



GAHC010018232014

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

Case No. : RSA/285/2014

MUKHTAR AHMED
S/O LATE BAFATULLAH AHMED, R/O LOHARPATTY, P.O. and P.S. and DIST.
DIBRUGARH, ASSAM.

VERSUS

SHAHNOWAJ AHMED and 2 ORS.

2:RAFIQUOR ZAHAN AHMED

BOTH NO. 1 AND 2 ARE SONS OF SHAHJAHAN ALI

3:SHAHJAHAN ALI

S/O LATE ABDUL SATTAR
ALL 1
2 AND 3 ARE R/O LOHARPATTY
P.O. and P.S. and DIST. DIBRUGARH
ASSAM

Advocate for the Petitioner : MR.B BARUAH

Advocate for the Responent : MS.E BHARALIR-1,2and3

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. C. Baruah. Advocate.

For the Respondents : Ms. M. Hazarika, Sr. Advocate.

Date of Hearing : 02.03.2023, 28.03.2023

Date of Judgment : 28.03.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. C. Baruah, learned counsel for the appellant. Also heard Ms. M. Hazarika, learned Senior Counsel for the respondent.
2. This appeal is filed under Section 100 of the Code of Civil Procedure, 1908 which was admitted on 11.06.2004 by this Court. However, Ms. M. Hazarika, learned Senior counsel has raised a question of maintainability of the present second appeal inasmuch as the original suit was filed under the provision of Assam Urban Areas Rent Control Act, 1972, for declaration, eviction and recovery of arrears of rent and for permanent injunction and no second appeal is provided under the Act' of 1972.
3. In view of such submission and as agreed to by learned Counsel for the parties, before going to the merit of this case, let this Court first examine the issue of maintainability:-
 - I. The plaintiffs' pleaded case was that the plaintiffs are the owner of a plot of land measuring 7 Lecha covered by PP No. 95 of Dag



No. 140 and 141 of Marwaripatty Ward, Dibrugarh Town. According to the plaintiff, the plaintiff No. 3 constructed an Assam type shop house over that plot of land and let out a shop premises measuring 5 ft X 4 ft to the defendant and monthly rent was fixed at Rs. 600/- per month and one lease deed was also executed to that effect on 01.05.2002.

- II. Thereafter, according to the plaintiffs, the plaintiffs demolished the old Assam type house and constructed one RCC building over the said plot of land consisting eleven rooms in the ground floor. The plaintiffs let out a shop room measuring 50 sq. ft in the aforesaid building to the defendant and monthly rent was fixed at Rs. 1000/-. However, the defendant stopped payment of rent from the month of January, 2009.
- III. It is the further case of the plaintiffs that on 29.11.2011, the defendant not only refused to pay the rent but assaulted the mother of the plaintiffs and thereafter, an FIR was filed. Accordingly, the suit was filed.
- IV. The defendant contested the suit by filing written statement. The defendant though admitted the tenancy and the monthly rent of Rs. 600/-, however the execution of the deed of lease dated 01.05.2002, was denied by the defendant. The enhancement of rent to Rs. 1000/- per month was also denied. According to the defendant, the plaintiffs never issued rent receipt inspite of the demand of the defendant.



- V. Regarding the default, the defendant stated that he tendered the rent for the month of January, 2012 by way of money order but plaintiffs refused to accept the same. Thereafter, the defendant started depositing the monthly rent in the Court through treasury challan.
- VI. The learned trial Court came to a conclusion that the defendant has failed to exhibit the rent deposit receipt through Rent Controller and has not called for the records of misc. cases through which the rents were deposited before the Rent Controller to prove that he has complied with the procedure prescribed under Section 5(4) of the Assam Urban Areas Rent Control Act, 1972. It is also the finding of the learned trial Court that, in his cross-examination, the DW-1 has clarified that he does not have any document to prove the payment of rent. It was the finding of the learned trial Court that the defendant even failed to state when the rents were offered after the incident dated 29.11.2011 till the month of January, 2012. Accordingly, the learned trial Court decreed the suit for eviction and arrears of rent of Rs. 36,000/-.
- VII. Though the defendant/appellant preferred an appeal before the learned First Appellate Court under section 8 of the Act'1972, which was registered as Title Appeal No. 5/2014, however, in filing such appeal, there was a delay of 193 days.
- VIII. The basic ground of such delay in preferring the appeal as explained was that in the last part of June, 2013, the appellant went to chamber of one lawyer with his son and met his junior and brief



was also handed over to the junior. Thereafter, they could not make any contact with the Advocate or his junior and subsequently the Advocate expired. In support of such contention, the appellant examined two witnesses.

