

GAHC010150672017



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

Case No. : CRP/294/2017

1. Mrs. Hasna Rahman

W/o Late Md. Abdur Rahman,
R/o Jalal Barrack, Red Cross Road,
P.O. and P.S. and District: Dibrugarh.

...PETITIONER

-VERSUS-

1. The Ahmed Tea Company (P) Ltd.,

A company duly constituted and registered under the
Indian Companies Act, 1956, having its registered office
at Bairagimath, Dibrugarh Town, District- Dibrugarh,
P.O. and P.S.- Dibrugarh. PIN- 786001.

....RESPONDENT

Advocates for the petitioners : Mr. S. Biswas
Mr. B. J. Mukherjee
Mrs. I. Begum

Advocates for the respondents : Ms. S. Sarma
Mr. B. Talukdar
Ms. N. M. Deka

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 06.12.2022

Date of Judgment & Order : 03.04.2023

JUDGMENT & ORDER (CAV)

Heard Mr. S. Biswas, learned counsel for the petitioner. Also heard Ms. S. Sarma, learned counsel for the respondent.

2. This civil revision petition, filed under Section 115 of the Code of Civil Procedure, is directed against the impugned judgment and decree dated 14.08.2017, passed by the learned Civil Judge, Dibrugarh, in T.A. No. 07/2014, affirming the judgment and decree dated 11.12.2013, passed by the learned Munsiff No. 2, Dibrugarh, in T.S. No. 113/2007.

3. The brief facts of the case is that the respondent/plaintiff is a company duly registered under Indian Companies Act, having its registered office at Bairagimath, Dibrugarh Town, managing all its work through a Board of Directors. Late Abdul Rahman, the husband of the petitioner/defendant, came to occupy the suit premises at a monthly rent of Rs. 60 per month, according to English Calendar Month, payable at the end of each month of the tenancy. As per the allegation brought in the plaint, it is alleged that the said Abdul Rahman failed to pay the rent and thereby become a defaulter in payment of rent of the suit premises. As there was a *bona fide* requirement of the suit premises, the

respondent/plaintiff filed a ejectment suit, being T.S. No. 52/1993, in the Court of the then Sadar Munsiff. However, the learned Munsiff dismissed the suit vide its judgment and order dated 02.01.1996.

4. Thereafter, the plaintiff again filed a fresh suit, being T. S. No. 113/2007, before the learned Munsiff No. 2, Dibrugarh, praying for recovery of khas possession and vacant possession of the suit premises along with recovery of compensation along with others. The ground taken by the plaintiff is that Late Abdul Rahman, the husband of the present petitioner, failed to pay rent from the month of August, 1980, and therefore he became a defaulter and moreover, after his demise, his family members used the suit premises roughly causing damage to a considerable part of it. The petitioner/defendant, accordingly, appeared and filed their written statement in the suit denying all the allegations made in the plaint and stated *inter alia* that the suit is barred by principle of *res judicata* in view of the judgment passed in T.A. No. 03/1996, passed by the learned Civil Judge Senior Division, Dibrugarh, arising out of T.S. S No. 52/1993. The learned Munsiff No. 2, Dibrugarh, vide its judgment and decree dated 11.12.2013, decreed the suit filed by the respondent/plaintiff holding that the plaintiff indeed has *bona fide* requirement of the suit premises.

5. Against the said judgment and decree dated 11.12.2013, passed by the learned Munsiff No. 2, Dibrugarh, the petitioner/defendant preferred an appeal before the learned Civil Judge, Dibrugarh, which was registered as T.A. No. 07/2014. But, the learned Civil Judge, Dibrugarh, vide its judgment and decree dated 14.08.2017, affirmed the judgment passed by the learned Munsiff No. 2, Dibrugarh.

