(2005) 01 GAU CK 0032

Gauhati High Court

Case No: C.R.P. No. 57 of 2003

Parul Bala Debnath and Others		APPELLANT
	Vs	
Umatara Roy		RESPONDENT

Date of Decision: Jan. 27, 2005

Acts Referred:

- Assam Urban Areas Rent Control Act, 1972 - Section 5(4), 6(1)
- Civil Procedure Code, 1908 (CPC) - Section 115, 151

Citation: (2005) 1 GLT 532

Hon'ble Judges: A.H. Saikia, J

Bench: Single Bench

Advocate: H. Deka, P. Kataki, N.P. Das and M. Islam, for the Appellant; A.K. Goswami and S. Banik, for the Respondent

Final Decision: Dismissed

Judgement

A.H. Saikia, J.
Heard Mr. H. Deka, learned Senior counsel assisted by Mr. M. Islam, learned Counsel for the Petitioners. Also heard Mr. A.K. Goswami, learned Senior counsel assisted by Mr. S. Banik, learned Counsel for the Respondent.

2. This revision petition u/s 115 read with Section 151 CPC has been directed against the judgment and decree dated 28.11.2002 passed by learned Civil Judge (Sr. Division) No. 1, Silchar in T.A. No. 6/ 2002 dismissing the appeal and thereby affirming the judgment and decree dated 24.12.2001 and 7.1.2002 respectively passed by learned Civil Judge (Jr. Division), No. 1, Silchar in T.S. No. 7/98.

3. The moot question involved in this case as to whether the Defendant/Petitioners were defaulter though they paid their rent both for current month as well as for another five months in advance in the court by way of depositing the rent through non-judicial case

being Misc. Case No. 607/95. Admittedly both the Courts below held that the Petitioners were defaulters.

4. The case of the Petitioners is that they, being the tenant under the Plaintiff/Respondent, were required to pay monthly rent of Rs. 110/ - to the Respondent within first seven days of the succeeding month according to Bengali calendar. In the month of "Kartik" 1402 BS, when the landlady/Respondent refused to accept the rent and due to strained relationship between the landlady and tenants, the Petitioners/tenants having no other alternative, deposited the rent for the month of "Kartik", 1402 BS together with rents for other succeeding five months till "Chaitra" 1402 BS in the court.

5. It is admitted by the Petitioners that while depositing the rent in question in the court, they did not take any steps for service of notice upon the Respondent for which Misc. Case No. 607/95 by which the above mentioned rents from the month of "Kartik" to "Chitra" 1402 BS deposited, was dismissed/filed by the court vide order dated 18.11.1996.

6. Thereafter, the Respondent as Plaintiff filed the instant Title Suit praying for eviction of the Petitioners from the premises under rent on the sole ground of defaulter as the Petitioners failed to pay the rent as required under the Assam Urban Areas Rent Control Act, 1972 (for short, "the Act").

7. Assailing the impugned judgment and decree of the court below, Mr. Deka, learned Senior counsel for the Petitioners has forcefully argued that the learned court below acted illegally and with material irregularity in non-consideration of his deposit for the month of "Kartik" together with the subsequent months till "Chaitra" in advance, as a valid deposit.

8. Admitting the non-issuance of notice as required under the law, learned Senior counsel has also submitted that such non-issuance of notice may be treated as a technical one and that the same was not a wilful default as the Petitioners/Defendant had to accompany his ailing uncle for Chennai for medical treatment during that relevant period. Besides, it is also argued that Petitioners had invested a huge amount of money for restoration of electrical connection which was disconnected by the Assam State Electricity Board due to a fire incident that took place in the rented premises as the electricity was not restored by the landlady despite repeated requests by the Defendant/Petitioners. As such, the action of restoration of electric supply was taken by the Petitioners themselves as per direction of the trial court before which Petitioners had pleaded for such restoration and the said trial court was pleased to pass a direction for such investment as well as also directed the landlady to adjust an amount of Rs. 50/ - against the total rent of Rs. 110/ -.

