

GAHC010175492023



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

Case No. : CRP/122/2023

LUNA KALITA
W/O PRAMOD KALITA,
R/O BARHOLI, MOUZA- MAHABHAIRAB, DIST.- SONITPUR, ASSAM, PIN-

VERSUS

KIRAN BARUAH @ KIRAN BARUAH BAISHYA
W/O LT. ISHAN BARUAH,
R/O FC ROAD, UZAN BAZAR, HOUSE NO. 589, NEAR LATASIL FIELD, P.O.-
UZANBAZAR, GUWAHATI, ASSAM, PIN- 781004.
THROUGH HER ATTORNEY AND SON-IN-LAW SWAPNIL BHARALI, S/O
CHITTANANDA BHARALI, R/O FLAT NO. 502, MEGHAMALLAR NRJT II,
KHARGULI ROAD, KHARGULI, GUWAHATI- 04.

Advocate for the Petitioner : MR. S SAHU

Advocate for the Respondent : FOR CAVEATOR

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 13.10.2023

Heard Mr. S. Sahu, learned counsel for the petitioner and Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. A. Dhar, learned counsel for the respondent- caveator.

2) The suit by respondent- landlord for eviction of petitioner-tenant under the Assam Urban Areas Rent Control Act, 1972, being T.S. No. 5/2018 was decreed. The aggrieved petitioner- tenant had filed an appeal, being T.A. No. 1/2022 was dismissed. As second appeal is not provided for, hence, by filing this revision under Section 115 CPC, the petitioner- tenant has assailed the concurrent judgment and decree passed by the learned Trial Court and the First Appellate Court.

3) The case of the respondent in the plaint, in brief was that the petitioner was a defaulter in payment of Rs.11,000/- as monthly rent, which she did not deposit in the bank and therefore, eviction of petitioner was prayed. It was projected that the petitioner had filed T.S. 39/2013 before the Court of Munsiff, Tezpur, praying for permanent injunction against illegal eviction where she claimed to be the tenant of the respondents. The respondents contested the suit and also filed a counter-claim, wherein it was projected that the petitioner was a sub- tenant and that one Pankaj Talukdar was her real tenant. The said T.S. 39/2013 by the petitioner was dismissed for default. However, although the counter-claim had proceeded by virtue of order passed by this Court in CRP 414/2015, the same was dismissed on merit. Thus, the respondent's plea that the petitioner was a sub-tenant did not stand. It was claimed that the monthly rent of Rs.11,000/- was due from May, 2012, but as the respondent was entitled to claim rent only for last three years in Court, she claimed rent from January, 2015 to December, 2017 at the rate of Rs.11,000/- per month amounting to Rs.3,96,000/- and also prayed for eviction of the petitioner.

4) In her written statement, the petitioner had admitted that she was a tenant and that she had paid a sum of Rs.2,00,000/- to the respondent, which was to be adjusted as rent upto April, 2018 for which no receipt was

given and that from May, 2018, monthly rent at the rate of Rs.12,000/- was demanded. It was claimed that there was no mode for paying rent. It was also claimed that the petitioner had done a lot of repairing work which was to be adjusted against rent.

5) The learned Trial Court had framed the following issues for trial, viz., (1) Whether there is any cause of action for the suit? (2) Is the plaint liable to be rejected under Order VII, Rule 11(a) of CPC? (3) Whether the defendant is a defaulter in payment of rent to the plaintiff? (4) Whether the defendant had paid Rs.2,00,000/- to plaintiff towards rent? (5) Whether the plaintiff is entitled to 50% enhancement of rent? (6) Whether the plaintiff is entitled to decree as prayed? (7) To what other relief(s) the parties are entitled to?

6) In support of her case, the respondent- plaintiff had examined three witnesses, namely, (i) Sri Swapnil Bharali, attorney of the respondent (PW-1), (ii) Smt. Kiron Baruah, respondent (PW-2), and (iii) Sri Dhiraj Roy, Deputy Manager, SBI, and had exhibited the following documents, viz., (a) General Power of Attorney (Ext.1), (b) Patta Pass Book of suit land (Ext.2), (c) Jamabandi (Ext.3), (d) Records of TS no. 39/13 (Ext.4), (e) Bank statement of Smt. Kiron Baruah (Ext.5), (f) Letter dated 22.10.2017 (Ext.6), (g) Certificate of Postal Department (Ext.7), (h) Authority letter issued by Branch Manager, Silpukhuri Branch (Ext.8), (i) Statement of Account running into 43 pages (Ext.9), and (j) Certificate issued under the provision of Banker's Book Evidence Act, IT Act read with Evidence Act (Ext.10). The petitioner- defendant had examined herself as DW-1 and no documents were exhibited.

