



THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

CRP No. 57/2018

Shri Gobardhan Prasad Modi,
S/o Sew Dayal Modi,
Resident of Alhaj J. Ahmed Quarters,
Red Cross Road, Graham Bazar,
Dist.-Dibrugarh, Assam, Pin-786001.

.....Petitioner.

-Versus-

The Ahmed Tea Co. (P) Ltd.,
Having its registered office at K.N.C.B. Path,
Boiragimoth, Dibrugarh Town,
Dist.-Dibrugarh, Assam, Pin-786001,
Represented by its Director viz.
Mrs. Nazrana A. Islam.

.....Respondent.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocates:-

For the Petitioner	:	Mr. P.J. Saikia, Sr. Adv., Mr. R.S. Mishra.
For the Respondent	:	Mr. J. Patowary.
Date of Hearing	:	03.09.2024.
Date of Judgment & Order	:	03.12.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. P.J. Saikia, learned Senior counsel assisted by Mr. R.S. Mishra, learned counsel for the petitioner and also heard Mr. J. Patowary, learned counsel for the respondent.

2. This revision petition, under Section 115, read with Section 151 of the Code of Civil Procedure, is directed against the judgment and decree dated 03.02.2018 passed by the learned Civil Judge, Dibrugarh (herein after first appellate court), in Title Appeal No.2/2016. It is to be noted here that vide impugned judgment and decree dated 03.02.2018, the learned First Appellate Court has affirmed the judgment and decree dated 26.11.2015 passed by the learned Munsiff No.2, Dibrugarh, in Title Suit No.40/2006. It is also to be noted here that vide impugned judgment and decree dated 26.11.2015, the learned Munsiff No.2, Dibrugarh, has decreed the suit by directing the petitioner herein to vacate the suit premises on the ground of defaulter and bonafide requirement.

3. The back grounds facts leading to filing of the present revision petition is briefly stated as under:-

“The respondent herein as plaintiff instituted a title suit, being Title Suit No.40/2006, arraying the petitioner herein as defendant praying for khas possession of the suit premises by evicting the petitioner/defendant and recovery of arrear rent, mesne profit, cost of the suit, etc. The respondent/plaintiff rented the suit premises to the petitioner/defendant as monthly tenant w.e.f. 01.12.1973, under the tenancy agreement dated 22.11.1973, for using the suit premises as residential quarter and as per the tenancy agreement, monthly rent for the suit premises was fixed at Rs.150/- per month payable by 15th day of each succeeding month.

The suit premises is a C.I. sheet roofed pucca house, consisting of six rooms with kitchen and bathroom standing on the part of the land covered by Dag No.27(Part), P.P. No.66 of Dibrugarh and part of Municipality Holding No.3(New)/325 (Old). Thereafter, the petitioner herein failed to comply with the terms and conditions of monthly tenancy and becomes irregular in payment of rent and as such, he becomes a defaulter and he also failed and refused to abide by his own amicable agreement to raise the monthly rent to Rs.450/- per month since the month of January, 2000. Thereafter, in the month of April, 2004, he illegally extended the suit premises without the knowledge and consent of the respondent herein and raised a RCC structure with a water tank and in spite of reminder from the respondent herein, the petitioner continued to be a defaulter in payment of rent and also refused to remove the illegal construction and up to the month of April, 2006, he has an outstanding rent amounting to Rs.7,700/-. Thereafter, the respondent herein requires the suit premises for its own use as bonafide requirement for expansion of its own business and therefore, the respondent herein has instituted the Title Suit No.40/2006, before the Court of learned Munsiff, Dibrugarh. In the said suit, the petitioner herein had filed written statement stating that the suit is barred by the law of limitation as the lease was terminated in the year 1980 and he came to occupy the suit premises agreeing to pay the rent by 15th day of succeeding month, but since the very inception of the tenancy he is paying rent as per his convenience and suitably, sometimes for several months together in lump sum, which the respondent herein always accepted without any claim and objection and that the petitioner is an electrical supervisor and he rendered his services to the