- IX. The learned appellate Court below after going through the evidence of PW-1, (the appellant) and PW-2 (his son) came to a conclusion that there are serious inconsistencies in their evidences. The PW-2, has clearly deposed in his cross-examination that he never went to the chamber of the lawyer as stated and has not handed over any file to any lawyer or he brought back any brief of the case. The learned appellate Court concluded that there is also no material to show when the PW-2 went to the chamber of the counsel.
- X. The further contention that appellant that he was suffering suffering from jaundice, was also rejected on the ground that no materials were placed before the learned appellate Court below in support of such contention.
- XI. Accordingly, the learned appellate Court came to a conclusion that no sufficient cause is shown to condone the delay. Accordingly, same was dismissed.
- XII. Being aggrieved by such decision, a revision petition under Section 115 of the CPC, 1908, was preferred by the appellant before this Court, which was registered as CRP/215/2014.
- XIII. The said revision petition was withdrawn on 25.07.2014. The said



order dated 25.07.2014 passed in CRP/215/2014 is quoted herein below:-

“Date of Order: 25.07.2014:

Heard Mr. C. Baruah, learned Senior Counsel assisted by Mr. D. Baruah, learned counsel for the petitioner.

At the threshold Mr. C. Baruah, learned Senior Counsel submits that by the order impugned in this revision petition, the prayer for condonation of delay made by the present petition in an application accompanying memorandum of appeal before the learned First Appellate Court was rejected. Mr. Baruah further submits that in view of the judgment of the Hon’ble Supreme Court in the case of Shyam Sundar Sarma vs. Pannalal Jaiswal, reported in (2005) 1 SCC 436, learned counsel for the petitioner wants to withdraw this Revision Petition with permission to file a Second Appeal.

Prayer is allowed.

Revision Petition is dismissed on withdrawal.

Learned counsel for the petitioner is allowed to withdraw the certified copy of the impugned order annexed to this application so as to enable the learned counsel to file the Second Appeal without further delay”.

XIV. Thereafter, the present second appeal was filed.

4. Ms. Hazarika, learned Senior Counsel for the respondents while relying on the judgment of this Court in the case of **Ranjit Kr. Dey and Ors – Vs- Krishna Gopal Agarwala and Ors** reported in **2004 (2) GLT 435** submits that the remedy against an appellate order under the provision of

Assam Urban Areas Rent Control Act, 1972 lies in a revision petition. According to the learned Senior Counsel, on the date of withdrawal of the revision petition on 25.07.2014, the law was already settled in this regard through **Ranjit Kr. Dey** (supra) which was delivered on 11.06.2004, that no second appeal shall lie against an appellate order passed under the provision of Assam Urban Areas Rent Control Act, 1972.

5. Per contra, Mr. D. Baruah, learned counsel for the appellant relying on the judgment of the Hon'ble Apex Court in the case of **Shyam Sundar Sarma –Vs- Pannalal Jaiswal and others** reported in **(2005) 1 SCC 436** submits that, when an appeal is dismissed as barred by limitation, it is a decision on appeal. Therefore, a second appeal will lie in terms of the judgment of **Shyam Sundar Sarma** (supra). Such ratio was laid down by the Hon'ble Apex Court on 04.11.2004 and therefore, the revision was rightly withdrawn and second appeal was rightly filed. Therefore, the matter should be heard on the substantial question of law as framed, submits Mr. Baruah, learned counsel.
6. This Court has given anxious consideration to the arguments advanced by the learned counsel for the parties and also perused the materials available on record.
7. Section 8 of the Assam Urban Areas Rent Control Act, 1972 (hereinafter referred to as the Act, 1972), provides that a landlord or a tenant aggrieved by any decision or order of the Court, passed under Section 4, 5 and 7 (2) of the Act, 1972, shall have a right of appeal against the same, as if, such decision or order were a decree in a suit for ejectment of the tenant from the house and such appellate Court's

decision shall be final.

