

IN HE HIGH COURT OF ORISSA, CUTTACK

R.S.A. NO. 337 OF 2017

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment dated 30.06.2017 passed by the learned District Judge, Cuttack in R.F.A. No.10 of 2016 partly modifying the judgment and decree dated 14.12.2015 and 23.06.2016 respectively passed by the learned Senior Civil Judge, 1ST Court, Cuttack in C.S(I). No.67485 of 2015.

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M/s. Bharat Motors & Others :::: *Appellants.*

-:: VERSUS ::-

*Savitri @ Savitri Devi Bhawsinka
& Others* :::: *Respondents.*

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode)**

<i>For Appellants</i>	::::	M/s. Prafulla Kumar Rath, S.K. Pattnaik, A. Behera, S.K. Behera, Kumar Kashyap, P. Nayak, B.K. Dash, S. Parija, Advocates.
<i>For Respondents</i>	::::	M/s. S.P.Misra, Sr. Advocate, S. Mishra, Ekta Agrawal, Neha Sharma, L.K. Moharana, R.K. Das, Advocates, (For Respondent Nos.1 to 3)

CORAM:

MR. JUSTICE D DASH

Date of Hearing : 25.10.2021 : Date of Judgment :03.01.2022

D.Dash, J. The Appellants by filing this Appeal under Section-100 of the Code of Civil Procedure (hereinafter called as ‘the Code’) have assailed the judgment and decree passed by the learned District Judge, Cuttack in RFA No.10 of 2016.

By the said judgment and decree, the First Appellate Court has allowed the Appeal filed by these Appellants-Defendants under section-96 of the Code, in part only to the extent of determination of the fair and equitable rent of the tenanted premises for the period from August, 2008 to October, 2013. The First Appellate Court has fixed the same @ of Rs.30,000/- per month instead of Rs.40,000/- as had been so awarded by the Trial Court for said period. It may be stated that rest part of the order of the Trial Court in directing the Defendants to vacate the possession of the suit premises; pay arrear rent @ of Rs.40,000/- per month from November, 2013 till March, 2014 and damage @ of Rs.80,000/- per month w.e.f. 01.04.2014 till actual vacation of the suit premises have been given the seal of approval.

The cross-objection filed by the Respondents-Plaintiffs for enhancement of monthly rent and damage for the aforesaid period has, however, been rejected.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to as they have been assigned the position in the Trial Court.

3. Plaintiffs Case:-

One Ramesh Kumar Bhawsinka as the Plaintiff had filed the above noted suit for eviction of the Defendants from the suit premises and delivery of vacant possession with direction for payment of arrear house rent and damage with interest.

It is pertinent to state here that during the pendency of the suit, said original Plaintiff having died, his legal representatives coming on record have pursued the suit and they are called the Plaintiffs.

The original Plaintiff is the owner of the premises which is the subject matter of the suit. It is stated to be covering an area of Ac.0.200 decimals with four rooms and other constructions standing over the same. On 28.11.1946, a lease agreement has been executed in favour of Ganesh Lal Didwania, one of the Directors of M/s. Bharat Motors (Defendant No.1) for running a show room, garage/workshop. The rent agreement was for a period of 21 years w.e.f. 01.12.1946. On completion of the aforesaid period, the tenancy agreement between the original Plaintiff and M/s. Bharat Motors (Defendant No.1) through its partner came into being on 19.07.1985 and then it was for a period of four years w.e.f. 01.08.1984 till 21.07.1988. The rent was fixed thereunder at Rs.2,100/- per month with a stipulation that the same would stand increased @ 20% after expiry of the lease period. In this way, the tenancy continued till July, 2008 when the monthly rent being accordingly enhanced as per the said stipulation and agreed upon was Rs.10,000/- per month.

