

(2022) 09 GAU CK 0025

In the Gauhati High Court

Case No : Civil Revision Petition No. 134 Of 2017

M/S. Todi Motor Stores And 5 Ors.

APPELLANT

Vs

M/S. Jagannath Mahabir Prasad And 10 Ors.

RESPONDENT

Date of Decision : 14-09-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 115, 115(a), 115(b), 151
Assam Urban Area Rent Control Act, 1972 — Section 5, 5(1)(e), 5(4)

Citation : (2022) 09 GAU CK 0025

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : G. N. Sahewalla, H. K. Sarma, K. Agarwal, S. C. Keyal

Final Decision : Dismissed

Judgement

1. Heard Mr. G. N. Sahewalla, the learned senior counsel assisted by Mr. H. K. Sarma, the learned counsel for the petitioners and Mr. Kamal Agarwal, the learned senior counsel assisted by Mr. S. C. Keyal, the learned counsel for the respondents.

2. This is an application under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (for short, the Code) challenging the judgment and decree dated 15.03.2017 passed in Title Appeal No.21/2008 whereby the judgment and decree dated 26.11.2008 passed by the learned Munsiff No.2, Dibrugarh in Title Suit No.37/2007 was upheld.

3. Before entering into the facts of the case, it would be relevant to note that the Petitioner herein have invoked the revisional jurisdiction under Section 115 of the Code. It is no longer res-integra that the revisional jurisdiction is limited in scope inasmuch as the said jurisdiction cannot be exercised to correct error of facts. However gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. A plain reading of Sub-Clauses (a) and (b) of Section 115 of the Code is in reference to the exercise of

jurisdiction by the Court not vested in the Court by law or has failed to exercise jurisdiction so vested in Court. Clause (c) is in relation to exercise of jurisdiction illegally and with material irregularity. Therefore, under Section 115 of the Code a jurisdictional question may arise not only where the Court acts solely without jurisdiction but also in a case where jurisdictional errors are committed while exercising jurisdiction. There may be various facets of jurisdictional error for example the findings arrived at is perverse, based on no evidence or misreading of evidence or such findings have been arrived at by ignoring or overlooking material irregularities or such findings so grossly erroneous that if allowed to stand would occasion miscarriage of justice. In other words, interference with an incorrect finding of fact recorded by the Court below for the purpose of exercising revisional jurisdiction must be understood in the context, where such findings are perverse or has been arrived at without consideration of material evidence or such finding is based on no evidence or misreading of evidence or is grossly erroneous that if allowed to stand it would occasion gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In the judgment of the Constitution Bench of the Supreme Court rendered in the case of Hindustan Petroleum Corporation Ltd. Vs. Baharsingh reported in (2014) 9 SCC 70, the Supreme Court observed that the Court while exercising jurisdiction under Section 115 of the Code is required to satisfy itself as regards the regularity, correctness, legality or propriety of the impugned decision or the order and cannot exercise its power as an Appellate Court to re-appreciate or reassess the evidence to a different finding of fact. It is also made clear that this Court while exercising the revisional jurisdiction is not and cannot be equated with the power of re-consideration of all questions of facts as the Court of First Appeal.

4. In the backdrop of the above, let this Court take into consideration the facts of the instant case. For the purpose of convenience, the parties herein are referred to in the same status as they stood before the trial court.

5. The case of the plaintiffs in brief is that M/s Jagannath Mahabir Prasad which is a Hindu Undivided Joint Family Firm (for short, HUF), represented by its Karta Sri Mahabir Prasad Agarwalla (since deceased) was a lawful owner and landlord of the suit premises which has been described fully in the plaint. In the year 1948, Late Jagannath Agarwalla who was the father of late Mahabir Prasad Agarwalla and the Karta of the aforesaid HUF used to reside with his family members at Lahoal, Dibrugarh. In 1948, Mahabir Prasad Agarwalla married Gita Devi (since deceased), the younger sister of Late Nandalal Todi (since deceased) who is the predecessor-in-interest of the defendants.

