

GAHC010306182019



2024:GAU-AS:8398

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

Case No. : CRP/25/2020

MUSTAK AHMED
S/O- LATE JEADUL HAQUE, HAVING HIS OFFICE AT A-ONE TRAVELLING
GOODS, BELOW ORIENTAL BANK OF COMMERCE, S S ROAD,
LAKHTOKIA, GUWAHATI- 01, DIST- KAMRUP(M), ASSAM

VERSUS

AZADUR RAHMAN HAZARIKA
S/O- LATE HABIBUR RAHMAN HAZARIKA, R/O- COL J ALI ROAD,
LAKHTOKIA SWEET PALACE, P.S- PANBAZAR, GUWAHATI- 01, DIST-
KAMRUP(M), ASSAM

Advocate for the Petitioner : MR S ALI, MR A IKBAL,MR R BARUAH,A I AHMED

Advocate for the Respondent : MR. R J BORDOLOI, R ALI, FOR CAVEATOR

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

JUDGMENT & ORDER (Oral)

Date : 22-08-2024

1. Heard Mr. A. Ikbal, learned counsel for the petitioner. Also heard Mr. R. Ali, learned counsel for the respondent.
2. This petition is filed under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (herein referred to as CPC) against the Judgment and Decree dated 07.09.2019 passed by the learned Civil Judge No.2, Kamrup(M) at Guwahati in Title Appeal No.112 of 2016 dismissing the appeal of the petitioner/defendant and confirming the Judgment and Decree dated 20.09.2016 passed by the court of learned Munsiff No.1, Kamrup(M) at Guwahati in Title Suit No.105 of 2013.
3. The facts of the case are as follows.

The respondent as plaintiff instituted Title Suit No.105/2013 against the petitioner/defendant before the Court of Munsiff No.1, Kamrup(M) at Guwahati for ejectment of the petitioner from the schedule premises on the ground of defaulter and bona fide requirement and realization of arrear rents.

It is the specific case of the respondent/plaintiff that the petitioner is a tenant under the respondent in respect of the schedule premises and that the petitioner has not paid rents to him since the month of August, 2012 and hence the petitioner is defaulter in payment of rent. It is the further case of the respondent/plaintiff that the suit premises is required bona fide by the respondent for himself and for his family members for their own commercial use.

4. The petitioner/defendant contested the said suit by filing written statement and specifically denied the allegations urged by the respondent/plaintiff in his plaint and took the specific plea that the tenancy commenced from the days of their predecessor since 1976. It is further stated in the written statement that after the expiry of tenancy on 31.08.2012, the tenancy was not renewed but the same continued verbally with an assurance by the respondent that the same would be renewed and the terms and conditions would be given in a written tenancy agreement at a later stage. It was further pleaded by the petitioner/defendant that the agreement dated 01.09.2009 was valid for three years and expired on 31.10.2012. However, upon expiry of the said agreement no new written agreement has been entered into. Accordingly, it was pleaded that the petitioner/defendant is not a defaulter in respect of payment of rent to the respondent as the respondent continued to receive rent till December, 2012.

5. The following issues and additional issue were framed by the Trial Court :-

- “1) Whether the suit is maintainable in the present form and manner? (Struck Down)
- 2) Whether there is any cause of action for the suit?
- 3) Whether the defendant is defaulter in payment of rent?
- 4) Whether the plaintiff is entitled to realize of Rs.16,800/- being arrear rent from the defendant as prayed for?
- 5) Whether the plaintiff is entitled for the decree of eviction of the defendant from the suit premises?
- 6) To what other relief/reliefs the parties are entitled to?

Additional Issue :-

7) *Whether the suit premises is bonafide required by the plaintiff and his family for commercial purpose?”*

6. Thereafter, evidences were led by both the parties and upon conclusion of hearing the learned Trial Court rendered its Judgment and Decree on 28.09.2016 whereby the suit was allowed on the ground of defaulter and bonafide requirement.

7. Aggrieved and dissatisfied by the aforesaid Judgment and Decree dated 28.09.2016 passed by the learned Trial Court, the appellant/defendant preferred Title Appeal No.112/2016 before the learned Court of Civil Judge No.2, Kamrup(M) at Guwahati. The Appellate Court after hearing the parties dismissed the said appeal by judgment and decree dated 07.09.2019. Against the aforesaid judgment and decree passed by the learned Appellate Court, the present Revision Petition has been filed.