It is stated that before completion of the period of tenancy on 02.07.2008, the Plaintiff had requested the Defendants to handover the possession of the suit premises on or before the expiry of the month of July, 2008 i.e. with effect from 01.08.2008. It is stated that the Defendant No.1 through one of its partner i.e. Defendant No.2 had then made a request to the original Plaintiff to have a fresh negotiation for execution of a new agreement in expressing the desire to continue with the tenancy by paying Rs.10,000/- as rent every month. The Defendants did not then vacate the suit premises. The Plaintiff, however, at that time could not take effective step against the Defendants for vacation of the suit premises because of his health condition due to ailments. It is further stated that Defendant No.2 on behalf of Defendant No.1 then had given an assurance

to the original Plaintiff that they would pay rent of Rs.50,000/- per month for a period of six months, when they would be shifting to another premises. However, despite such assurance, as per that old rate, a sum of Rs.10,000/- was paid towards monthly rent. The Plaintiff thereafter serving the notice upon the Defendants asked them to vacate the suit premises. It is next stated that the Defendants did not pay the rent of Rs.10,000/- from the month of November, 2013 onwards nor did they vacate the suit premises for which finally notice under section-106 of the Transfer of Property Act (for short, 'the T.P. Act') was issued terminating the tenancy with the defendants and asking them to vacate the suit premises on or before 31.03.2014. The Defendants since did not act upon that notice, the suit has come to be filed.

4. The Defendants in their written statement while traversing the plaint averments admitted that there was an agreement between Durgadutta Bhawsinka and Defendant No.1 which had come into being on 28.11.2046 and stated that same stood renewed from time to time. And as per the agreement, the Defendant No.1 made valuable permanent structures by installing a car servicing/ repairing unit and went on paying the rent as fixed and agreed upon. It is thus stated that in case the Defendant No.1 is asked to vacate the premises, they would sustain huge loss to the tune of Rs.2.00 crores and that need be compensated. They denied about any assurance with regard to payment of Rs.50,000/- per month as rent till the vacation of the suit premises within six months as pleaded by the Plaintiff. They have stated that they had never stopped the payment of rent from the month of November, 2013 as alleged by the Plaintiff. It is their case that the rent being offered the original Plaintiff refused to receive which is now

projected differently attributing bad conduct upon the Defendants. It is also pleaded that there is an agreement implied or express that the tenancy is irrevocable. It is stated that there was no agreement with the original Plaintiff on or after 06.08.2007. They however, stated that the Plaintiff being interested in enhancing the monthly rent, they are willing to pay the same as would be reasonably determined.

5. On the above rival pleadings, the Trial Court framed eight issues, which run as under:-

ISSUES

- i) Is the suit maintainable?
- ii) Is there any cause of action for institution of the suit?
- iii) Is the suit barred by limitation?
- iv) Is the suit hits by mi-joinder and non-joinder of necessary parties?
- v) Is the Plaintiff, the Landlord and the Defendant No.1, the tenant in respect of the suit premises?
- vi) Is the Defendant No.1 liable to be evicted from the premises?
- vii) Whether the Plaintiff is entitled to realize the arrear house rents and damages from the Defendants as claimed for?
- viii) Is the Plaintiff entitled to the relief claimed or any other relief/s?

6. Answering the crucial issues i.e. issue nos.5 & 6 concerning the Landlord and Tenant relationship and the Plaintiffs claim of eviction of the Defendant No.1 from the suit premises, the answers have been recorded in favour of the Plaintiffs.

Next coming to issue no.7 as to realization of the arrear house rent, damage from the Defendants, the Trial Court has directed the Defendants to pay a sum of Rs.40,000/- per month as rent for the period from August, 2008 to October, 2013; @ Rs.40,000/- for the period November, 2013 to March, 2014 and damage @ Rs.80,000/- per month; from April, 2014 till actual vacation of the suit premises to the Plaintiffs.

7. Aggrieved by the above judgment and decree from which the Defendants suffered, they had carried the Appeal. The Plaintiffs had also filed a cross-objection seeking enhancement of the rent and damage in claiming Rs.50,000/- per month as rent from November, 2013 till March, 2014 and damage of Rs.5,000/- per day, i.e., Rs.1,50,000/- per month from 01.04.2014 till vacation. The First Appellate Court has found the conclusions arrived at by the Trial Court in respect of issue nos. 5 & 6 has held to be in order, that the parties are having relationship of landlord and tenant and as such in view of the termination of tenancy, the Defendants are liable to vacate the tenanted premises.