6. As the suit premises was lying vacant due to shifting of some of the members of the HUF to Lahoal in the month of April, 1950, Late Nandalal Todi approached Late Jagannath Prasad Agarwalla and Mahabir Prasad Agarwalla to allow him to use and occupy the suit premises for doing his business of motor parts thereby agreeing to pay monthly rent and vacate the same whenever needed and asked

for. Accordingly, the plaintiffs allowed Late Nandalal Todi to run his business with the conditions that he would not make any new construction, addition or alteration therein without the written permission of the landlord and not to cause any damage to the premises and to vacate the same whenever the same would be required for the use of the members of the HUF. It was also agreed that Late Nandalal Todi would start his business over the suit premises and the rent was fixed at the rate of Rs.150/- per month according to English Calendar month payable in the 1st day of each succeeding month. In due course, the rent for the suit premises was enhanced from time to time and the last of such enhancement was Rs.1,000/- w.e.f. November, 1985. In the meanwhile, in the year 1981 Late Nandalal Todi expired leaving behind his two sons and one daughter. After the death of Nandalal Todi, the defendant Nos.2, 3 & 4 continued the business of the defendant No.1 as partners thereof. It was the further case of the plaintiff that Prasanna Kumar Agarwalla who was the eldest son of Karta of the plaintiffs' HUF expired on 04.11.1996 leaving behind him his wife, one son and one daughter. The said son and daughter of Late Prasanna Kumar Agarwalla were students of Dibrugarh town and as such the suit premises were required for residential purposes as well as for business purposes. It is under such circumstances the defendants were asked to vacate the suit premises. It has been mentioned that although the defendant No.2 on behalf of the other defendants assured to vacate the suit premises but he failed to do so. In the meantime, the defendant No.1, through his partners, started collecting building materials with an intent to raise illegal construction on the said suit premises for which a suit being T.S. No.109/1998 was filed in the Court of the Civil Judge, No.1, Junior Division, Dibrugarh along with a petition for temporary injunction registered as Misc.(J) Case No.76/1998. In the said temporary injunction application, the court had granted temporary injunction restraining the defendants from raising any construction thereupon.

7. It is the further case of the plaintiffs that since April, 1996, no rent has been paid by the defendants and the total rent upto July, 1999 came to Rs.40,000/-. Under such circumstances the suit was filed seeking recovery of khas and vacant possession of the suit premises by evicting the defendants, their dependants, relatives, successors, assigns, employees etc. and by removing the business goods and all other belongings of the defendants; for recovery of arrear rent amounting to Rs.36,000/- up to July, 1999; for interest on the arrear rent @ 18% per annum from the date of filing of the suit till recovery; for future compensation from the month of August, 1999 till delivery of khas and vacant possession of the suit premises @ Rs.1,000/- per month etc.

8. The defendants jointly filed a written statement. In the written statement, the defendants admitted about the commencement of the tenancy in the year 1950 in respect to the suit premises and the enhancement rent from Rs.150/- to Rs.1,000/- per month with effect from November, 1985. It was however, denied by the defendants that there was any stipulation that the suit premises would be vacated as and when the plaintiffs required. It was stated in the written

statement that the original landlord allowed their predecessor to use and occupy the open space belonging to the plaintiffs by way of renovation and reconstruction as may be required, and accordingly, their predecessor constructed pucca boundary walls in the north and east of the suit premises, a chang measuring 15 ft. X 15 ft., a godown with pucca wall of C.I. sheet roof measuring 30 ft. X 18 ft. and another small room with wooden wall measuring 10 ft. X 8 ft. for their use as office. It was stated that the defendants along with their predecessor were very regular in payment of rent and whenever asked, the predecessor-in-interest of the plaintiffs to issue rent receipts, one or the other pretext the rent receipts were not issued and out of good faith the same was never insisted upon. It was the further contention of the defendants that on 01.07.1997, the defendants were regularly paying the rent for the suit premises till the month of May, 1997. It was stated that as per the arrangement, the plaintiffs who resided at Lahoal used to collect the monthly rent for the suit premises from the defendants himself or through his representatives regularly. However, when the defendants on 01.07.1997 offered the rent for the month of June, 1997, the agents of the plaintiffs refused to accept the same and demanded rent @ Rs.1,500/- per month. Thereafter, the defendant No.2 again on 04.07.1997 offered the rent for the month of June, 1997 @ Rs.1,000/- per month to the plaintiffs and also expressed the inability to enhance the rent but the plaintiffs refused to accept the rent and again demanded rent @ Rs.1,500/- per month. The defendant No.2 again on 06.07.1997 requested the plaintiffs over phone to accept the rent but he refused to accept the same at the said rate. Under such circumstances, the defendant No.2, being compelled, deposited the rent in the Court of the Civil Judge, Junior Division-cum-Rent Collector at Dibrugarh and since then he has been depositing the monthly rent @ Rs.1,000/-.