9. According to Mr. Deka, once the Petitioners have invested the said sum of money, being a total amount of Rs. 2,100/ -, the same ought to have been taken as an amount already deposited with the landlady for the purpose of rent and accordingly Petitioners should not have been declared as defaulter by the Courts below. To bolster up his

submission, Mr. Deka has relied on the decision of the Apex Court in Modern Hotel, Gudur, Represented by M.N. Narayanan Vs. K. Radhakrishnaiah and Others, . In the said case it was held that when the landlord had Rs. 5,000/ - on tenant''s account with him as advance amount which he was holding for years without paying interest and against the clear statutory bar, there could be no justification for granting a decree of eviction on the plea of defaulter.

10. I am constrained to hold that the ratio laid down in the said case is not in favour of the Petitioners in the case in hand. In the instant case, there was no amount being kept with the landlady on behalf of the tenants which can be said to be impermissible under the law. That apart, the Petitioners had deposited the rent in advance for five months being contrary to the provisions of law.

11. The law on the point of deposit of the rent in the court is very clear and unambiguous. Section 5(4) of the Act speaks as follows:

(4) Where the landlord refuses to accept the lawful rent offered by his tenant, the tenant may, with 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. Mr. Goswami, learned Senior counsel appearing for the Respondent has contended that there is no jurisdictional error or material irregularity committed by the learned Courts below calling for any interference of this Court u/s 115 read with Section 151 of CPC Defending the impugned judgment and decree, he has submitted that purely on the issue of admitted fact non-issuance of notice to the Respondent by the Petitioners while depositing the rent in the court itself, this revision petition is liable to be dismissed. According to him, such non-issuance of notice is clearly violative of provision of law as well as against the judicial pronouncement rendered time to time by this Court. Reliance has been placed upon two decisions of this Court, namely --

i) Sudhir Chandra Deb and Anr. v. Parsuram Prasad Verma and Ors. reported in (1992) 1 GLR 250; and

ii) Sekhar Chand Swami and Ors. v. India Umbrella Manufacturing Co. and Ors. reported in (1997) 1 GLR 5.

13. In Sudhir Chandra Deb''s case (supra), this Court while dealing with the scope of Section 5(4) of the Act held in paragraph 8 as follows:

...Under Section 5(4) notice of the receipt of the deposit is to be served on the landlord, and on receipt of the notice the landlord may withdraw the deposited rent. If no step is taken and, therefore, no notice is issued, the landlord, shall have no knowledge about the deposit. The deposit is to be made where the landlord refused to accept the lawful rent offered by his tenant. The object of the enactment is that, on the refusal to accept the lawful rent offered by his tenant, if the deposit is made as provided therein, it would be deemed that the rent has been duly paid to the landlord by operation of law. Therefore, if the rent is not deposited in terms of Section 5(4), it cannot be said that the tenant has paid the rent, i.e. the tenant is a defaulter....

14. This Court again in Sekhar Chand Swami"s case (Supra) observed as under

18. The law enunciated by the Apex Court in a series of decisions required to be discussed as the counsel for the Petitioner insistently urged that for equity and justice mere technically may be avoided.

19. In the case of (1982) 2 GLR 8 it is held as follows: "so, the process fees, as required under sub Section 4 having not paid the deposit of the rent is not as per the said Section and it cannot be said to be a deposit in accordance with law and as such the tenant cannot get any protection.

20. This view has been followed in 1991 (1) GLR 249 Shri Sudhir Chandra Deb and Anr. v. Shri Parsuram Prasad Verma and Ors. and in (1992) 1 GLR 250 Sudhir Chandra Deb and Anr. v. Parsuram Prasad Verma and Ors.

21. The position of law is that the proceeding u/s 5(4) of the Act is a proceeding in the Civil Court and therefore the procedure laid down in the Civil Rules and Orders is to be followed.

