

GAHC010140092022



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

**Case No. : CRP/84/2022**

MD. ZULFIQUR ALI  
S/O LATE SHAHID ALI, R/O HOUSE NO. 4, VILL-AROHAN PATH, NEW  
TOWN SARANIA, P.S.-PALTANBAZAR, GUWAHATI-07, DIST-KAMRUP(M),  
ASSAM

VERSUS

MD. AZADUR RAHMAN HAZARIKA  
S/O LATE HABIBUR RAHMAN HAZARIKA, R/O COL. J ALI ROAD,  
LAKHTOKIA SWEET PALACE, P.S.-PALTANBAZAR, GUWAHATI-01, DIST-  
KAMRUP(M), ASSAM

**Advocate for the Petitioner** : MR. A IQBAL

**Advocate for the Respondent** : MS N RAHMAN (FOR CAVEATOR)

**BEFORE**

**THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY**

For the Appellant : Mr. A Iqbal, Advocate

For the Respondents :Mr. P Khataniar, Advocate

Date of Hearing : 09.03.2023

Date of Judgement :09.03.2023

**JUDGEMENT & ORDER (ORAL)**

Heard Mr. A Iqbal, learned counsel for the petitioner. Also heard Mr. P Khataniar, learned counsel for the respondent.

2. The present petition is filed under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 assailing judgment and decree dated 26.04.2022 passed by the learned Civil Judge No. 2, Kamrup (M) at Guwahati in TA No. 62/2018 whereby the judgement and decree dated 05.09.2018 passed by the learned court of Munisiff No.1, Kamrup (M) at Guwahati in TS No. 349/2013 was upheld.

3. The case of the plaintiff as pleaded in the plaint can be summerized as follows:

I. The respondent as plaintiff instituted a title suit being TS No. 349/2013 against the petitioner for ejectment under Assam Urban Areas Rent Control Act, 1972 (hereinafter referred to as Act, 1972). The suit was also filed for arrears of rent.

II. The father of the present petitioner was the original tenant under the respondent in respect of Assam type rooms, which is described in the schedule to the plaint.

III. The rent was payable within the first week of the succeeding month.

IV. It was the case of the plaintiff that that the respondent had failed to pay the rent.

V. The basic ground for seeking such eviction was bona-fide requirement and default in payment of rent.

VI. It is the case of the plaintiff that the rent for each English calendar month falls due on last day of English calendar month and rent was fixed at Rs. 5,000/- per English calendar month.

VII. The monthly rent for the English calendar month of July, 2013 full due on 31.07.2013 and was payable within seventh of August, 2013. Similar was the case in respect of the month of August, 2013. However, said rents were not paid within the stipulated time period and accordingly the suit was filed.

4. As the bona-fide requirement is held to be not available to the plaintiff by both the learned courts below and such decision is not under challenge, this court is not going to enter into such finding in this judgment.

5. The case of the defendant as pleaded in the written statement are, amongst other, non-maintainability of the suit, which has been seriously urged before this court also and shall be dealt with at the later part of the judgment.

6. The other plea taken by the defendant was that though the defendant went to offer the rent for the month of July and August, 2013 within the period it became due, however, the wife of the landlord intimated that as her husband is not available, same may be given at later point of time. Subsequently, such rents were not accepted and having no alternative the defendant deposited the rent through the process as provided under Sub-section 4 of Section 5 of the Act, 1972.

7. The learned trial court formulated as many as four issues like

the maintainability of the suit, issue of default in payment of rent and the issue of bona-fide requirement. As the bona-fide requirement is not a subject matter for the purpose of the present determination, let this court look into the issue of default in payment of rents.

8. To prove default in payment of rents, the plaintiff adduced himself as the PW1. The learned court below while determining such issue, found that the evidence of PW1 had remained un-shaken. In that view of the matter, the learned trial court below dealt with the evidence led by the defendant to prove that there was no default on his part rather it was the action of the plaintiff, for which there was some delay in payment of the rents. The learned Trial Court while discussing the evidence of DW1 i.e. the tenant defendant came to the following conclusion:

I. There is not dispute regarding the tenancy, the amount of rent and the due date.

II. The defendant admitted that the rents for the month of July, 2013 and for the month of August, 2013 could not be paid within the stipulated time as the landlord refused to accept same. To prove such refusal, the defendant examined himself as DW1.

III. Though the defendant pleaded that he along with his representative went to deposit the rent, which was refused by the wife of the landlord, however, the defendant has not specifically stated on which date he went to offer the rent. He has also not examined the representative, who went along

with him to offer the rent. Therefore, the learned trial court below disbelieved such pleading and evidence of the defendant.