9. On the question of bonafide requirement the defendants in their written statement denied that the suit premises were bonafide requirement for the use and benefit of the members of the HUF. It was further denied that the defendant No.2 representing the other defendants assured the plaintiffs that the defendants to vacate the suit premises within month and also clear the arrear rent but failed to do so.

10. On the basis of the pleadings, as many as eight issues were framed by the trial court which were:-

- 1) Whether the suit is maintainable in law and in facts in its present form?
- 2) Whether there is cause of action for the suit?
- 3) Whether the suit premises was in dilapidated condition at the time of creating tenancy and Nandalal Todi the deceased father of defendant Nos.2, 5 and 6 renovated by constructing corridor, rooms, office, boundary walls etc. at his own cost with permission/consent of the plaintiff?
- 4) Whether the suit premises is bonafide required by the plaintiff for the use, occupation and benefit of the members of the plaintiff?

- 5) Whether the defendants are defaulters in respect of rent for the suit premises?
- 6) Whether the suit became bad for mis-joinder of defendant Nos.3 to 6?
- 7) Whether the plaintiff is entitled to get the decree as prayed for?
- 8) To what relief/s the parties are entitled to?

11. The plaintiffs adduced evidence of three witnesses and exhibited three numbers of documents in support of the case. The defendants adduced evidence of one witness and exhibited 45 numbers of documents in support of the case.

12. The trial court by the judgment and decree, decreed the suit on contest with costs. It was held that the plaintiffs were entitled for recovery of khas and vacant possession of the suit premises described fully in the schedule of the plaint by evicting the defendants, their dependants, relatives, successors, assigns, employees etc. and by removing the business goods and all other belongings of the defendants therefrom. It was further held that the plaintiffs were entitled to get the arrear rent amounting to Rs.36,000/- up to July, 1999. It was also held that the plaintiffs were entitled to get interest on the arrear rent @ 6% per annum only from the date of filing of the suit till recovery is granted. However, the prayer to grant the plaintiffs future compensation from the month of August, 1999 till delivery of khas and vacant possession of the suit premises @ Rs.1,000/- per month was not allowed. It was also held that the amount of money deposited by the defendants as due rent from the month of June, 1997 till the date of the said decree in the court vide several Misc. (NJ) cases filed for the purpose in favour of the plaintiffs, would be deducted from the total amount of money that is calculated as due in view of the decree granted to the plaintiffs.

13. At this stage, it may be relevant herein to mention that the court below while deciding the Issue No.3 came to a finding that the defendants could not prove that the suit premises was in a dilapidated condition at the time of creating tenancy and that Nandalal Todi, the deceased father of the defendant No. 2, 5 & 6 renovated it by constructing corridor, rooms, boundary walls etc. at his own cost with the permission/consent of the plaintiffs. On the Issue as regards bonafide requirement which was Issue No. 4, the trial court came to a finding that the suit premises was bonafide required by the plaintiffs. On the Issue as to whether the defendants were defaulters in respect of the rent for the suit premises which is the Issue No.5, the trial court came to a finding that the defendants could not show that they were not defaulters and hence liable to be evicted. It was further observed while deciding the Issue No.5 that the defendants were heavy defaulters and as such liable to be evicted.

14. Being dissatisfied and aggrieved, an appeal was preferred by the defendants before the Court of the Civil Judge, Dibrugarh which was registered and numbered as T.A. No.21/2008. The First Appellate Court, after taking into consideration the various grounds of objections so taken, framed the point for determination which reads as follows:-

Whether the learned Munsiff No.2, Dibrugarh rightly passed the judgment, order and decree dated 26.11.2008 in T.S. No.37/2007 (88 of 1999) or the same required interference by the Court?