respondent herein from time to time against charges to be paid or adjusted against the rent due and since the date of termination of the tenancy on 01.08.1980, the petitioner is occupying the suit premises as trespasser and not as a tenant and that the respondent herein unilaterally increased the monthly rent from Rs.350/- to Rs.450/- per month and claiming falsely arrear rent of Rs.100/- per month by adjusting the rent paid by the petitioner as part payment, to which the petitioner has objected. He denied that he is a defaulter in payment of rent and also denied illegal construction and also the bonafide requirement of the suit premises for own use by the respondent herein and therefore, it is contended to dismiss the suit.

Upon the aforementioned pleadings of the parties, the learned Munsiff, Dibrugarh, has framed as many as 5(five) issues as under:-

- (i) Whether the suit is maintainable in law and facts?
- (ii) Whether the suit is barred by limitation?
- (iii) Whether the defendant is a defaulter in payment of monthly rent?
- (iv) Whether the suit premises is bonafide requirement of the plaintiff?
- (v) Whether the plaintiff is entitled to the reliefs as prayed for?

Thereafter, the learned Trial Court has discussed the issues and answered all the issues in affirmative, in favour of the plaintiff, the respondent herein and thereafter, decreed the suit granting following reliefs:-

- (i) The defendant/tenant, his agents, employees etc. is/are directed to vacate the suit premise and handover the khas possession of the suit premise to the plaintiff.
- (ii) The defendant/tenant is directed to remove all the illegal and unauthorized constructions in the suit premises at his own cost.
- (iii) The defendant is directed to pay to the plaintiff the arrear rent from June, 2008 @Rs.350/- till recovery of the suit premises.
- (iv) The defendant/tenant is to bear the cost of the suit.

Having been dissatisfied, the petitioner herein had filed an appeal before the learned Civil Judge, Dibrugarh, being Title Appeal No.2/2016 and thereafter, hearing both the parties, the learned First Appellate Court had dismissed the appeal and thereby affirmed the judgment and decree so passed by the learned Munsiff No.2, Dibrugarh, in Title Suit No.40/2006."

4. Being aggrieved, the petitioner has approached this Court by filing the present revision petition on the following grounds:-

- (i) The learned Courts below acted illegally and with material irregularity in exercise of its jurisdiction by allowing the Title Suit No.40 of 2006 vide the impugned Judgment and Decree dated 03.02.2018, without application of judicious mind and consideration of materials available on records in their true perspective.
- (ii) The learned Court below acted illegally and with material irregularity in exercise of its jurisdiction by allowing the Title Suit No.40 of 2006, vide the impugned Judgment and Decree dated 03.02.2018, by holding that the petitioner admitted his default in

paying the monthly rent to the opp. party vide his Reply dated 29.02.1980, i.e. Ext.68, to the Notice dated 11.02.1980, i.e. Ext.67 sent by the opp. party by failing to consider that vide his Reply dated 29.02.1980 i.e. Ext.68, the petitioner only promised to pay all the arrears of house rent w.e.f. the month of March, 1979 to the month of March, 1980, by the 1st week of April, 1980 and did not admit that he is a defaulter in payment of monthly rent to the opp. party.

- (iii) The findings of the learned Courts below to the effect that the petitioner admitted his default in paying the monthly rent to the opp. party vide his reply dated 29.02.1980 i.e. Ext.68 to the Notice dated 11.02.1980 i.e. Ext.67 sent by the opp. party is nothing but a perverse finding.
- (iv) The learned Courts below acted illegally and with material irregularity in exercise of its jurisdiction by holding that on scrutiny of the initial tenancy agreement i.e. Ext.2, it appears that the tenancy was a monthly one, payable within 15th day of the succeeding month and although the said tenancy agreement was for a period of 11 months w.e.f. 01.12.1973, yet, there is nothing on the record to show that the basic ingredients or components of the terms and conditions of the said tenancy agreement was ever changed by the parties by failing to consider that the averments made by the petitioner under paragraph 18.7 of his Written Statement as well as averments made by the petitioner under paragraph 10 of his evidence-on-affidavit and the rent receipt entries in the ledger book of the opp. party i.e. Ext.7, 8 and 9 amply proves the facts that since the inception of the tenancy, the petitioner was paying rent as per his convenience and suitability

sometime for months together in lump sum, which the plaintiff always accepted and thereby, by conduct of the parties, the terms and conditions of the tenancy agreement i.e. Ext.2 with regard to payment of rent by the petitioner to the opp. party was changed.

