

GAHC010133202022



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

Case No. : CRP/75/2022

JAGATJYOTI DUTTA
S/O- LATE JITENDRA KUMAR DUTTA,
R/O- NUTANPARA, HAILAKANDI TOWN , WARD NO-6,
P.O,P.S AND DIST- HAILAKANDI, ASSAM

VERSUS

ASHISH DAS
S/O- LATE PORESH CHANDRA DAS,
THE SECRETARY, BARROWARY PUJA COMMITTEE, S.S ROAD,
HAILAKANDI TOWN WARD NO-9, R/O-
P.O,P.S AND DIST- HAILAKANDI, ASSAM,
PIN-788151

Advocate for the petitioner(s) : Ms. R Choudhury

Advocate for the respondent(s): Ms. S Dasgupta

Date of hearing : 10.05.2024
& Judgment

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER (ORAL)

This is an application under Section 115 of the Code of Civil Procedure, 1908 (for short, the Code) challenging the judgment and decree dated 08.06.2022 passed by the learned Civil Judge, Hailakandi in Title Appeal No.08/2020 thereby affirming the judgment and decree dated 03.02.2020 passed by the learned Munsiff No.1, Hailakandi in Title Suit No.41/2017

2. The facts leading to the instant proceedings are that the respondent herein as plaintiff had instituted a suit for ejecting the petitioner herein who was the defendant from the tenanted premises on the ground of defaulter in payment of rent. The said suit was registered and numbered as Title Suit No.41/2017.

3. The petitioner, herein as defendant submitted a written statement, categorically admitting that on account of a sudden increase in the house rent, the defendant did not pay the monthly house rent and became a defaulter. It is very pertinent to observe that there is no mention, whatsoever, that the defendant thereupon approached the Court under Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 (for short, the Act of 1972) for depositing the rent in the Court in the manner provided therein. On the basis of the said pleadings as many as 6(six) issues were framed. The Issue No.2 related to whether the defendant was a defaulter in payment of rent and the issue No.5 was an issue pertaining to as to whether the plaintiff had *bona fide* requirement of the suit premises.

4. It is very pertinent to mention that the defendant who was the tenant did not depose before the Court or adduce evidence to the effect that he was not a defaulter. On the other hand, on behalf of the defendant, there were two other

witnesses who deposed, but they categorically mentioned that they were not conversant with the agreement between the plaintiff and the defendant. The learned Trial Court vide judgment and decree dated 03.02.2020 decreed the suit in favour of the plaintiff by holding that the defendant was a defaulter and accordingly also directed realization of an amount of Rs.21,280/-. Accordingly, the learned Trial Court held that the plaintiff was entitled to get possession of the suit premises by evicting the defendant.

5. Being aggrieved, an appeal was preferred by the defendant which was registered and numbered as Title Appeal No.08/2020. The learned First Appellate Court duly framed four points for determination. The appeal was dismissed by upholding the determination so made by the learned Trial Court in respect to the defendant being a defaulter in payment of rent. The said judgment and decree was passed on 08.06.2022 and thereupon the instant proceedings have been filed under Section 115 of the Code challenging the said judgment and decree passed by the learned First Appellate Court.

6. This Court has duly heard the learned counsels appearing on behalf of the parties and has given anxious consideration to their respective submissions.

7. From the very written statement filed by the defendant, it is clear that the defendant had himself admitted that he was a defaulter in payment of rent. It is also very clear that the defendant never took the recourse of depositing the rent before the Court which would have otherwise provided as a shield against an eviction to be carried out under Section 5(1)(e) of the Act of 1972. The tenant further did not depose or produce any document to show that he was not a defaulter *inasmuch as*, it is also well settled that it is the burden on the part of the tenant to prove that he is not a defaulter. Under such circumstances, this Court is of the opinion that both the Courts below were justified in coming to

the conclusion that the defendant was a defaulter in payment of rent.

8. The revision application, therefore, being devoid of any merit and there being no jurisdictional error committed by the Courts below, this Court finds no ground to interfere with the judgment and decree dated 08.06.2022 passed in Title Appeal No.8/2020. Accordingly, the instant petition stands dismissed with costs quantified @Rs.11,000/-. In addition to that, the plaintiff would be entitled to the costs throughout the proceedings.

JUDGE

Comparing Assistant