

GAHC010122572014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/30/2014

SMTI NABANITA BARUAH @ BURAGOHAIN
D/O- SRI BIRA RANJAN BARUAH, R/O- CHIRING CHAPORI, OLD THANA
ROAD, P.O. and DIST.- DIBRUGARH.

VERSUS

SMTI DALIMI TAYE and 3 ORS.
W/O- LT. PADMA NATH TAYE.

2:SRIMATI JAGOMAYA TAYE
D/O- LT. PADMA NATH TAYE.

3:SRI TULSI NARAYAN TAYE
S/O- LT. PADMA NATH TAYE.

4:SRI PRASANNA KUMAR TAYE
S/O- LT. RAM LAL TAYE
ALL R/O- CHOWKIKINGHEE
OLD D.C. BUNGLOW ROAD
DIBRUGARH TOWN
P.O.
P.S. and DIST.- DIBRUGARH
ASSAM

Advocate for the Petitioner : MR.S DUTTA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**JUDGMENT
(ORAL)**

Date : 28.09.2023

Heard Mr. S. Dutta, learned counsel for the petitioner. Also heard Mr. P.P. Dutta, learned counsel for the respondents.

2. By filing this revision petition under section 115 CPC, read with section 227 of the Constitution of India, the petitioner has assailed the impugned appellate judgment and decree dated 05.11.2023, passed by the learned Civil Judge, Dibrugarh in TA No. 40/2011, by which the judgment and decree dated 21.06.2011, passed by the learned Munsiff No.1, Dibrugarh in TS No. 74/2007 was affirmed. As a consequence of concurrent finding of both the learned Courts below, the petitioner is facing imminent eviction from the suit premises described in the schedule of the plaint as well as in the decree.

3. In brief, the case of the respondent-plaintiff in the suit is that she is the owner of a plot of land measuring 16.5/114 lessa, covered by dag no. 294 (New) of periodic patta no. 146 of village-East Chowkidingi within the Dibrugarh Town Mouza and located at Lachitnagar, Dibrugarh along with the houses standing thereon, which are covered by Municipality Holding No.112 and 113. One of the rooms constructed by the respondent was let out to the petitioner-tenant by virtue of an agreement dated 01.01.2005. During the currency of the tenancy, the suit premises was mutually divided with the other co-owners and the properties under the Holding No.112 fell in the share of Padmanath Taye, predecessor-in-interest of the respondent nos.1, 2 and 3 and the properties under Holding No.113 fell in the share of Prasanna Kumar Taye, respondent

no.4.

4. The tenancy agreement, which had lapsed by efflux of time on 01.12.2006, was not extended and that the respondent had alleged that the petitioner had not paid monthly rent for the suit premises since January, 2006 and was a defaulter. Therefore, advocate's notice dated 12.04.2006 was issued and thereafter, the suit for eviction was filed, amongst others for eviction of the petitioner, her men, dependants, etc. from the suit premises and for recovery of khas possession, permanent injunction, cost etc.

5. The petitioner had contested the said suit by filing a written statement, denying the allegations and stating therein that an advance of Rs.85,000/- was paid to the respondents and that the suit premises was constructed by spending a sum of Rs.1,50,000/- and that the other tenants had also made their own construction. It was also pleaded that the suit premises was taken on lease by way of an agreement dated 01.10.2000 at a monthly rate of Rs.1,000/-, which was subsequently raised to Rs.1,150/- from the month of January, 2005. The stand of the petitioner was that the advocate's notice was suitably responded to. It was also stated that the petitioner had offered rent to the respondent, which she had refused to receive and therefore, on 06.05.2006, the petitioner had sent rent to the respondent by way of a cheque drawn for a sum of Rs.4,600/-, which was sent for the month of February to May, 2006 and that on 07.06.2006, another cheque for Rs.1,150/- was sent to the respondent for the month of June, 2006, which was not deposited in the bank. In the written statement, description of 8 Misc.(N.J.) cases regarding deposit of rent from the month of February, 2006 to July, 2007 was provided. It was denied that the petitioner had negotiated with some other persons to sub-rent the suit

premises and accordingly, prayer was made to dismiss the suit.