- (v) The learned Courts below acted illegally and with material irregularity by failing to consider that since the inception of the tenancy, the petitioner was paying rent as per his convenience and suitability sometime for months together in lump sum, which the plaintiff always accepted and thereby, by conduct of the parties, the terms and conditions of the tenancy agreement i.e. Ext.2 with regard to payment of rent by the petitioner to the opp. party was changed inasmuch as, conduct of the parties spreading over a fairly long period of time in respect of payment and receipt of rent contrary to the terms and conditions of the tenancy agreement entered into between the parties indicates that agreement or arrangement in regard to payment of rent between the parties was modified.
- (vi) The learned Court below acted illegally and with material irregularity by holding that the learned Trial Court discussed the materials produced by the parties and come to the conclusion that the petitioner is a defaulter in paying rent and learned Appellate Court, also, has not found anything to interfere with the findings of the learned Trial Court by failing to consider that the learned Trial Court below allowed the Title Suit No.40 of 2006 vide the impugned Judgement and Decree dated 26.11.2015 by holding that from the tenancy agreement i.e. Ext.2 entered into between the parties, it is apparent that the rent fell due on 15th day of each succeeding month by failing to consider that since the inception of

the tenancy, the petitioner was paying rent as per his convenience and suitability sometime for months together in lump sum, which the plaintiff always accepted and thereby, by conduct of the parties, the terms and conditions of the tenancy agreement i.e. Ext.2 with regard to payment of rent by the petitioner to the opp. party was changed and stands modified over the period of time.

- (vii) The learned Courts below acted illegally and with material irregularity by holding that as per Section-5(4) of the Assam Urban Areas Rent Control Act, 1972, the tenant must establish that he had tendered the rent to the landlord and the landlord had refused to accept the same and thereafter, he deposited the rent in Court and nothing could be brought forth by the petitioner to establish and prove the tendering of rent to the opp. party every month and its subsequent refusal to accept the rent before the deposit in the Court by failing to consider that averments made by the petitioner under paragraph 16 of his evidence-on-affidavit as well as the averments made by the petitioner under paragraph 2 of his Petition filed under Section-5(4) of the Assam Urban Areas Rent Control Act, 1972 amply proves the fact that before depositing the rent in Court, the petitioner offered/tendered the same to the opp. party and the opp. party refused to accept the same inasmuch as, when once the landlord refuses to accept the lawful rent tendered by the tenant, the relationship between them is strained and therefore, physical payment or offer of rent by the tenant for every month will be an idle formality.
- (viii) The learned Courts below acted illegally and with material irregularity by holding that the opp. party intends to expand its business by raising construction over its own land and the opp.

party has obtained required permission from the Dibrugarh Development Authority vide Ext.97, 98, 101 and 202 inasmuch as, due to non-delivery of vacant possession by the petitioner, the opp. party is not in a position to raise its construction and as a result of which, the opp. party is suffering a lot and according, the learned Court below held that the learned Trial Court rightly concluded the issue of bonafide requirement in favour of the opp. party by failing to consider that Ext.97 is the Notice to Admit and Ext.98 is the Misc. (J) Case No.40 of 2006 arising out of instant Title Suit No.40 of 2003 and not the Permission for Construction and Ext.99, Ext.100, Ext.101 and Ext.102 were exhibited under objection on the ground of introduction of new documents without leave of the Court and therefore, said documents cannot be considered under the law for deciding the issue of bonafide requirement.

