



THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

DATED : 4th MAY, 2023

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

RFA No.03 of 2022

Appellants : M/s. Himal Match Co. Pvt. Ltd. and Another

versus

Respondent : Smt. Kiran Agarwal

Appeal under Order XLI Rules 1 and 2 of the Code of Civil Procedure, 1908

Appearance

Mr. Passang Tshering Bhutia, Advocate for the Appellants.

Mr. Sajal Sharma and Ms. Shreya Sharma, Advocates for the Respondent.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Respondent/Plaintiff filed an Eviction Suit before the Court of the District Judge, East Sikkim, at Gangtok, seeking eviction of the Appellants/Defendants from the suit premises, recovery of arrears in rent and mesne profits. The grounds enumerated for such eviction were illegal occupation of the suit premises by the Appellants despite due receipt of Notice of Eviction. That, the premises were required for the Respondent's personal use and occupation and that the suit premises being in a dilapidated condition were required to be overhauled.

2. The facts relevant for the present purposes are that the suit premises comprising of a four storied RCC building, measuring 30 ft. x 92 ft., situated at Rangpo Bazar, was rented out by M/s. Balchand Udairam, the owner, to the Appellant, M/s. Himal Match Co. Pvt. Ltd., at a monthly rent of ₹ 250/- (Rupees two hundred



and fifty) only. The year of tenancy has not been mentioned in the plaint. On 14-08-1991, M/s. Balchand Udairam sold the suit property to the Respondent. Upon such sale, the Respondent informed the Appellant Company about it and requested that monthly rent be deposited to her. The Appellant Company failed to comply with the request.

(i) The suit premises being in a dilapidated condition the Assistant Town Planner II, Urban Development and Housing Department (UD&HD), sent a Notice dated 01-10-2008 to the Respondent requiring her to ensure structural stability with retrofitting works, but the required repairs could not be carried out as the premises were not vacated by the Appellants. An Eviction Notice dated 30-12-2008 was served upon the Appellants by the Respondent, which was also not complied with and the Appellants continue to remain in unlawful occupation of the suit premises from 01-02-2009. That, on this ground, the Respondent was entitled to mesne profit calculated @ ₹ 200/- (Rupees two hundred) only, per day, on and from 01-02-2009, till the date of obtaining vacant possession of the suit premises. The further case of the Respondent is that during the pendency of the suit (Eviction Suit No.01 of 2010), permission was granted to withdraw it with liberty to file afresh. On such liberty, the Respondent on 29-01-2018 sent a fresh Notice for Eviction to the Appellant, through Registered AD, requesting the Appellant to vacate the suit premises by 01-03-2018. The Appellants again failed to oblige. That, the Appellants are defaulters in payment of rent from 14-08-1991, when the suit premises was registered in the name of the Respondent. The Respondent claims arrears of rent from 14-08-1991 till 01-02-2009



and mesne profits after 01-02-2009. Accordingly, the Respondent sought for a decree for recovery of possession of the suit premises, recovery of arrears of rent of ₹ 54,000/- (Rupees fifty four thousand) only, decree declaring that the Respondent is entitled to mesne profits from 01-02-2009 till the date of filing of the suit.

(ii) The Appellants contested the claims and averred that the suit is barred by limitation under the provision of Article 52 of the Schedule of the Limitation Act, 1963, which stipulates that the period of limitation for recovery of arrears in rent is three years from the date when the arrears become due. Admittedly, the rent became due from 01-09-1991 as per the Respondent. It was claimed that the Appellants have been regularly paying the rent to M/s. Balchand Udairam, till the month of January, 2009, after which M/s. Balchand Udairam refused to accept the rent. The Appellants have then been depositing the rent in the postal savings account of K. B. Biswakarma, C/o Himal Match Company. The electricity bill is being deposited in the name of M/s. Balchand Udairam, as he is the owner of the suit property. The grounds of dilapidated condition of the suit premises, requirement of overhauling and personal occupation were denied. That, after the receipt of Notice of Eviction dated 30-12-2008, the Appellants vide a communication dated 09-04-2009, addressed to Jeevan Agarwal, authorised representative of M/s. Balchand Udairam, enquired about the reason for refusal to accept rent from February, 2009, but the letter was returned with the remarks "*Refused by Addressee hence return to sender*". The Appellants are therefore not liable to pay mesne profit of ₹ 200/- (Rupees two hundred)



only, per day, from 01-02-2009. Hence, the suit be dismissed as not being maintainable.

