
(2000) 05 GAU CK 0029
In the Gauhati High Court
Case No : Civil Revision No. 104 of 1994

Radio Talkies Equipment Company	Vs	APPELLANT
Debadas Ghosh and Others		RESPONDENT

Date of Decision : 30-05-2000

Acts Referred:

Assam Urban Areas Rent Control Act, 1972 — Section 5(4)

Citation : (2001) 2 GLT 471

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : N.M. Lahiri and G.N. Sahewalla, for the Appellant; D.C. Mahanta, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—Heard Mr. N.M. Lahiri, learned advocate for the Petitioner and Mr. D.C. Mahanta, learned advocate for the Respondents.

2. This revision arises out of the judgment and decree dt. 15.12.93 passed in T.A. No. 16/85 by the learned Asstt. District Judge, Dhubri. By the impugned judgment the learned Judge allowed the appeal and set aside the judgment and decree passed in T.S. No. 604/82 by the learned Munsiff No. 1, Dhubri and decreed the suit.

3. The opposition party as Plaintiff instituted a suit being Title Suit No. 604/82 in the Court of the learned Munsiff No. 1 at Dhubri against the present Petitioner/Defendant for ejectment and for recovery of arrear rent on the grounds of default from the month of June, 1982 and there also was a plea of bonafide requirement. The Petitioner as Defendant contested the suit by filing a written statement wherein he denied the plea of bonafide requirement as well as default. With regard to the plea of default the case of the Defendant was that the landlord having refused to accept the rent he made the deposit in the Court u/s 5(4) of the Assam Urban Areas Rent Control Act, 1972 and as such he was

protected.

4. The learned Munsiff framed as many as six issues and issue No. 3 was on the question of default. Both the parties adduced evidence and submitted documents and after completion of the trial and after hearing the parties, the learned Munsiff by his judgment dt. 11.8.85 dismissed the suit holding that the Petitioner is not a defaulter and that suit house was not required by the opposite party for bonafide requirement.

5. An appeal being Title Appeal No. 69/85 was preferred and after hearing the arguments of both the sides by his judgment dt 11.12.87 dismissed the appeal. Being aggrieved a revision being Civil Revision No. 62/88 was filed before this Court and the legality and validity of the deposit of rent by the Defendant was also challenged before this Court. This Court by judgment and order dt. 23.4.93 remanded the matter to the learned Asstt. District Judge for deciding the validity of the deposit made by the tenant. This Court interalia found as follows:

i) No finding has been recorded that the Defendant had deposited the rent together with the process fees for service of notice to the landlord....Unless the notice of deposit of rent is caused upon the landlord the landlord would not know that such deposit has been made and in such event the Defendant is liable to be held as defaulter.

6. In paragraph 13 of the judgment this Court directed the appellate Court as follows:

13. This being the question of law which relates to jurisdictional error, I set aside the judgment and order dated 11.12.87 passed by the learned Court below. However, considering the facts and circumstances of this case, I remit this case to the learned Court below to give a finding whether the Defendant has deposited the rent in Court in accordance with the provisions of Section 5(4) as discussed above.

7. On receipt of the order of remand the matter was again heard by the learned Asstt. District Judge. The records of rent deposit cases were called for by the Defendant but report came from the rent deposit Court that such records are not available as have been destroyed in due course. The learned Judge in the impugned judgment has found as follows:

This attempt on the part of the Respondent is of no avail in as much as they did not make any proper step to bring the said record during hearing for proper perusal at the relevant time. Recital of summons served on D.W. 3 by the Respondent side only reveals that he was asked to bring the records of the relevant Misc. (NJ) case of the year 1982 but admittedly he was not the proper person to bring the said record to Court to be inducted into evidence. The Defendant/Respondent side made no endeavour to bring the relevant record for perusal by the Court below from the proper custody. This laches on the part of the Respondent/Defendant makes him non suited in this regard. Thus the

submission of Mr B.K. Das the learned Counsel for the Respondent in this aspect stand as a small peg to hand such a big submission.

8. In a catena of decisions this Court has held that the payment of process fee for service of notice is mandatory and if that is not there the deposit of rent u/s 5(4) is not valid deposit. If any authority is required one may have a look at (1) 1992 (1) GLR 250 (Sudhir-Ch. Dev v. Parsuram Prasad Verma; (2) 1987 (2) GLR 8, (Hons Kumar v. Jadunandan and Ors.) The tenant if he fails to perform the statutory duties and obligation he cannot claim protection. Hence the appeal was allowed the suit was decreed. As such this revision. If is submitted that non deposit of process fee is not fatal as the landlord had the knowledge of deposit, he withdraw the rent and as such waived his right.

9. In AIR 1970 Gau 59 (Amar Bahadur Thapa and Anr. v. Abdul Hai and Anr.) this Court held that finding regarding proper deposit of rent in the Court adhering to statutory requirement is basically a finding of fact and that cannot be questioned in a second appeal. It also cannot be a question in revision. The burden to prove that the deposit was made in conformity with Section 5(4) is squarely on the Defendant/tenant and he must discharge this burden and having failed to discharge this burden the Defendant now cannot take up the plea that the records were not available and he is not in a position to prove it. A suit was pending and he should have taken proper care to obtain the certified copy of the rent deposit cases in time as it is known that such cases are destroyed in course of time. That not being done now he must suffer for his own laches. That being the position, this revision is bound to stand dismissed. A further plea is taken that the rent which was deposited in Court that has been withdrawn and such withdrawal of rent will wipe out the plea of default. In AIR 1969 Assam and Nagaland Page 66 (Full Bench) (Kalikumar Sen v. M.L. Biswas) Dutta C.J., as he then was held that withdrawal of rent shall wipe out default in the majority judgment it was specifically pointed out that it is not the position in law. If the rent is not deposited in time that will make the tenant a defaulter and subsequent withdrawal shall not wipe out the plea of default. Earlier to it also there was such a decision on this point. So that majority judgment is squarely binding on me. The same is the decision in Patel Gordhan Kadvabhai and Others Vs. Competent Authority and Additional Collector and Others, wherein this Court pointed out that mischief of statutory default does not come to an end merely because of the withdrawal of rent by landlord under the scheme of the Act. In AIR 1965 Gau 55 (Bhagatram and Ors. v. Keshab Das and Ors.) the rent was deposited before the Court and the landlord withdraw it and it was argued before the Division Bench that this will amount to waiver and the Division Bench of this Court pointed out that mere withdrawal of the amount by the landlord under the Rent Control Act does not constitute waiver, in absence of any evidence to show that the landlord intended to keep the lease subsisting. To the same effect is the decision in 1989 (2) GLJ 502 (Sri Arun Chandra Sarma v. Sri Janardan Prasad Verma).

10. That being the position, this contention of Sri Lahiri is against the established principle of law by various decision. Accordingly, this revision is dismissed and the stay order passed earlier shall stand vacated.