7) The suit was allowed and decreed by the Court of learned Civil Judge, Sonitpur, Tezpur vide judgment and decree dated 31.05.2022.

8) In respect of issue nos. 3 and 4, referring to the pleadings and evidence on record, it was observed that the petitioner had admitted in her written statement that the respondent was her landlord. It was also observed that in her cross examination, the petitioner (DW-1) had admitted that she was depositing monthly rent in the bank account of the respondent and that she had also deposited a sum of Rs.3,00,000/- in respondent's bank account towards payment of rent till July, 2018 and that the respondent had asked the petitioner to deposit rent in her bank account from the month of August, 2018. But the petitioner had not proved any bank pay-in-slips to prove such deposit. However, from Ext.5 and Ext.9, which were bank statements of the respondent, only one entry of deposit of Rs.12,000/- was made on 14.05.2018 and accordingly, it was held that the petitioner was a defaulter.

9) In respect of issue no. 4, it was held that the petitioner could not establish that she had paid a sum of Rs.2,00,000/- to the respondent.

10) Resultantly, in respect of issue no. 1, it was held that there was a cause of action for the suit. In respect of issue no. 2, it was held that the plaint was not liable to be rejected. In respect of issue no. 5, by referring to the provisions of Section 3(2) of the Assam Urban Areas Rent Control Act, 1972, it was observed that the market value of land, estimated cost of construction, etc. was not proved by leading evidence and accordingly, it was held that the respondent was not entitled to enhancement of rent.

11) In respect of issue nos. 6 and 7, it was held that the respondent was entitled to decree for recovery of rent from January, 2015 to December, 2017 at the rate of Rs.11,000/- per month and at the rate of Rs.12,000/- per month from May, 2018 till recovery of possession. The respondent was also found entitled for eviction of the petitioner along with her men, materials, etc.

from the suit premises.

12) The said judgment was assailed by the petitioner in appeal, which was dismissed by appellate judgment and decree dated 03.05.2023 in T.A. No. 01/2022, passed by the learned District Judge, Sonitpur, Tezpur.

13) The learned first appellate Court, did not formulate the points of determination. However, the issues were revisited and after elaborate discussions on the pleadings and evidence on record, affirmed the decision of the learned Trial Court on all the issues. However, in respect of issue no. 5, it was held that the respondent- plaintiff had recognized the petitioner- defendant as tenant on 12.07.2017 and therefore, the respondent was held entitled to recovery of rent from 12.07.2017 onwards at the rate of 11,000/- per month. Moreover, it was held that there was no tenancy agreement with clause to enhance rent and thus, the respondent was not found entitled to enhanced rent at the rate of 12,000/- per month from May, 2018 till recovery of possession.

14) In connection with this revision, the learned counsel for the petitioner had submitted that the respondent had not proved the due date of payment of rent, without which the petitioner could not have been declared to be a defaulter in payment of rent. In support of the said submissions, reliance was placed on the case of *Tushar Kanti Dey v. Sujalata Choudhury & Ors., 2002 (1) GLT 51*. It was also submitted that the respondent had taken a plea in the previous suit between the parties that the petitioner was a sub-tenant and therefore, in the absence of the petitioner's landlord, namely, Pankaj Talukdar, the suit of the respondent could not have been decreed as landlord- tenant relationship between the respondent and the petitioner could not be established. It was further submitted that no issue was framed regarding landlord- tenant relationship and the respondent had not called for the records

of TS No. 39/2013, which was fatal to the case of the respondent. No other point was urged.

15) The learned senior counsel for the respondent had referred to the pleadings made by the petitioner and had referred to her cross-examination and it was submitted that when the petitioner had admitted the respondent to be her landlord, admitted facts need not be proved. It was submitted that the petitioner had not been able to prove that she had tendered rent and therefore, she was admittedly a defaulter. Reliance was placed on the case of *On the death of Rajmangal Dubey, his LRs. & Ors. V. On the death of Maya Shankar Bharati, his LRs. & Ors., (2016) 6 GLR 255.*

16) Having heard the learned counsel for the petitioner and learned senior counsel for the respondent, perused the materials available on record.

17) It is noted that in para 12 of her written statement, the petitioner had stated "*That the defendant who is a tenant of the plaintiff earlier filed a Title Suit No. 39/2013 ...*" Thus, the petitioner had specifically admitted in her written statement that the respondent was her landlord and she was a tenant. It appears that the counter-claim of the respondent in T.S. 39/2013, where she had taken a plea that the petitioner was a sub-tenant through Pankaj Talukdar stood disproved and dismissed. Therefore, the Court is of the considered opinion that when the petitioner had admitted the respondent as her landlord and has also admitted that she was a tenant of the respondent, the said Pankaj Talukdar is not a necessary party or an essential party to be impleaded as co-defendant in the present suit. Moreover, in view of the said admission, it was not necessary for the respondent to prove landlord-tenant relationship with the petitioner. Both the plea fails on the said count.