- (ix) The learned Courts below acted illegally and with material irregularity as the opp. party cannot be permitted to develop its case by way of evidence-on-affidavit beyond its pleadings inasmuch as, no amount of evidence can be looked into and/or considered beyond the pleadings of the parties under the law.
- (x) The learned Courts below acted illegally and with material irregularity by failing to consider that the opp. party purchased 8B-2K-8L of land covered by different Dags of Patta No.547(O)/66(N) of Graham Bazar Ward, Dibrugarh Town Mouza and only on a part of which, the suit premises and some houses are standing and there is no averments made by the opp. party as to why the other part of the land cannot fulfill the bonafide requirement of the opp. party and hence, it is apparent and obvious that the ground of bonafide requirement of the suit premises has been put forward by

the opp. party as a tool to evict the petitioner from the suit premises inasmuch as, the word "bonafide" denotes that the landlord genuinely, pressingly and honestly need the premises in question for his use under the law, which is absent in the case in hand.

5. Mr. Saikia, learned Senior counsel for the petitioner submits that the impugned judgment and decree dated 03.02.2018, suffers from manifest illegality. Firstly, Mr. Saikia submits that the impugned judgment and decree of the learned First Appellate Court is vitiated on account of not following the mandate of Order 41 Rule 31 of the CPC, as the learned First Appellate Court had failed to draw up points for determination and also failed to answer all issues. In support of his submission, Mr. Saikia has referred to a decision of a coordinate bench of this Court in **Biswanata Das (Death) By Lrs. v. Gita Rani Saha**, reported in **AIR 2024 Gauhati 72** as well as to a decision of Hon'ble Supreme Court in **Santosh Hazari v. Purushottam Tiwari (Dead) by Lrs.**, reported in **AIR 2001 Supreme Court 965**.

5.1. Secondly, Mr. Saikia submits that the bonafide requirement has to be pleaded and proved by adducing cogent evidence and a mere statement is not sufficient to establish the said contention. In support of his submission, Mr. Saikia referred to a decision of this Court in **Ramakrishna Mission v. Sagarmoy Dey**, reported in **2014 (4) GLT 52**, and also to a decision of a coordinate bench of this Court in **Assam Cycle Company v. Motilal Bothra**, reported in **2003 (1) GLR 296**.

5.2. Thirdly, Mr. Saikia submits that the petitioner is not a defaulter and he has been paying rent to the respondent regularly and sometimes beyond the stipulated period and the respondent used to accept the same without any objection and as such, the petitioner herein cannot be

termed as a defaulter. In support of his submission, Mr. Saikia has referred to the decisions of Hon'ble Supreme Court in the case of **Rashik Lal & Ors. v. Shah Gokuldas**, reported in (1989) 1 SCC 542 and in **S.P. Deshmukh v. Shah Nihal Chand Waghajibhai Gujarati**, reported in AIR 1977 SC 1985 and under the aforementioned facts and circumstances, Mr. Saikia contended to set aside the impugned judgment and decree and to allow the petition.

6. Per contra, Mr. Patowary, learned counsel for the respondent has supported the impugned judgment and decree, so passed by the learned First Appellate Court. Mr. Patowary submits that the jurisdiction of this Court under Section 115, read with Section 151 of the Code of Civil Procedure is very restricted and this Court cannot embarked into the discussion of the evidence so recorded by the learned Trial Court. In the instant case, no jurisdictional error committed by the learned First Appellate Court is pointed out and proved. In order to maintain a revision petition, the petitioner has to show that the condition under Section 115 of the CPC is satisfied with.