8. Mr. A. Ikbai, learned counsel for the appellant submits that the judgment of the Appellate Court suffers from jurisdictional error inasmuch as the Appellate Court has failed to determine the points of issue as required under Order XLI Rule 31 of the CPC. He further submits that the Appellate Court has not dealt with all the issues involved in the suit and merely by determining the issue of defaulter upheld the judgment of the Trial Court. He accordingly submits that the impugned Judgment and Decree of the Appellate Court is manifestly erroneous and therefore the same is liable to be quashed.

9. Mr. R. Ali, learned counsel for the respondent, on the other hand, submits that the judgment of the Trial Court does not suffer from any infirmity or any jurisdictional

error whatsoever and therefore, cannot be interfered with under Section 115 of the CPC. He further submits that the learned Appellate Court having substantially adjudicated the relevant issue in hand, the procedure prescribed under Order XLI Rule 31 of the CPC is substantially complied with.

10. I have given my prudent consideration to the arguments advanced by the learned counsel appearing for both the parties and have perused the relevant materials available on record including the case records of the Trial Court.

11. Apt to refer to Section 5 of the Assam Urban Areas Rent Control Act, 1972 (herein after referred to as the Act) before adverting on the merit of the issues involved in the petition which is reproduced herein below for ready reference:-

“5. Bar against passing and execution of decree and orders for ejection.

(1) No order or decree for the recovery of possession of any house shall be made or executed by any Court so long as the tenant pays rent to the full extent allowable under this Act and performs the conditions of the tenancy :

Provided that nothing in this sub-section shall apply in a suit or proceedings for eviction of the tenant from the house-

(a) where the tenant has done anything contrary to the provisions of clause (m), clause (o) or clause (p) of Section 108 of the Transfer of Property Act, 1882 (Central Act 4 of 1882) or to the spirit of the aforesaid clause in areas where the said Act does not apply; or

(b) where the tenant has been guilty of conduct which is a nuisance or an annoyance to the occupiers of the adjoining or neighbouring houses; or

- (c) where the house is bonafide required by the landlord either for purposes of repairs or rebuilding, or for his own occupation or for the occupation of any person for whose benefit the house is held, or where the landlord can show any other cause which may be deemed satisfactory by the Court; or
 - (d) where the tenant sublets the house or any part thereof or otherwise transfers his interest in the house or any part thereof without permission in writing from the landlord; or
 - (e) where the tenant has not paid the rent lawfully due from him in respect of the house within a fortnight of its falling due; or
 - (f) where the tenant has built, acquired or been allotted a suitable residence.
- (2) The transfer of the interest of the landlord in the house shall not affect the right of the tenant provided the tenant pays rent allowable under this Act to the transferee.
- (3) Where the landlord recovers possession of a house from a tenant on the ground that the house is bonafide required by him for purpose of repairs or rebuilding or for his own occupation or for the occupation of any person for whose benefit the house is held, and the repairs or the rebuilding of the house is not commenced or the house is not occupied by the landlord or such person within fifteen days of the date of vacation of the house by such tenant or the house having been so occupied is within six months of the said date re-let to or allowed to be possessed by any other person, the Court may, on the application of the evicted tenant made within seven months of his vacating the house, direct the landlord to put the evicted tenant in possession of the house within such period as the Court may fix and to pay him such compensation as

appears to the Court to be reasonable and proper. Such a direction shall be deemed to be a decree under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) and to be capable of execution as such under the provisions of that Code.

(4) Where the landlord refuses to accept the lawful rent offered by his tenant, the tenant may within a fortnight of its becoming due, deposit in Court the amount of such rent together with process fees 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 on the landlord, and the amount of the deposit may 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 a defaulter under clause (e) of the proviso to sub-section (1) of this section."

12. Reading of the aforesaid provision abundantly clarifies that the bar against passing and execution of decree and orders for ejection shall not apply in a suit or proceedings for eviction of tenant from the house upon either fulfillment of the grounds mentioned herein above in the extracted portion from (a) to (f) under sub-section (1) of Section 5 of the said Act.