15. The First Appellate Court decided the appeal by taking into account the question of maintainability of the suit; the question of dilapidated condition of the suit premises and the renovation so made; the question of defaulter in payment of rent as well as the question of bonafide requirement. The First Appellate Court found that the suit was maintainable and as such confirms the findings by the trial court as regards Issue Nos.1, 2 & 6. On the question of dilapidated condition of the suit premises which was the Issue No.3, the First Appellate Court came to a finding that the suit premises was not in a dilapidated condition and confirmed the findings of the trial court as regard the Issue No.3. On the question of defendants being defaulters in payment of rent which was the Issue No.5, the First Appellate Court came to a finding that the defendants were defaulters in payment of rent. In doing so, the First Appellate Court observed in paragraph No.12.2 of the judgment that on a perusal of the petition of depositing rent marked as Exhibit-A, it was seen that the said petition was dismissed on 15.09.1997 inasmuch as the defendants did not take steps to serve the notice upon the respondent/landlord. Similarly, after taking into account the Exhibit Nos. B, C & I, it was observed that the petition so filed by the defendants for depositing the rent were also dismissed for not taking proper steps to communicate the rent deposit to the landlord. Relevant herein also to take note of that the court below also came to a finding that from Exhibit Nos. B, C & I it appeared that the defendants deposited the rent for months together in advance.

16. On the question of bonafide requirement which was the Issue No.4, the First Appellate Court came to a finding that the trial court did not commit any wrong in deciding the issue of bonafide requirement. In doing so, the First Appellate Court in paragraph No.13.3 of the judgment had taken into account that starting from 1950, the joint family of M/S Jagannath Mahabir Prasad had expanded to a large extent. The joint family consisted of 10 members, and on the other hand, in the written statement of the defendants in paragraph Nos. 8, it was stated that the suit properties were being used by the defendant No.2 alone because the other members of the family ceased to have any interest in the business. The First Appellate Court also took into consideration that the defendant No.2 admittedly had two sons, namely, Sunil Kr. Todi and Tinku. It was also observed that it was admitted that the defendant No.2 was having a business of cane furniture at Bangalore and the same is looked after by his younger son while his elder son Sunil Kr. Todi stays at Dibrugarh and runs the business in the name of Todi Motors which clearly reflects that the defendant No. 2 who is contesting the suit and the appeal had alternative arrangements. The First Appellate Court further took into consideration that as the business for the family members of the plaintiffs has enlarged, there was a bonafide requirement in favour of the plaintiffs. It is under such circumstances vide the judgment and decree dated 15.03.2017, the appeal so filed by the defendants was dismissed thereby

confirming the judgment and decree dated 26.11.2008 passed by the trial court in T.S. No.37/2007.

17. Being aggrieved and dissatisfied with the judgment and decree dated 15.03.2017 passed in Title Appeal No.21/2008, the instant revision application has been preferred under Section 115 of the Code.

18. As already noted in paragraph No.3 herein above, the jurisdiction to be exercised under Section 115 of the Code is limited. In the backdrop of the above, let this Court take into consideration the contentions raised by the learned counsel for the parties.

19. Mr. G. N. Sahewalla, the learned senior counsel submitted that the First Appellate Court while deciding the issue of defaulter in payment of rent had failed to take into consideration the Ext. Nos. B, C & I in proper perspective. The learned senior counsel submitted that had the said exhibits been taken into consideration in proper perspective, the defendants could not have been held to be defaulter in payment of rent. On the question of bonafide requirement which was another ground on which the decree for eviction was passed, the learned senior counsel submitted that there was no bonafide requirement of the suit premises of the plaintiffs in as much as at the time of filing of the suit, the suit premises was required for residential and study purposes of the grandchildren of Late Mahabir Prasad Agarwalla and now the grandchildren have attained majority and ceased to be students. The learned senior counsel, therefore, submitted that the trial courts as well as the First Appellate Court completely failed to take into consideration the subsequent events while deciding the issue of bonafide requirement.