6. The learned trial Court, on the basis of pleadings had framed the issues for trial:

“1. Whether the suit is maintainable in law & in facts?

2. Whether there is cause of action for the suit?

3. Whether the defendant constructed the suit premises on her own expenditure and whether there was any condition to adjust the money so invested towards the payment of rent?

4. Whether defendant is a defaulter in paying rent to the plaintiffs in accordance with the agreed terms and conditions as well as in accordance with law and liable to be evicted from the suit premises?

5. Whether the plaintiff required the suit premises bonafide?

6. Whether the plaintiff is entitled to the relief's claimed for?

7. To what relief/s the parties are entitled?”

7. The respondent/plaintiff's side had examined 3 (three) witnesses and had also examined the following documents viz., Power of Attorney No.301 Sl. No. 677 dated 27.03.2007 (Ext.1); Sale Deed (Ext.2); Mutation Order (Ext.3); Jamabandi (Ext.4); Revenue Payment Receipt (Ext.5 to 15); Holding Tax Payment Receipt (Ext.16 and 17); Notice (Ext.18); Registered Postal Receipt (Ext.19); A/D Card (Ext.20); and Agreement dtd. 01.01.2005 (Ext.21).

8. The petitioner/defendant had examined 2 (two) witnesses and had examined the following documents viz., Agreement dtd. 01.12.2000 (Ext.A); Agreement dtd. 01.01.2005 (Ext.B); Notice to produce documents (Ext.C); Notice to admit documents (Ext.D); Voucher of expenditure (Ext.E to J); Notice dated 12.04.2006 (Ext.K); Reply dated 12.05.2006 (Ext.L); Counterfolios of

cheque (Ext.M and N); Rent depositing challans [Ext.O(1) to O(29)]; Drug License dtd. 02.12.2000 (Ext.P); Renewal of Drug Licence (Ext.Q); Insurance Policy of shop (Ext.R); Rent Receipt [Ext.S(1) to S(15)]; and Deposit of rent, Misc.(N.J.) cases till May, 2010 Ext.[T(1) to T(42)]

9. The learned trial Court, on examination of materials available on record held in respect of issue no.1 that the suit was maintainable on facts and in law. In respect of issue no.2, it was held that as the respondents had alleged that the petitioner was a defaulter, which was denied by the petitioner, there was a cause of action for the suit. In respect of issue no.3, it was held that there was no evidence to show that any construction over the suit premises was made by the petitioner and there was no condition for adjustment of rent as per the terms of the rent agreement (Ext.21) and therefore, the said issue was decided in favour of the respondents. In respect of issue no.4, the learned trial Court took note of the contents of Advocate's notice (Ext.18), wherein the respondents had asked the petitioner to vacate the suit premises and to pay arrear rent from January, 2006.

10. Referring to the evidence, it was held by the learned trial Court that the petitioner was a defaulter in payment of rent from the month of February, 2006 and further held that the proceedings of Misc.(J) Case No. 77/2009 [Ext.F(25)] was dismissed for not depositing challan and also took note of the contents of Ext.T(1) that the petitioner had deposited rent from February, 2006 till December, 2006 by one challan and it was held that the rent was not offered within the 1st week of the succeeding month and it was held that the rent deposit cases vide Ext.T(24), T(34), T(36), and T(39) had been dismissed for not taking steps. Accordingly, it was held that the requirement of section 5(4) of

the Assam Urban Rent Control Act was not fulfilled and accordingly, the issue of defaulter was decided against the petitioner. Moreover, it was held that the deposit of rent in Court for the month of February, 2006 was not proper payment of rent as it was a monthly tenancy and accordingly, the issue was decided in favour the respondent.

11. In respect of issue no.5, the learned trial Court had held that the PWs had stated that the suit land was required *bonafide* for their own use for constructing a new house thereon and it was held that the petitioner had failed to disprove the same and accordingly, the said issue no.5 was decided in favour of the respondents.

