

GAHC010186782023



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

Case No. : CRP(IO)/271/2023

BASANT JAIN

S/O- LATE NEMI CHAND JAIN, C/O- ARIHANT TRADERS, N.C. ROAD, WARD
NO. 9, P.O. AND P.S. TEZPUR, DIST. SONITPUR, ASSAM

VERSUS

RIA JALAN

W/O- SRI ANUP JALAN, R/O- LDS ROAD, GAROWANPATTY, P.O. TEZPUR,
DIST. SONITPUR, ASSAM AND HAVING CORRESPONDENCE ADDRESS AS
ASSAM HARDWARE STORES, BORGOLA BUILDING, N.C. ROAD, P.O. AND
P.S. TEZPUR, DIST. SONITPUR, ASSAM

For the Petitioner(s) : Mr. G. N. Sahewalla, Sr. Advocate
: Ms. S. Todi, Advocate

For the Respondent(s) : Mr. A. Ganguly, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 01.04.2024

Heard Mr. G. N. Sahewalla, the learned Senior counsel assisted by Ms. S. Todi, the learned counsel appearing on behalf of the Petitioner and Mr. A.

Ganguly, the learned counsel appearing on behalf of the Respondent.

2. This is an application under Article 227 of the Constitution challenging the order dated 15.07.2023 passed by the learned Court of the Munsiff No.2, Tezpur at Sonitpur in Misc.(J) Case No.129/2022 arising out of Title Suit No.95/2020.

3. From the materials on record, it reveals that the Respondent herein as plaintiff had instituted a suit for ejectment of the defendant/petitioner herein; for a decree of enhanced rent @ Rs.12,000/- by fixing as fair rent or to take measures for fixation of fair rent as prayed for at least from April, 2018 and its periodical enhancement during the pendency of the suit; for recovery of mesne profit at the rate as deemed fit by the Court; for a decree of all arrear rents etc. The said suit was registered and numbered as Title Suit No.95/2020.

4. The defendant pursuant thereto filed the written statement. During the pendency of the said suit, an application was filed by the plaintiff under Sections 3 and 4 of the Assam Urban Areas Rent Control Act, 1972 read with Order XXVI Rule 9 and Section 151 of the Code of Civil Procedure, 1908 for appointment of a Commissioner to collect data and assess the present rental of the shops of the suit premises nature in the areas nearby in order to help the Court in determination of the fair rent. The said application was filed taking into account that an issue was framed being Issue No.(ii) as to whether the suit is maintainable as the plaintiff has claimed recovery of arrear @ Rs.12,000/- only per month from April, 2018 to January, 2020 without determination of fair rent or to take any measure for fixation of the fair rent?

5. To the said application, objections were filed. The learned Trial Court vide an order dated 15.07.2023 allowed the said application filed by the plaintiff and directed the Civil Nazir to visit the suit premises wherein the rental shops are

situated for determining the fair rent and to submit a report thereafter. Being aggrieved by the said order, the present proceedings have been initiated.

6. This Court has put a specific query upon the learned Senior counsel for the Petitioner/the defendant as to why the instant application has been filed inasmuch as from a perusal of the impugned order, there seems to be no jurisdictional error. The learned Senior counsel for the Petitioner submitted that if the fair rent is fixed, it would result in making the Petitioner a defaulter inasmuch as the rent what the petitioner is paying as a tenant is Rs.1,100/- from the month of April, 2018 onwards which was the rate fixed. In the opinion of this Court, the basis for filing the instant proceedings is completely misconceived inasmuch as it is well settled that the suit for eviction on the ground of defaulter has to be adjudicated on the basis of the due rent on the date of filing of the suit. The fair rent can be fixed only from the date of application and the tenant cannot be held a defaulter for not making payment of the fair rent prior to the fixation of the fair rent. In that regard, the law is well settled by the judgment of the Division Bench of this Court in the case of ***Surajmal Mangilal Vs. Legal heirs of deceased Kanhaiyalal Agarwal reported in (2010) 2 GLR 198.***

7. This Court also finds it relevant to mention that the fixation of fair rent has to be made w.e.f. the date of the application for the fixation of the fair rent and the tenant cannot be held as a defaulter prior to fixation of the fair rent. It is a different aspect of the matter that the tenant would be liable to pay the fair rent from the date of filing of the application for fair rent but cannot be held as defaulter for non-payment of rent from the date of filing of the application. In addition to that, it is also well settled that in order to arrive at a finding that the defendant/tenant is a defaulter during the pendency of the suit, the said aspect

of the matter has to be brought to the notice of the Court by filing an application in the manner envisaged under law as held by the Division Bench of this Court in the case of ***Sobha Biswas Vs. Raniit Lodh reported in (2006) 1 GLT 479.***

8. Consequently, the entire apprehension on the basis of which the instant application has been filed is totally misconceived. In addition to that, this Court also finds it relevant to mention that the impugned order dated 15.07.2023 does not suffer from any jurisdictional error or perversity for which the said impugned order requires no interference, more so in a proceedings under Article 227 of the Constitution.

9. This Court has also taken note of that vide an order dated 30.08.2003 further proceedings of Title Suit No.95/2020 was stayed by this Court. The said interim order stands vacated and the parties who are duly represented before this Court are directed to appear before the learned Trial Court on 13.05.2024 for further proceedings of the suit.

10. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant