
(2016) 06 GAU CK 0028

GAUHATI HIGH COURT

Case No: CRP No. 290 of 2015

M/s Verma Crockery
Stores

APPELLANT

Vs

Arun Kedia & Son

RESPONDENT

Date of Decision: June 13, 2016

Acts Referred:

- Assam Urban Areas Rent Control Act, 1972 - Section 5(1)(e), 5(4)

Citation: (2016) AIRCC 2783 : (2016) 6 GauLJ 168 : (2016) 6 GauLR 310

Hon'ble Judges: N. Chaudhury, J.

Bench: Single Bench

Advocate: Mr. S. Dutta, Senior Advocate, and Mr. N. Kalita, Advocate, for the Petitioners; Mr. G.N. Sahewalla, Senior Advocate, Mr. R. Jain, Advocate, for the Opposite Parties

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N. Chaudhury, J.(Oral)—In this revision petition under Section 115 read with Section 151 of the Code of Civil Procedure the tenant has challenged the concurrent findings of the learned Courts below whereby the decree for eviction of the tenant has been passed both on the ground of default as well as on bona fide requirement.

2. One M/S Arun Kedia & Son, a Hindu Undivided Family, as plaintiff instituted Title Suit No.58/2005 in the Court of learned Civil Judge (Senior Division) at Dibrugarh stating that the defendant was inducted as a tenant to the suit premises by the predecessor of the plaintiff and after the plaintiff had purchased the suit premises the defendant became a tenant at a monthly rental of 1400/-. But since April, 2004 the defendant did not make payment of the rent and thus became defaulter for the period with effect from April, 2004 to October, 2005. The suit premises also being dilapidated required reconstruction. It is the further case of the plaintiff that the suit premises is situated in a busy commercial hub

of Dibrugarh Town and so the plaintiff wanted to make profitable use of the suit premises by demolition and reconstruction. Thus, the plaintiff has bona fide requirement for the suit premises. With these twin reasons the suit was instituted praying for a decree for recovery of khas possession by ejecting the defendant and for realisation of arrear rent to the tune of Rs.26,000/-.

3. On being summoned the defendant appeared and by submitting written statement denied the allegation of default and bona fide requirement. The defendants stated that they came in possession of the suit premises in the year 1968-69 initially under Devi Prasad Kedia at a monthly rental of Rs.325/- which was increased from time to time and ultimately it was raised to Rs.1400/- per month in the year 2000. In the year 1992 the landlords were away from Dibrugarh to Rajasthan and after coming back they collected rents on 20.01.1994 for the period with effect from 01.07.1992 to 31.12.1993. There are other such examples to show that the plaintiffs used to collect rent as per their convenience. The sum total of the objections raised by the defendant was that there was no fixed mode of payment and the landlord used to collect rent as and when necessary. With these averments in the written statement the defendant controverted the plea of bona fide requirement as well as default and claimed that the suit is liable to be dismissed.

4. Upon rival contentions of the parties the learned trial Court framed as many as seven issues which are quoted below :-

"(i) Whether there is any cause of action for the suit?

(ii) Whether the suit is maintainable in law and facts?

(iii) Whether the suit is bad for non joinder of necessary parties?

(iv) Whether the defendants have been defaulter to pay monthly rent for the suit premises to the plaintiff since April, 2004?

(v) Whether the defendants deposited the rent of the suit premises illegally?

(vi) Whether the plaintiff is entitled to a decree as prayed for?

(vii) Whether the parties are entitled to any other relief or reliefs?"

5. Plaintiff examined one witness and exhibited 10 documents while defendant examined two witnesses and exhibited 121 documents. After consideration of the materials available on record the learned trial Court held that the suit has cause of action, that it was maintainable and that the suit was not bad for non joinder of party. The crux of the suit being Issue Nos.(iv) and (v) were taken up together for consideration and thereupon the learned trial Court was of the opinion that the defendant does not have any discretion to deposit rent for a few months together in Court and that too without even tendering rent

to the landlord. Deposit of rent in Court for the period from October, 2003 to September, 2004 without tendering the same to the landlord was held to be illegal by the learned trial Court and accordingly the issue was decided in favour of the plaintiff. The learned trial Court formally did not frame any issue on bona fide requirement and did not decide the question although the plea was taken in the plaint. Both Mr. S. Dutta, learned senior counsel appearing for the petitioner and Mr. G. N. Sahewalla, learned senior counsel appearing for the opposite party, jointly submitted that the parties led evidence on bona fide requirement knowing the same to be an issue before the learned trial Court. The learned trial Court ultimately by his judgment and decree dated 22.05.2013 decreed the suit for eviction but did not pass a decree for recovery of arrear rent.

