

GAHC010192712013



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

Case No. : CRP/214/2013

BAKUL DEB
S/O- LT. KUMUD RANJAN DEB, C/O- M/S. CHANDIKA GLASS AGENCY,
DISPUR OLD POST OFFICE, OPP. KUNJALATA LODGE, G.S. ROAD, GHY- 5,
DIST.- KAMRUP, ASSAM.

VERSUS

SMTI DIPTI PAUL
W/O- LT. SIBA PRASAD PAUL, R/O- SREENAGAR BYE LANE NO. 1 A, P.S.-
DISPUR, KAMRUP, ASSAM.

Advocate for the Petitioner : MRB KAUSHIK

Advocate for the Respondent : FOR CAVEATOR

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 27.09.2023

Heard Mr. S.K. Ghosh, learned counsel for the petitioner and
Mr. A.C. Sarma, learned senior counsel, assisted by Mr. B.C. Talukdar, learned

counsel for the respondent.

2. By filing this revision under section 115 CPC read with Article 227 of the Constitution of India, the petitioner has assailed the appellate judgment and decree dated 01.03.2013 passed by the learned Civil Judge No.1, Kamrup (M), Guwahati in TA 91/2010. By the said appellate judgment, the appeal of the respondent- landlord was allowed by setting aside the judgment and decree dated 22.07.2010 passed by the learned Munsiff No.2, Kamrup (M), Guwahati, by which the suit of the eviction filed against the petitioner-tenant was dismissed.

3. The respondent is the landlord of the petitioner in respect of the suit premises, which is described in the Schedule B of the plaint. Four rooms were constructed on the land of the respondent out of which one room is the suit premises described in Schedule B. Pursuant to an agreement dated 01.03.2001, between the parties, the petitioner had taken the suit premises on rent, agreeing to pay rent @ Rs.1400/- per month. The tenancy was in accordance with the English monthly calendar and the tenant premises was used for carrying out business under the name and style of Chandika Glass Agency. As per the agreement, the monthly rent fell due within the first week of the succeeding month. The other three rooms of the respondent were let out to three separate tenants. In the plaint, it was projected that in all, the respondent was receiving a monthly rent of Rs.3600/- per month for the four rooms which was insufficient and therefore, she had decided to start a business of stationary cum gift items from the suit premises. It was also projected that the respondent was facing financial hardship and that to start the business she had obtained a trade licence from the GMC on 18.08.2006 for operating the business under the

name and style of Dipti's Neer and had arranged some money from taking loan from her relatives. On the ground that she had no other alternative premises, suit for eviction had been filed against the petitioner by stating that cause of action for the suit had arose in the month of June, 2006, 11.08.2006 and 24.08.2006, which is elaborately described in the plaint.

4. The appellant had contested the said suit by filing a written statement and a plea was that the respondent did not require the suit premises bona fide and it was denied that the respondent had decided to start a business of stationary cum gift items and had obtained trade license from the GMC. The petitioner denied that any cause of action had arisen on the dates mentioned by the respondent. It was also stated that the respondent landlady had taken an amount of Rs.80,000/- from the petitioner as an advance which was agreed to be deducted @ Rs.200/- per month which was later on increased to Rs.400/- per month and till 01.03.2006 a sum of Rs.24,000/- had already been adjusted and an advance balance of Rs.56,000/- was still lying with the respondent. It was also stated that since July, 2006, the respondent had refused to accept the rent lawfully tendered by the petitioner and details of 10(ten) Misc. (NJ) case were pleaded regarding deposit of monthly rent of Rs.1,000/- per month in Court vide those NJ cases. Further plea of the petitioner is that apart from the suit premises, the respondent had 4/5 Assam Type Houses other than those mentioned in the plaint in her compound which was let out to different families and that the son of the respondent was a builder who was earning enough to maintain himself and his family and it was also pleaded that the respondent is a house wife and it is not possible for her to do the business.

5. The learned trial Court on the basis of pleadings framed the

following issues for trial:

- (1) Whether the suit is maintainable in the present form?*
- (2) Whether there is cause of action for the suit?*
- (3) Whether the suit is bad for non-joinder of necessary parties?*
- (4) Whether the defendant defaulted in paying rent of Rs.1400/- PM to the plaintiff w.e.f. August, 2006?*
- (5) Whether the suit premises is bona fide required by the plaintiffs?*
- (6) Whether the plaintiffs are entitled to the reliefs claimed in the suit?*

6. The learned counsel for the petitioner has submitted that during the trial, the respondent landlady had examined herself as sole witness for the plaintiff and nine documents were exhibited, being death certificate of her husband (Ext.1), trace map (Ext.2) title deed (Ext.3), mutation certificate (Ext.4), land revenue paid receipt (Ext.5), municipal tax (Ext.6), trade licence (Ext.7), advocate's notice (Ext.8) and advocate's reply (Ext.9). The petitioner-tenant exhibited himself as PW-1 and had exhibited the following, viz., agreement (Ext.A), money receipt [Ext.B (1 to 33)], N.J. case challans [Ext.C (1 to 43)] and record of NJ cases [Ext.D (1 to 13)].

