

GAHC010184772014



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

Case No. : CRP/99/2014

TATA AIG LIFE INSURANCE COMPANY LTD. and 2 ORS.
NOW TATA AIA LIFE INSURANCE COMPANY LTD. HAVING ITS
CORPORATE OFFICE AT PENINSULA TOWERS, 6TH FLOOR, PENINSULA
CORPORATE PARK, GANPATRAO KADAM MARG, LOWER PAREL,
MUMBAI-13, MAHARASTRA.

2: SENIOR MANAGER FACILITY AND PROJECT EAST AND NORTH
TATA AIG LIFE INSURANCE CO. LTD.
5TH FLOOR
55 CHOWRANGI
KOLKATA-71

3: MANAGER
TATA AIG LIFE INSURANCE CO. LTD.
SHILLONGPATY
SILCHAR-01
DIST- CACHAR
ASSAM.

VERSUS

SMTI SHIBANI DEB ROY
W/O SHRI MANOJ DEB ROY, OF PARAMA 3RD.FLOOR SHYMAPRASAD
ROAD, SILCHAR-788001, DIST- CACHAR, ASSAM

Advocate for the Petitioner : MR.P P DUTTA

Advocate for the Respondent : MR.N DHAR

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri P. P. Dutta, Advocate.

Advocate for the respondent : Shri T. U. Laskar, Advocate.

Date of hearing : **20.06.2024**

Date of Judgment : **20.06.2024**

JUDGMENT & ORDER

The instant petition has been filed under Section 115 of the Code of Civil Procedure, 1908 against a judgment and decree dated 15.07.2013 passed by the learned District Judge, Cachar in Title Appeal No. 3/2011. By the impugned judgment and decree, the First Appellate Court had partly reversed the judgment and decree dated 12.07.2011 passed by the learned Civil Judge No. 1, Cachar in TS No. 64/2008. Since the Assam Urban Area Rent Control Act, 1972 does not provide for any second appeal, the application has been presented to invoke the revisionary jurisdiction of this Court.

2. The petitioner is the defendants in the TS No. 64/2008 which was instituted for ejectment and other relief. The facts projected in the plaint was that the defendants were the tenants in respect of the suit premises at a monthly rent of Rs. 12,100/- (Rupees Twelve Thousand One Hundred) only and such tenancy had started from June 2005. It also transpires from the records that the defendants had made an advanced payment of Rs. 36,300/- (Rupees Thirty Six Thousand Three Hundred) only being 3 months rent. In April, 2008, the

defendants had served a notice of termination after 3 months which was replied to by the plaintiff. Though as per the defendants, on 28.06.2008, the premises were vacated, the plaintiff had failed to take over possession and therefore for its safe custody, the defendants had put a lock. The suit was ultimately instituted by terming the defendants as defaulter. It appears that the issue of defaulter was also connected to certain amounts relating to bank charges as the payments of rent was made by cheque. It also transpires that for one occasion, the defendants had made payment of 6 months rent together and the default was attributed to a claim of interest @ 18% for those 6 months from December, 2006 to June, 2007.

3. The learned Trial Court vide the judgment dated 12.07.2011 had decreed the suit only for Prayer Nos. a & b and rest of the relief was denied. For ready reference, the relief sought under (a) & (b) are extracted herein below:-

a) for ejectment of the defendants and/or any person claiming under them from their illegal occupation of premises described in schedule below by removal of all obstructions/hindrances etc. there from.

b) for direction upon the defendants for removal of all furniture, fixtures, appliances, interior decoration etc. from the Schedule premises at its cost and restore the schedule premises as it was when it took possession of the same and in case of default of the defendants to do so, decree for removal thereof from the schedule premises through court at the cost of the defendants.

4. Being aggrieved, the plaintiff had preferred the appeal being Title Appeal No. 3/2011 before the learned District Judge, Cachar. The Appellate Court vide judgment and decree dated 15.07.2013 had also granted the relief under prayer (g) & prayer (h) and also interest @ 6 %. The learned Appellate Court had also interfered with the issue of adjustment of the advanced payment as there was no separate counter claim for set off.

5. I have heard Shri P. P. Dutta, learned counsel for the petitioners. I have heard Shri T. U. Laskar, learned counsel for the respondent.

