GAHC010294532019

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

Case No. : CRP/166/2019

M/S MARBLE POINT AND ANR.
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT SREENIWAS BASUDEO COMPLEX, G.S. ROAD ROAD, GANESHGURI, GUWAHATI-05, REP. HEREIN BY ITS PROPRIETOR SRI MANOJ KUMAR JAIN.

2: MANOJ KUMAR JAIN
S/O SHRI PADAM CHAND JAIN
R/O SREENIWAS BASUDEO COMPLEX
G.S. ROAD ROAD
GANESHGURI
GUWAHATI-0

VERSUS

M/S SREENIWASH BASUDEO AND 2 ORS. (A)
A UNIT OF ASSAM VEGETABLE AND OIL PRODUCTS LTD. HAVING ITS REGISTERED OFFICE AT G.S. ROAD, GANESHGURI, GUWAHATI-05, REP. BY ITS DIRECTOR SHRI PRABHU DAYAL DEORAH.

2:PRABHU DAYAL DEPRAH
S/O LT. BASUDEO DEORAH
DIRECTOR OF M/S SREENWASH BASUDEO
GANESHGURI
GUWAHATI-05

3:ASSAM VEGETABLE AND OIL PRODUCTS LTD.
HAVING ITS REGISTERED OFFICE AND PRINCIPAL PLACE OF BUSINESS AT G.S. ROAD
GANESHGURI
GUWAHATI-5
REP HEREIN BY ITS DIRECTO

Advocate for the Petitioner : Mr. S. Chamaria, Advocate.

Advocate for the Respondents : Mr. N. Alam, Advocate.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 22.09.2022

Date of Judgment : 30.09.2022

JUDGMENT AND ORDER (CAV)

Heard Mr. S. Chamaria, the learned counsel for the petitioners and Mr. N. Alam, the learned counsel appearing on behalf of the respondents.

2. This is an application under Section 115 of the Code of Civil Procedure, 1908 (for short, the Code) challenging the judgment and order dated 22.10.2019 passed by the learned District Judge, Kamrup (M), Guwahati in Title Appeal No.08/2012 whereby the appeal was dismissed thereby affirming the judgment and decree dated 28.05.2012 passed by the learned Civil Judge No.3, Kamrup (M), Guwahati in Title Suit No.151/2006.

3. Before entering into the facts of the case, it would be relevant to note that the petitioners herein have invoked the revisional jurisdiction under Section 115 of the Code. It is no longer *res-integra that* the revisional jurisdiction is limited in scope inasmuch as the said jurisdiction cannot be exercised to correct error of facts. However gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. A plain reading of Sub-Clauses (a) and (b) of Section 115 of the Code is in reference to the exercise of jurisdiction by the Court not vested in the Court by law or has failed to exercise jurisdiction so vested in Court. Clause (c) is in relation to exercise of jurisdiction illegally and with material irregularity. Therefore, under Section 115 of the Code a jurisdictional question may arise not only where the Court acts solely without jurisdiction but also in a case where jurisdictional errors are committed while exercising jurisdiction. There may be various facets of jurisdictional error for example the findings arrived at is perverse, based on no evidence or misreading

of evidence or such findings have been arrived at by ignoring or overlooking material irregularities or such findings so grossly erroneous that if allowed to stand would occasion miscarriage of justice. In other words, interference with an incorrect finding of fact recorded by the Court below for the purpose of exercising revisional jurisdiction must be understood in the context, where such findings are perverse or has been arrived at without consideration of material evidence or such finding is based on no evidence or misreading of evidence or is grossly erroneous that if allowed to stand it would occasion gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In the judgment of the Constitution Bench of the Supreme Court rendered in the case of ***Hindustan Petroleum Corporation Ltd. Vs. Baharsingh*** reported in ***(2014) 9 SCC 70***, the Supreme Court observed that the Court while exercising jurisdiction under Section 115 of the Code is required to satisfy itself as regards the regularity, correctness, legality or propriety of the impugned decision or the order and cannot exercise its power as an Appellate Court to re-appreciate or reassess the evidence to a different finding of fact. It is also made clear that this Court while exercising the revisional jurisdiction is not and cannot be equated with the power of re-consideration of all questions of facts as the Court of First Appeal.

