
(2015) 05 GAU CK 0027

In the Gauhati High Court

Case No : Civil Revision Petition No. 417 of 2008

M. Ahmed Bhuyan and Co. and Others

APPELLANT

Vs

Lalit Kumar Chakraborty and Others

RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Assam Urban Areas Rent Control Act, 1972 — Section 5

Citation : (2015) 2 GLD 642 : (2015) 3 GLT 185

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : N. Islam, for the Appellant; P. Deka, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.

1. Heard Mr. N. Islam, the learned counsel appearing for the petitioners (defendants). Also heard Mr. P. Deka, the learned counsel appearing for the respondents (plaintiffs).

CASE BACKGROUND

2. The Title Suit No. 103/2000 was filed by Dr. Lalit Kumar Chakraborty (the predecessor of the respondents) for ejectment of the petitioner's on the ground of rent default and bona fide requirement and prayer was also made for recovery of arrear rent w.e.f. August, 1999 till the defendants are evicted. In the plaint it was stated that the tenancy in respect of the property in Dibrugarh Town was started 30/40 years back and when the suit was filed, the rent @ Rs. 90/- per month was payable by the first week of each succeeding month. The rent payment by the tenant was described as erratic and it was pleaded that the defendants failed to pay rent since August, 1999 and therefore they are defaulters. Moreover the suit premises was required for construction of Doctor's Chamber and Clinic for the original plaintiff Dr. Lalit Kumar Chakraborty and further plea was that the premises are also needed for extension of the business

of the plaintiff's son Tirtha Chakraborty. As the defendants failed to pay rent from August, 1999, the plaintiffs issued a legal notice on 12.8.2000 (served on 17.8.2000), requiring the defendants to vacate the suit premises and also demanding payment of arrear rent. During the pendency of the suit, the original plaintiff Dr. Lalit Kumar Chakraborty died on 13.10.2001 and accordingly his wife Smt. Manjusree Chakraborty and the two children were substituted as the successors of the doctor plaintiff.

3. The defendants in their written statement (W.S.) however contended that the suit is bad for non-joinder of necessary parties from the side of the plaintiff as well as the defendants, since all the successors of the original landlady Late Saudamini Devi and the successors of original tenant Late M. Ahmed Bhuyan were not impleaded in the case. The plaintiff's plea of bona fide requirement was denied and the defendants further claimed that the rent was being collected by the landlord in 6 monthly or sometime on yearly basis and in the absence of due date the rent is payable on demand. But since August, 1999, the landlord refused to accept the tendered rent and therefore the same was deposited in the Court by the defendants.

4. On the basis of the pleaded case of both sides, the learned Trial Judge formulated the following seven issues:-

1. Whether the suit is maintainable in law and facts?
2. Whether the plaintiff has right to sue?
3. Whether the suit is bad for non-joinder of necessary parties?
4. Whether the defendant is defaulter on payment of rent?
5. Whether the suit premises is bonafide required to the plaintiffs?
6. Whether the plaintiff is entitled to decree as claimed for?
7. What relief or reliefs, if any, the parties are entitled?

TRIAL COURT

5. In support of their case, the plaintiffs Manjusree Chakraborty and Tirtha Chakraborty testified as PW.1 and PW.2 respectively, whereas Abul Hussain Bhuyan (DW.1), Kalu Hussain Bhuyan (DW.2) and Ajit Bordoloi (DW.3) testified as the witness, from the side of the defendants.

6.1. After considering the evidence in the case, the learned Civil Judge (Jr. Division) No. 1, Dibrugarh observed that all the successors of the original tenant were not arrayed in the ejectment suit and noticing the ignorance of the PW.1 and PW.2 about the legal heirs of the original tenant Late M. Ahmed Bhuyan (who died in 1962), the issue of non-joinder of the successors of the deceased tenant was answered against the plaintiff and the Court held that the suit is not maintainable for non-joinder of necessary parties.

6.2. Then the Trial Court examined the 4th issue of rent default and noted from the evidence of the Civil Sheristadar Ajit Bordoloi (DW.3) that the rent from August, 1999 to July, 2000 was deposited in Court on 1.9.2000 by the defendants. The Court further noted from the evidence that there was no fixed time to pay the rent which was realised on several occasion for multiple months and on that basis it was held that the tenants are not defaulters of rent.

6.3. The issue of bona fide requirement (5th issue) was then examined by the Court and noticing that the Doctor plaintiff, who needed the suit premises for construction of chamber and clinic had died on 13.10.2001 and the son Tirtha Chakraborty had not taken any specific plea on his requirement, the issue was answered against the landlord.

6.4. On the basis of the above findings on the key issue Nos. 3, 4 and 5, the other issues were answered against the plaintiff and the ejectment suit was accordingly dismissed on 23.2.2005 (Annexure-C) by the learned Trial Judge.