6.1. Mr. Patowary, further submits that there is no evidence that the petitioner has offered the rent to the respondent and that the respondent has refused to accept the same and no such evidence has been tendered before the learned Trial Court and unless such evidence is led before the Court, the plea cannot be established. Mr. Patowary also submits that the petitioner herein has violated Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 and as such, the learned Trial Court as well as the learned First Appellate Court has rightly decided the issue and therefore, it is contended to uphold the impugned judgment and decree passed by the learned First Appellate Court. In support of his submission, Mr. Patowary has referred to a decision of Hon'ble Supreme Court in the case

of **Manjusree Chakraborty & Ors. vs. M. Ahmed Bhuyan and Company & Anr.**, reported in (2018) 12 SCC 551. Mr. Patowary, has also referred to another decision of this Court in **Parul Bala Debnath & Ors. vs. Umatara Roy**, reported in 2005 (1) GLT 532.

7. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also carefully gone through the decisions referred by learned Advocates of both the parties and the impugned judgment and decree dated 03.02.2018.

8. Perusal of the impugned judgment and decree passed by the learned First Appellate Court, it appears that the learned Trial Court has formulated one point for determination "as to whether the learned Trial Court has rightly passed the impugned judgment and decree dated 26.11.2015, in Title Suit No.40/2006 or the same requires interference of this Court?" And thereafter, discussed the points and the arguments so advanced before it. It is a fact that the learned First Appellate Court had not formulated point for determination in issue wise and discussion was also not directed to that effect. Instead, the learned First Appellate Court had formulated one general point for determination and thereafter, discussing the evidence and appreciating the submission of learned counsel of both sides, answered the point in favour of the plaintiff. But it appears that while arriving at the finding, the learned First Appellate Court had discussed the evidence adduced by the parties and also the documents exhibited before it and as such, it cannot be said that the learned First Appellate Court has violated the provision of Order 41 Rule 31 of the CPC. In the case of **Murgendra Indravandan Mehta and Others vs. Ahmedabad Municipal Corporation**, reported in (2024) SCC Online SC 849, Hon'ble Supreme Court, while dealing with

the issue held that an omission to frame points of determination by the First Appellate Court, as per Order 41 Rule 31 of the C.P.C. would not prove fatal as long as that first appellate court dealt with all the issues that arisen for deliberation in the said appeal.

9. The issue of bonafide requirement of the suit premises was dealt with by the learned Trial Court in Issue No.(iv), and decided the issue in favour of the plaintiff. In arriving at such a finding, the learned Trial Court has also relied upon two decisions of Hon'ble Supreme Court in the case of **Ragavendra Kumar v. Firm Prem Machinery & Co.**, reported in **AIR 2000 SC 534** and in **M/s. Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal & Ors.**, reported in **(2005) 8 SCC 252**.

10. In the case of **Ragavendra Kumar (supra)**, Hon'ble Supreme Court has held that landlord is the best judge of his requirement and he has got complete freedom in the matter. In the case of **Sait Nagjee Purushotham (supra)**, Hon'ble Supreme Court has held that the prerogative of the landlord that if he requires the premises in question for his bonafide use for expansion of business. There is no ground that the landlord already has his business and therefore, it is not a genuine need.

11. Thereafter, the learned Trial Court had held that the plaintiff requires the suit premises for own business and for some construction and the plaintiff has also demonstrated vide Exhibits – 97, 98, 101 and 102 that necessary permission has already been obtained for the aforesaid construction and also the plaintiff has contended that the premises is in dilapidated condition, which requires urgent repair. Further, the learned Trial Court had held that the defendant has submitted that the plaintiff has various other lands and premises, which may be put to use by the plaintiff rather than the said suit premises and thereafter,

relying on the aforesaid decisions, the learned Trial Court had held that the evidence and the documents tendered by the plaintiff shows that the suit premises is required for construction and business need only and as such, it can be said that the premises is bona-fide requirement of the plaintiff.

12. The finding of the learned Trial Court, when examined in the light of the facts and circumstances on the record, this Court find no infirmity or illegality in the same. The petitioner herein being the tenant cannot dictate the landlord as to how the property belonging to him should be utilized for the purpose of the business. The fact that the landlord has some other land for construction and premises which may put to use for business cannot stop the landlord from exercising his right to seek eviction from the tenanted premises so long as he intends to use the same tenanted premises for his own business. Reference in this context can be made to a decision of Hon'ble Supreme Court in **Anil Bajaj & Anr. Vs. Vinod Ahuja**, reported in (2014) 15 SCC 610, wherein Hon'ble Supreme Court has held as under:

“It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of the business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the same tenanted premises for his own business.”