Then delving upon the directions of the Trial Court as regards the quantification of the arrear rent and damage; the lower Appellate Court has directed the Defendants to pay a sum of Rs.30,000/- per month towards rent from August, 2008 to October, 2013 and Rs.40,000/- per month w.e.f. November, 2013 to March, 2014. The Defendants have also been directed to pay towards damage for the period running from April, 2014 till actual date of vacation @ Rs.80,000/- per month. In other words, the lower Appellate Court has only modified the quantum of arrear rent to Rs.30,000/- per month instead of Rs.40,000/- per month as awarded by the Trial Court for the period running from August, 2008 to October, 2013.

8. Keeping in view the concurrent finding recorded by the Courts below on issue nos.5 & 6 and finding no such infirmity therein, the present Appeal has been admitted only to answer the following substantial question of law:-

“Whether the ultimate direction given by the First Appellate Court to the Defendants to pay the rent for the period from August, 2008 to October, 2013 @ Rs.30,000/- per month, November, 2013 to March, 2014 @ Rs.40,000/- per month and damage to be paid by the Defendants to the Plaintiffs @ Rs.80,000/- per month w.e.f. April, 2014 till actual vacation of the suit premises is the outcome of perverse appreciation of evidence on record as also wholly against their weight, thus suffer from the vice of arbitrariness and unreasonableness?

9. Mr. P.K.Rath, learned Counsel for the Appellants (Defendants), submitted that the Plaintiffs having received sum of Rs.10,000/- towards rent till the month of November, 2013 by merely stating that they have so received under protest, the Courts below ought not to have determined that a sum of Rs.30,000/- per month as rent would be reasonable and fair which according to him is not guided by any fixed formula, but is dependent on various factors and facts and circumstances of the case. He submitted that in the case in hand, the Courts below have fallen in grave error by giving maximum importance upon an agreement, Ext.11 entered into between the original Plaintiff and the Plaintiff No.2 as first party another Tenant-Company as the second party; wherein the rent has been fixed on square feet basis of the tenanted premises in respect of new building. He submitted that the Courts below before going to derive any support from that Ext.11 ought to have kept in view the detail background facts of the case in hand which have been duly lost sight of in fixing the fair and equitable rent for the premises in question as also in assessing the damages.

It was submitted that the fixation of the rent and quantification of damage have been arbitrarily done by the Courts below and the same being highly disproportionate and exorbitant is beyond the realms of any reasonableness. It was also submitted that the Defendants are in occupation of the tenant premises since 1946 and they have been continuing to run the same business going through so many ups and downs and they have also put up permanent structures to suit the purpose of running, the automobile garage/ workshop with the consent of the Plaintiff and all these facts ought to have been taken into account in viewing the aspect that practically the vacation of the premises as sought for would force the Defendants to close their said business activity for ever causing serious sufferance to them when the fact remains that they have also spent huge sum for putting up constructions etc. and they need fairly long time for its vacation in finding suitable accommodation.

10. Mr. S.P. Misra, learned Sr. Counsel for the Respondents (Plaintiffs) submitted all in favour of the judgment and decree passed by the First Appellate Court in directing the Defendants to pay the arrear rent and damage for the periods as stated therein. According to him, the Courts below having found the Defendants to have continued to enjoy by remaining in occupation of the tenanted premises after having incurred the liability as to vacate the same in favour of their Landlord have rightly taken into account the present market situation in determining the arrear rent and quantifying the damage, more so when it has been found that taking advantage of the low rent as had been fixed long back; the Defendants are making unlawful gain causing deprivation to the Plaintiffs of using their property in getting proper return as on date. He submitted that the evidence

on record being seen, it cannot be said that such quantification of rent and damage for such continued possession of the suit premises by the Defendants is either arbitrary nor disproportionate.