13. In the present case in hand, the specific plea of the landlord as evident from the evidence adduced before the Trial Court is that the tenant has not paid the rent lawfully due from him in respect of the house within a fortnight of its falling due and also for the bonafide requirement of use of the said premises by the landlord and his family members. Thus, fulfillment of either condition i.e. defaulter or bonafide requirement is suffice in law to exclude the suit from the bar contained under Section 5 of the Act.

14. Reverting back to the facts of the present case, it appears that the learned Trial Court by framing issue as "Whether the defendant is defaulter in payment of rent" has held that the defendant has defaulted and accordingly held that the plaintiff is entitled to realize Rs.16,800/- before arrear rents for the period from August 2012 to February, 2013 from the defendant as prayed by him.

15. Reading of the Appellate Court's judgment impugned in the present revision petition indicates that the issue of defaulter has been dealt by the Appellate Court and after determining the said issue has come to a specific finding that the defendant failed to comply with the mandatory provision as laid down under Section 5(4) of the said Act and has defaulted in paying rent to the plaintiff as the deposit in Court cannot be considered to be valid deposit in view of absence of evidence to show that there was a valid tender to the landlord and the same was refused.

16. It is settled law that this Court while exercising power under Section 115 of the CPC is concerned with the limited issue of jurisdiction alone.

17. Section 115 of the CPC is reproduced hereunder for ready reference :-

“115. Revision .- (1) *The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-*

(a) *to have exercised a jurisdiction not vested in it by law, or*

(b) *to have failed to exercise a jurisdiction so vested, or*

(c) *to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:*

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court."

Thus, the powers of Revision Court under Section 115 of the CPC are not for correction of mere error of facts or law but is only where there is a jurisdictional error or illegality or material irregularity in the exercise of jurisdiction that the Revision Court can interfere.

19. Keeping in view the limited jurisdiction that this Court has under Section 115 of the CPC, let me now examine whether the Appellate Court has committed any jurisdictional error.

20. Apt to refer to Order XLI Rule 31 of the CPC which is quoted hereunder for ready reference, which provides the manner in which the Appellate Court shall dispose of the first regular appeal :-

"31. Contents, date and signature of judgment.-- The judgment of the Appellate Court shall be in writing and shall state –

- (a) the points for determination;*
- (b) the decision thereon;*

(c) *the reasons for the decision; and*

(d) *where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,*

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

21. Reading of Order XLI Rule 31 of the CPC indicates that the basic requirement which needs to be followed by the Appellant Court, while disposing of the First Regular Appeal is that the judgment of the Appellate Court must, reflect its conscious application of mind and record findings supported by reasons on all the issues arising along with the contentions put forth, and pressed by the parties for decision by the Appellate Court. Drawing of the points of determination is procedural in order to achieve the aforesaid requirement. Thus, what is mandated is that the Appellate Court disposes of the First Regular Appeal by a reasoned decision on all the relevant issues, by reevaluating and reappreciating the evidences thereof. In other words, the Court of first appeal being the final Court on questions of facts, the whole case is therein open for rehearing both on questions of facts and law.

22. In the present case, though the Appellate Court has not stated the points for determination in the judgment, it appears that the Appellate Court has determined the issues raised in the appeal by both the parties. It further appears that the Appellate Court has decided the issues raised by giving reasons for the decision. Therefore, there being independent assessment by the Appellate Court on the relevant evidence on all important aspect of the matter, it amounted to substantial compliance of the said provision of the Code. It further appears that the findings of

the Appellate Court are well founded and quite convincing. The Appellate Court ought to have drawn the points for determination in the judgment. However, the Appellate Court having independently assessed the evidence of the parties and having considered the relevant issues arising for adjudication, cannot be said to have acted illegally or with material irregularity merely for non- drawal of the points of determination.