20. On the other hand, Mr. K. Agarwal, the learned senior counsel appearing on behalf of the respondents submitted that Section 5 of the Assam Urban Area Rent Control Act, 1972 (for short, the Act of 1972) prescribed the various grounds on which a decree for ejection can be passed. The learned senior counsel for the respondents submitted in the instant case that both the courts below had concurrently held that the defendants in the case were defaulter in payment of rent and that there was a bonafide requirement of the plaintiffs in respect to the suit premises. The learned senior counsel for the respondents further submitted that such concurrent findings of facts arrived at by both the courts below cannot be interfered with in a proceeding under Section 115 of the Code unless and until the findings so arrived at suffers from jurisdictional error and the findings so arrived at by ignoring or overlooking material evidence or are so grossly erroneous that if allowed to stand would occasion miscarriage of justice. The learned senior counsel for the respondents submitted that a perusal of both the concurrent findings of the facts arrived at by the learned courts below, under no circumstances, would show that the courts below, more particularly, the First Appellate Court has committed a jurisdictional error or the findings so arrived at are perverse requiring interference. Referring to the Ext. Nos. A, B, C, E, I, J, K and Ext. L to AF and further referring to the cross-

examination of the defendant witness No.1, the learned senior counsel for the respondents submitted that there was non-compliance to Section 5 (4) of the Act of 1972. The learned senior counsel for the respondents submitted that Section 5 (4) of the Act of 1972 provides protection to the tenant from being treated as a defaulter provided the tenant, upon refusal of the landlord to accept the lawful rent offered by the tenant, within a fortnight of it becoming due, deposit in the court the amount of such rent together with the process fee for service of notice upon the landlord and on receiving such deposit, the court shall cause a notice on the receipt of such deposit to be served on the landlord. The learned senior counsel for the respondent submitted that it is an admitted fact by the defendant during his cross-examination that the deposits of rent were not in accordance with Section 5 (4) of the Code in as much as the lawful rent was not deposited as mandated under the said Section. The deposit of rent in advance in the court is totally foreign to the provision of Section 5 (4) of the Act of 1972.

21. On the question of bonafide requirement, the learned senior counsel for the respondents submitted that the said finding is also a finding of fact concurrently held by both the courts below and the defendants as petitioners have not been able to show that there is any perversity in the said findings. The learned senior counsel for the respondents, further referring to the judgment of the First Appellate Court, more particularly in paragraph No.13.3 submitted that the First Appellate Court had duly taken into consideration the facts and had come to a finding that the bonafide requirement of the plaintiffs was a necessity on account of the members of the family of the plaintiffs having enlarged as well as the business. Therefore, the learned senior counsel for the respondents submitted that this is a fit case for dismissal with exemplary cost.

22. I have heard the learned counsel for the parties and also perused the materials on record. Let this Court first take into consideration the question of defaulter in payment of rent.

23. Both the courts below have concurrently come to a finding that the defendants were defaulter in payment of rent. Such finding is a question of fact and can be interfered with when such finding of fact is based on no evidence or opposed to the totality of the evidence and contrary to the rational conclusion on which the state of evidence must be reasonably led. Section 5 (1) (e) of the Act of 1972 stipulates that a decree for eviction can be passed where the tenant had not paid the rent lawfully due from him in respect to the houses within a fortnight of it falling due. Section 5 (4) is a deeming provision when a tenant who had made the deposit in terms with said Section shall not be treated as a defaulter under Clause (e) of the proviso to sub-section (1) of Section 5 of the Act of 1972. Section 5 (4) of the Act of 1972, being relevant, is quoted herein below:

"5. Bar against passing and execution of decree and orders for ejections (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. A 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.”

24. From a perusal of the said Section, it would be seen that exercise of the right by the tenant to deposit the rent in the court is subject to fulfillment of the condition that the landlord refuses to accept the lawful rent offered by the tenant. Therefore, unless there is the tendering of the lawful rent by tenant, Section 5 (4) does not have any application. Further to that, it would be seen that only upon the landlord refusing to accept the lawful rent offered by the tenant, the tenant has the option within a fortnight of it becoming due to deposit in the 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 made thereafter be withdrawn by the landlord on application made by him to the court in that behalf. It is only upon the fulfillment of the said condition that a tenant shall not be treated as a defaulter under Section 5 (1) (e) of the Act of 1972.