6. Shri Dutta, the learned counsel has submitted that there is no dispute to the fact that the premises in question was ultimately taken over possession by the plaintiff in December, 2008. He has however submitted that the claim for rent and the direction of the First Appellate Court for such payment of rent from July 2008 to December, 2008 is not justified as in the aforesaid period, the defendants were not in possession. It is submitted that the premises in question was vacated by the end of July, 2008 and peaceful possession was sought to be handed over to the plaintiff which was refused by him and only for the safe custody, the defendants had put a lock in the premises. It is submitted that by the aforesaid action, it cannot be held that the defendants were continuing with the possession of the premises in question. It is submitted that rent would be payable only when a tenant is in possession thereof and not otherwise. The learned counsel for the petitioner has also submitted that the direction of the First Appellate Court on the issue of adjustment of the advance is against the interest of justice. It is submitted that the rent agreement had a specific clause of adjustment/refund of the advanced payment and therefore it was incumbent upon the landlord to abide by the same for which no counter claim would be required.

7. Shri Dutta, the learned counsel has however submitted that so far as the direction to pay Rs.2000/- (Rupees Two Thousand) only as damage, the petitioners would not have any grievance. The learned counsel accordingly submits that the impugned judgment is required to be interfered with.

8. *Per Contra*, Shri Laskar, the learned counsel for the respondent/plaintiff has submitted that the judgment and decree of the First Appellate Court dated 15.07.2013 has been passed after consideration of all the relevant materials on record. It is submitted that a clear case of default was made out and since the possession of the premises in question was not handed over in July, 2008, it was incumbent upon the defendants to pay the rent. The claim for enhancement has been made in terms of the specific clause in the agreement which prescribes for an enhanced rate of 25% after expiry of 3 years. It is submitted that the direction towards payment of interest is also justified as the amount was a legal entitlement of the plaintiff /respondent being the landlord.

9. On the part of the impugned judgment towards adjustment/set-off of the advanced amount of Rs.36,300/- (Rupees Thirty Six Thousand Three Hundred) only, the learned counsel has submitted that the observation of the First Appellate Court is in accordance with law as there was no counter claim or any statement for setting off.

10. The rival submissions have been duly considered. The LCR has also been duly perused.

11. Certain facts which are undisputed emerge from the materials on record. The petitioner/defendants were the tenants of the plaintiff in respect of the suit premises at a monthly rent of Rs.12,100/-(Rupees Twelve Thousand One Hundred) only. As per the rent agreement, there was also a provision for enhancement @ 25% after 3 years upon renewal. The materials also suggest that the petitioners had served a notice of termination of the tenancy in April, 2008. However, the petitioner/defendants have projected that in spite of the

notice, the possession was not taken over and only for the safe custody of the premises, the defendants had put a lock.

12. It appears that the suit was instituted towards the end of the year 2008 wherein the aspect of default was also taken. The default, as observed above, is also on the aspect of bank charges connected to payment of rent by cheque and interest charges for rent paid together for 6 months. There was no such suit instituted at a prior point of time and it was instituted only after the expiry of the notice period. It is also not in dispute that the possession of the suit premises was ultimately taken over by the plaintiff/respondent in December, 2008 whereafter the suit was instituted. This Court is of the view that so far as the judgment dated 12.07.2011 of the Trial Judge is concerned granting prayers (a) & (b), the same appears to be in order. The grievance of the present respondent before the First Appellate Court was in respect of denial of the other reliefs. The First Appellate Court had also taken into consideration the aspect of possession from July, 2008 to December, 2008 and had directed payment of an amount of Rs.77,642 (Rupees Seventy Seven Thousand Six Hundred Forty Two) being the rent at the enhanced rate of Rs.15,125/-(Rupees Fifteen Thousand One Hundred Twenty Five) only per month. The learned First Appellate Court had also directed payment of interest @ 6%. The First Appellate Court had however made an observation on the aspect of adjustment/refund of the advanced amount of Rs.36,300/-(Rupees Thirty Six Thousand Three Hundred) only due to absence of any counter claim.

13. Though taking a hyper technical view, the aforesaid observation is a possible and plausible observation, interest of justice would demand that such requirement may not be strictly adhered to for adjustment of the advance

amount which was not otherwise disputed. It would be against the interest of justice to deny such adjustment/refund as admittedly, the amount of Rs.36,300/-(Rupees Thirty Six Thousand Three Hundred) only was paid and lying with the respondent as advance payment at the time of induction of the petitioners as tenants.

14. In view of the aforesaid discussions, while this Court is not inclined to interfere with the impugned judgment and decree dated 15.07.2013, the part of the judgment denying the adjustment of the amount of Rs.36,300/-(Rupees Thirty Six Thousand Three Hundred) only stands interfered with. Accordingly, the payment to be made by the present petitioners in terms of the impugned decree would stand adjusted by the amount of Rs.36,300/-(Rupees Thirty Six Thousand Three Hundred) only.

15. The appeal accordingly stands disposed of in terms of the observations made above.

JUDGE

Comparing Assistant