

(2004) 11 GAU CK 0006**Gauhati High Court****Case No:** C.R.P. No. 58 of 2003

Dhanai Bhagwat

APPELLANT

Vs

Shakil Akhtar

RESPONDENT

Date of Decision: Nov. 23, 2004**Acts Referred:**

- Assam Urban Areas Rent Control Act, 1972 - Section 8
- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: (2005) 3 GLR 398 : (2005) 1 GLT 394**Hon'ble Judges:** H.N. Sharma, J**Bench:** Single Bench**Advocate:** C.K.S. Baruah, G. Rahul and M. Baarthakur, for the Appellant; G.P. Bhowmik and R. Hazarika, for the Respondent**Final Decision:** Dismissed**Judgement**

H.N. Sarma, J.

By this revision petition the petitioner tenant has challenged the judgment and order dated 3.1.2003 passed by the learned ad hoc Additional District Judge-1, Tinsukia in Title Appeal No. 2/99 dismissing the appeal filed by the petitioner and upholding the judgment and decree dated 25.11.98 and 18.12.98 respectively passed by the learned Civil Judge (Jr. Divn.) No. 1, Tinsukia in Title Suit No. 19/94 by which the suit of the plaintiff respondent was decree for ejectment of the defendant petitioner from the suit premises and also a decree for arrear of rent amounting to Rs. 15,000 was granted against him.

2. The Title Suit No. 19/94 was instituted by the landlord respondent for ejectment and recovery of khas possession and also for arrear of rent and for permanent injunction, etc. The pleaded case of the plaintiff, inter alia, is that the plaintiff is the owner of the suit premises alongwith some other properties situated at Rungagora Road, Tinsukia in the district of Tinsukia and the defendant came in occupation of

the said premises as monthly tenant at a monthly rent initially of Rs. 180 which is gradually enhanced upto Rs. 500 as per English calendar month. It is the case of the plaintiff that the defendant violated the terms of the tenancy for which earlier a title suit being TS No. 23/88 was instituted by the plaintiff against the defendant for ejection of the defendant and for recovery of the vacant and khas possession of the suit premises and also for recovery of arrear of rent and compensation, etc. The said suit was subsequently settled between the parties on certain terms and conditions. One of the terms of the said settlement of the said suit was that the rent for the premises shall be paid at the rate of 450 per month from May 1990 to December 1990 and from the month of January 1991 the defendant will pay Rs. 500 per month and the rent shall be paid month by month within the first seven days of each month of tenancy in advance. It is also pleaded that the tenancy was expired on 31.3.1991 and in spite of demand and request made by the plaintiff the defendant petitioner did not vacate the same. On the other hand the defendant by his letter dated 22.3.1991 requested the plaintiff for extension of his tenancy for another eleven months from April 1991 to 28th February, 1992. The defendant paid rent upto the month of December 1991 but defaulted from the month of January 1992 onwards. In spite of repeated demands made by the plaintiff the defendant did not vacate the suit premises and accordingly the defendant is a defaulter in respect of the suit premises and is continuing and occupying the same without payment of the rent. It is also pleaded that the defendant surreptitiously collected some building materials with a view to raise pucca premises over the suit premises without the consent and permission of the plaintiff landlord. On these counts the plaintiff prayed for a decree for recovery of khas possession of the suit premises and for recovery of arrear rent amounting to Rs. 15,000 and for other relief.

3. The defendant petitioner contested the suit by filing written statement denying the allegations of the plaintiff made in the plaint. In his written statement the plaintiff stated that by his letter dated 22.3.1991 he requested the plaintiff to extend the period of tenancy for another eleven months but the plaintiff did not reply to it. It is also stated in the written statement that on 4.12.1991 at the time of taking rent for the month of December 1991 the plaintiff asked the defendant to vacate the suit premises with effect from 29.2.1992 stating that plaintiff did not desire to extend the tenancy after 28.2.1992. The defendant did not agree to it as the tenancy was to expire on 16.3.1992 only. The defendant further pleaded that the plaintiff received a sum of Rs. 20,000 between 12.6.1990 and 9.12.1991 either by himself or by his rent collector Shri Niranjan Prasad and thus a huge sum of money was received in advance as rent and was lying outstanding with the plaintiff and as such defendant is not a defaulter. Upon pleadings the learned trial court framed the following issues:

1. Whether the suit is maintainable in law and facts?
2. Whether the plaintiff has any right to sue?

3. Whether the defendant is a defaulter and has violated the terms of tenancy?
 4. Whether the defendant had violated the terms of compromise decree passed in T.S. 23/88 in the court of A.D.J., Tinsukia?
 5. Whether the defendant prepared to make unauthorized constructions on the suit premise?
 6. Whether the defendant is liable to be evicted for violation of the terms of tenancy and compromise decree?
 7. Whether the plaintiff is entitled to a decree as prayed for?
 8. To what relief or reliefs the plaintiff is legally entitled to? and
 9. Whether the plaintiff received Rs. 20,000/- as advance house rent from the defendant between 12.6.1990 to 9.12.1991 which is lying outstanding and as such defendant is not a defaulter?
4. The parties adduced evidences and exhibited certain documents. The plaint was amended and after amendment there was further examination of the defendant. The plaintiff examined two witnesses on his behalf. The defendant examined himself. The plaintiff exhibited as many as eight documents in support of his case. After hearing the parties the learned trial court while deciding Issue No. 3, which relates to defaulter, categorically held on consideration and appreciation of the evidence on record that the defendant is a defaulter and has violated the terms of tenancy and the issue was decided in favour of the plaintiff. Similarly, Issue Nos. 1, 2 and 4 were also decided in favour of the plaintiff. The learned trial court while deciding the related issue regarding receipt of Rs. 20,000 as advance house rent by the plaintiff between 12.6.1990 to 9.12.1991 thoroughly examined the matter and appreciated the evidence of the parties. The learned trial court also quoted that part of the evidence in his judgment in which the petitioner has stated that said amount of Rs. 20,000 was not paid as house rent and on such consideration the learned trial court came to the finding that the plaintiff failed to prove his case that the said amount of Rs. 20,000 was paid as advance house rent and decided the issue against the defendant. In ultimate analysis vide judgment and order dated 25.11.1998 the learned trial court decreed the suit with cost in favour of the plaintiff and the arrears of rent amounting to Rs. 15,000 has also been decreed. Against this judgment and decree the petitioner filed an appeal being Title Appeal No. 2/99 in the court of ad hoc Addl. District Judge No. 1, Tinsukia u/s 8 of the Assam Urban Areas Rent Control Act. The learned appellate court heard the parties at length and considered the materials on record and formulated the point for determination, inter alia, whether the appellant/petitioner is a defaulter and whether the plaintiff/respondent received advance house rent from the defendant and as such the tenancy is extended automatically. Upon careful consideration of the matter and on examination of the materials on record including the exhibited documents. The

learned appellate court on consideration of the evidence found that there was no evidence to show that there was an arrangement between the plaintiff and the defendant to pay the rent through cheque and the defendant has not mentioned the payment of advance rent in Ext-7, his first written statement. In para 7 of the written statement it is mentioned that the respondent was in the habit of demanding and receiving advance house rent showing necessity of money. But in his evidence the defendant stated that the plaintiff was not in the habit of taking advance house rent. The learned appellate court also held that the defendant admitted that he has not paid the said amount of Rs. 20,000 as advance house rent. On such consideration, by a detailed and elaborate judgment the learned appellate court upheld the judgment and order passed by the learned trial court and dismissed the appeal. Against the said judgment the present revision petition has been filed.

5. I have heard Mr. C.K. Sarma Baruah, learned senior counsel appearing for the petitioner and Mr. G. P. Bhowmik, learned counsel appearing for the respondent. Mr. Sarma Baruah, the learned senior counsel has submitted that it is an established fact that certain amount of money in excess to the house rent was paid to the landlord plaintiff and accordingly the defendant cannot be held to be a defaulter. It is also submitted that there is no evidence to show that the same was paid for some other purpose and the defendant is entitled to adjust the said amount taking it as advance house rent. Submitting this Mr. Sarma Baruah has pointed out that in this view of the matter the defendant is not a defaulter and the finding of default arrived at by the learned trial court is a perverse one. It is also submitted that the learned appellate court has acted illegally and with material irregularity in failing to cure the defects committed by the learned trial court. It was further submitted that the plaintiff has not examined himself and the learned courts below excluded from consideration of the material evidence on record which were recorded after amendment of the written statement. At any rate, it was submitted, that the finding on the issue is not sustainable. In support of his contention Mr. Sarma Baruah has cited the decision reported in [Mohd. Salimuddin Vs. Misri Lal and Another,](#)