6. Being aggrieved and dissatisfied with the judgment and decree, dated 14.08.2017, passed by the learned Civil Judge, Dibrugarh, the petitioner has preferred the present civil revision petition on the following grounds, amongst others:

- (i) That the learned Courts below has committed grave error in law as well as in facts while passing the judgment and decree and therefore, the same is liable to be set aside and quashed.
- (ii) That the learned Courts below have erred in law while decreeing the suit in favour of the respondent/ plaintiff by deciding the issue No. 2 in favour of the plaintiff inasmuch as the respondent/company/ plaintiff once filed suit for ejectment against the present defendants on the ground of defaulter and *bona fide* requirement, which was dismissed by the learned Munsiff on 02.01.1996, and therefore, the subsequent suit filed by the respondent/plaintiff/ company is barred by law of *res judicata*. But the learned Courts below, without even considering the pleadings of the parties, passed the judgment in T.S. No. 52/1993 and in appeal filed by the respondent/plaintiff/company, decided the issue No. 2 in favour of the plaintiff, and hence the judgment and decree passed by the learned Courts below is liable to be set aside and quashed.
- (iii) That the learned Courts below have also committed grave error while deciding the issue No. 3 in favour of the plaintiff while deciding

the question of defaulter, the date on which the rent falls due, ought to have been decided by the learned Court below, but the said issue was never decided by the learned Courts below.

- (iv) That the learned Munsiff No. 2 as well as the learned Civil Judge, Dibrugarh, also erred in facts while holding that the suit premises is required for a *bona fide* use of the plaintiff/company and the learned Court below did not take into consideration the evidence of the P.W. 1 where she clearly stated that in the suit premises, there are many residential houses, some of which are still laying vacant and she filed a suit for ejectment against some of the tenants and not against all and therefore, the judgment and decree, passed by the learned Courts below, are not sustainable in eye of law.
- (v) That the learned Civil Judge as well as the learned Munsiff relied on Exhibit-23, the report of government registered valuer, dated 13.07.1979, as well as the Exhibit-25 & Exhibit-26, the minutes of meeting of Board of Directors, where the resolution was taken to construct the proposed office by vacating the premises wherein the defendant No. 1 was a tenant and thus, the judgment and decree passed by the learned Courts below is not sustainable in the eye of law and is liable to be set aside.
- (vi) That the learned Courts below also misinterpreted the fact and the evidence of P.W.-1 wherein she stated that the rent was never collected on month to month basis and the same was payable as per

the convenience of tenant/defendant and no time was ever fixed for payment of rent to the respondent/ plaintiff and it was never objected by the plaintiff on such payment. But, the learned Court below did not take this fact into consideration and decreed the suit in favour of the plaintiff and hence, the same is liable to be set aside and quashed.

7. On the basis of the above stated grounds, it is prayed by the present petitioner/defendant for setting aside the judgment and decree dated 14.08.2017, passed by the learned Civil Judge, Dibrugarh, in T.A. No. 07/2014, affirming the judgment and decree dated 11.12.2013, passed by the learned Munsiff No. 2, Dibrugarh, in T.S. No. 113/2007.

8. The respondent has appeared and filed counter-affidavit against the present petition stating *inter alia* that the Title Suit No. 113/2007 was filed for eviction of legal heirs of Late Abdul Rahman, the original tenant, on the ground of default of monthly payment of rent of Rs. 60 per month since October 2000 and also for the *bona fide* requirement of the plaintiff/respondent. The issue of *res judicata* raised by the present petitioner/defendant is already decided by the learned Court below in favour of the respondent/plaintiff. The learned Munsiff No. 2, Dibrugarh, was pleased to frame 6 (six) numbers of issues and the issue No. 2 was in respect of *res judicata* and accordingly, the issue No. 2 was decided in favour of the respondent/plaintiff considering that the instant suit is not barred by *res judicata*.