3. The Learned Trial Court settled eight issues for determination;

1. *Whether the Defendants have defaulted in payment of rent of the suit premises? (onus on Plaintiff)*
2. *Whether the Plaintiff requires the suit premises for bona fide requirement? (onus on Plaintiff)*
3. *Whether the premises is in a dilapidated condition? (onus on Plaintiff)*
4. *Whether the plaintiff is entitled for recovery of arrears of rent and mesne profit? (onus on Plaintiff)*
5. *Whether the recovery of arrears of rent mesne profit are barred by law of limitation? (onus on Defendants)*
6. *Whether the Plaintiff is the absolute owner of the suit property who is entitled under the law to file the present suit? (onus on Plaintiff)*
7. *To what relief or reliefs the Plaintiffs are entitled to?*
8. *Whether the suit is bad for non-joinder and mis-joinder of parties?*

4. In issue no.1, the Learned Trial Court concluded that the Appellants defaulted in payment of rent to the Respondent, as the Appellants were unable to prove payment of rent by a single document filed by them. The only witness who deposed on behalf of the Appellants, Tanka Bahadur Chettri, had categorically denied having any idea about any of the documents filed by the Appellants except Exhibit D2. He admitted under cross-examination that till date not a single rupee had been paid as rent to the Respondent, by the Appellants, with respect to the suit premises. That, Appellants neither pleaded nor proved that the alleged deposit of rent in the name of K. B. Biswakarma was for and on behalf of the Respondent.



(i) Issue no.2 was decided in favour of the Respondent having concluded that the Respondent required the premises for her personal use, to set up her business and to supervise her business in Gangtok, Siliguri and Darjeeling, Rangpo being equidistant from the above places of her business.

(ii) Issue no.3 stood decided in favour of the Respondent, as Exhibit P2, the Notice issued by the Assistant Town Planner -II, UD&HD revealed that the suit premises required retrofitting works, hence the suit premises was in a dilapidated condition, fortified by the evidence of the Appellants' witness, Tanka Bahadur Chettri, who admitted that the building on which the suit premises is located is very old and in a dilapidated condition.

(iii) Issues no. 4 and 5 were taken up together being co-related. The Respondent had claimed arrears of rent from 14-08-1991, that as per Article 52 of the Schedule of the Limitation Act, 1963, the period of limitation for setting up of claim for arrears of rent was three years from the date when the arrears become due. Hence, the claims from August, 1991 till the date three years prior to the filing of the suit would be barred by limitation. The Respondent was found to be entitled to arrears of rent from September, 2015, till the date of receipt of the amount from the Appellants @ ₹ 250/- (Rupees two hundred and fifty) only, per month.

(iv) Issue no.6 was also decided in favour of the Respondent in view of Exhibit 1, the Sale Deed document, dated 14-08-1991. The Learned Trial Court found that the Respondent had sufficiently proved that she is the absolute owner of the suit property.



(v) While deciding issue no.7, the Court held that the Appellants are liable to be vacated from the suit premises and liable to pay rent arrears @ rent of ₹ 250/- (Rupees two hundred and fifty) only, from September, 2015, till the date of receipt of the amount from the Appellants.

(vi) The suit was found to be not bad for *non-joinder* and *mis-joinder* of parties in issue no.8. M/s. Balchand Udairam a third party to the suit could not be impleaded in the suit as no reliefs has been claimed from him, and the matter could be adjudicated without his involvement.

Eviction Suit No.02 of 2018 in the Court of District Judge, Special Division – I, Sikkim at Gangtok, was accordingly decreed.

5. The submissions of learned Counsel for the parties before this Court have been heard and anxiously considered. The evidence and documents on record, the impugned Judgment and the citations placed in the written synopsis have been carefully perused.

6. This Court is to determine; (i) Whether the Respondent proved her requirement of the suit premises and for personal occupation and thorough overhauling on account of failure of the Appellants to pay rent for four months, in terms of the Government of Sikkim, Health and Works Department, Notification No.6326—600-H&W—B, dated 14-04-1949 (in short “Notification of 1949”) and (ii) Whether the Appellants are liable to be evicted from the suit premises?

7. Notification No.6326—600-H&W—B, dated 14-04-1949, provides as follows;

**“GOVERNMENT OF SIKKIM
Health and Works Department
Notification No.6326—600-H&W—B.**



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Under powers conferred in para 2 of Notification No.1366-G, dated the 28th July 1947, the following Rules have been framed to regulate letting and sub-letting of premises controlling rents thereof and unreasonable eviction of tenants as the scarcity of housing accommodation still exists in Sikkim.

I The landlords can charge rent for premises either for residential or business purposes on the basis of the rents prevailing in locality in year 1939, plus an increase upto 50 per cent so long as the scarcity of housing accommodation lasts.