4. In the backdrop of the above, let this Court take into consideration the facts of the instant case. For the sake of convenience, the parties herein are referred to in the same status as they stood before the trial court.

5. The respondents herein as plaintiffs had initiated a suit before the Court of the Civil Judge No.1, Kamrup (M) at Guwahati against the petitioners herein as defendants. In the said suit, the plaintiffs has stated that they are the owners of a plot of land measuring 8 Bighas 2 Lechas whereupon the plaintiffs had constructed Assam Type small godowns some of which were given to different licencees. Amongst the several godowns in the said plot of land, there are two godowns which were vacant. The first of such godown has been more specifically described in Schedule-A of the plaint. The second such

godown has been more specifically described in Schedule-B of the plaint. On 10.02.2005 and 11.02.2005, the plaintiffs and the defendants had entered into and licence agreement by which the defendants were allowed to do their business from the Schedule-A and Schedule-B premises with effect from 01.12.2004 to 31.10.2005 which stood revoked automatically on 31.10.2005. The terms and conditions of said licences were that the licence shall never be construed as tenancy agreement or lease or otherwise will not create any other right of interest in the suit premises in favour of the defendants and the said agreements were purely a temporary arrangement simply to allow the defendants to use and occupy the suit premises only for storage and sell of marbles. It was mentioned that the defendants shall pay to the plaintiffs Rs.34,254/- and Rs.1,29,558/- as licence fee for 11 (eleven) months in respect to the Schedule-A and Schedule-B premises respectively at the rate of Rs.3,114/- and Rs.11,778/- per month payable on or before the 7th day of each month according to English Calendar without any delay or default. It was mentioned therein that the defendants have deposited Rs.6,228/- and Rs.23,556/- with the plaintiffs as security deposit which shall not carry any interest and would be refundable on revocation or expiry of the said deeds. Further to that, it was also mentioned that the defendants shall pay to the plaintiffs the electricity charges for every month as per the reading of the sub-meter subject to a minimum charge of Rs.310/ per month and that all payments of licence fee, electricity charges and other dues, if any, shall be made by the defendant to the plaintiffs by cheque or draft payable in bank at Guwahati against receipt to be issued by the plaintiffs to the defendants. It was also mentioned that the defendants shall use the suit premises for storage of marbles only from 01.12.2004 and shall not enter the suit premises after 30.10.2005. Further to that, it was also a condition that the defendants shall not allow anyone else to use and occupy the suit premises or any part thereof in any manner for any purpose and the defendants shall on expiry of the period of 11 (eleven) months or earlier revocation shall stop entering into the suit premises.

6. It has been mentioned in the plaint that the defendants used to pay the monthly licence fee to the plaintiffs and the plaintiffs used to issue licence fee receipts to the defendants. Both the suit premises as described in Schedule-A and Schedule-B were described in the plaint as small Assam type godowns constructed with ordinary wood posts which were constructed long back which stands in a most dilapidated condition and may collapse at any time. Accordingly, after the expiry of the period of said leave and licencee agreements, the plaintiffs had request the defendants to vacate the suit premises stating that the plaintiffs required the suit premises for its own use and the plaintiffs would start construction over the suit land and the defendants had assured the plaintiffs that they will act as per the terms and conditions of the said leave and licencee agreements and vacate the suit premises after one month. However, the defendants failed to vacate the same. It has also been mentioned that the defendant had paid monthly licence fee of Rs.3,114/- and Rs.11,778/- till the month of October, 2005 in respect to the suit premises, but from the month of November, 2005, the defendants have neither paid the monthly licence fee nor the electricity bill to the plaintiffs and as such the defendants have acted contrary to the agreements and liable to be ejected. It was mentioned that the agreements dated 10.02.2005 and 11.02.2005 expired on 31.10.2005 and thereafter the defendants became trespassers and illegally they have been enjoying the suit premises without any fresh agreement. It has also been mentioned that in the month of March, 2006, the plaintiffs had requested the defendants to pay the arrear licencee fee to the plaintiffs and vacate the suit premises but the defendants have failed to vacate the suit premises after expiry of the period of agreements and also did not pay the arrear licencee fee and electrical charges from the month of November, 2005 till May, 2006. The plaintiffs have also mentioned in the plaint that the suit premises is situated near G.S. Road at Ganeshguri which is a prime commercial place of the city and the defendants are illegally in possession of the suit premises. It was mentioned that on account of the defendants' action, the plaintiffs were suffering from financial and mental hardship and as such the defendants are liable to be ejected from the suit premises as described in the