18) Moreover, when both the respondent- plaintiff and the petitioner-defendant had admitted by their respective pleadings that counter-claim filed by the respondent, claiming that the petitioner was a sub-tenant was dismissed, the relationship between the respondent and the petitioner as landlord-tenant stood admitted by the petitioner, who had instituted TS No. 39/2013, claiming injunction against the respondent. Therefore, in view of such admission by the petitioner, the non-calling of record of TS No. 39/2013 cannot be said to be fatal for the respondent.

19) The learned counsel for the petitioner had produced a copy of the evidence-on-affidavit filed by the petitioner as DW-1 wherein she had admitted in para 2 thereof that she used to deposit the monthly rent in the bank account of the respondent. The learned Trial Court as well as the learned First Appellate Court had given a finding to the effect that the petitioner had taken a plea that she was depositing rent in the bank account of the respondent, but no deposit slips were proved by the petitioner. The learned counsel for the petitioner could not show any material to rebut the said finding of fact. Moreover, no documentary evidence was proved by the petitioner to show that she had made some payment to the respondent.

20) Moreover, in para 14 of the written statement, the petitioner had admitted receipt of letter dated 22.10.2017 (Ext.6) from the respondent. Even if there was no mode of making payment, at least from the date of demand, the petitioner should have tendered rent to the respondent. After the present suit was filed, then also the petitioner could have deposited rent in Court, which was not done. Therefore, merely because there was no date when the rent had become due, cannot be a lawful excuse not to tender monthly rent to the respondent after receipt of letter dated 22.10.2017 (Ext.6) or from the date she

had received summons to appear in the present suit being TS 5/2018. This Court, in a catena of decisions, has held that under the provisions of Assam Urban Areas Rent Control Act, 1972, the obligation of the tenant to pay rent subsists even during the pendency of the suit and appeal. In this regard we may refer to the case of *Abdul Matin Choudhury & Anr. v. Nityananda Dutta Banik, 1997 (2) GLT 590*. Therefore, when the petitioner had become a defaulter during the pendency of the suit, the case of *Tushar Kanti Dey (supra)*, is not found to help the petitioner in any manner because in the said case, a finding was returned by the learned trial Court that the landlord was in the habit of receiving rent together for several months, which is not so in the present case.

21) Therefore, in light of the discussions above, the Court is of the considered opinion that the petitioner has not been able to demonstrate that the impugned judgment and decree, passed by the learned Trial Court and the learned First Appellate Court suffers from any jurisdictional error or suffers from any perversity owing to incorrect reading of evidence or documents on record.

22) In the case of *The Managing Director, Hindustan Aeronautics Ltd. Vs. Ajit Prasad Tarway, AIR 1973 SC 76 (FB)*, the Supreme Court of India had held that if the lower appellate court order is within its jurisdiction, the High Court should not interfere even if the order is right or wrong or in accordance with law or not, unless jurisdiction is exercised illegally or with material irregularity.

23) In the case of *M/s. Bhojraj Kunwarji Oil Mill and Ginning Factory & Anr. v. Yograjsinha Shankersinha Parihar & Ors., AIR 1984 SC 1894 (para-4)*, the Supreme Court of India had held that interference with the judgment of Courts below in exercise of revisional jurisdiction is impermissible on the ground that a different view on facts elicited was possible.

24) In the case of *Pandurang Dhondi Chougule & Ors. v. Maruti Hari Jadav & Ors.*, AIR 1966 SC 153, the Constitution Bench of the Supreme Court of India had held that when the error of lower court in question of law is not related to question of its jurisdiction, interference in revision was not justified.

25) In this case, the petitioner could not *prima facie* demonstrate and/or show that the judgment and decree dated 31.05.2022, passed by the learned Civil Judge (Senior Division), Tezpur in T.S. 05/2018 or the appellate judgment and decree dated 03.05.2023, passed by the learned District Judge, Sonitpur, Tezpur in T.A. No. 01/2022 are vitiated by any jurisdictional error or that their respective finding suffer from any perversity owing to incorrect reading of evidence or documents on record, there is no merit in this revision and accordingly, this revision stands dismissed in the motion stage without issuing notice on the respondents.

26) The parties are left to bear their own cost.

27) The Registry shall transmit a copy of this order to the Court of learned Civil Judge (Senior Division), Sonitpur, Tezpur as to the learned District Judge, Sonitpur, Tezpur to make this order a part of T.S. No. 05/2018 and T.A. No. 01/2022 respectively.

JUDGE

Comparing Assistant