7. The learned trial Court, upon examination of the pleadings and evidence available on record, held in respect of issue no.1 that in absence of specific materials, the suit was maintainable. In respect of issue no.3, it was held that the suit was not bad for non-joinder of necessary of parties. In respect of issue no.4, it was held that a sum of Rs.56,000/- was lying with the

respondent landlady and therefore, as it was not adjusted towards rent, the petitioner was not a defaulter and resultantly, the learned trial Court also justified the lack of prayer in the plaint for claiming arrear rent. In respect of issue no.5 based on the GMC trade licence (Ext.7), the learned trial court arrived at a finding that the respondent landlady was running a business and moreover, took notice of the fact that the Ext.7 was not reviewed and relied on the cross examination of PW-1 wherein she had stated that she has no experience of business, it was held that the need of the respondent for the suit premises is not genuine and that the suit premises was not required by the respondent. In respect of issue no. 2, it was held that the respondent-plaintiff had narrated a bundle of fact but failed to establish that the petitioner was a defaulter and that the suit premises was required by the respondent and hence, the respondent was not entitled to any relief. Therefore, it was held that the respondent had failed to prove any cause of action for the suit. Resultantly, in view of decisions on issue nos. 2, 4 and 5, the issue no. 6 was decided in the negative by holding that the respondent was not entitled to any relief and the suit was accordingly dismissed.

8. The aggrieved respondent preferred an appeal, which was registered as TA 91/2010 which was adjudicated in the Court of learned Civil Judge No.1, Kamrup (M), Guwahati. The learned appellate court on the basis of materials available on record, formulated the following point of determination as follows-

“Whether the impugned judgment and decree have been passed erroneously without appreciating the material evidence on record and / or are not sustainable in law.”

9. The learned appellate Court had revisited the pleadings as well as the evidence on record and considered the fact that after receiving the advocate's notice for eviction since the month of August, 2006, the petitioner had not paid monthly rent to the respondent. The learned appellate Court also took notice of the cross examination of the petitioner-tenant wherein he had stated that he cannot remember the date on which he had tendered the rent for the month of August, 2010 to the respondent and that he had also stated that he had not tendered the rent for the subsequent months to the respondent. Moreover, the said learned Court, by referring to the cases of (1) *Nirmala Devi Choudhury legal heir of Shankarlal Jajodia and ors. Vs. Anandilal Jain, 2006 (2) GLT 816*, (2) *Parul Bala Debnath Vs. Umatara Debnath, 2005 (1) GLT 532* and (3) *Bansal Traders and Ors. Vs. Nandalal Gattani, 2006 (3) GLT 715*, has also taken notice of the statement made by the petitioner that he had not called for the record of NJ cases after May, 2007. It was also held that the petitioner had failed to show by adducing any evidence that he had deposited rent in court in respect of the tenant premises after compliance of the mandatory provision of Section 5(4) of the Assam Urban Areas Rent Control Act, 1972. In view of the statement made by the respondent in her cross-examination that she cannot recall whether the petitioner had deposited the rent in court or not, it was held that the learned trial Court had committed grave error in arriving at a decision in issue no.4 that the petitioner was not a defaulter and accordingly, the said finding of the learned trial Court was reversed by holding that the petitioner was a defaulter.

10. The point as to whether the respondent had a bona fide requirement of the suit premises, the learned appellate Court took notice of the pleadings of the respondent that the monthly rent of Rs.3600/- per month was insufficient and therefore, she has taken permission from the GMC on

18.08.2006 for running her business under the name and style of M/s. Dipti's Neer and that she had no other alternative premises within the Guwahati city except the suit premises, it was held that the tenanted premises was bona fide required by the respondent to run her business. In this regard, referring to the trade licence (Ext.7), it was again reiterated that the requirement of the suit premises was bona fide, genuine and honest to run her business. In this regard, the reference was made to the case of *Smti. Arati Saha Vs. Shri Mangal Sarkar, (1995) GLR 221*. Resultantly, as the issue of bona fide requirement and defaulter was decided against the petitioner, the appeal of the respondent was allowed by reversing the decree of dismissal of suit, which was passed by the learned trial Court.