12. In view of the said discussions on issue nos.1 to 5, the issue nos.6 and 7 were decided in favour of the respondents and the respondents-landlords were held entitled to relief of recovery of arrear rent of Rs.1,000/- per month from 01.01.2006 till the date of eviction and it was directed that the respondents will refund back the security money of Rs.85,000/- to the petitioner at the time of eviction and the respondents were found entitled for khas possession of suit land by evicting the petitioner, dependents, belongings etc. from the suit premises.

13. The aggrieved petitioner had assailed the said judgment and decree by filing an appeal which was registered TA No. 40/2011. The said appeal was dismissed by judgment and decree dated 05.11.2013, passed by the learned Civil Judge, Dibrugarh. It would suffice to mention that the learned appellate Court, on the basis of materials available on record had framed the following the point for determination:

“1) Whether the judgment and decree passed by the learned trial court is just and proper or needs any interference in this appeal?”

14. The learned trial Court had revisited all the issues framed by the learned trial Court and after independently appreciating the evidence on record and upheld the decision of all the issues. It would be appropriate to mention that the learned first appellate Court also found the petitioner to be defaulter in payment of rent and it was also held that the suit premises was *bonafide* required by the respondents by taking note of the evidence of PWs that the suit premises was required for construction of their house and enjoyment and accordingly, it was held that the *bonafide* requirement within the meaning of section 5(1)(c) of the Assam Urban Rent Control Act did not only relate to the respondents/plaintiffs alone, but also to such person for whose benefit the house was held.

15. Assailing both the judgments wherein concurrent finding of fact was returned, the learned counsel for the petitioner had forcefully submitted that both the impugned judgments were vitiated for non-consideration of the fact that as per the agreement between the parties dated 01.12.2000, there was a requirement to give 3 (three) months' prior notice in writing. In this regard, it is submitted that as per clause-vii of the Terms of Condition of Tenancy Agreement, it was specifically agreed between the parties that in respect of continuation or discontinuation of agreement of tenancy, 3 (three) months' prior notice in writing would be served to the other parties.

16. By citing the case of *M/s Sarwan Kumar Onkar Nath v. Subhas Kumar Agarwalla, (1987) 4 SCC 546*, it was submitted that as the respondents were holding a sum of Rs.85,000/- as advance, the said advance amount was liable to

be adjusted against the monthly rent and therefore, the petitioner could not have been declared as a defaulter in payment of rent. Moreover, the ground of *bonafide* requirement of the suit premises was also questioned by the learned counsel for the petitioner on the ground that there was no evidence to show that the suit premises was required by the respondents for their own purpose and in this regard, it is submitted that there are total six shops in the land of the respondents and that no reason has been cited why the respondents had chosen only the present suit premises.

17. The learned counsel for the respondents has contested the submissions made by the learned counsel for the petitioner.

18. Before addressing on the submissions made by the learned counsel for the petitioner, the Court is of the considered opinion that in the present case in hand, there are concurrent finding of fact by both the trial Court as well as learned first appellate Court and that both the Courts have concurrently held that the petitioner is a defaulter in payment of rent and the suit premises was *bonafide* required by the respondents. Therefore, in exercise of jurisdiction under section 115 CPC and/or Article 227 of the Constitution of India, this Court would not normally re-examine the evidence and give a finding contrary to the concurrent finding of fact as decided by the learned Courts below, unless it can successfully be demonstrated that the findings were perverse or it can be shown that the said learned Courts had committed patent illegality.

19. Nonetheless, in view of the submissions made by the learned counsel for the petitioner, the challenge to the finding of both the Court below on the issue of *bonafide* requirement and default has been again examined.

