Judgement

K. Lahiri, J.—This revision u/s 115 of the CPC is by the defendant-tenant against the judgment and decree passed by the trial court and confirmed by the appellate court.

2. The intrinsic facts to get a grip of the questions of law raised by the Petitioner : The plaintiff filed the ejectment suit, claimed arrears of rent, compensation and ejectment of the defendant from the suit premises. The plaintiff claimed that the defendant was a monthly tenant, the tenancy commenced from the 1st day of every English Calendar month, the rent was fixed at Rs. 300/-payable within the first week of the succeeding month. The defendant was an inveterate defaulter in payment of rent and the plaintiff had to exercise much to recover the arrears. When the defendant defaulted to pay rent for December 1971 and January 1972 within the stipulated time he had to serve quit notice to the defendant demanding delivery of possession of the premises on the expiry of the month of Feb. 1972. The defendant received the notice but did not comply with the terms thereof and hence the suit.

The Defendant filed written statement and contested the suit. He admitted

clearly (1) that he was a monthly tenant, and, (2) that the stipulated rent was Rs. 300/- per month. However, he contended that the mode or method of payment of rent was altered as desired by the plaintiff. According to him the plaintiff had asked him to make lump sum payment of rent instead of monthly payment and it became the practice. He claimed that on receipt of the notice of ejectment he offered the rent to the plaintiff and on his refusal to accept the same he deposited then in court as required under the Rent Control Act.

3. The trial court reached the following conclusions and decreed the suit with costs : (1) that the defendant was a monthly tenant; (2) that the rent was payable by the first week of the succeeding month; (3) that the stipulated monthly rent was Rs. 300/-, (4) that the avowal of the defendant that the plaintiff had consented to accept rent in lump sum was not tenable; (5) that the defendant had failed to deposit the rent for the months of December, 1971 and January, 1975 within the stipulated period and was a defaulter liable to be ejected under the law; (6) that the defendant could not establish that he ever offered the rent for the months in question before depositing it in court; (7) that the defendant deposited rent for the said months on 18-2-1972 only after receipt of the notice on 7-2-1972 without offering the rent to the landlord and became a defaulter liable to be ejected; and, (8) that the quit notice validly terminated the tenancy. The learned Munsiff decreed the suit with costs. There was an abortive appeal and hence the revision.

4. Learned counsel for the petitioner has put forward the following contentions; (1) that there was no finding as to what was the "rent allowable under the Act", the courts below were obliged to consider what was the "fair rent" and without determination of the question the courts had no jurisdiction to decree the suit, and, (2) that the defendant having deposited the rent into court on 18-2-1972 as required under the Assam Urban Areas Rent Control Act, 1961, for short "the Act", was not a defaulter and the court had no jurisdiction to pass the ejectment decree. No other point has been urged.

5. The first contention is heard to be rejected. The defendant admitted in his written statement that he was a monthly tenant and the stipulated rent was Rs. 300/- per month. The defendant never questioned that the agreed rent was high and not "fair rent" as contemplated under "the Act". Naturally he did not ask for fixation of fair rent. No issue was framed and accordingly no occasion arose to determine the fair rent of the suit premises. The point is taken for the first time in revision. The defendant merely asserted that the mode of payment of rent was altered to lump sum payment of rent instead of monthly payment in the succeeding month. However, the defendant admitted that the initial agreement was to pay rent within the first week of the succeeding month. The plaintiff denied the claim which was accepted by the courts below. These are the findings of fact, based on evidence and they are impeccable. Therefore, the first contention fails.

6. The last submission of the petitioner is that he was never a defaulter as he

had. deposited the rents into court as required u/s 5 of "the Act" and he was entitled to protection which was denied to him by the courts below. Counsel for the petitioner contends that Section 5 of the Act should be construed liberally in favour of the tenant; deposit of rent for the months of December, 1971 and January, 1972, on the 18th of February, 1972 was substantial compliance with the provisions of Section 5 of "the Act". Deposit of rent, even, without offering the same to the landlord, was merely irregular. These did not invalidate the actions and courts below were wrong in assuming that they were essential requirements of the section and invalidated the action of deposit. As such, it is contended that the finding of the court below that the petitioner was a defaulter was without jurisdiction and the petitioner is entitled to protection u/s 5 of the Act. Indeed, the section prohibits the court to make or execute any decree if the tenant pays rent to the full extent allowable under the Act and performs the conditions of tenancy. Proviso (e) to Subsection (1) of Section 5 states that the bar created u/s 5(1) shall not be applicable where the tenant has not paid the rent lawfully due from him in respect of the house within a fortnight of its falling due. Sub-section (4) of Section 5 lays down the renditions precedent when the tenant shall not be treated as a defaulter under clause (e) of the proviso to Sub-section (1) of Section 5 of the Act - I extract the relevant portion of Section 5 of the Act :--