22. The note under Rule 42 of the Civil Rules and Orders framed by the Gauhati High Court is quoted below:

It should be particularly noted that the additions made by the High to schedule-I of the CPC requires that every plaint shall be accompanied by necessary number of its copies, draft forms of summons and fee for service thereof (0.7 Rule 91A) and a statement of party"s address for service (as per Rule 15 of the High Court Rules and Order 6, Rule 14A).

23. As it is seen it is mandatory and is the obligation of the party concerned furnish the draft forms of summons or notice to be issued to the other party. Non judicial cases like deposit of rent etc. cannot deviate from this procedure as the consequence of the failure of the Petitioner to furnish the draft the draft forms of summons/ notice will be that the court will not be in a position not serve notice of the landlord. Section 5(4) of the Rent Control Act provides that the court shall cause notice of receipt of deposit of rent to be served on the landlord and the landlord shall have the right to withdraw the rent so

deposited. If due to the default of the tenant in depositing the rent, in not taking such steps, the Court is not in a position to issue notice to the landlord and consequently no deposit within statutory time even if the amount of rent is claimed to deposit with the application. It is mandatory on the part of the court to issue notice to the landlord informing him about the deposit of rent in court. When the deposit of rent found non deposit for not taking mandatory procedural steps, the court is unable to inform in its statutory obligation to issue notice and in that case court will be justified in dismissing the NJ Case resulting non deposit of rent. Apparently, as records shows, the NJ Case was dismissed for non deposit of requisites etc. and the judicial and logical inference is that there was no rent deposit by the tenant under the mandatory Sections of the Act and therefore the tenant/revision Petitioner defaulted the rent for the month of January, 1974 and once the tenant defaulted, he be considered as defaulter, even if he continues to deposit for subsequent months. In the present case, no only written up notices and copies were not submitted even the process fee was not paid. I cannot agree with the submission of the learned Counsel for the Petitioner that rent was deposited and deposit of process fee is not a part of rent.

24. In the Full Bench decision of the court in Kali Kumar v. Kakhan Lal AIR 1969 A&N 66 it was held--

The legislature having conferred benefits on the tenant could not have intended to make it a one-way traffic absolute. The quintessence of the proviso (e) to Sub-Section (1) of Section 6 is to deny the benefit of protection conferred u/s 6(1) of the Act where the conditions for the same are absent.

25. From my above discussion I hold that the revision Petitioners are defaulters and they did not comply with the mandatory provisions of Section 5(4) of the Assam Urban Areas Rent Control Act, by not depositing process fee and other requisites under the provisions of law and therefore cannot get any protection and the decree of eviction passed against them by the first appellate court which is the last court on fact suffers no infirmity which has been passed after appreciation of materials on record and the decision arrived at by the first appellate court is legal and within its jurisdiction.

15. On meticulous scanning of the impugned judgments and decree of the Courts below and also having regard to the above cited cases, as well as upon hearing learned Counsel for the rival parties, this Court is of the view that the learned Courts below were correct and right in holding that the Petitioners were defaulters in respect of non-payment of the rent in question in due time as prescribed under the law. A lumpsum payment of amount in advance is not permissible under the Act. That apart, Section 5(4) clearly indicates that for every deposit in the court, a proper notice along with process fees must be rendered failing which such deposit cannot be said to be a legal deposit. It is settled that issuance of notice in depositing the rent in the court is mandatory and any deviation of the same would take away the protection given to tenant under the Act. An ordinary reading of the provision of law as contained in Section 5(4) of the Act manifestly indicates

that the payment of rent in the Court by the tenant is permissible only when there would be a refusal from the landlord to accept the said rent and such deposit in the Court is required to be made within a fortnight of its becoming due and that too with proper notice accompanying the process fees so as to intimate the landlord of such deposit of the rent in the court failing which the tenant shall be treated as defaulter.

16. In the instant case, it is an admitted fact that the Petitioners did not take any steps for issuance of notice on deposit of rent in the Court. That being so and in view of the above observation and discussion, this Court does not find any merit in this revision petition calling for interference u/s 115 of Code of Civil Procedure.

17. In the result, this revision petition fails and stands dismissed.