APPELLATE COURT

7.1. The aggrieved plaintiffs then filed the Title Appeal No. 12/2005, which was considered by the learned Civil Judge, Dibrugarh. The Appellate Court noted that Md. Abul Hussain Bhuyan, the 2nd defendant is the owner of the 1st defendant i.e. M/s. M. Ahmed Bhuyan and Co. and that it was the company which was the tenant of the suit premises. Thus since the owner of the company was impleaded as the 2nd defendant, the Appellate Court observed that the concerned defendants were arrayed in the ejectment suit and therefore it was held that the plaintiffs can't be non-suited for non-joinder of the other successors of the original tenant. Thus the Trial Court's finding on issue No. 3 was disapproved.

7.2. The non-payment of the rent from August, 1999 was next considered and the Court also noted that the rent from August, 1999 to July, 2000 was deposited in Court on 1.9.2000 by the tenants. The provisions of the Assam Urban Areas Rent Control Act, 1972 (hereinafter referred to as "the Rent Act") was scrutinized from where the Appellate Court gathered that the rent is payable within a fortnight of its falling due and since the rent from August, 1999 to July, 2000 was deposited in Court in one go, the tenant was held to be a defaulter and thus the Trial Court's finding on issue No. 4 was also reversed against the tenants.

7.3. The learned Civil Judge observed that the Doctor plaintiff's son, Tirtha Chakraborty required the suit premises for extension of his business and for construction of Doctor's Chamber and Clinic for indoor patients and also perused the evidence of PW.1 who stated that the suit premises are needed for construction of nursing home. On these considerations the Court positively answered the issue of bona fide requirement for the business purpose of Tirtha Chakraborty and accordingly the Trial Court's finding on issue No. 5 was negated and decided in the plaintiffs' favour.

7.4. Consequently the negative findings against the plaintiffs on the other issues

were set aside and the ejectment suit was decreed by directing eviction of the defendants and payment of arrear rent w.e.f. August, 1999 till the defendants are evicted, by the judgment dated 22.8.2008 (Annexure-D) passed by the learned Civil Judge, Dibrugarh.

TENANT'S CASE

8.1. Assailing the legality of the ejectment decree passed by the Appellate Court by reversing the decision of the Trial Judge, Mr. N. Islam, the learned counsel firstly submits that the Appellate Court acted without jurisdiction in giving a defaulter finding since the same is inconsistent with the evidence in the case. The counsel relies on the rent receipts (Exhbt."G" series), issued by the original plaintiff Dr. Lalit Kumar Chakraborty and the rent receipts (Exhbt.8 series) issued by his mother Late Saudamini Devi to contend that the rent was not collected on any fixed date but was realized on yearly or sometimes 6 monthly basis and therefore rent was payable on demand. In this case, the due date was never identified and therefore it is argued that the defaulter finding is wrongly given.

8.2. The petitioners also contend that when the requirement for construction of Doctor's Chamber and Nursing Home was pleaded by the deceased landlord Dr. Lalit Kumar Chakraborty, after his death on 13.10.2001, his legal heirs can't claim same bona fide requirement, as they do not have the qualification or expertise to operate Nursing Home or need Doctor's Chamber.

8.3. Referring to the evidence of the Civil Sheristadar Ajit Bordoloi (DW.3), Mr. Islam contends that when the rent for several previous months as per usual practice was tendered in August, 2000, the landlord refused to accept the same and accordingly the rent from August, 1999 to July, 2000 was deposited in the Court on 1.9.2000 and therefore it is argued that the tenants can't be held to be defaulters when there was no due date and rent was deposited in Court within the permitted period, after the landlord's refusal of the tendered rent.

LANDLORD'S CASE

9.1. On the other hand, Mr. P. Deka, learned counsel for the respondents/landlords submits that the parties are in agreement that the suit premises were let out under monthly tenancy and accordingly it is argued that when the rent for several months from August, 1999 to July, 2000 was unpaid and was deposited in Court only on 1.9.2000, the defaulter finding was correctly given and the same does not require any interference by the Revisional Court.

9.2. Referring to the pleaded case of the plaintiffs and also the testimony of the witnesses, Mr. Deka argues that the suit premises were needed for the business requirement of Tirtha Chakraborty and since the landlord is the best judge on his requirement, the finding on the bona fide requirement can't be faulted by re-appreciating the evidence.

9.3. The respondents cites Dilawar Hazarika vs. Paraminder Singh reported in (1992) 2 GLR 12 to contend that when the prevalent practice is that rents for

several months are collected and there is no fixed date, the accumulated rents will fall due on the last date of the month on landlord's demand and in the instant case, the landlord had issued the notice on 12.8.2000 (served on 17.8.2000), requiring the tenants to vacate the property and to pay the arrear rent. Thus the arrear rent upon demand became payable on the last date of August, 2000 and since the rent was not paid within a fortnight of due date, the tenant was rightly held to be a defaulter.

DISCUSSION and DECISION

10. Under the Rent Act, the tenant is protected from eviction so long as he performs the conditions of tenancy and only when the rent is not tendered within a fortnight of its falling due, ejectment can be sought for such defaulting tenant under the Rent Act. In cases of bona fide requirement of the landlord also, ejectment can be claimed under the Rent Act.