"5. Bar against passing and execution of decree and orders for ejection. -- (1) No order or decree for the recovery of possession of any house shall be made or executed by any Court so long as the tenant pays rent to the full extent allowable under this Act and performs the conditions of the tenancy :

Provided that nothing in this sub section shall apply in a suit or proceedings for eviction of the tenant from the house :--

(e) Where the tenant has not paid the rent lawfully due from him in respect of the house within a fortnight of its falling due, or

* * *

(4) Where the landlord refuses 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 fees 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. The tenant who has made such deposit shall not be treated as a defaulter under Clause (e) of the proviso to Sub-section (1) of this section."

7. The substance of the contention of the counsel for the petitioner if fashioned in its proper setting is that the conditions prescribed in Sub-section (4) are directory. The preconditions like prior offer of rent to the landlord, his refusal to accept the rent and the time requisite prescribed to deposit rent within a

fortnight of its becoming due are all directory -- they do not relate to the essence of the thing to be performed or relate to matters of substance but their compliance is merely a matter of convenience rather than of substance. Therefore, non-compliance with the terms of the section does not vitiate the act of deposit

8. It will be seen that Sub-section (1) of Section 5 of the Act has devised or contrived a positive constraint and prohibits the court to pass a decree so long (i) the tenant pays the rent to the full extent allowable under "the Act", and (ii) performs the conditions of the tenancy, Under such circumstances the landlord is disentitled to obtain a decree or execute the same. However, the prohibition is inapplicable where the circumstances enumerated in clauses (a) to (f) to the proviso exist. Even failure of or non-compliance with the terms of clause (e) shall not render the tenant a defaulter provided he complies with the provisions of Sub-section (4). So much freedom of action has been bestowed by legislature to the tenant overriding the landlords' contractual right and statutory rights under the Transfer of Property Act 1882.

9. In *Kali Kumar Sen v. Makhanlal Biswas* AIR 1969 Gau 66, a Full Bench of this court laid down the requisite preconditions on fulfilment of which a tenant is entitled to the protection u/s 5 of "the Act". Their Lordships laid down the circumstances where a tenant is entitled to the protection. The Full Bench has ruled that under the following circumstances a tenant shall not be treated as "defaulter", (1) If the tenant pays his rent to the landlord on the due date to the full extent, no order of eviction can be passed or executed against the tenant, as he is not a defaulter; (2) if the landlord refuses to accept the rent and the tenant deposits it in court within 15 days of its becoming due, then also the tenant is not a defaulter; (3) if the rent is tendered or deposited in court beyond time, but accepted by the landlord, then also the tenant is not a defaulter. It was held that the rent due for the months of Baisakha and Jaistha were deposited in court in Asadh, therefore, the deposit of the rent for Baisakha was made beyond time and the landlord had not withdrawn it, so the defendants were defaulters and the decree was upheld. While reaching the conclusion two concurring opinions were expressed and their Lordships scanned the entire history of the Rent Control legislation from the year 1944 onwards and have held that the provisions regarding deposit are mandatory. As such, there is a binding decision of the Full Bench within this court that the tenant must pay the rent within the statutory period prescribed by Section 5(4) to obtain the relief. If the rent offered by the tenant is refused by the landlord, the former is obliged to deposit it within a fortnight of its becoming due, and, only upon such deposit the tenant shall not be a defaulter. The value and strength of the robust decision has not been appreciated in many quarters. It has been stated as "harsh", "too severe" and "landlord oriented" decision -- vide North Eastern Region Local Acts and Rules, Vol. 11 page 706-07. The observations of the learned author have been used by the counsel for the petitioner to bear up his contention. The observations of the learned author overlooked that this court merely highlighted the legislative intent and held the provisions mandatory, If we scan the judgment we notice that their

