

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.40 of 2022

Sri Subhasish Datta @ Apu Datta,

Son of late Nirode Ranjan Datta,
Resident of Jail Ashram Road,
P.O. Dhaleswar, P. S. East Agartala,
District: West Tripura
Presently residing under the
Care of Shri Sebabrata Biswas, Matri Villa,
Near Curcuit House, Kunjaban,
Agartala, West Tripura, PIN:799 006

-----Defendant-Appellant (s)

Versus

Shri Pintu Debnath,

Son of Shri Pulin Chandra Debnath,
Resident of Nalgaria, P.O. & P.S. Ranirbazar,
District: West Tripura

----- Plaintiff-Respondent (s)

For Appellant(s)	:	Mr. S. M. Chakraborty, Sr. Adv. Ms. A. Pal, Adv.
For Respondent(s)	:	Mr. A. Sengupta, Adv.
Date of Hearing	:	11.12.2023
Date of delivery of Judgment and Order	:	21.12.2023
Whether fit for Reporting	:	YES/NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This is an appeal under Section 100 of CPC filed against the judgment and decree dated 28.04.2022 passed by Learned District Judge, West Tripura, Agartala in Title

Appeal No.50/2019 affirming the judgment and decree passed by Learned Trial Court in T.S.134 of 2016.

02. The gist of the appeal in short is that the respondent-plaintiff Pintu Debnath filed one suit for declaration under Section 34 of the Specific Relief Act and also for realization of security deposit money before the Court of the Learned Civil Judge (Senior Division), Court No.1, West Tripura, Agartala against the appellant-defendant vide Case No.T.S.134 of 2016 and after hearing both the sides Learned Trial court below by the judgment dated 03.06.2019 decreed the suit of the respondent-plaintiff with costs. The operative portion of the order of the Learned Court below is reproduced below:

"In the result, the suit of the plaintiff is decreed on contest with costs. The plaintiff is entitled to a decree declaring that the defendant committed serious breach of contract with the plaintiff by not delivering the vacant possession of the rented premises to the plaintiff in compliance of the tenancy agreement. The plaintiff is also entitled to the decree declaring that the cancellation/revocation/termination of the tenancy agreement by the plaintiff is lawful.

The plaintiff is also entitled to get a refund of security deposit money amounting to Rs.3,50,000/- (Rupees three lakhs fifty thousand only) from the defendant.

The plaintiff is also entitled to get interest at the rate of six percent per annum from the date of final demand notice dated 25.10.2016 till the date of payment.

The defendant is directed to refund the security deposit amounting to Rs.3,50,000/- (Rupees three lakhs fifty thousand only) to the plaintiff within two months from the date of passing of the decree of this suit at the rate of six percent per annum from the date of final demand notice dated 25.10.2016 till the date of payment."

03. Challenging the judgment of Ld. Civil Judge (Senior Division), Court No.1, Agartala, West Tripura the present appellant preferred an appeal before the court of

Learned District Judge, West Tripura, Agartala which was numbered as Title Appeal 50 of 22019 and after hearing argument of both the sides Learned First Appellate Court delivered the judgment on 28.04.2022 of the appellant-defendant and dismissed the appeal affirming the judgment of the Learned Trial Court. The operative portion of the order of Learned First Appellate Court is given below:

"In the result, this title appeal filed by the defendant appellant is dismissed.

The judgment and decree of the Learned Trial Court passed in Title Suit No.134 of 2016 is upheld and affirmed.

Prepare the appellate decree accordingly.

This Title Appeal stands disposed of on contest."

Now the defendant-appellant has preferred this second appeal challenging the judgment of the First Appellate Court.

04. Before the court at the time of admitting this appeal, the following substantial question of law was formulated by order dated 05.09.2022:

"Whether a party to an agreement can take the advantage of any action done in contravention of the terms and conditions of the written agreement, which was consciously executed by the parties to the same?"

05. In course of hearing Learned senior counsel Mr. S. M. Chakraborty appearing for the appellant submitted before the court that the plaintiff-respondent did not make any prayer in the plaint, that the alleged lease/tenancy agreement was void. There was also no such condition in the agreement that in the event of non-delivery of possession of the lease hold property, the tenancy will come

to an end. Learned senior counsel further submitted that in the plaint it was asserted by the plaintiff-respondent that he gave the security deposit and paid monthly rents to the appellant for a certain period. If it is so, is it a believable story that without taking possession of the lease hold shop, the plaintiff-respondent has given monthly rents to the present appellant. Learned senior counsel has also argued that both the Learned courts below have misinterpreted the recital of Clause-10 of alleged lease/tenancy agreement.