13. In view of above factual and legal position, I find no force in the submission of Mr. Saikia and the decisions referred by him in **Ramakrishna Mission** (supra) and **Assam Cycle Company** (supra), would not come into his aid.

14. Further, it appears that whether the present petitioner is a defaulter in payment of monthly rent or not, the same has been discussed in Issue No.(iii) by the learned Trial Court. The learned Trial Court also held that the burden to prove that he is not a defaulter is upon the tenant. Thereafter, considering the evidence adduced by the plaintiff and the various documents exhibited before it, the learned Trial Court held that the defendant paid rent up to June, 2005 and Ext. 95 and 10(c) had substantiated the same. Thereafter, the learned Trial Court also held that he paid that rent up to May, 2008 by banker's cheque and from June, 2008, he started depositing rent in the Court. It has also been held that nothing was brought forth to establish tendering of rent to the plaintiff every month and subsequent refusal and he admitted depositing rent in the Court and never approached the plaintiff or offered banker's cheque to him every month and nothing is shown that the relation between them is extremely strained. And accordingly, the learned Trial Court arrived at the finding that he becomes defaulter as he deposited rent in the Court without first offering the rent to the plaintiff, which is nonest in the eye of law, in view of provision of Section 5(4) of the Assam Urban Areas Rent Control Act, 1972.

15. While arriving at such a finding the learned Trial Court had also discussing some of the decisions of this Court in **Kalikumar Sen vs. Makhanlal Biswas**, reported in **AIR 1969 A&N 66** and in **Deoki Nandan Bajaj & Ors. vs. Luku Barman & Ors.**, reported in **2007 (1) GLT 8**, wherein it has been held that though the deposit was made in the Court without offering the same to the landlord is non-est in the eye of law and the same being in derogation to Section 5(4) of the Assam Urban Areas Rent Control Act, 1972.

16. The learned First Appellate Court had also recorded concurrence to the finding of the learned Trial Court. While the finding of the learned Trial Court as well as the First Appellate Court is examined in the light of given facts and circumstances on the record, and also in view of the submissions of learned Advocates of both sides, I find that the finding of the learned Trial Court as the First Appellate Court cannot be said to be illegal or arbitrary.

17. I have considered the submission of Mr. Saikia, learned Senior counsel for the petitioner and also carefully gone through the decisions referred by him in this regard and I find that the same would not advance his argument.

18. It is well settled that the jurisdiction of this Court under Section 115/151 CPC is very limited. It can interfere with the impugned judgment and decree, when it is demonstrated and the Courts below have committed jurisdictional error or a material irregularity requiring interference of this Court. Reference in this const can be made to a decision of this court in the case of **Niyoti Dev & Ors. vs. Ahmed Tea Company (Pvt.) Ltd.**, reported in **2017 (4) GLT 57**, wherein it has been held that in exercising the revisional jurisdiction, the Court can interfere only if it shows that the Court below had exercised its jurisdiction illegally or with material irregularity. In the case in hand, the learned Senior counsel for the petitioner has failed to demonstrate before this Court as to how the jurisdictional error or any irregularity committed by the learned Courts below. The learned Trial Court in its judgment and decree has extensively discussed all the points pleaded in the pleadings by the respective parties and after detailed discussion, answered all the issues in favour of the plaintiff. The learned First Appellate Court also

discussed on the points and arrived at a concurrent finding with the learned Trial Court.

19. In the result, I find no merit in this instant revision petition and accordingly, the same stands dismissed.

20. Send down the records of the learned courts below with a copy of this judgment. The parties have to bear their own cost.

Sd/- Robin Phuikan
JUDGE

Comparing Assistant