

GAHC010182992022



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

Case No. : CRP/101/2022

PRABINDRA KUMAR BORDOLOI
S/O LT. HEM CHANDRA BORDOLOI, R/O GNB ROAD, SILPUKHURI, MOUZA
ULUBARI, P.S CHANDMARI, GUWAHATI, DIST KAMRUP (M) PIN-781003

VERSUS

MAMONI DEKA
W/O HAJEN DEKA, R/O R.G. BARUAH ROAD, BYE LANE NO. 11,
GUWAHATI DIST. KAMRUP (M) ASSAM PIN-781024

Advocate for the petitioner(s): Mr. BD Deka

Advocate for the respondent(s): Mr. P Deka

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

06.05.2024

Heard Mr. BD Deka, the learned counsel appearing on behalf of the petitioner and Mr. P Deka, the learned counsel appearing on behalf of the respondent.

2. This is an application under Section 115 of the Code of Civil Procedure, 1908, (for short, the Code) challenging the order dated 10.06.2022 passed in Title Appeal No.6/2018 by the Court of the learned Civil Judge No.2 Kamrup(M) at Guwahati, whereby the learned First Appellate Court remanded the suit back to the learned Trial Court to decide afresh the entire suit.

3. At the outset, it is very pertinent to mention that the dispute in question is a landlord tenant dispute coming within the ambit of the Assam Urban Areas Rent Control Act, 1972 (for short, the Act of 1972). Taking into account Section 8 of the said Act of 1972 whereby a further appeal is not provided against an appellate judgment and decree passed in First Appeal and thereby an appeal under Order XLIII Rule 1(u) and Section 104 of the Code being not permitted, the instant application is being taken up for consideration under Section 115 of the Code.

4. This Court has duly taken note of that the petitioner herein had instituted a suit being Title Suit 200/2010 seeking eviction of the defendants on the ground of defaulter in payment of rent as well as on the ground of *bona fide* requirement. The learned Trial Court vide judgment and decree dated 21.12.2017, decreed the said suit in favour of the plaintiffs/ the petitioners herein on both counts that the plaintiff was entitled to eviction of the defendant

on the ground of defaulter in payment of rent as well as also on the ground of *bona fide* requirement.

5. The respondents herein who was the defendant filed an appeal before the Court of the learned Civil Judge No.2, Kamrup (M) at Guwahati, which was registered and numbered as Title Appeal No.6/2018. At this stage, this Court finds it very pertinent to observe that there was an application filed before the learned Trial Court by the defendant for calling for the records of certain NJ Cases. The said application was though allowed, the defendant did not take steps on 29.09.2016, 16.11.2016, 20.02.2017, for which the learned Trial Court vide an order dated 08.03.2017 decided to proceed with the suit, without waiting for the records of the NJ Cases.

6. The appeal i.e. Title Appeal No.6/2018 was heard by the learned First Appellate Court i.e. the Court of the learned Civil Judge No.2, Kamrup(M) at Guwahati. The learned First Appellate Court vide the impugned order dated 10.06.2022 remanded the suit back to the learned Trial Court on the ground that the learned Trial Court proceeded with the case debarring the plaintiff from calling for the remaining records of the NJ Cases, and, as such, directions were given to the learned Trial Court to decide the case afresh after going through the NJ records filed since the month of February, 2010. In that process, the learned Trial Court not only set aside the decision in respect to the issue based on defaulter in payment of rent, but also set aside the issue based on *bona fide* requirement without even touching on the said issue of *bona fide* requirement in its observation. The said aspect in the opinion of this Court violates the

mandates of Order XLI Rule 31 of the Code.

7. During the course of hearing, this Court had also enquired from the learned counsel appearing on behalf of the respondent, who was the appellant in Title Appeal No.6/2018 as to whether any application under Order XLI Rule 27 of the Code was filed. To which, the learned counsel submits that in his opinion no such application was filed. Be that as it may, this Court having taken note of the above materials is of the opinion that the learned First Appellate Court grossly erred in law in remanding the suit back and the same is also contrary to the provisions of Order XLI Rule 24 of the Code *inasmuch as*, the learned First Appellate Court ought to have decided the suit on the basis of the materials available on record.

8. Accordingly, this Court, therefore, sets aside the order dated 10.06.2022 and directs the learned First Appellate Court i.e. the Court of the learned Civil Judge No.2 Kamrup(M) at Guwahati to decide the said appeal being Title Appeal No.6/2018 on the basis of the materials available on record and in consonance with the provisions of Order XLI Rule 31 of the Code.

9. Taking into account that both the parties are duly represented, this Court directs the parties to appear before the learned First Appellate Court on 10.06.2024. On appearance of the parties, the learned First Appellate Court shall proceed with the disposal of the appeal, in accordance with law and taking into account that the said suit was filed in the year 2010 and almost 14 years had passed by. An attempt be made to dispose of the said appeal within a

period of 8(eight) months from the date of appearance of the parties.

10. The observations made hereinabove, shall not preclude the respondent to take such steps otherwise available under the law.

11. With the above, this revision petition stands disposed of.

JUDGE

Comparing Assistant