9. Further it is stated in the counter-affidavit that the petitioner/defendant

failed to tender or deposit the monthly rent every month to the respondent/plaintiff and in this regard, the respondent/plaintiff also exhibited some Misc NJ cases, which were dismissed for default, and in those Misc (NJ) cases, there was no mention of offer or tender of monthly rent to the plaintiff/respondent by the petitioner/defendant prior to deposit in the Court of Rent Controller-cum-Munsiff No. 1, Dibrugarh, and thus the claim of the petitioner/defendant that they are not the defaulter is not true and the petitioner/defendant, as the tenant, defaulted in payment of rent since October, 2000. Further, in regards to the issue No. 4, i.e. the *bona fide* requirement, the respondent/ plaintiff exhibited Exhibits- 25 & 26, the resolution of Board of Directors, as well as Exhibit-23, the report of government valuer, and the Exhibit-24, the Municipal Board Assessment Register, which shows that the suit premises are in dilapidated condition and it requires to be dismantled as the said suit premises was constructed in the year 1955. The new construction is proposed to be done for the plaintiff/respondent own needs for which the plaintiff has taken the requisite permissions from the Office of the Dibrugarh Development Authority. More so, the respondent/ plaintiff is suffering everyday from some activities of the petitioner/defendant as a tenant, who is an accused of a case of lynching a college student in Dibrugarh Market, which was registered as Dibrugarh Sessions Case No. 75/2000, under Sections 302/534 of the Indian Penal Code.

10. In view of above, the respondent/plaintiff prayed for dismissal of the present revision petition.

11. The learned counsel for the petitioner, Mr. S. Biswas, has submitted that

the learned Court below erred in law and facts while deciding the issue No. 2 in favour of the plaintiff/respondent holding that the subsequent suit/appeal is not barred by *res judicata* in spite of the fact that the earlier Title Suit No. 52/1993, which was filed for eviction of the petitioner/defendant on the ground of defaulter as well as the *bona fide* requirement, was dismissed vide judgment and order dated 02.01.1996. Another ground taken by the petitioner that the issue No. 3 also decided in favour of the plaintiff/respondent holding that the present petitioner/defendant has defaulted in payment of monthly rents to the plaintiff/respondent for the suit premises. While deciding the said issue, the learned Court below never discussed or decided the date on which the rent falls due to the plaintiff. The learned Civil Judge also did not consider the fact that in the earlier suit, i.e. Title Suit No. 52/1993, as well as in Title Appeal No. 03/1996, the learned Courts below, after elaborate discussion, held that the respondent/plaintiff/company had failed to establish the fact as to when the rent falls due and from which date the defendants are defaulters. Further, the learned Courts below also failed to consider the evidence of P.W.-1, wherein, she clearly stated that many residential houses in the entire campus are still laying vacant, but the respondent/plaintiff has not filed any ejectment suit against those tenants and they filed the cases only against the present petitioner/defendant for his eviction.

12. In this context, the learned counsel for the petitioner/defendant also relied on a decision of this Court in the case of **Upendra Chandra Debb Roy Vs. Smti. Subhashini Deb & Ors.**, reported in **(1989) 2 GLR 7**, and stressing on paragraph No. 8 of the said judgment, submits that the mere statement of the landlord that the tenant is a defaulter or the house in question is *bona fide*

required is not sufficient and to prove a person as a defaulter, it is to be determined the date when the rent actually falls due. But, here in the instant case, it is seen that there was no due date for payment of rent fixed between the landlord and the tenant.

