

GAHC010225892024



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

Case No. : CRP(IO)/443/2024

MASHUD ZAMAN
S/O- LATE MD. SOFIQUE, R/O- NEW VILLAGE ROAD, WARD NO-4, JORHAT
TOWN, DIST- JORHAT, PIN-785001

VERSUS

MD. RAKIB AND 4 ORS
S/O- MD. SALEH,
R/O- NILMONY PHUKAN PATH, (NEW VILL ROAD), DIST- JORHAT, PIN-
785001, ASSAM

2:MD. TOUFIQUE
S/O- MD. SALEH

R/O- NILMONY PHUKAN PATH
(NEW VILL ROAD)
DIST- JORHAT
PIN-785001
ASSAM

3:MD. MOFIZUR RAHMAN
S/O- MD. SALEH

R/O- NILMONY PHUKAN PATH
(NEW VILL ROAD)
DIST- JORHAT
PIN-785001
ASSAM

4:MUJIBUR RAHMAN
S/O- MD. SALEH

R/O- NILMONY PHUKAN PATH
(NEW VILL ROAD)

DIST- JORHAT
PIN-785001
ASSAM

5:GOPAL PRASAD SAHU
R/O- C/O- GOPAL STORE
DHEKAI PATTY
KABARSTHAN ROAD
NEAR JAMA MASJID
DIST- JORHAT
PIN-78500

Advocate for the Petitioner : MR. A IKBAL, MS. J SARMA,MS. M NATH

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 29.11.2024

Heard Mr. A. Ikbal, learned counsel for the petitioner.

2. The order, dated 19.07.2024, passed by the learned Civil Judge (Junior Division) No.1, Jorhat, is challenged in this petition under Article 227 of the Constitution of India read with Section 151 Code of Civil Procedure.

3. It is to be noted here that vide impugned order, dated 19.07.2024, the learned trial Court has dismissed the petition filed by the petitioner for allowing him to withdraw the rent deposited by the respondent No.5/opposite party herein, before the learned trial Court.

4. Mr. Ikbal, learned counsel for the petitioner submits that the respondent herein has deposited the rent as per Section 5(4) of the Assam Urban Areas Rent Control Act, 1972, before the learned trial Court and the petitioner herein had filed a petition, being Petition No. 2628/2019, dated 27.08.2019, for

allowing him to withdraw the amount.

5. Mr. Ikbal, also submits that the learned trial Court had dismissed the petition on the ground that there is dispute regarding the landlord, but referring to an order dated 17.05.2023, passed by the learned trial Court in Title Suit No. 26/2022(new).Mr.Ikbal, submits that in the said Title Suit, the respondent Nos. 1 to 4 have challenged the authority of the petitioner to collect the rent as landlord subsequent and the same has been withdrawn by the respondent/opposite party herein and the order dated 17.05.2023, as such, attained in finality Mr. Ikbal also submits that the respondent herein also filed objection petition before the learned trial Court in the Misc.(N.J) Case No. 245/2019, admitting that the present petitioner is the landlord and as such, in view of provision of Section 5(4) of the Assam Urban Areas Rent Control Act, 1972, the learned trial Court ought to have allow the petition. But, the learned trial Court has illegally dismissed the same and in view of the provision Section 5(4) of the Assam Urban Areas Rent Control Act, 1972, the petitioner is entitled to collect the rent deposited before the learned trial Court and therefore, Mr. Ikbal has contended to allow the petition.

6. Having considered the submission of Mr. Ikbal, learned counsel for the petitioner, I have carefully gone through the petition and the document placed on record and also perused the relevant provision of law.

7. Sub-section 4 to Section 5 of the Assam Urban Areas Rent Control Act, 1972, provides that where the landlord refused to accept the lawful rent offered by his tenant, the tenant may, within a fortnight its becoming become due, deposit in Court the amount of such rent together with process fee for service of notice upon the landlord, and on receiving such deposit the Court shall cause a notice of the receipt of such deposit to be served upon the landlord and the

amount of deposit be thereafter be withdrawn by the landlord on application made by him to the Court in that behalf. A tenant who has made such deposit shall not be treated as defaulter under Clause E of the Proviso to Sub-Section (1) of the Section.

8. In the instant case, it appears that from the record that though the authority of the present petitioner is disputed by the respondent/Opposite party herein in Title Suit No. 26/2022, the same was withdrawn by them and no liberty was granted to them to file a fresh suit, vide Order dated 17.05.2023, by the learned Civil Judge, Jorhat. And as such, there is no dispute at present regarding who is the landlord of the tenanted premises and in that view of the matter and in view of the provision of Sub-Section (4) to Section 5 of the Assam Urban Areas Rent Control Act, 1972, the petitioner herein is entitled to withdraw the amount, and there is no impediment in allowing the petitioner to withdraw the rent from the Court.

9. In that view of the matter, the impugned order dated 19.07.2024, fails to withstand the legal scrutiny and therefore, the same set aside and quashed. The learned trial Court is directed to allow the petitioner to withdraw the rent deposited in the Court.

10. In terms of above, this CRP stands disposed of.

JUDGE

Comparing Assistant