
(2003) 09 GAU CK 0033
In the Gauhati High Court
Case No : C.R.P. No. 191 of 1999

Ranjit Dey

APPELLANT

Vs

Md. Shahjahan Ali

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Assam Non-Agricultural Urban Areas Tenancy Act, 1955 — Section 5(1)(b)

Citation : (2004) 1 GLR 44

Hon'ble Judges : P.P. Naolekar, C.J

Bench : Single Bench

Advocate : G.N. Sahewalla, A.K. Goswami, P. Bora and T. Baidya, for the Appellant; P.K. Barua, A. Dasgupta and U.C. Bhattacharya, for the Respondent

Judgement

P.P. Naolekar, C.J.—Heard Mr. G.N. Sahewalla, learned counsel for the petitioner and Mr. P.K. Barua, learned counsel for the respondent.

2. In a suit filed by the plaintiff respondent for ejectment of the defendant petitioner on the ground of default in payment of rent, an ex parte decree was granted by the trial court against the petitioner herein. That ex parte decree was confirmed by the High Court in Second Appeal No. 125/93. However, directions have been given by the High Court for determination of the compensation u/s 5(1)(b) of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955 and the High Court has said :

"5. For deciding this question of compensation only this appeal shall go back to the Appellate Court, i.e., Assistant District Judge, Sibsagar and the learned Asstt. District Judge if necessary may take evidence and decide the question of compensation payable to the tenant. The appellate court shall take only that aspect of the matter and other questions shall not be reopened before the appellate court. Once this compensation is determined, time shall be fixed for the payment of the same and thereafter on payment of the same the decree may be executed against the tenant. The appellant court shall determine this aspect of the matter as early as possible as it is a suit of 1985. Both the parties shall

appear before the appellate court on 31st March, 1999 to receive instruction."

3. Thus, the direction for determination of compensation for the permanent structure made by the defendant is in accordance with the provisions of Section 5(1)(b) of the Assam Urban Areas Tenancy Act, 1955 and the trial court has taken steps for determination of the compensation. After the decree has been confirmed by the High Court by judgment dated 22.2.1999, the defendant, petitioner herein has moved applications on 23.3.1999 and 31.3.1999 purported to be u/s 5(3) of the Act of 1955 for deposit of entire arrears of rent. The trial court dismissed the applications filed by the petitioner defendant on the ground that the High Court's direction is only in regard to determination of the compensation for the permanent constructions made by the tenant and thus applications filed by the tenant cannot be entertained, Sub-section (3) of Section 5 of the Assam Urban Areas Tenancy Act, 1955 gives additional protection to the tenant from decree for ejectment being executed against him if he deposits the entire arrears of rent within 30 days from the date of the decree. Sub-section (3) is an additional provision giving protection to the tenant from execution of decree on his deposit of rent within time specified. Sub-section (3) is an independent provision and has nothing to do with the provision of Section 5(1)(b) wherein compensation is to be determined by the Court for the permanent construction made by the tenant. Right of the tenant to deposit the amount after passing of decree is not in any way hampered or affected by the order passed by the High Court for determination of compensation by the trial court under Clause (c) of Section 5 of the Act of 1955. Application for deposit of arrear rent can only be made after the decree is finally passed for ejectment. Therefore, tenant has a right to move application for deposit of arrear rent within 30 days of passing of the decree. In view thereof, the trial court has committed an error in rejecting the applications filed by the tenant-defendant-petitioner.

4. In view of the above, the order passed by the trial court is set aside and it is directed that the application filed by the tenant-defendant shall be considered in accordance with law, i.e., under Sub-section (3) of Section 5 of the Assam Urban Areas Tenancy Act, 1955 and shall pass order thereon.

5. The revision petition stands disposed of. However, in the circumstances of the case, there shall be no order as to costs.

6. The records of the case be sent back immediately within a period of 7 days.