06. Mr. Chakraborty, Learned senior counsel again submitted that in para-7 of the plaint filed by the plaintiff-respondent before the Learned court below, it was clearly mentioned that by a notice dated 25.10.2016 he has revoked, cancelled and terminated the tenancy agreement and furthermore in the said para of the plaint it was further asserted by the plaintiff-respondent that on receipt of the said notice dated 25.10.2016, the appellant-defendant by a reply dated 08.11.2016 informed that he did not receive any security money from the plaintiff-respondent and also stated that the respondent-plaintiff has been possessing the shop premise at Datta market near Sakuntala road, Agartala. Learned senior counsel further argued that since the Learned courts below failed to appreciate clause-10 of the tenancy agreement properly. So the judgment passed by Learned Appellate court cannot be sustained in the eye of law. Furthermore, according to the Learned senior

counsel a void agreement cannot be legally enforced. As the tenancy agreement was silent in respect of steps to be taken in the event of non-delivery of possession of the suit premise, so no relief could be granted and Learned senior counsel in support of his contention relied upon a decision of Hon'ble Supreme Court in **Tarsem Singh vs. Sukhminder Singh** reported in **AIR 1998 SC 1400** and finally urged before this court to allow this appeal by setting aside the judgment of Learned First Appellate Court.

07. On the contrary, Mr. A. Sengupta, Learned counsel appearing for the respondent-plaintiff at the time of hearing has submitted before this court that the present appellant-defendant in his written statement before the Learned Trial Court admitted that he has received the rent of the let out premises from the respondent-plaintiff and furthermore DW-1 Subhasish Datta(Appellant) in his examination-in-chief on affidavit before the Learned Trial court in para No.5 specifically stated that:

"That, I say that, the plaintiff did not taken the premises for the business purpose as there was no complete construction of shop premises. The shop premises is open and there is no roof and further there is no door, window in the said premises."

Similarly, DW-2 Rupak Debnath in para-5 of his examination-in-chief on affidavit stated that:

"That, I say that, the shop premises is till now incomplete and there is no boundary wall, door, window, plastering works, roof etc."

Thus from the admission of the defendant-appellant and his witness it is crystal clear that no possession was given to respondent-plaintiff by the appellant-defendant.

08. Learned counsel appearing for the respondent-plaintiff further drawn the attention of the court that the rent receipts which were adduced by the plaintiff-respondent were marked as exhibits without any objection from the appellant-defendant side during trial before the Learned Trial court. Learned counsel Mr. Sengupta again submitted that the notice issued by the respondent-plaintiff was lawful. So in summing up Learned counsel for the respondent-plaintiff submitted before the court that both the Learned courts below had rightly delivered the judgment with reasonable grounds. So Learned counsel appearing for the respondent-plaintiff prayed for dismissal of this present appeal.

09. I have heard detailed argument of both the sides and also gone through the records of the Learned court below. As I have already stated that the respondent-plaintiff filed the suit before the Learned Trial court below for granting a decree of adjudication under Section 34 of the Specific Relief Act and also for realization of security deposit money in support of suit shop. On consideration of the pleadings of the parties Learned Trial court framed the following eight number of issues:

- (i) **Whether the suit is maintainable in its present form and nature?**
- (ii) **Whether there is any cause of action for filing the suit?**
- (iii) **Whether the plaintiff is entitled to get a decree declaring that the defendant committed serious breach of contract with the plaintiff by not delivering the vacant possession of the rented premises to the plaintiff in compliance of the tenancy agreement?**
- (iv) **Whether the plaintiff is entitled to get a decree declaring that the cancellation/ revocation/ termination of the tenancy agreement by the plaintiff is lawful?**
- (v) **Whether the plaintiff is entitled to get a refund of security deposit money amounting to Rs.3,50,000/- from the defendant?**
- (vi) **Whether the plaintiff is entitled to get interest @ 12% per annum from the date of final demand notice dated 25.10.2016 till the date of payment?**
- (vi) **Whether the plaintiff is entitled to get the decree, as prayed for?**
- (vi) **Whether the parties are entitled to get any other relief/relieves?**