25. In the instant case, it is admitted that the monthly rent was Rs.1,000/- which is the lawful rent. A perusal of Ext.A which is the first deposit of rent made by the defendants in the court vide Misc. Rent Case No.509/1997, the said aspect is duly admitted. The said application, however, was dismissed on the ground that the defendants did not take any steps which has attained finality. Therefore, on the face of it, the same was not in compliance with Section 5 (4) of the Act of 1972. Now coming to Ext. B, it would be seen that the deposit of rent was made for the month of October, November, December, 1997 together. The said application cannot also be taken into account that it was in compliance to Section 5 (4) of the Act of 1972. Taking into account that there was no offer as well as refusal by the plaintiffs for the months of November and December, 1997 and without there being a refusal for the month of November and December, 1997 the condition precedent for exercise of the option under Section 5 (4) of the Act of 1972 is necessary for which the deposit so made cannot be considered as a valid deposit in accordance with law. Further to that, it would also be seen from Ext. C, the deposit of rent was for the month of November, 1998 to March, 1999; vide Ext. I, the deposit of rent was from August, 2000 to September, 2000 in advance along with the rent of July, 2000; Ext.J whereby there was deposit of rent for the months of May and June, 2000 in advance; Ext.K where the deposit of rent was made in advance. Similarly, Ext.L to AF would also show that the deposits of rent were in advance. It is also relevant to take note of that most of the rent cases, pertaining to deposit of rent, were dismissed on the ground of not taking steps. This aspect of the matter would be seen from the cross-examination of the defendant witness No.1 who admitted the same. Considering

the above, it is therefore, clear that the defendants were not entitled to the benefit under Section 5 (4) of the Act of 1972 as there was no deposit of rent in accordance with the said provision. Both the learned trial courts as well as the First Appellant Court had duly taken into consideration the said aspect of the matter and this Court does not find any perversity in the said findings. Consequently, the issue pertaining to default in payment of rent, as held concurrently by the courts below, is upheld.

26. The next question is as regards the bonafide requirement of the plaintiffs. Both the courts below have concurrently come to a finding that there was a bonafide requirement of the plaintiffs at the time of filing of the suit as well as at a later stage during the pendency of the suit and the appeal. These are findings of facts and sans any perversity being shown the same cannot be interfered with in a revisional jurisdiction. This Court has also taken note of the judgment of the First Appellate Court in paragraph No.13.3 and the decision of the trial court in Issue No.4 and has come to a finding that the same does not call for any interference.

27. Considering the above, this Court is of the opinion that this is not a fit case for exercise of jurisdiction under Section 115 of the Code.

28. The findings of both the courts below are affirmed by this Court.

29. Taking into consideration that the defendants have been carrying on their business since long and Mr. G. N. Sahewalla, the learned senior counsel appearing for the petitioners/defendants submitted that if the defendants are immediately evicted, serious irretrievable injury would be caused as it would be very difficult to immediately find an alternative location for carrying out its business. Taking into consideration that the defendants have been carrying on their businesses in the suit premises for more than a decade, it would be just and reasonable to grant them six months of time to vacate the suit premises provided that they submit an undertaking before the Trial Court within 29.09.2022 to the effect that they shall vacate the suit premises within a period of six month from the date of the instant judgment i.e. on or before 13.03.2023. Failure to submit the undertaking within the period, the plaintiffs shall be entitled to initiate execution application for evicting the defendants.

30. It is clarified that during this period of six months the defendants shall continue to make payment of amount of Rs. 1,000/- per month in the form of compensation to the plaintiffs.

31. It is further observed that granting of extension of the period of six months subject to filing undertaking as aforesaid and the payment of compensation of Rs. 1,000/- per month during this period of six months shall not create any right or interest in favour of the defendants in respect to the suit premises. It is also clarified that during this period, the defendants shall remain in possession of the suit premises as the custodian of the plaintiffs and shall not do any act or acts which may effect the rights of the plaintiffs over the suit premises in any manner

whatsoever.

32. The respondents herein shall be entitled to rent for the period of the eviction proceedings either through adjustment from the rent already deposited in the Court or by making an application before the Executing Court to decide on their entitlement of the rent during the pendency of the eviction proceedings and the Executing Court would permit the tenant/petitioner herein to controvert the allegations of non-payment of rent during the pendency of the eviction proceedings and thereupon decide in accordance with law.

33. With the above observation, the instant petition stands dismissed.

34. Send back the LCR.