6. As against the judgment and decree passed by the learned Munsiff No.1, Dibrugarh the tenant preferred Title Appeal No.41/2013 in the Court of learned Civil Judge at Dibrugarh. Plaintiff also appears to have filed a Cross Objection under Order 41, Rule 22 of the CPC on the ground that the suit ought to have been decreed even on the ground of bona fide requirement. The learned First Appellate Court after considering the materials available on record and after hearing both sides passed the impugned judgment and decree on 18.03.2015 holding that the learned trial Court did not commit any error in holding the tenant defaulter. This is because the tenant was duty bound to tender rent every month for the whole period with effect from April, 2004 to October, 2005 when the rents were deposited in Court. A mere deposit in Court without tendering the rent first to the landlord was held to be insufficient for compliance of Section 5(4) of the Assam Urban Areas Rent Control Act, 1972. Coming to the question of bona fide requirement the learned First Appellate Court on the basis of the materials available on record held the view that the plaintiff pleaded that suit premises is bona fide required by him for he wanted to dismantle the same and to erect a new construction for more profits as the suit premises is situated in a commercial location in the heart of Dibrugarh Town. According to learned First Appellate Court, there is sufficient material available on record to hold that the plaintiff has bona fide requirement. The defendant except some bare suggestions could not prove to the contrary. Relying on two reported judgments of this Court and the Hon^{ble} Apex Court the learned First Appellate Court was of the view that the suit land and premise is bona fide required by the plaintiff and so the additional issue was accordingly decided in favour of the plaintiff/respondent.

7. I have heard Mr. S. Dutta, learned senior counsel assisted by Mr. N. Kalita, learned counsel for the petitioners and Mr. G. N. Sahewalla, learned senior counsel assisted by Ms. R. Jain, learned counsel for the opposite parties.

8. The eviction suit instituted by the respondents herein are based on the twin grounds that the tenant committed default in payment of rent for the period from April, 2004 to October, 2005 and that the landlord has bona fide requirement for reconstruction and use. In deciding the issue of bona fide requirement the learned trial Court noted the case of the defendant as well as that of the plaintiff. It was the case of the defendant that they came into possession of the suit premises on 01.04.1975 at a rental of Rs.375/- per

month and the same used to be collected by the landlord Sri Birendra Kumar Kedia. The firm name was changed to M/S Verma Crockery Stores and the rent was further enhanced to Rs.425/- per month till 31.08.1982. Since 01.04.1982 the rent was again enhanced to Rs.500/- per month which continued till 31.07.1986 and thereafter the rent was further enhanced to Rs.700/- from 01.08.1986 which continued till 31.07.1992. Thereafter, the landlord went to Rajasthjan and he came back only in the year 1994 to receive rent for 18 months at a time on 20.01.1994. Again on 31.03.1994 rent was paid for three months for the period of January, February and March, 1994 together on 31.03.1994 and ultimately on 01.04.2000 the rent was finally enhanced to Rs.1400/- per month and the same continued till the plaintiff purchased the suit land and the premises. It is not the case of the plaintiff that after purchase of the suit premises from the original owner a new arrangement was made along with the defendant and so the earlier arrangements are presumed to have continued. Even the amount of rent of Rs.1400/- does not appear to have been changed after the plaintiff had taken over. From the observation of the learned First Appellate Court in paragraphs 7 and 8 it appears that really there was no fixed mode of payment between the tenant and their former landlord and there is nothing on record to come to a finding that the earlier arrangement was subsequently changed. Under such circumstances, it was necessary for the learned Courts below to hold as to what was the due date and what was the mode of payment in the case in hand on perusal of the materials available on record. The learned trial Court did not accept the contention of the defendant that there was no fixed mode of payment of rent and the same view has been held by the learned First Appellate Court. Now if it is found that from the period prior to purchase of the suit premises by the plaintiff there was no fixed mode of payment, that may not be in the knowledge of the plaintiff and unless and until a specific case is made out and established that a new arrangement was made between the existing tenant and the new landlord with fresh grounds it has to be assumed that the earlier arrangement remained the same. From the observations made in paragraphs 7 and 8 of the impugned appellate judgment with regard to periodic payment of rent it is not possible to uphold the view held by the learned Courts below that rent was payable on the last day of every month or that it was payable on the first day of the succeeding month. Falling due of rent and mode of payment are two different things. In a monthly tenancy rent may fall due on the last day of the month but the parties may make an arrangement for making of payment as per their convenience. From the examples cited in paragraphs 7 and 8 of the impugned first appellate judgment it appears that no such fixed mode of payment did exist between the original landlord and the tenant.