20. At the outset, it would be stated that the ratio of the case of *M/s Sarwan Kumar Onkar Nath (supra)* would not be applicable under the facts and circumstances of this case. In the said cited case, the decision was rendered by taking into account the provisions of section 3 as well as section 11(1)(b) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982. The provisions of section 3 of the said Act provides that "it shall not be lawful for any person to claim or receive, in consideration of the grant, renewal or continuance of a tenancy of any building, the payment of any premium, salami, fine or any other like sum in addition to the rent or payment of any sum exceeding one month's rent of such building as rent in advance". The said provision of law is extracted in paragraph 1 of the said judgment. As per the facts of the said case, the landlord had received advance rent for 2 (two) months. Under such circumstances, it was held that as there was no agreement that the amount was liable to be adjusted on the termination of lease, the tenant was hold not be a defaulter.

21. In the State of Assam, the tenancy in question is governed by the provision of the Assam Urban Area Rent Control Act and the said Act does not contain *para material* provision like section 3 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982. Under section 5 of the Assam Urban Area Rent Control Act, a tenant becomes liable to be evicted if he has not paid the rent lawfully due from him in respect of the house within a fortnight of its falling due. Admittedly, the petitioner had deposited rent in Court for the month of February, 2006 to December, 2006 vide Ext.T(1). Therefore, both the learned Courts below had rightly decided the issue of defaulter against the petitioner as the said Ext.T(1) was sufficient to show that the rent was not tendered and deposited in the Court within the fortnight of its falling due. Therefore, the

finding of fact returned by both the learned trial Court as well as the learned first appellate Court does not warrant any interference. Moreover, the rent deposit cases vide Ext.F(25), Ext.T(24), Ext.T(34) and Ext.T(36) had been dismissed for not taking steps. The said finding of fact could not be disputed by the learned counsel for the petitioner.

22. Insofar as the ground of *bonafide* requirement is concerned, in light of evidence tendered by the PW.1, 2, 3, and 4, it is seen that during the course of examination of the said witnesses, the *bonafide* requirement of the respondents could not be disputed. Therefore, insofar as the issue of *bonafide* requirement is concerned, the concurrent finding returned by both the learned trial Court as well as the learned first appellate Court does not warrant any interference.

23. As a result of the discussions above, this revision against the concurrent finding in the judgment of the learned trial Court and the learned first appellate Court does not warrant any interference and therefore, the revision stands dismissed.

24. At this stage, the learned counsel for the petitioner has made a prayer to allow the petitioner to remain in the suit property for a year so as to make alternative arrangement. The said prayer is opposed by the learned counsel for the respondents by submitting that the respondent no.1 is ill and is suffering from cancer and therefore, he prays to allow the respondents to put the decree in execution immediately.

25. Having noted that the stand of the petitioner is that he has been in the suit premises from the year 2000, the Court is of the considered opinion that ends of justice would be met to allow the petitioner time till 31.03.2024 to

vacate the suit premises. In this regard, the condition imposed by the Court is as follows:

- a. The occupation on the tenant premises till the said extended period would be confer any right to the petitioner and such occupation shall also not be constitute to be a fresh tenancy.
- b. For the months of October, 2023 to 31.03.2024, the petitioner shall have to pay compensation @Rs.2,500/- per month to the respondents, for which the respondent shall provide her bank details to which the petitioner shall deposit the compensation by electronic money transfer mode like, bank online transfer, Google Pay, Phone Pay etc. If such compensation is not paid within seven days of the next month, right would vest on the respondent to put the decree into execution. On such payment being tendered, the respondent shall issue a money receipt.
- c. In order to facilitate the petitioner to over stay in the suit premises till 31.03.2024, the petitioner shall be required to submit an undertaking before the learned trial Court she would be vacating the suit premises by 31.03.2024 by handing the suit premises to the respondent and no one else. The undertaking shall also be to the effect that she would pay monthly compensation to the respondents to the extent of Rs.2,500/- per month from October, 2023 to 31.03.2024 and that during the said extended period of stay she would not make any alternation/ modification of the suit premises nor introduce a third party into the suit premises or in her business or create any third party rights.
- d. On failure of the petitioner to handover the vacant possession of

the suit premises described in the plaint on 31.03.2024 to the respondents or in case of violation of any of the terms and conditions imposed by the Court, it would be open to the respondents to put the decree into execution.

26. Let the LCR be sent back.

JUDGE

Comparing Assistant