13. Paragarph No. 8 of the aforesaid judgment reads as under:

“8. In the instant case, the points which arose for consideration are whether the landlord failed to prove the existence of the two conditions and the Court below erroneously decreed the suit by wrongly throwing the burden of proof on the tenant. ... It is well-settled by a series of decisions of this Court that the existence of the conditions precedent for passing an order in question must be proved by the landlord who claims eviction of the tenant. A mere statement of the landlord that the tenant is a defaulter or that the house in question is required by him for his own use or occupation is not sufficient. He has to establish the aforesaid conditions by cogent and convincing evidence. If he fails to prove the existence of any of the aforesaid conditions precedent, the Court cannot pass an order of eviction. In a case where eviction is claimed on the ground of the tenant being a defaulter within the meaning of Clause (e) of the proviso to sub-section (1) of section 5 of the Act, the landlord has to prove that the tenant failed to pay the rent lawfully due from him in respect of the house within a fortnight of its falling due. The most important fact that has to be proved, therefore, is the date when the rent actually fell due. ... The determination of the date when the rent actually falls due in a particular case depends upon the arrangement or agreement between the parties. ... There may be cases where the landlord, due to various reasons or for his own convenience wants the rent to be paid for two or three months at a time either in advance or on expiry of the period for which it is due. ...”

14. The learned counsel for the petitioner further relied on another decision of this Court in the case of **Tushar Kanti Dey Vs. Sulata Choudhury**, reported in **(2002) 1 GLT 51**, wherein, in paragraph No. 9 thereof, it has been held as

under:

“9. It is incumbent on the part of the Court to determine at the threshold the fact situation as to when the rent becomes due for payment by the tenant to the landlord. Only after deciding the said point the Court can come to conclusion to arrive at a finding so as to declare the tenant a defaulter. In this instant case in hand admittedly, both the landlord/plaintiff and the tenant (defendant/petitioner) were usually paying and receiving rent together for several months as arrears of rent. Therefore it is highly necessitated to find out the exact date when the rent actually fell due. I am absolutely convinced that the Courts below in arriving at the decision that the tenant-petitioner was a defaulter, did not decide the factum as to when the rent becomes due for payment of rent.”

15. The learned counsel for the petitioner further submitted that there should be an agreement between the landlord and the tenant where particular due date should be fixed for payment of monthly rent as well as the mode of payment and also there should be a conscious statement of default as well as the *bona fide* requirement which may be a good ground for the eviction of the tenant. But, in the instant case, it is seen that there is no due date fixed for the payment of the rent and there is no finding in that regard that the petitioner/defendant defaulted in payment of the rent. But, without discussing or deciding these factors, the learned Courts below arrived at a decision that the present petitioner/defendant has defaulted in payment of the rent.

16. In regards to the point raised by the respondent/plaintiff for *bona fide* requirement, it is submitted by the learned counsel for the petitioner that the learned Courts below failed to consider the fact that the plaintiff/respondent has

many other properties in the same campus where the other tenants are still residing, but without filing any ejection suit etc. against those tenants, the plaintiff/respondent filed the suit only to evict the present petitioner/defendant from the suit premises. The P.W.-1 herself stated in her evidence that she has not filed any case against the other tenants for their eviction except the tenants in the barrack stating that the land is required by her for establishing her office complex and showroom. It is a fact that the plaintiff/company/ respondent has many other properties wherein the showroom or office complex can be easily established, but the learned Courts below have failed to take into consideration the said fact. More so, the plaintiff/respondent took the permission from the GMD for construction of the office room etc. without informing the fact about the existence of the suit premises where the tenants are still residing, otherwise as per the P.W.-3, the permission for construction would have not been given till dismantling the same. It is further submitted that the permission for construction was obtained by the plaintiff/respondent without informing about the house existing there on the lands and also about the tenants residing in the said premises. But the learned Courts below without considering the entire facts of the case, decided the issue No. 5 in favour of the plaintiff/respondent deciding that the suit premises is required *bona fide* to the plaintiff/respondent.

17. In this context, the learned counsel for the petitioner/defendant also relied on a decision of Hon'ble Supreme Court in **Ram Dass Vs. Iswar Chander & Ors.**, reported in **(1988) 3 SCC 131**, and further stressed on the paragraph No. 11 of the said judgment, which reads as under:

“Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the land-

lord subject to the satisfaction of certain statutory conditions. One of them is the bonafide requirement of the land-lord, variously described in the statutes as "bona-fide requirement", "reasonable requirement", "bona-fide and reasonable requirement" or, as in the case of the present statute, merely referred to as "landlord requires for his own use". But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a "requirement" in law must have the objective element of a "need". It must also be such that the court considers it reasonable and, therefore, eligible to be gratified. In doing so, that court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down."