IV. The further contention of the defendant is that thereafter having no alternative, he deposited the rent in the court through the process as prescribed under Sub-section 4 of the Section 5 of the Act, 1972. Such contention was also rejected by the learned trial court below on the ground that none of the documents or receipt of payment of rent issued by the Treasury or the notice issued to the landlord tendering the rent has been proved by producing the original and only Xerox copy of certain documents were only produced. And accordingly, the learned trial court came to a conclusion that the defendant has failed to prove that rent was duly offered in term of Sub-section 4 of Section 5 of the Act, 1972 and accordingly held that the defendant tenant is a defaulter and passed the judgment of eviction.

9. Such decision was taken to appeal through TA No. 62/2018 before the learned Appellate Court. The learned Appellate Court re-affirmed the said judgment and did not find any fault in the judgment and upheld the same. Being aggrieved, the petitioner is before this court.

10. Argument advanced by the learned counsel for the petitioner:

I. The learned counsel for the petitioner taking to the plaint annexed to the present petition contends that the plaint is not supported by any affidavit, therefore, by virtue of Section 26

of the CPC, 1908 such plaint is nonest in the eye of law inasmuch as the statement regarding the default of payment of rent cannot be accepted as the said statement is not supported by any affidavit and on this count alone the whole suit was not maintainable and is liable to be dismissed and the decree passed should be reversed.

II. Regarding payment of rent, it is argued that rents were tendered, however, on being refused, it was to be deposited in the court and therefore in such a situation it cannot be said that this is an wilful default inasmuch as the Act, 1972 only says about wilful default.

III. The petitioner has all throughout been paying the rent and even after the landlord refused to accept the rent, he continued to pay the rent before the court and being a beneficial legislation in favour of the tenant, the learned court below ought not to have straightway rejected the evidences available on record.

11. Per contra, Mr. Khataniar, learned counsel submits that the plaint was duly supported by an affidavit and in support of such contention he has produced a certified copy of the plaint obtained from the learned court below. Coming to the other points, the learned counsel submits that there are concurrent findings of fact so far relating to the default in payment of rent and both the learned courts below after elaborately discussing the evidences and material on record have come to such a conclusion. Therefore, this court in exercise of its jurisdiction under Section 115 of the CPC, should not

reverse such finding of facts.

12. This court has given anxious consideration to the submission advanced by the learned counsel for both the parties. The material available on record clearly depicts that the defendant has not disputed the tenancy. The defendant has not also disputed the amount of rent and has also not disputed the due date. The defence case of the defendant so far relating to the default, is that though the defendant went to tender the rent for the month of July, 2013, the wife of the landlord refused to accept it by saying that her husband is out of station and whenever he will come back he will accept the rent. Similar is the stand so far relating to the rent for month of August, 2013.

13. Thus, it is established that even if the rent of July, 2013 was refused after tendering, it was not deposited in the court on such refusal immediately. Therefore, when the rent became due for the month of August, 2013, it was the same pleading that they further went to tender the rent, however, that was also not accepted and thereafter the rent of July, 2013 and August, 2013 were deposited together before the court. There is no quarrel on this point and this is a specific pleading and thus admitted position. Therefore, the petitioner had admittedly defaulted in payment of rent for the month of July, 2013.

14. Now coming to the deposit of rent before the court, according to the defendant they deposited the same before the court in terms of Sub-section 4 of Section 5 of the Act, 1972. In view of the aforesaid admitted fact, now the burden shifted to the defendant to

show that there was no default on his part. There is no iota of evidence on record to show, on which date the rent was tendered inasmuch as for determination of a default, the date of tendering is very important. Though, a statement has been made that it was tendered, however, no specific date has been mentioned either in the plaint or in the evidence. Further, it is the pleaded case of the defendant that one of his representative also accompanied him to tender the rent. But, the said representative has also not been examined as witness. Therefore, in the aforesaid backdrop, the finding of the learned trial court and affirmed by the learned Appellate Court as discussed hereinabove cannot be treated as perverse finding or a finding without jurisdiction. Furthermore, admittedly, it is not disputed at this stage also that Xerox copies of the rent deposit receipt before the Treasury were exhibited. A notice tendering rent, prior to deposit, was also not exhibited.

15. In that view of the matter, this court finds no merit in this revision petition and to review the concurrent finding of fact based on evidence on record. Accordingly, same stands dismissed.

**JUDGE**

**Comparing Assistant**