2. The landlords cannot eject the tenants so long as the scarcity of housing accommodation lasts, but when the whole or part of the premises are required for their personal occupation or for thorough overhauling the premises or on failure by the tenants to pay rent for four months the landlords may be permitted to evict the tenant on due application to the Chief Court.

3- Any tenant may apply to this Department for fixing his rent. On receipt of such application the Department will enquire about the rent prevailing in the locality in 1939, and fix rent as per Rule (I) above.

4- Any person acting in contravention of this Notification will be liable to prosecution under para. 4. of notification No.1366-066-G, dated the 28th July, 1947.

5. The tenant means those person in actual occupation. Landlord means owners of the premises.

These rules will come into force with immediate effect.

By order of his Highness the Maharaja of Sikkim.

**Gangtok,
The 14th, April, 1949.**

**R.B. Singh
Secretary,
Health and Works Department;
Government of Sikkim.**

[emphasis supplied]"

In terms of the above extracted Notification, in order to evict tenants, the landlord is to establish that he requires the whole or part of the premises for his personal occupation or for thorough overhauling or the tenants have failed to pay rent for four months.

8. That, the property belongs to the Appellants is no more *res integra* in view of Exhibit P1, the Sale Deed document, executed between M/s. Balchand Udairam and the Respondent herein. In any event, it is settled law that in a suit for eviction the Court is only required to determine whether a relationship of landlord and tenant exists between the parties and not the question of title to the properties, which may be considered tangentially but cannot be decided finally. In **Keshar Bai v.**



Chhunulal¹ the Hon'ble Supreme Court observed that even the denial of a landlord's title in the written statement can provide a ground for eviction of a tenant. That, it is not necessary that the denial of title by the tenant should be anterior to the institution of eviction proceedings. That, in eviction proceedings the question of title to the properties may be incidentally gone into, but cannot be decided finally.

(i) The Appellants have proved that Exhibit P3 is the Eviction Notice, dated 30-12-2008, addressed to the Appellants, M/s. Himal Match Co. (P) Ltd. and B. K. Shrestha, Chairman and Managing Director of the Appellant Company. The Notice states that the premises into which the Appellant Company was inducted at a monthly rate of ₹ 250/- (Rupees two hundred and fifty) only, has been purchased by the Respondent and hence the Appellant Company was required to vacate the suit premises having sub-let it to a third party, without the consent of the Respondent, apart from which the building was to be retrofitted to ensure structural stability being in a dilapidated condition.

(ii) The letter addressed to Jeevan Agarwal of M/s. Balchand Udairam, by one K. B. Biswakarma, Constituted Attorney of the Managing Director of the Appellant Company, Exhibit D6, informed *inter alia* that, he was in receipt of Notice dated 30-12-2009 (*sic*, 30-12-2008) sent through the Respondent's lawyer. The sender requested Jeevan Agarwal therein to inform him 'urgently' as to why he was not receiving the rent or whether he had sold the tenanted premises to a third party. That, if in spite of the receipt of the letter, Jeevan Agarwal failed to reply or explain the reason for refusal of the monthly rent, then it would be

¹ (2014) 11 SCC 438



presumed that M/s. Balchand Agarwal was no longer the owner and as such, rent would be sent to M/s. Mona Jyoti Investment Company from whom he had received the above, Notice Exhibit P3. The witness of the Appellant Company, Tanka Bahadur Chettri, identified Exhibit D6 as the letter dated 09-04-2009, sent to Jeevan Agarwal of M/s. Balchand Udairam by K. B. Biswakarma. The witness asserted that Exhibit D6 is not a false and fabricated document. The foregoing circumstances establish that the Eviction Notice *supra* made the Appellants aware of the sale of the suit premises to the Respondent and her ownership of it, thereby despite lack of any specific communication informing the Appellants of the sale and purchase, the Appellants were seized of the situation and Exhibit P3 the Legal Notice suffices to establish that the property had changed hands. In other words, sale of the suit premises and the consequent transfer of property was in the knowledge of the Appellant Company.

(iii) Coming to the question of dilapidated condition of the premises, Exhibit P2 is a letter dated 01-10-2008 issued to Kiran Agarwal (Respondent) by the Assistant Town Planner II, UD&HD, mentioning that the four storied building of the Respondent, situated at Rangpo Bazar, had been inspected jointly by the officers of the Town Planning Cell and Engineering Cell of UD&HD. The inspection found that the building required to be retrofitted to avoid any disaster due to structural failure of the building. The retrofitting works were to be completed within six months as detailed in the letter *supra* at sl. no.1 to sl. no.6 therein. In this context, apart from the evidence of the Respondent who identified Exhibit P2, which stood the test of cross-examination, the witness



of the Appellants testified that the building was in a poor condition. Under cross-examination the fact that the building in which the suit premises is located is very old and in a dilapidated condition was extracted from the Appellants' witness. The witness further testified that on looking at the building, major retrofitting and repair works are required to be done as it is in a dilapidated condition. Thus, the evidence discussed above and Exhibit P2 establish that the property required retrofitting and strengthening.