18. In context of the *bona fide* requirement, the learned counsel for the petitioner/defendant further relied on 2 (two) decisions of the Hon'ble Supreme Court- (i) **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta [(1999) 6 SCC 222]** & (ii) **Dinesh Kumar Vs. Yusuf Ali [(2010) 12 SCC 740]**, wherein also, the Hon'ble Apex Court expressed the view that the Court has to ascertain the need of the landlord before coming to any finding in regards to *bona fide* requirement of the landlord.

19. Thus, relying on those decisions, it is submitted by the learned counsel for the petitioner/defendant that the learned Court below neither considered the fact that there is no due date fixed for payment of the monthly rent, though the issue of defaulter is decided in favour of the plaintiff/respondent and in the same time, the learned Court below also failed to consider the entire facts of the case before deciding the issue of *bona fide* requirement in favour of the plaintiff/respondent. Further, the learned Court below failed to consider the fact that the subsequent suit/appeal are barred by *res judicata*.

20. In reply to the said submissions, the learned counsel for the respondent/plaintiff, Ms. S. Sarma, has submitted that the learned Court below committed no error or mistake while deciding the issues of *res judicata*, *bona fide* requirement as well as the defaulter of payment of the rent. It is further submitted that the petitioner, as the defendant, took the plea in their written statement that they are not the defaulters and also took the plea that the suit is barred by *res judicata* as the matter is earlier decided by the learned Sadar Munsiff as well as the learned Civil Judge Senior Division, in Title Suit No. 52/1993 and T.A. No. 03/1996, respectively. But the subsequent suit was filed for default of the payment of rent from October, 2000, only after arising of new cause of action. The petitioner/defendant failed to pay their monthly rent from the month of October, 2000, which was fixed only @ Rs. 60 per month. The petitioner/defendant has failed to tender or to deposit the monthly rents several months and accordingly, the respondent, as the plaintiff, exhibited Misc (NJ) cases, which were all dismissed for default by the learned Munsiff No. 1, Dibrugarh, and hence, the plea of the defendant/petitioner that they are not the defaulters are not at all believable or acceptable one. They failed to deposit the rent since October, 2000, and thus defaulted in payment of rent and accordingly new cause of action arises, for which, the eviction suit was filed before the learned Munsiff No. 2, Dibrugarh, which was being numbered as Title Suit No. 113/2007. The cause of action for the earlier suit was for default arrear for payment of monthly rent up to 1993, which was numbered as Title Suit No. 52/1993, and the same was dismissed vide judgment and order dated 02.01.1996. But the present suit is filed only on the basis of new cause of action arises and hence, the learned Court below did not committed any error or

mistake while deciding the issue in favour of the plaintiff/respondent in regards to the issue of *res judicata*.

21. Citing a judgment of Hon'ble Supreme Court reported in **(2001) 6 SCC 473 (N.R. Narayan Swamy Vs. B. Francis Jagan)**, it is submitted by the learned counsel for the respondent/plaintiff that the ground of *bona fide* requirement or non-payment of rent is recurring cause and therefore the landlord is not precluded from instituting a fresh proceeding. Paragraph No. 10 of the said judgment reads as under:

“10. The aforesaid rule would have no application in a proceeding initiated for recovering the suit premises on the ground of bona fide requirement which is a recurring cause. Order XXIII rule 1(4)(b) precludes the plaintiff from instituting any fresh suit in respect of such subject matter or such part of the claim which the plaintiff has withdrawn. In a suit for eviction of a tenant under the [Rent Act](#) on the ground of bona fide requirement even though the premises remains the same, the subject matter which is cause of action may be different. The ground for eviction in the subsequent proceedings is based upon requirement on the date of the said suit even though it relates to the same property.”