11. Assailing the first appellate judgment impugned in this revision petition, the learned counsel for the petitioner has referred to the pleadings on record and it was submitted that in respect of the issue of defaulter, balance sum of Rs.56,000/- was lying with the respondent for which the petitioner was not a defaulter. In this regard, a reference was made to the cross examination of the PW-1 where she had admitted that the said amount was lying with her. The learned counsel for the petitioner has also referred to that part of cross-examination of PW-1 where she had admitted that she did not accept the rent as the petitioner was not vacating the suit premises.

12. In the said context, the tenancy agreement between the parties has been perused. The learned counsel for the petitioner has provided a English translated copy of the said agreement for the convenience of the Court, which is retained on record. From clause 2 of the said agreement, it appears that the parties had agreed that the petitioner had paid a sum of Rs.60,000/- to the

respondent as advance for the shop and agreed to pay another sum of Rs.20,000/- as advance and out of the total advance of Rs.80,000/-, the parties had agreed that a sum of Rs.200/- shall be adjusted from the monthly rent and after adjustment, the remaining balance amount shall be kept as a security until the time of termination of tenancy and the respondent was required to refund the security amount to the petitioner on termination of tenancy. The said agreement does not contain any clause that the outstanding advance which remains with the respondent shall be adjustable against the rent. The finding of fact recorded by the learned first appellate court is to the effect that there was an admission by the petitioner during his cross examination that he cannot remember the dates on which he had tendered monthly rent for the month of August, 2006 and that he had also admitted the fact that he did not tender the rent for the subsequent months to the respondent. In the said context, it may be appropriate to refer to the provisions of Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 which is extracted below.

5 (4) Where the landlord refuses to accept the lawful rent offered by his tenant, the tenant may within a fortnight of its becoming due, deposit in Court the amount of such rent together with process fees for service of notice upon the landlord, and on receiving such deposit, the Court shall cause a notice of the receipt of such deposit to be served on the landlord and the amount of the deposit may thereafter be withdrawn by the landlord on application made by him to the court in that behalf. The tenant who has made such deposit shall not be treated as a defaulter under Cl. (e) of the proviso to sub-S. (1) of this section.

13. It is too well settled from the judicial pronouncement of this Court as well as the Supreme Court of India in light of Section 5(4) of the Assam Urban Areas Rent Control Act that the deposit of rent in Court is permissible only on refusal of the landlord to accept the same and that the tenant is then required to deposit the rent in Court, which must be made within the fortnight of its becoming due. Moreover, the mandatory procedure for the deposit of rent in

Court is that the tenant has to file written-up notice to be served on the landlord which is required to be accompanied with the requisite process fees. Nothing has been brought on record to show that the said well settled principle regarding the Section 5(4) of the Assam Urban Areas Rent Control Act has otherwise been diluted.

14. In support of his submission that when an advance was already been available with the landlord, the tenant would not said to be a defaulter, reliance has been placed on the case of *Modern Hotel, Gudur Vs. K Radhakrishnaiah and Ors., 1989 AIR 1510*.

15. In the considered opinion of the Court, the said case would not help the petitioner in supporting his case because of the fact that the said decision was rendered having regard to provision of Section 7(2) of the Andhra Pradesh Buildings (Lease, Land and Eviction) Control Act, 1962. The said provision is quoted in paragraph 5 of the said judgment, which shows that the landlord is prohibited to accept any sum in excess of the agreed rent and therefore, in the light of the said provision, the said case was decided. In the present case in hand, there was an agreement between the parties that any amount of advance lying in excess would be adjusted as security deposit. However, the Assam Urban Areas Rent Control Act, 1972 does not have any such prohibition. Therefore, in the absence of any stipulation that any adjustment in excess of Rs.200/- from the monthly rent was permissible, the decision of the learned first appellate Court cannot be faulted with. In the context of Assam Urban Areas Rent Control Act specially Section 5(4) thereof, the said provision has been interpreted by the Court in the case of *Sobha Biswas and Ors., Vs. Ranjit Lodh, 2006 (1) GLT 479*, wherein the Division Bench

of this Court had held that the liability to pay monthly rent to the landlord subsists during the pendency of eviction suit even though the default relates to a period after filing of the eviction suit and it was also held that if a tenant fails to discharge his liability, the landlord shall have right to get the decree of ejectment. The said statutory interpretation of Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 has constantly been followed.

16. On the issue of bona fide requirement, it is observed that the learned trial Court had rejected the plea of bona fide requirement of the suit premises by the respondent on the ground that the respondent had already obtained a trade licence and therefore, there was a presumption that she was doing a business. In the considered opinion of the Court since the presumption is not available to be taken by the learned trial Court because in the provisions of Section 140 of the Gauhati Municipal Corporation Act, 1971, prescribing the requirement of taking a licence annually for carrying out any of the professions, trades or calling indicated in the fourth Schedule and the legal requirement is to take a licence before the first day of April in each year or within one month of his taking of the professions, trades or calling. Therefore, there is no express bar under the Gauhati Municipal Corporation Act, 1971 for obtaining a trade licence prior to commencement of a business.