11. In order to address the rival contentions in answering the substantial questions of law; it would be apposite to have a glance at the rival pleadings.

The Defendants have continued to occupy the tenanted premises till July, 2008 by virtue of an agreement with the Plaintiff. The occupation was on payment of agreed rent of Rs.10,000/- per month. The agreement came to an end and thereafter, the Defendants having not vacated the suit premises have remained in possession as such. It is stated that the Defendant No.1 had then requested the Plaintiff for a fresh negotiation and execution of an agreement to that effect stating that at point of time they are not in a position to vacate. The matter did not progress further.

The Defendants however, went on paying rent @ Rs.10,000/- per month which the Plaintiff states to have received on protest. The Plaintiff had not responded to that letter of Defendant No.1. It is stated that thereafter when the Plaintiff had written a letter calling upon the Defendants to vacate the suit premises, the Defendant No.2 had assured that they would be paying Rs.50,000/- per month as the rent for the next six months when they would be vacating the premises. The Defendants all along have denied these averments.

The Plaintiff No.2 examined as P.W.1 has stated an oath in respect of assurance of the Defendants and that despite the same; they failed to vacate the suit premises. However, the fact remains that the assurance was not by way of any writing nor there was any reply from the side of the

Plaintiff with regard to the so-called requests. It is said that the Defendants taking advantage of the illness of the father of the Plaintiff and other personal problems, went on paying a sum of Rs.10,000/- as rent, when they should have paid the rent at the higher rate as promised. Finally the notice terminating the tenancy was given on 07.03.2014 calling upon the Defendants to vacate the suit premises on or before 31.03.2014 and there the damage was claimed @ Rs.4,000/- per day, i.e, Rs.1,20,000/- per month; in case of non-vacation of the premises for the period commencing from the date of termination of tenancy.

In the plaint, the Plaintiff has claimed the following reliefs:-

- “a) let a decree of eviction be passed against the Defendants directing the Defendants to give vacant possession of the premises in favour of the Plaintiff within a period to be specified by the Hon’ble Court;
- b) let the Defendants be directed to pay the damages @Rs.5,000/- per day in favour of the Plaintiff for their unlawful possession of the premises w.e.f. of 01.04.2014 till they give vacant possession;
- c) let a decree be passed directing the Defendants to pay Rs.50,000/- towards the arrear house rent at Rs.10,000/- per month from November, 2013 till March, 2014 in total Rs.50,000/-;
- d) let a decree be passed fixing the fair and equitable rent of the premises for the period August, 2008 till March, 2014 and the Defendants be directed to pay the fair rent as fixed by the Hon’ble Court within specified time along with pendente lite and future interest;
- e) let the Defendants be restrained by an order of permanent injunction not to sublet the premises or not to create any third party interest either by changing the partnership for or by way of incorporation of a Company during pendency of the suit;

- f) let any other relief be granted in favour of the Plaintiff to which the Plaintiff is entitled to; and
- g) let the cost of the suit be decreed in favour of the Plaintiff and against the Defendants.”

As already stated the lower Appellate court has directed for recovery of rent @ Rs.30,000/- per month from August, 2008 to October, 2013; @ Rs.40,000/- from November, 2013 to March, 2014 and damage @ Rs.80,000/- per month from April, 2014 till actual vacation.

12. The First Appellate Court has relied upon the oral evidence of P.W.1 that the rent of Rs.10,000/- after the expiry of the period of the tenancy as per the agreement was received by his father, the original Plaintiff on protest. The reason for the same as per the Appellate Court is that at that time it was far below the market rent of such premises in the locality. This general reason in my considered view has no relevance for the matter on hand, where the tenancy has been continuing for more than five decades and that too when since pre-independence days, by lease initially for a long term of 25 years and the Defendants have also put up permanent constructions of permanent nature from time to time as per their need with the consent of the Plaintiff. In case of an agreement between the landlord and tenant which is found to be in existence since the year, 1946 and when we view the factum of enhancement of rent to have been made on many prior occasions, it does not appear that the rent was then being enhanced and fixed from time to time looking at and solely banking upon the prevailing market rent of such premises in the locality. It has been upon mutual discussion between them and thus the quantum of rent depending upon vary many factors has been fixed. In fact in such a case, all those factors cannot be exhaustively stated and many of those even arise at the