22. Further, the learned counsel for the respondent/plaintiff also relied on a decision of Hon'ble Apex reported in **(2014) 15 SCC 610 (Anil Bajaj & Anr. Vs. Vinod Ahuja)**, wherein, it is held that *“it is not for the tenant to dictate to the landlord as to how property belonging to landlord should be utilized by him for his business - Landlord doing business from various other premises cannot foreclose his right to seek eviction from tenanted premises so long as he intends to use said tenanted premises for his own business.”*

23. Citing the aforesaid judgment, it is submitted that the present respondent/plaintiff/company may have the other premises, but that cannot be the only ground for rejecting the prayer for *bona fide* requirement of the present plaintiff/ respondent and thus, the learned Court below committed no

error or mistake while deciding the issue of *bona fide* requirement in favour of the plaintiff/respondent.

24. The learned counsel for the respondent/plaintiff further relied on a decision of the Hon'ble Apex Court reported in **(2015) 12 SCC 778 (Baldev Singh Bajwa Vs. Monish Saini)**, wherein, it has been held that "*A heavy burden would lie on tenant to prove that requirement of landlord is not genuine – To prove this fact tenant must give all necessary facts and particulars supported by documentary evidence, if available, to support his plea in affidavit itself so that Controller will be in position to adjudicate and decide question of bona fides of need of landlord – Mere assertion on part of tenant will not be sufficient to rebut the strong presumption in landlord's favour.*"

25. In respect of the plea on defaulter of the payment of rent, the learned counsel for the respondent/plaintiff relied on the decision of this Court reported in **2017 (4) GLT 57 (Niyoti Dev & Ors. Vs. Ahmed Tea Company (Pvt.) Ltd.)**, wherein, it has been held that "*unless the pre-condition and requisites of depositing of rent is adhered to, which was mandatory in nature, the rent cannot be said to be validly deposited.*"

26. To support the plea of defaulter, the respondent/plaintiff had already stated in their affidavit-in-opposition and also submitted that the plaintiff had exhibited several numbers of Misc (NJ) cases which were dismissed by the Court of learned Munsiff for default, which otherwise established that the defendant's claimed that they are not the defaulters is not believable and the petitioner/defendant is the defaulter in payment of rent to the respondent/plaintiff since October, 2000.

27. The learned counsel for the respondent/plaintiff also relied on a decision

of Hon'ble Supreme Court in **Bhupinder Singh Bawa Vs. Asha Devi**, reported in **(2016) 10 SCC 209**, wherein also, the Hon'ble Apex Court has expressed the view that *"it is open to the landlord to choose more suitable premises for carrying on the business by her son and that the respondent cannot be dictated by the appellant as to which shop her son should start the business from."*

28. So, from the submissions made by the learned counsels for both the parties and also after perusing the pleadings of the parties as well as the judgments passed by the learned Courts below, it is seen that the main issue to be decided is "as to whether the impugned judgment and decree, dated 11.12.2013, passed by the learned Munisiff No. 2, Dibrugarh, in T.S. No. 113/2007, and the impugned judgment and decree dated 14.08.2017, passed by the learned Civil Judge, Dibrugarh, in T.A. No. 07/2014, dismissing the appeal filed by the present petitioner/defendant, suffers from any illegality, impropriety or correctness requiring any interference of this Court?"

29. Issue mainly raised by the petitioner/defendant is that the learned Munsiff No. 2, Dibrugarh, as well as the learned Civil Judge, Dibrugarh, committed error and mistake while deciding the issue No. 2, i.e. *res judicata*, issue No. 3, i.e. issue of defaulters, and also the issue No. 5, i.e. the issue of *bona fide* requirement in favour of the respondent/plaintiff.