8. A question whether any remedy lies against an order passed under Section 8 of the Act, 1972 in view of the finality clause in section 8, two divergent views were expressed by the two learned Single Judges of this Court.

9. In ***West Bengal State Weaver's Cooperative Society Limited and others –Vs- Bibha Basu Chowdhury and others*** reported in ***2004 (1) GLT 177***, it was held that a revision application under Section 115 of the Code of Civil Procedure, 1908, in respect of a final order passed by the appellate authority under Section 8 of the Act, 1972 to be not maintainable. Whereas another learned single Bench in ***Ranjit Kr. Dey and Ors –Vs- Krishna Gopal Agarwala and Ors***, took a view that the conclusions recorded in ***West Bengal State Weaver's Cooperative Society Limited*** (supra) require an authoritative decision by a larger Bench of this Court and accordingly, the matter was referred for consideration and decision on the following question:-

“Whether a decision or order passed in appeal under Section 8 of the Assam urban Areas Rent Control Act, 1972 is revisable by the High Court under Section 115 CPC; or Section 8 of the Act, 1972 completely debars the revisional jurisdiction of the High Court to entertain the revision against the decision or order passed by the Appellate Court under Section 8 of the Act, 1972?”.

10. Thereafter, the larger Bench had decided the reference and determined that a revision application under Section 115 of the CPC against an appellate decision under Section 8 of the Act, 1972 is maintainable. Thus, by virtue of the aforesaid judgment of the larger Bench on reference, it is

concluded that a revision petition under Section 115 of the CPC shall be a remedy against a decision passed under Section 8 of the Act, 1972 inasmuch as no further appeal from an appellate order under section 8 has been provided. Such decision was reported in **2004 2 GLT 435**.

11. Now coming to the contention of Mr. Baruah, learned counsel for the appellant regarding applicability of the ratio of the judgment in the case of **Shyam Sundar Sarma** (Supra), let this Court look into the ratio as laid down in **Shyam Sundar Sarma** (Supra).
12. In the case of **Shyam Sundar Sarma** (Supra), it was held that even when an appeal is dismissed by refusing to condone the delay, it is a decision in the appeal. Therefore, the same is to be treated as the order of appellate Court and therefore, second appeal shall lie.
13. There is no quarrel with the ratio laid down in the case of **Shyam Sundar Sarma** (Supra). There is also no quarrel in the settled proposition of law that when a second appeal is provided under the statute against a judgment and decree of an appellate Court and the appeal is dismissed only on the ground of being barred by limitation and not on the basis of merit of the case, then the second appeal is the remedy.
14. However in view of the decision in the case of **Ranjit Kr. Dey** (supra), the law is equally settled that against an order passed under Section 8 of the Act, 1972, the revision petition under Section 115 of the CPC, 1908, is the remedy inasmuch as Section 8 of the Act, 1972 provides no further appeal and mandates that the appellate order under Section 8 shall be final.



15. By virtue of the ratio laid down in ***Shyam Sundar Sarma*** (Supra), the appellate order in the present case is also a determination of the appeal, though it was dismissed only on the ground of being barred by limitation. Therefore, since it is a determination under Section 8 of the Act, 1972, by virtue of ratio laid down in the case of ***Ranjit Kr. Dey*** (supra), in the considered opinion of this Court, a revision petition shall be the remedy, not a second appeal.
16. The appellant also opted for such course of action but withdrew the same as discussed hereinabove. In that view of the matter, the present second appeal stands dismissed being not maintainable.
17. Parties to bear their own cost. LCR be sent back forthwith.

JUDGE

Comparing Assistant