10. To substantiate the issues the plaintiff-respondent adduced four numbers of witnesses and relied upon some documentary evidences which were marked as Exhibit-1 to Exhibit-19 and at the same time the present appellant-defendant did not adduce any documentary evidence on record in support of his defence. But they adduced only two witnesses including the defendant-appellant himself. Regarding execution of lease/tenancy agreement (Exhibit-1) there is no dispute on record amongst the parties. It was the case of the respondent-plaintiff that as per tenancy agreement he gave Rs.3,50,000/- as security deposit to the appellant-defendant

and paid monthly rents for a certain period. But inspite of his request the appellant-defendant did not hand over the possession of suit premise to him. So by the notice dated 25.10.2016 (Exbt-4) he has revoked, cancelled and terminated the tenancy agreement which the present appellant-defendant objected stating that the same was illegal, inoperative and not binding upon the appellant in view of the fact that same was contrary to the clause of the said tenancy agreement (Exbt.1). More so, in the event of non-delivery of possession of the suit shop as alleged, there was no scope to revoke the tenancy agreement by the respondent-plaintiff. Learned Trial court below at the time of decision of the suit decided all the issues in favour of the respondent-plaintiff and relied upon Section-10 of the Indian Contract Act and came to a conclusion that tenancy agreement (Exbt.1) was a valid contract in the eye of law. From the exhibited documents further it appears that the respondent-plaintiff could prove the money receipts of security deposit towards payment of security deposit money amounting to Rs.3,50,000/- to the present appellant-defendant and also the money receipt towards payment of monthly rents to the appellant-defendant and those documents were exhibited without any objection from the side of appellant-defendant of this appeal. So there is no scope to disbelieve the evidence on record regarding payment of security deposit money by the respondent-

plaintiff to the present appellant of this case and also regarding payment of monthly rents to the appellant-defendant.

11. Now for the sake of convenience, this court would like to refer herein below the definition of lease as defined under Section 105 of the Transfer of Property Act, 1882, which is as follows:

"105. Lease defined.—A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

From the above definition it appears that the paramount consideration of a valid lease is that *"there shall be transfer of right to enjoy any property made for a certain time, express or implied, or in perpetuity in consideration of a price paid or promises, or of money etc."*

12. As I have already stated that there is no dispute on record regarding execution of tenancy agreement (lease) amongst the parties. Now I would like to refer herein below the relevant Clause-10 of the tenancy agreement (lease-agreement) dated 09.11.2011 [Exbt.1] is as under:

"That, the lessor of lessee have right to cancel this Lease agreement during the period of lease in that case will have to issue 6(six) months written notice intimating his desire to vacate the lease hold premises/shop room."

13. From the aforesaid clause it appears that as per the tenancy agreement both the parties had the right to cancel the lease agreement during the period of lease and

for that six months written notice intimating his desire to vacate the lease hold premises/shop room be given.

14. Here in the case in hand from the evidence it appears that it was the case of the respondent-plaintiff that the appellant-defendant had failed to deliver the possession of the suit premise/shop to him rather he filed a Criminal case against the respondent-plaintiff which was ended in acquittal. It is apparent on record that there was no any express provision/clause in the said agreement [Exbt.1] that in the event of non-delivery of possession the tenancy agreement would come to an end.

15. The appellant-defendant although took the plea that he did not receive any security deposit money from the respondent-plaintiff but before the courts below he could not substantiate his contention by adducing oral/documentary evidence on record to rebut the claim of the respondent-plaintiff. So the assertion made by Learned senior counsel for the appellant-defendant cannot be accepted at this stage by this court.

16. As already stated Learned senior counsel for the appellant in course of hearing relied upon one citation in **Tarsem Singh** (supra). I have also gone through the said citation. In para No.-12, 13, 14 and 15 wherein the Hon'ble Apex Court has made the following observations:

12. Contract' is a bilateral transaction between two or more than two parties. Every contract has to pass through several stages beginning with the stage of negotiation during which the parties discuss and

negotiate proposals and counter-proposals as also the consideration resulting finally in the acceptance of the proposal. The proposal when accepted gives rise to an agreement. It is at this stage that the agreement is reduced into writing and a formal document is executed on which parties affix their signatures or thumb impression so as to be bound by the terms of the agreement set out in that document. Such an agreement has to be lawful as the definition of contract, as set out in Section 2(h) provides that "an agreement enforceable by law is a contract". Section 2(9) sets out that "an agreement not enforceable by law is said to be void".

13. Before we proceed to consider what are lawful agreements or what are voidable or void contracts, we may point out that it is not necessary under law that every contract must be in writing. There can be an equally binding contract between the parties on the basis of oral agreement unless there is a law which requires the agreement to be in writing.