30. It is a fact that the earlier suit filed by the respondent/plaintiff was dismissed by the learned Munsiff as well as the learned Civil Judge, which were being numbered as T.S. No. 52/1993 and T.A. No. 03/1996, respectively. But, the subsequent suit was filed by the respondent/plaintiff with fresh cause of action which arose on October, 2000, wherein they claimed that the petitioner/defendant failed to deposit the monthly rent since October, 2000, and

in the same time they also claimed a plea that for extension of their business purpose, there is a *bona fide* requirement of the suit premises. Thus, it is seen that the subsequent suit, which is filed after arousal of the new cause of action, cannot be said to be barred by principle of *res judicata*. More so, as cited above, the Hon'ble Apex Court in the case of **N. R. Narayan Swamy (supra)**, also held that the ground of *bona fide* requirement or non-payment of rent is a recurring cause and therefore, the landlord is not precluded from instituting fresh proceeding and accordingly, it is seen that the learned Civil Judge, Dibrugarh, committed no error or mistake while deciding or affirming the issue of *res judicata* in favour of the plaintiff/respondent.

31. Coming to the next issue on defaulter, it is claimed by the petitioner/defendant that they never defaulted in payment of the rent as there was no fixed date for payment of rent and the learned Munsiff No. 2, Dibrugarh, as well as the learned Civil Judge, Dibrugarh, while passing the judgment in T.S. No. 52/1993 as well as in T.A. No. 03/1996, respectively, elaborately discussed that the plaintiff/company had failed to establish the fact as to when the rent falls due and from which date, the defendants are the defaulters. In regards to this issue, the learned Civil Judge, Dibrugarh, also discussed elaborately and it is seen that the plaintiff/company also send notice through its engaged counsel and narrated the entire fact of irregular payment of rent and also directed the petitioner/defendant to pay the rents directly to the company. But, in spite of that, the petitioner/defendant failed to produce any document to prove that they paid rents before the office and for which, the plaintiff/respondent, as a landlord, also issued notice to the petitioner/defendant. More so, the burden lies on the tenant that the rent was illegally tendered and the same was refused by the landlord/plaintiff.

32. But, from the discussion made in the issue No. 3 by the learned Civil Judge, Dibrugarh, and also from the evidence of D.W.-1, it is seen that the petitioner/defendant used to offer the rent to the landlord/plaintiff sometimes, but on their refusal they had to deposit the same before the Court. In this context, as cited by the learned counsel for the respondent/plaintiff, this Court had discussed on the issue in its judgment in the case of **Niyoti Dev (supra)** and it is held that unless the precondition and requirement of deposit of rent is adhered to, which is mandatory in nature, rent cannot be said to be validly deposited. The learned counsel for the petitioner argued in this point that there is no fix date for payment of rent and hence, the question of defaulter does not arise.

33. In this context, the learned counsel for the petitioner/defendant also relied on a decision of this Court in the case of **Upendra Chandra Deb Roy (supra)**, wherein, it is held that "mere statement of landlord that tenant is a defaulter or that the house in question is required by him for his own use or occupation is not sufficient. He has to establish the aforesaid conditions by cogent and convincing evidence ... determination of the date when the rent is actually falls due in a particular case depends upon the arrangement or agreement between the parties. The learned counsel for the petitioner, as stated above, also relied on another decision of this Court in **Tushar Kanti Dey (supra)**.

34. But, here in the instant case, as discussed above, the petitioner/defendant failed to establish that he legally tendered the rent to the respondent/plaintiff and in the same time also, it is seen that several Misc (NJ) cases were dismissed for default and thus, it is seen that they even defaulted in payment of rent before the Court of learned Munsiff. At the time of adducing evidence, the

Sheristadar of the Court of learned Munsiff, Dibrugarh, was also stood as a witness, wherefrom, it is seen that several NJ rent deposit cases were dismissed due to not taking any proper steps. More so, the plaintiff/company also brought on record the terms of tenancy, wherein, the petitioner/defendant was to deposit rent at the end of each month as per the English Calendar. Though the petitioner/defendant denied the allegation of defaulters, but they could not produce any documents or any evidence that the rent was regularly deposited by them. Accordingly, it is seen that the issue on defaulter of payment of rent is rightly decided by the learned Civil Judge as well as by the learned Munsiff in favour of the plaintiff/respondent.