11. The Appellate Court reversed the finding on rent default by considering the provisions of the Rent Act under which the tenant is obliged to pay the rent within a fortnight of its due date. Therefore it was important to determine which is the due date for the tenancy in the present case. The rent receipts (Exhbt. "G" and "H" series), issued by the predecessor landlady Saudamini Devi and her son Dr. Lalit Kumar Chakraborty show that the rent was received for several months at one go and there are many instances of rent being collected on yearly basis. This indicates that rent is payable on demand of the landlord and not at the end of each month. Therefore the issue that require consideration is whether the defendants failure to tender rent from August, 1999 to July, 2000 at the end of each month and depositing the arrear rent in Court on 1.9.2000, can amount to tenant failing to tender rent within the due date.

12. On the above aspect, the evidence of the Civil Sheristadar Ajit Bordoloi (DW.3) shows that the tenant tendered the rent to the landlord on 10.8.2000 but the landlord asked for later payment, then when the rent was again tendered on 15.8.2000, the landlord refused to accept the same. Only after this, the tenant deposited the rent in the Court on 1.9.2000. Now if we apply the ratio of Dilawar Hazarika (Supra) to these facts, when rent is payable on demand and the demand notice was issued by the landlord on 12.8.2000 (served on 17.8.2000) for payment of payable rent, the due date for tendering the rent will be the last date of the month of the landlord's demand i.e. August, 2000. Thus when the rent was tendered on 15.8.2000 and was refused by the landlord and then it was deposited in the Court on 1.9.2000, it is apparent that the tenant tendered the rent upon demand and when refused, it was deposited in Court. Therefore I do not find merit in the conclusion of the Appellate Court on tenant being a defaulter. This is a perverse finding which is not consistent with the evidence in the case.

13. If the rent was demanded by the landlord in August and it was tendered in the same month but was refused and thereafter it was deposited in the Court on

1.9.2000, the tenant is surely entitled for protection under Sub-section (4) of Section 5 of the Rent Act. By depositing the rent in Court, the tenant has qualified for legal protection and therefore his ejectment could not have been ordered by the Appellate Court on the ground of rent default.

14. The need for the suit premises as pleaded was for setting up a Nursing Home and Doctor's Chamber. This plea was primarily based on the fact that the deceased plaintiff Dr. Lalit Kumar Chakraborty was a practicing Doctor but he died on 13.10.2001 during the pendency of the suit. Additional need was also pleaded for the business requirement of Tirtha Chakraborty, the son of the deceased Doctor. But interestingly in his evidence as PW.2, Tirtha Chakraborty stated that he is not successful in his present business and if the suit premises are vacated, he will construct a Nursing Home and that is the business he intended to set up. Normally in such cases the landlord's decision on his need/requirement should be allowed to have the final say, but when the PW.2 is not a Doctor and is not connected with any Nursing Home activity, it is difficult to accept that his plea of opening a Nursing Home is genuine, pressing or bona fide. Since the plaintiff had not specified any other activity but the Nursing Home business, when the plaintiff Doctor died on 13.10.2001, the PW.2 not being a medical man or otherwise qualified for setting up a Nursing Home, while testifying before the Court on 14.11.2002, should have given specific details on how he proposes to start a Nursing Home business. In the absence of required particulars, I feel that the learned Civil Judge misconstrued the bald evidence of PW.2 on availability of money for business, to answer the issue of bona fide requirement in favour of the plaintiffs.

15. The present tenancy is continuing for last 30/40 years, where the original landlady was Late Saudamini Devi, the grandmother of the present plaintiffs. Similarly the first tenancy was in the name of M. Ahmed Bhuyan, who died in 1962 and the original tenant was succeeded by his son Nur Hussain, who himself died in 1991 and thereafter the tenancy shifted to the successors of that tenant. But since it was projected that the final tenancy was in the name of the proprietary firm M/s. M. Ahmed Bhuyan and Co., owned by the 2nd defendant Md. Abul Hussain Bhuyan, the non-joinder of the other successors of the original tenant according to my opinion, may not be fatal and therefore on the 3rd issue, I don't find any infirmity with the finding given by the Appellate Court.

16. But when it is found that the finding on rent default and bona fide requirement are inconsistent with the evidence in the case, the reversal of the Trial Court's verdict by the Appellate Court is nothing but a perverse finding and accordingly the impugned judgment and decree dated 22.8.2008 (Annexure-D) in the T.A. No. 12/2005 passed by the learned Civil Judge, Dibrugarh is held to be unsustainable and the same is therefore quashed. But although the ejectment suit is thus dismissed, in future if any ground for ejectment is available under the Rent Act, the landlord will be at liberty to file fresh ejectment suit and that legal option is not foreclosed by dismissal of their case on this occasion. It is ordered

accordingly.

17. With the above order, this case stands allowed by leaving the parties to bear their own cost. The Registry is accordingly directed to return the L.C.R. with a copy of this order to the concerned Court.