23. Reference is made to the decision of the Apex Court in the case of **H. Siddiqui (Dead) by L.RS. Vs. A. Ramalingam** reported in **(2011) 4 SCC 240**. Paragraphs 17 and 18 of the aforesaid judgment are reproduced herein under for ready reference :-

“17. The High Court failed to realise that it was deciding the First Appeal and that it had to be decided strictly in adherence with the provisions contained in Order XLI Rule 31 of the Code of Civil Procedure, 1908 (hereinafter called CPC) and once the issue of alleged power of attorney was also raised as is evident from the point (a) formulated by the High Court, the Court should not have proceeded to point (b) without dealing with the relevant issues involved in the case, particularly, as to whether the power of attorney had been executed by the respondent in favour of his brother enabling him to alienate his share in the property.

Order XLI, Rule 31 CPC:

18. The said provisions provide guidelines for the appellate court as to how the court has to proceed and decide the case. The provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the appellate court that the court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance of the said provisions if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspect of the matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the

parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the Trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the court must proceed in adherence to the requirements of the said statutory provisions. (Vide: Thakur Sukhpal Singh v. Thakur Kalyan Singh & Anr., 7 AIR 1963 SC 146; Girijanandini Devi & Ors. v. Bijendra Narain Choudhary, 8 AIR 1967 SC 1124; G. Amalorpavam & Ors. v. R.C. Diocese of Madurai & Ors., 9 (2006) 3 SCC 224; Shiv Kumar Sharma v. Santosh Kumari, 10 (2007) 8 SCC 600; and Gannmani Anasuya & Ors. v. Parvatini Amarendra Chowdhary & Ors., 11 AIR 2007 SC 2380)."

24. Reading of the aforesaid decision of the Apex Court, apparent that if the Appellate Court independently deals with the relevant issues involved in the case by reevaluating and reappreciating the facts/evidence and by applying its mind and consideration thereof has decided the case, there is substantial compliance of the requirement of Order XLI Rule 31 of the CPC. Therefore, there is no jurisdictional error whatsoever in the manner the Appellate Court has arrived at its findings. In view of the same, the contention of the learned counsel for the appellant as regards non-compliance of Order XLI Rule 31 of the CPC is not accepted.

25. This takes me to the second contention of the learned counsel for the appellant as whether the Appellate Court by not going into the issue of bonafide requirement has committed jurisdictional error in law?

26. What transpires from the discussion made herein above is that if any one of the grounds of ejection as stipulated under Section 5 of the said Act is available, the bar prescribed under Section 5 of the said Act is lifted. In other words, under the provisions

of Section 5 of the said Act, a suit or proceeding for eviction of a tenant from the house can be made (a) where the tenant is doing anything contrary to clause (m), clause (o) and clause (p) section 108 of the Transfer of Property Act, 1882, or (b) where the tenant has been guilty of conduct which is a nuisance or any annoyance to the occupiers of the adjoining or neighbouring houses, or (c) where the house is bona fide required by the landlord either for purpose of repairs or rebuilding, or for his own occupation, or (d) where the tenant sublets the house or any part thereof or otherwise transfers his interest in the house or any part thereof without permission in writing, or (e) where the tenant has not paid the rent lawfully due from him in respect of house within fortnight of its falling due, or (f) where the tenant has built acquired or been allotted a suitable residence. Therefore, if any one of the aforesaid grounds of eviction are found against the tenant, the suit for eviction is maintainable.

27. In the present case, it is seen that the learned Appellate Court has determined the issue of defaulter which is one of the grounds stipulated under Section 5 of the said Act and after discussing and re-evaluating the evidence available on record has come to a specific finding that the defendant/ appellant is a defaulter and thereafter has upheld the decision of the learned Trial Court. Therefore, the second contention of the learned counsel for the appellant to the effect that the Appellate Court having not discussed the issue of bonafide requirement has committed jurisdictional error is also not accepted.

28. In view of the above, this Court finds no jurisdictional error in the approach adopted by the learned Appellate Court. Therefore, the impugned judgment and

decree dated 07.09.2019 passed by the learned Civil Judge No.2, Kamrup(M) at Guwahati in Title Appeal No.112/2016 warrants no interference from this Court while exercising powers under section 115 of the CPC.

29. Hence, the Revision Petition fails.

30. Resultantly, the Revision Petition stands dismissed.

31. No order as to cost.

33. Send back the Trial Court records.

JUDGE

Comparing Assistant