14. Section 10 of the Contract Act provides as under:-

"10. What agreements are contracts.- All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in India and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents."

15. The essentials of contract set out in Section 10 above are:-

- (1) Free consent of the parties
- (2) Competence of parties to contract
- (3) Lawful consideration
- (4) Lawful object

15A. Competence to contract is set out in Section 11 which provides that every person is competent to contract who is of the age of majority and who is of sound mind and is not disqualified from contracting by any law to which he is subject. Section 12 provides that a person will be treated to be of sound mind if, at the time when he makes the contract, he is capable of understanding it and forming a rational judgment as to its effect upon his interests.

From the principle of the aforesaid citation further it appears to me that the aforesaid agreement i.e. Exbt.1 was made in pursuance of Section-10 of Indian Contract Act.

17. From the record of the Learned court below it transpires that tenancy agreement [Exbt.1] was duly executed amongst the parties of this appeal and the said agreement was a valid contract in the eye of law. The

principles of the aforesaid citation is very much applicable for just decision of this appeal but by the principles of the aforesaid citation as referred by Learned senior counsel for the appellant there is no scope to disbelieve the evidence on record of the respondent-plaintiff before the Learned Trial Court below. More so, from Exbt.15 that is the reply notice dated 08.11.2016 by the appellant-defendant against the legal notice dated 25.10.2016 to the respondent-plaintiff it also appears that in para-4 it was asserted on behalf of the appellant-defendant that the respondent-plaintiff defaulted in making payment of monthly rent in respect of the let out premise to the appellant-defendant which attracts Clause-11 of the agreement and thus he(respondent) violated Clause-11 of the tenancy agreement [Exbt.1]. But to substantiate his contention there is no evidence on record from the side of appellant-defendant that for violation of the said clause the appellant-defendant has taken any sort of legal step against the respondent-plaintiff of this present appeal. Had there be any violation on the part of the respondent-plaintiff in respect of Clause-11 of the tenancy agreement, the appellant-defendant had the legal scope to challenge the tenancy agreement which he failed to do so. Thus from the act and conduct and also from the evidence on record specifically the evidence of DW-1 and DW-2 in their examination-in-chief of affidavit, wherein they themselves admitted that the suit shop/premise was not

ready for delivery. So it is crystal clear that the plea of the respondent-plaintiff before the Trial court that the present appellant-defendant did not hand over possession to the respondent-plaintiff was/is well established and thus the Learned Trial court below rightly came to a conclusion that there was a breach of contract on the part of the appellant-defendant to perform his part of contract in execution of the tenancy agreement [Exbt.1] inspite of receiving security deposit amount and the monthly rents for few months in respect of the suit premise from the respondent and thus rightly delivered the judgment and similarly the Learned First Appellate court at the time of delivering the judgment relied upon Section-91 of the Evidence Act regarding receipt of security deposit amount of Rs.3,50,000/- by the appellant-defendant from the respondent-plaintiff and also came to the conclusion on perusal of the Clause-10 of the agreement that the Clause-10 of the agreement would come into play only after the agreement is actually brought into force and it was also the observation of the Learned First Appellate Court that even after execution of the agreement and also after receipt of the security deposit money as well as the monthly rents the appellant-defendant failed to hand over the suit premise to the respondent-plaintiff resulting which the requirement of six months notice as per Clause-10 of the tenancy agreement would not be required for

revocation/termination of the lease agreement/tenancy agreement [Exbt.1].

18. Thus after hearing both the sides and also after going through the LC records it appears to me that there was no infirmity in the judgment passed by Learned First Appellate Court affirming the judgment of the Learned Trial Court below in T.S. 134 of 2016, passed by Learned Civil Judge (Senior Division) Court No.1, Agartala, West Tripura. So the substantial question of law as formulated by this court by the order dated 05.09.2022 is accordingly answered in negative against the present appellant of this case.

19. In the result, the appeal preferred by the appellant is hereby dismissed on contest with costs. The judgment and decree dated 28.04.2022 passed by the Learned District Judge, West Tripura, Agartala in Title Appeal No.50 of 2019 affirming the judgment and decree dated 03.06.2019 of the Learned Trial Court numbered as Title Suit 134 of 2016, is hereby affirmed.

Prepare the decree accordingly and send down the LCRs along with a copy of the judgment.

JUDGE

MOUMITA DATTA
Digitally signed by
MOUMITA DATTA
Date: 2023.12.22
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