(iv) Coming to the question of requirement of the premises for the personal use and occupation of the Respondent, in her evidence she stated that she requires the suit premises for her personal use and occupation as well as that of her husband as both of them had decided to open an Office at Rangpo which is located centrally between Darjeeling, Siliguri and Gangtok. That, she intended to open an office to expand their business. That, she and her husband also intend to reside in the suit premises in their old age, to oversee their business in Darjeeling, Siliguri and Gangtok. These facts have not been demolished under cross-examination. To support the evidence of the Plaintiff with regard to the dilapidated condition of the suit premises and the requirement for their personal occupation, the Respondent's husband Mahabir Prasad Agarwal adduced evidence and supported the Respondent's evidence on both counts. It concludes that the suit premises are required for the personal use and occupation of the Respondent. Relevant reference is made to the observation in ***Sidharth Vyas and Another*** vs. ***Ravi Nath Misra and Others***² wherein the Hon'ble Supreme Court while referring to the decisions of *Joginder Pal* vs. *Naval Kishore Behal* [(2002) 5 SCC 397] and *Malpe Vishwanath*

² (2015) 2 SCC 701



Acharya and Others vs. State of Maharashtra and Another [(1998) 2 SCC 1] held that the object of the Rent Law is to balance the competing claims of the landlord to recover possession and the tenant to be protected from arbitrary eviction when there is acute shortage of accommodation.

(v) Coming to the question of rent arrears, the Respondent as per the Appellants was not eligible to get rent arrears from 01-02-2009 in view of the Article 52 of the Limitation Act. This provision provides for arrears of rent and the period of limitation is three years, for which the time begins to run when the arrears become due. The Respondent's case is that after the property was purchased by her on 14-08-1991, the monthly rent has not been paid to her by the Appellants. The evidence of the Appellants' witness is that Exhibit D2 (collectively) are the money orders receipts, postal slips and deposit slips of the Post Office Savings Bank, from February, 2009 to September, 2011 in respect of monthly rent remitted by the Appellant Company, to M/s. Balchand Udairam in respect of the rented premises. Perusal of Exhibit D2 (collectively) reveals that this pertains to the Post Office Savings Bank Account of one K. B. Biswakarma and Money Order Acknowledgement Cards. A sum of ₹ 250/- (Rupees two hundred and fifty) only, has been deposited in the Post Office Savings Bank A/c of K. B. Biswakarma in various months. It is unfathomable as to how the Court is to presume that the amount deposited in the account of K. B. Biswakarma was for the purpose of payment of house rent to M/s. Balchand Udairam or the Respondent. As correctly noticed by the Learned Trial Court in its impugned Judgment, K. B. Biswakarma who was the Constituted Attorney of



the Appellants-Defendants No.1 and 2 and claimed to be a well-acquainted with the facts of the case having verified the written statement on oath, failed to enter the witness box to substantiate his averments, instead one Tanka Bahadur Chettri deposed for the Appellants and he was unaware of matters pertaining to the suit. The Learned Trial Court has held that the Respondent is entitled to arrears of rent from September, 2015. No arguments have been advanced as to why there should be no such payment. The finding is accordingly upheld.

9. While addressing the question of mesne profits, Learned Counsel for the Respondent submitted that the mesne profits had not been allowed by the Learned Trial Court. That, this decision was not being assailed by the Respondent. In view of the submission of Learned Counsel for the Respondent with regard to mesne profit no further discussions need ensue.

10. In conclusion, questions no.(i) and (ii) framed above are decided in favour of the Respondent. All conditions for eviction and not only one, as required under Notification No.6326—600-H&W—B, dated 14-04-1949 are fulfilled, viz., the Respondent has established her personal requirement of the suit premises, that the suit premises were in a dilapidated condition and that rent was not paid to her by the Appellants. The decision of the Learned Trial Court on the issues settled by it for determination call for no interference by this Court.

11. Appeal dismissed.

12. The Appellants shall vacate the suit premises within three months from today and hand over vacant possession to the Respondent.



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13. The Appellants shall pay arrears of house rent from September, 2015, till handing over of possession of the suit premises to the Respondent.

14. No order as to costs.

15. Copy of this Judgment be forwarded to the Learned Trial Court for information along with its records.

(Meenakshi Madan Rai)
Judge

04-05-2023

Approved for reporting : **Yes**

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