Lordships traced the history of Rent Control Legislations from 1944 onwards. The words of the Statute were considered along with its nature, context and object of the provision as well as the various possible constructions were also noted to ascertain the intention of the legislature. Their Lordships have merely given effect to the said intention. The provisions undoubtedly relate to matters of substance and directs acts or proceedings to be done in a certain manner and indicates clearly that a compliance with such provision is essential to the validity of the act of deposit of rent. It is clear that the prerequisite conditions must be fulfilled before the deposit of the rent may be taken as valid to prohibit or debar the court to make or pass a decree for eviction. The tenant can claim the protection only upon fulfilment of the conditions prescribed in Sub-section (4) of Section 5 of "the Act". The nature of the provision, its design and the consequences which would follow from construing it as mandatory as well as directory were considered by the Full Bench, Their Lordships also considered that if it would cause grave injustice to the landlord if the time limit fixed was considered as directory. It is the rule of construction that where a Statute is framed in terms of command, and there is no indication from the nature or wording of the provision or the surrounding circumstances that it is to receive a permissive interpretation the court is bound to construe the provision as peremptory. The constant endeavour of the court is to construe a provision what "reason and justice seem to demand". Their Lordships have considered the traditional grammatical approach as well as the modern "purposive approach" and reached the conclusion that the provisions of Section 5(4) were mandatory. Their Lordships were conscious of the affirmative and/or prohibitory words used in the section but the decision was not based on the nature of the words alone. It may be noted that the section created a new right or immunity in favour of the tenant as well as regulated the manner of its exercise and also prescribed the conditions precedent to obtain the remedy or protection. The provisions give a new right to the tenant and prescribe a particular remedy for obtaining it, therefore, such remedy must be strictly pursued. It would seem that Statutes which confer and regulate new rights, immunities and remedies, do ordinarily receive a mandatory construction because they are in derogation of common rights. Provisions of Section 5 take away the contractual right as well as the statutory rights of the landlord under the Transfer of Property Act, 1882 and, create new rights in favour of the tenants. The provisions of Section 5 cannot be presumed to alter the common right or the statutory right, further than they are so declared in Section 5, expressly or by necessary implications. The new rights or privileges created in favour of the tenant are a radical departure from those already existing. This is a satisfactory reason for subjecting them to a strict construction. Further, the provisions of the section directly relate to judicial action. The Section forbids the court to pass or execute an ejectment decree on fulfilment of the conditions prescribed in Section 5(4) of "the Act". Therefore, they provide that the tenant is entitled to certain relief and provide that certain facts must be proved to obtain the relief from the court. Indeed, the tenant is entitled to the relief awarded by the provisions upon proof of such conditions,

therefore, the conditions are surely mandatory. It may be noted here that specific time for performance has been prescribed in no uncertain language -- "within a fortnight of its becoming due." Legislature did not prescribe any other period but "a fortnight", it did not state "within a reasonable time". As such, the legislative intent to prescribe the specific time for the performance of the obligations is writ large in the section. Any other construction other than the one prescribed in Kali kumar AIR 1969 Gau 66 (supra) would have caused grave injustice and hardship to the landlord. A tenant, to put the landlord in difficulty, would have deposited the money into court without offering to the landlord and he could have invested, the rent for months together and thereafter deposited it at any time convenient to him, Surely, it would have caused great inconvenience to the landlords. The Full Bench merely ciphered the legislative intent and expressed it in the judgment, Under these circumstances, I reach the conclusion that the provision of Section 5(4) insofar as it commands that the tenant must offer the rent to the landlord and on his refusal he must deposit in court "within a fortnight of the rent becoming due", are mandatory provisions. Admittedly in the instant case, the courts below held that no offer had been made by the tenant to the landlord prior to the deposit of the rent for the months of December, 1971 and January, 1972. Further, the rent for the month of December, 1971 was deposited long beyond the prescribed period u/s 5(4) of "the Act". Under these circumstances the courts below were justified in holding that the tenant was a defaulter and the bar imposed in Section 5(1) of "the Act" was inapplicable. On the authority of Kali kumar (supra) and for the foregoing reasons, I reject the last contention of the learned counsel for the petitioner.

10. In the result, the petition is dismissed with costs which I assess at Rupees 200/-.