9. Moreover, the learned First Appellate Court has observed that every deposit in Court has to satisfy the legal requirement before the deposit is made in Court. Supposing in a given case landlord refuses to accept rent for a particular month and thereafter the tenant makes deposit in accordance with Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 (herein after referred to as ■the Act■), in that event tendering rent for the subsequent months by the tenant to the landlord may be a mere formality. This is because once a tenant goes to Court for depositing rent, the cordial relationship between

the landlord and the tenant is bound to deteriorate and in that event tendering rent every month would be an empty formality and the same may not be necessary. The Hon^{ble} Supreme Court in the case of **Dr. Brahmanand v. Smt. Kaushalya Devi and another**, reported in AIR 1977 SC 1198 held that when there is strained relationship between the landlord and tenant in that event tendering rent to the landlord may be a mere formality. In that view of the matter and in view of the observations made by the Hon^{ble} Supreme Court in Dr. Brahmanand (supra) I do not feel the observation made by the learned First Appellate Court is sustainable. The findings of the learned Courts below in regard to issue of default are accordingly liable to be set aside.

10. However, coming to the question of bona fide requirement it does not appear that there is any perversity in regard to findings of the learned First Appellate Court. The learned trial Court may not have framed any issue of bona fide requirement. Both the learned senior counsel representing the parties have pointed out that the parties led evidence knowing that the case involves the question of bona fide requirement. If the parties led evidence in respect of a matter in that event even if there is no formal issue Court is at liberty to decide the same on the basis of the evidence led by the parties. The learned trial Court in the case in hand did not give any decision on bona fide requirement. The plaintiff, therefore, filed a Cross Objection under Order 41, Rule 22 of the CPC before the learned First Appellate Court and claimed that there has to be a decision on the bona fide requirement and accordingly the learned First Appellate Court framed an additional issue on bona fide requirement. Even thereafter the tenant did not make any challenge and did not make any prayer for affording an opportunity to them for leading evidence on the issue. This may be due to the fact that both the parties led their evidence knowing that bona fide requirement was a question to be decided in the lis. The learned First Appellate Court appears to have considered the evidence on record and thereafter held that the suit premises is situated in a commercial location in Dibrugarh town. The plaintiff being landlord wanted to make profitable use of it by demolishing the existing structure and by constructing a multi storied building therein. During the course of hearing of this revision petition an offer was given to Mr. G. N. Sahewalla, learned senior counsel appearing for the respondents, as to whether the landlord was agreeable to accommodate the defendant in case any multi storied building is constructed. Such an offer was made by the Court in view of the submission made by Mr. S. Dutta, learned senior counsel appearing for the petitioners, and also in view of the fact that the tenant has been using the suit premises since 1968-69 for earning livelihood. Naturally, if the landlord makes a construction of multi storied building and lets out to others, the existing tenant definitely shall have a claim of first offer. Even under the provision of Section 5(3) of the Act in case an eviction decree is passed on bona fide requirement a right in the nature of lien becomes available to the defendant within the parameters mentioned in the Section. Be that as it may, since the learned counsel for the petitioner has not shown anything to hold that the finding of the learned First Appellate Court is perverse in regard to the issue of bona fide requirement it is not possible to interfere with the finding. The issue of bona fide requirement as decided by the learned First Appellate Court is

accordingly upheld.

11. Under Section 5(4) of the Act if any of the grounds enumerated under provision to Section is satisfied then a decree of eviction can be passed. Here, in the instant case, though the ground of default has not been decided in favour of the landlord but since the ground of bona fide requirement has been decided in favour of the landlord the eviction decree passed by the learned courts below cannot be interfered with.

12. Be that as it may, as agreed to by learned counsel for the parties, if after construction of the multi storied building by the landlord on the suit land any shop room is let out for commercial purpose, in that event, the present tenant shall be given an offer so that he can also avail the opportunity at the existing market rate.

13. The revision petition is dismissed. No order as to cost.

14. Send down the records.