moment. The special relationship between the parties, the longstanding bondage created thereby, the surrounding circumstances concerning the tenant as also the tenanted premises, constructions put up, the capability of the tenant, his then prevailing commercial activity and position in the market and other advantages or disadvantages all come up for consideration while so finalizing the rent on agreement. The conclusion of the lower Appellate Court that for the reason assigned, it is not possible to conclude that the original Plaintiff agreed to receive Rs.10,000/- as rent after the agreement which expired on 31.07.2008 in my view is thus unsustainable. In order to decide the quantum of rent for the period beginning from August, 2008, the lower Appellate Court has relied upon the rent agreement in respect of a tenanted premises wherein 4095 sqft. of built up space in the house has been rented out at Rs.40/- per sqft. per month. The agreement is dated 01.08.2010. In similar line, the Plaintiffs have proved three agreements such as Exts.12 to 14. Taking a cue therefrom, the rent has been fixed at Rs.30,000/- per month for the premises in question for the period from August, 2008 to October, 2013, while holding that there is no convincing material on record to fix the monthly rent of Rs.50,000/- as claimed by the Plaintiffs. Proceeding in this way, the rent for the subsequent period from November, 2013 to March, 2014 has been fixed at Rs.40,000/- and the damage with effect from April, 2014 till the actual vacation had been fixed at double the above determined rent i.e. @ Rs.80,000/-.

This Court finds no rationality behind the fixation of the rent as well as the damage as aforesaid. The agreements relied upon no doubt reveal that the market rent in the area has been substantially increased. Yet in the absence of evidence as to all the details of the factual background and

settings surrounding the execution of those said tenancy agreements besides all other factual details concerning the said tenanted premises under those agreements and the need of those tenants, their business activities, income and profit etc, the Trial Court as well as the lower Appellate Court should not have given so much importance to those in taking those as if the rate of rent in the locality. The approach is far from the ground realities surrounding the long standing tenancy at hand. When it is said that the rent after the expiry of the period of tenancy as per the last agreement was being paid at Rs.10,000/- per month, it had been so received on protest, there is no such acceptable evidence on that score except the bald oral testimony of P.W.1. The letter sent by the Plaintiff under Ext.2 also provides no hint in that light. The Plaintiffs have also remained silent for quite a long period for giving the notice as to termination of tenancy and thereafter filing the suit. This suit has come to be filed in the year, 2014 after expiry of the last period stipulated in the last agreement in July, 2008. From such long standing conduct of the parties, it is seen that the rent of the premises was being enhanced from time to time after certain gap. Therefore, keeping in view that the last payment of rent was @ Rs.10,000/- per month till July, 2008; this Court feels that keeping in view the totality of the facts and circumstances of the case and as obtained in evidence as discussed above, it would be fair and reasonable to direct the Defendants to pay the rent from August, 2008 till July, 2011 by fixing the rent with straightway enhancement of 50%, i.e, @ Rs.15,000/- (rupees fifteen thousand) per month and thereafter from August, 2011 to March, 2014 @ Rs.22,000/- (rupees twenty-two thousand) per month; and damage @ Rs.35,000/- (rupees thirty-five thousand) per month from April, 2014 till actual vacation.

13. The substantial question of law is answered as aforesaid.

14. Taking into account the facts and circumstances, this Court, in balancing the need as also the difficulties of the parties, directs the Defendant to vacate the possession of the suit premises by end of July, 2022 positively.

It is further observed that the payment of arrear rent and damage, as above determined, shall be paid by the Defendants after due adjustment of the payments, if any made to the Plaintiffs towards those period.

15. The Appeal thus is allowed in part to the extent as aforesaid. In the peculiar facts and circumstances, there shall be no order as to cost.

D. Dash,
(Judge).