6. As against this Mr. Bhowmik, learned counsel appearing for the respondent landlord has submitted that the present petition being a revision petition u/s 115 of the CPC the concurrent findings of facts cannot be set aside and the learned courts below committed no error of jurisdiction in passing the impugned judgment and decree. It is also submitted by Mr. Bhowmik that the learned trial court has elaborately assessed the evidence and materials on record and the learned appellate court also considered all the proved facts in the case and keeping into considerations of all necessary facts, have arrived at a correct finding which is not required to be interfered in the instant revision petition. Mr. Bhowmik also cited the decisions reported in [Sarwan Kumar Onkar Nath Vs. Subhas Kumar Agarwalla, ,](#) [Budhwanti and Another Vs. Gulab Chand Prasad, ,](#) [Bhoja alias Bhoja Ram Gupta Vs. Rameshwar Agarwalla and others, and](#) [Nand Lal Agarwal Vs. Ganesh Prasad Sah and](#)

Others, in support of his case, particularly on the point of alleged advance payment of house rent. Citing these decisions Mr. Bhowmik submitted that the alleged excess payment cannot be recorded as advance house rent unless the parties agree to such an arrangement.

7. I have heard the rival contentions of the parties and also gone through the connected records.

8. The core issue to be decided in this case is as to whether the learned courts below committed jurisdictional error in coming to a conclusion that the defendant is defaulter more particularly in view of the fact that there was an excess payment of Rs. 20,000 paid by the petitioner tenant to the plaintiff landlord. In para 7 of the written statement the defendant has specifically stated the date on which the rent was paid to the plaintiff and in Item No. 4 an amount of Rs. 10,850 has been shown to have been paid to the plaintiff. Again at Item No. 15 an amount of Rs. 1,500 has been shown to have been paid to the plaintiff. Scrutinising these payments ranging from Item No. 21, it is clear that all the monthly rents were collected and paid to Niranjan Ghosh, the collector of the plaintiff whereas the amount at Item Nos. 4 and 15 was paid to the plaintiff by cheque of United Bank of India, Tinsukia Branch. The defendant in his deposition also stated that there was no arrangement for payment of rent in advance. It is also stated that the plaintiff had no habit of taking advance rent and the said amount of money was not paid as advance house rent. The decision cited by Mohd. Salimuddin Vs. Misri Lal and Another, relates to Bihar Buildings (Lease, Rent and Eviction) Control Act. In that case it is held, interpreting Section 3 of the said Act, that where in a suit by landlord for eviction of tenant it was found that the tenant, in order to secure the tenancy advanced certain amount to the landlord (although in violation of prohibition to do so as embodied u/s 3 of the Act) under an agreement containing stipulation that the loan amount was to be adjusted against the rent which accrued, and the amount so advanced was sufficient to cover the landlord's claim of arrears of rent for the relevant period, it could not be said that the tenant was not entitled to claim adjustment of the loan amount so advanced against the rent which accrued subsequently, simply because the loan advanced was in violation of the prohibition contained in the Act. But the instant case is not in the same footing. Here the tenancy was not secured by way of advance payment. In fact, the contention before the court is against the evidence of the parties given before the court. Mr. Sarma Baruah has strongly urged that the learned trial court did not consider the evidence of the defendant recorded after amendment of the pleading but on going through the entire judgment and the evidence on record the said contention of the learned counsel cannot be upheld. In fact, the learned trial court in his judgment considered the evidence and materials produced by the plaintiff. The aforesaid case cited by Mr. Sarma Baruah is of no assistance to him in the instant case. In coming to the conclusion as to the default in payment of rent by the petitioner defendant as pointed out by Mr. Bhowmik, learned counsel for the respondent the courts below has not committed any error of

jurisdiction nor the impugned judgment can be branded as perverse. The courts below considered the necessary relevant materials and evidence on record and arrived at a proper finding and there is no scope for interference of the impugned judgment by this court in its revisional jurisdiction. Accordingly this revision petition fails and it is dismissed. No order as to costs.

9. At this stage Mr. Sarma Baruah, learned senior counsel appearing for the petitioner has prayed that the petitioner tenant has got his existing business over the suit premises and he is to make some arrangement for alternative accommodation to run his business and prays for six months time for making such alternative arrangement. Mr. Bhowmik, learned counsel for the respondent has fairly agreed to the same. Accordingly it is hereby ordered that the petitioner tenant shall be allowed to continue in the suit premises for a period of six months from today subject to the condition that the petitioner will file an undertaking before the trial court that he would vacate the premises immediately on completion six months from today and will not induct any third party or part with any possession of the suit premises and continue to pay the usual rent to the respondent/landlord and in the event of his failure to comply with any of the directions the decree shall be put to execution immediately.

10. It is made clear that in the event of any payment by the petitioner tenant towards the arrear house rent the same would be adjusted.