

GAHC010161222023



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

Case No. : CRP/116/2023

DIPTI REKHA SARMA
W/O- SHRI PRANAB SARMA,
R/O- COL. SIVARAM BORA ROAD,
KHARGULI, P.S.- LATASIL,
GUWAHATI- 781004,
DIST.- KAMRUP(M), ASSAM.

VERSUS

SUPRABHA BORDOLOI
W/O- SRI BHUBAN BORDOLOI,
R/O WARD NO. 11 (NEW), M.C. ROAD,
GUWAHATI CLUB, GUWAHATI- 781003,
DISTRICT- KAMRUP(M), ASSAM.

Advocate for the Petitioner : MR P UPADHYAY
Advocate for the Respondent : MR. P K BORDOLOI

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

16-08-2023

Heard Shri P. Upadhyay, learned counsel for the petitioner whereas Shri A. Ikbali, learned counsel is present for the respondent.

2. The instant revision petition has been preferred against a judgment dated 28.04.2023 passed by the learned Civil Judge No. 1, Kamrup (M) in Title Appeal No. 1/2021 by which the appeal has been dismissed and the judgment and order dated 23.12.2020 passed by the learned Munsiff No. 2, Kamrup (M) in TS No. 274/2016 has

been affirmed. The petitioner was the defendant in the suit which was instituted by the present respondent as plaintiff for ejectment on the grounds of *bona fide* requirement as well as defaulter.

3. The learned Trial Court vide the judgment and decree dated 23.12.2020 had decreed the suit in favour of the respondent plaintiff and directed ejectment on both the grounds. Against the aforesaid judgment and decree, the petitioner had preferred the aforesaid appeal which has also been dismissed by the learned Civil Judge No. 1, Kamrup (M) vide the impugned judgment dated 28.04.2023.

4. Shri Upadhyay, the learned counsel for the petitioner has submitted that the findings arrived at by the learned Munsiff which have been concurred by the Appellate Court are inconsistent with the materials on record. He submits that rent was being deposited in the Court in various NJ cases and therefore, the question of decreeing the suit on the ground of defaulter could not have arisen. He submits that the findings regarding *bona fide* requirement are also not in accordance with law.

5. On the other hand, Shri Ikbali, learned counsel for the respondent has at the outset submitted that under the Urban Areas Rent Control Act, there is no provision for filing any second appeal and it is only because of the said restriction that recourse under Section 115 of the CPC is taken. He submits that powers of revision are to be exercised with circumspection and unless there is jurisdictional error or blatant illegality or irregularity in the judgment, a Court exercising powers of revision would be loath to interfere. He submits that so far as the instant case is concerned, though the projection made on behalf of the petitioner is that rents were deposited in the Court in various NJ Cases, the same was not preceded by any tendering of the rent and such tendering was not proved in the Court which is required under the settled principles of law. He further submits that on the aspect of *bona fide* requirement, it is a settled principle that the landlord is the best Judge and the requirement can be best

assessed by the landlord.

6. The rival submissions have been considered.

7. This Court in exercise of powers under Section 115 of the CPC Acts as a Court of supervision wherein the primary object is to see whether the judgment impugned suffers from any jurisdictional error. In the Instant case, there is no such jurisdictional error. The other aspects which are to be taken into consideration is as to whether the findings arrived at have been done by taking into consideration the relevant factors or irrelevant factors have been taken into consideration. On both the aspects, the judgment passed by the learned Munsiff which has been affirmed by the Appellate Court appears to have been passed by taking into consideration the materials on record and the evidence adduced by the rival parties, more specifically by the plaintiff to establish the grounds of default in payment of rent as well as the aspect of *bona fide* requirement. The aspect of *bona fide* requirement is an aspect which should be best left to the assessment of the landlord. It is a different aspect altogether that if such requirement is not *bona fide* and has been raised only as a means to evict. However, in the instant case, the requirement appears to be *bona fide* and therefore there is hardly any scope for interference by this Court in exercise of powers under Section 115 of the CPC. As regards the ground of default in payment of rent, mere fact of depositing the rent in the Court in various NJ cases without establishing that such rent was first tendered to the landlord and refused, the same would not be a valid defense for a defendant in such a case.

8. Under the aforesaid facts and circumstances and in view of the discussion made above, this Court is of the opinion that no case for interference is made out.

9. At this stage, Shri Upadhyay, the learned counsel for the petitioner submits that the tenancy was existing since the year 2004 and therefore, in case this petition is dismissed, a reasonable period be granted to the petitioner to vacate the suit

property.

10. Shri Ikbal, the learned counsel for the respondent however fairly submits that a reasonable period may be granted which should not be more than 4 (four) months and accordingly a direction be granted to vacate the premises by the end of December, 2023.

11. After considering the aforesaid aspect, this Court is of the view that while the present petition is dismissed, interest of justice would be served if the petitioner is granted a reasonable time to vacate the premises which in the opinion of this Court is fixed to be a period of 6 (six) months from today. To avoid any ambiguity, such vacation should be done on or before 16.02.2024.

12. Petition accordingly stands dismissed with the aforesaid observation.

JUDGE

Comparing Assistant