35. Coming to the issue of *bona fide* requirement, it was submitted by the learned counsel for the petitioner that the learned Court below did not consider the fact that the P.W.-1 herself stated in her evidence that in the barrack of the suit premises, they were many residential houses and some of which are still laying vacant and she filed the suit for ejectment only against some of the tenants and not against all. Thus, it is seen that the plaintiff/respondent, in their own evidence, failed to establish that there is *bona fide* requirement of the suit premises. More so, the learned Court below decided the fact of *bona fide* requirement on the basis of the report of Exhibit-23, i.e. the report of government registered valuer, dated 13.07.1979, where the future life of the suit premises was estimated to be 15 years and also relied on the Exhibit-25, i.e. the minutes of meeting of Board of Directors, and also resolution of Board of Directors, dated 21.05.2000. But, from the record, it reveals that no information was given to the municipality authority in regards to the possession of the suit premises and without any proposal of dismantling the suit premises, the resolution was passed by the Board of Directors and behind the back of the

present petitioner, the respondent/plaintiff obtained the order for permission for construction of the building in the suit premises.

36. From the evidence of P.W.-1 as well as from other materials, it is seen that the plaintiff/company has its own tea plantation and other business and some other premises are still under rent, but the plaintiff/respondent requires the site for construction of building so as to accommodate its own office and showroom etc. and accordingly, they obtained the permission from the Dibrugarh Development Authority. More so, it is the case of the plaintiff that the plaintiff/company needs the premises for its own purpose. More so, it is discussed by the learned Civil Judge in its judgment that the P.W.-1 herself admitted that her 2 (two) son is earning a handsome amount of money and she is not in a distress that she cannot make arrangement for any alternative accommodation. More so, in the judgments relied by the learned counsel for the respondent/plaintiff, which was reported in **(2014) 15 SCC 610 (Anil Bajaj & Anr. Vs. Vinod Ahuja)** and **(2016) 10 SCC 209 (Bhupinder Singh Bawa Vs. Asha Devi)**, Hon'ble Apex Court has also expressed the view that it is the option for the landlord to choose the premises for doing his business and doing business in various premises cannot foreclose the right of seeking eviction of the tenanted premises and the landlord cannot be dictated by the tenant in this regard.

37. Here in the instant case also, it is a fact that the respondent/plaintiff has various properties including different plantation etc., but that cannot be foreclose the right of the present respondent/plaintiff for filing case for the suit premises which are being occupied by the tenants since 1964 and hence, after the lapse of so many years, it is very natural for the rented house to be required for reconstruction and hence, the plea that the suit premises are in dilapidated

condition cannot be rejected and in the same time, the resolution of the Board of Directors and the permission of the Municipal Corporation for construction of the building in the suit premises, cannot be held illegal.

38. So, from the entire discussions made above, it is seen that the learned Civil Judge, Dibrugarh, committed no error or mistake while deciding the issues, more particularly, the issue Nos. 2, 3 & 5, in favour of the plaintiff/respondent and the learned Munsiff No. 2, Dibrugarh, as well as the learned Civil Judge, Dibrugarh, made elaborate discussion on those issues and rightly decided those issues in favour of the plaintiff/respondent. And, accordingly, in my considered opinion, the judgment and decree passed by the learned Civil Judge, Dibrugarh, dated 14.08.2017, in T.A. No. 07/2014, affirming the judgment and decree dated 11.12.2013, passed by the learned Munsiff No. 2, Dibrugarh, in T.S. No. 113/2007, do not suffer from any legality, propriety or correctness requiring any interference of this Court.

39. In the result, I find no merit in this petition and accordingly, the same stands dismissed. However, there shall be no order as to cost.

40. Send down the records to the learned Court below.

JUDGE

Comparing Assistant