17. The learned trial court had also rejected the bona fide requirement of the respondent on the ground that she had no experience in doing business. The said finding, in the considered opinion of this Court, is without any basis because there is no legal requirement that one must have an experience of business and then venture into business. It is not a mandatory requirement of law that before commencing of business of his own, a person

must mandatorily work as an apprentice which would be a qualifying pre-requisite for doing a business. Therefore, there cannot be a legal presumption that merely because of a person is an aged person or that if a lady had no experience in doing business, there would be a presumption operating against such person that he/ she is quite incapable of doing business so much so that the bona fide requirement of the suit/ tenanted premises would fail. Therefore, in the considered opinion of the Court, the finding returned by the learned first appellate Court appears to be sound and therefore, interference with the finding of the learned trial Court on bona fide requirement is held to be justified and is affirmed.

18. In support of the submission of bona fide requirement, the learned counsel for the petitioner has placed reliance on the case of *Ram Dass Vs. Ishwar Chandar and Ors., (1988) 3 SCC 131*. The said decision also does not appear to help the petitioner in any manner. The said decision was rendered in the background of interpretation of Section 15(5) of the East Punjab Rent Restriction Act, 1949 which enabled the High Court to satisfy itself as to the legality and propriety of the order under revision, and it was held that the said provision gave much wide jurisdiction, which enable the Court of revision, in appropriate cases, to examine the correctness of the findings of facts also, though the revisional Court is not "a second court of first appeal". The said enabling provision is not available to this Court under the provisions of Assam Urban Areas Rent Control Act. Therefore, the jurisdiction of the Court in exercise of revisional jurisdiction is only to examine under Section 115 CPC as to whether the learned Court below had exercised jurisdiction not vested in it by law, or that the Court failed to exercise a jurisdiction so vested, or had acted in exercise of his jurisdiction illegally or with material irregularity. The said scope, in the

considered opinion this Court cannot be expanded to revisit the facts, and to arrive at a different conclusion which according to the Court, would be appropriate as if entertaining an appeal.

19. Therefore, in light of the provision of Section 115 CPC, and in light of discussion above, the Court is of the considered opinion that the decision of the first appellate Court appears to be on more legally sound footing than the decision rendered by the learned trial Court because the learned trial Court on the basis of surmises and conjectures arrived at a decision that the respondent did not have a bona fide requirement of the suit premises.

20. The Court has the power and jurisdiction to take note of the ground reality which is that the suit property situated in GS Road Guwahati, which is one of the happening place and has a very high commercial value and the price of the properties would be much higher than any other place in the State. The said factor is being mentioned only for the purpose of examining whether the proposed venture of the respondent could be started in the place like that. Therefore, as the property is in a commercial area, the Court does not find the idea of the respondent to start a business in suit premises as a faulty idea. Therefore, the Court is inclined to hold that the bona fide requirement which existed at the time of filing of the suit is still continuing, as area in which the suit property is situated has a great commercial potential for establishing a business venture.

21. Therefore, the revision is found to be devoid of any merit and the same is dismissed.

22. Considering the fact that the petitioner has been doing business

from the said suit premises from 01.03.2001 as appears from the agreement between the parties, the Court is inclined to grant 6(six) months time to the petitioner to vacate the suit premises ending on 31.03.2024. The occupation of the tenanted premises till the said extended period would not confer any right to the petitioner and such occupation shall also not be constitute to be a fresh tenancy. For the months of October, 2023 to 31.03.2024, the petitioner shall have to pay compensation @Rs.10,000/- per month to the respondent, 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 payment, Google Pay, PhonePay, etc. On such payment being tendered, the respondent shall issue a money receipt. 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 that he would be vacating the suit premises by 31.03.2024 by handing over the suit premises to the respondent and no one else. The undertaking shall be to the effect that he would pay monthly compensation to the respondent to the extent of Rs.10,000/- per month from October, 2023 to 31.03.2024 and that during the said extended period of stay he would not make any alternation/ modification of the suit premises nor introduce a third party into the suit premises or in his business or create any third party rights.

23. If such compensation is not paid within seven days of the next month, right would be vested on the respondent to put the decree into execution. On failure of the petitioner to handover the vacant possession of the suit premises described in the plaint on 31.03.2024 or in case of violation of any of the terms imposed by the Court, it would be open to the respondent to put the decree into execution.

24. Return back the LCRs.

JUDGE

Comparing Assistant