schedules as per the provisions of the Indian Easement Act, 1882. It has been also mentioned that till the month of May, 2006, the defendants were liable to pay Rs.1,08,584/- as arrear licencee fee with electric charge at the rate of Rs.620/- per month from the month of November, 2005. Further to that it has also been mentioned that the plaintiffs required the suit premises for bonafide reasons and the plaintiffs are not in a position to start construction and as such the suit premises are required by the plaintiffs for their own use, occupation and construction and the defendants are liable to be ejected from suit premises.

7. On the basis of the said averment contained in the plaint, the plaintiffs sought for ejectment of the defendants, their men along with all materials, belongings of the defendants and their men from the suit premises as described in Schedule-A and Schedule-B to the plaint; for recovery of arrear licence fee Rs.1,08,584/- and electrical charges from the month of November, 2005 to May, 2006; for decree for realization of pendentilite and future licence fee and electrical charges from the defendants jointly and severally; for decree for damages of Rs.3,114/- and Rs.11,778/- in respect to the suit premises as described in Schedule-A and Schedule-B to the plaint from the month of November, 2005 till the month of May, 2006 which comes to Rs.21,798/- for Schedule-A premises and Rs.82,444/- for the Schedule-B premises; future damages at the rate of Rs.6,228/- per month for the Schedule-A premises and Rs.23,556/- for the Schedule-B premises till the defendants are ejected from the Schedule-A and Schedule B premises.

8. The petitioners herein who were the defendants in the suit filed a joint written statement wherein various preliminary objections were taken as regards the maintainability of the suit. As regard the statement made in paragraph Nos.5 & 6 in the plaint wherein the details of the godowns, the description of the Schedule-A and Schedule-B premises and the licencee agreements dated 10.02.2005 and 11.02.2055 have been mentioned, there was no specific denial to the said statement. In fact, a perusal of paragraph Nos.13 & 14 of the written statement would show that the

defendants admitted the statement in paragraph No.5 of the plaint and as regards the paragraph No.6 of the plaint it was only stated that those are matters of records and the defendants did not admit anything which are inconsistent and contrary to the records of the case. As regards the non-payment of the licence fee, the same was denied in paragraph No.20 of the written statement. It was stated that the real fact is that the defendants ad infinitum paid rent to the plaintiffs through the court immediately after the plaintiffs denied receiving the rent. In paragraph No.29 of the written statement, the defendant stated their case. It was mentioned that rent of the tenanted premises was initially fixed at the date of Rs.25,025/- as charges which include municipal rates and taxes and other impositions outgoings and the amount was paid at the rate of Rs.2,275/- per month which was enhanced to Rs.1,29,558/- till the date of filing of the written statement. It was mentioned that there was no fixed time or period for payment of rent and it was verbally agreed between the plaintiff and the defendant that the rent from the defendant would be collected by him after coming to the tenanted premises. Accordingly, the plaintiff used to collect rent some time monthly, some time bi-monthly, some tine for several months together and some time in advance according to their convenience. It has been mentioned that in the first week of October, 2005, the plaintiff No.2 came to the defendant and demanded enhancement of rent from Rs.11,778/- to Rs.15,000/- per month on the plea of price rise. Since the demand made by the plaintiff No.2 was exorbitant and unreasonable, the defendant requested him to accept the rent as it was or enhance it reasonably but the plaintiff No.2 did not agree and left the place in fuming mire. It has been mentioned that the defendant approached the plaintiffs several times for accepting the rent and enter into fresh agreement but the plaintiffs challenged him to kick him out from the suit premises. It was mentioned that after refusal by the plaintiffs to accept the rent, the defendant having no alternative deposited the rent in the court for which the defendants were not a defaulter in payment of rent. It may be noted that there is no mention in the written statement that the defendants had approached the plaintiffs on each and every occasion before depositing the rent to the court under

Section 5 (4) of the Assam Urban Areas Rent Control Act, 1972 (for short, the Act of 1972).

9. On the basis of the said pleadings, as many as nine issues were framed which are as herein under:-

1. *Whether the suit is maintainable in law as well as on facts?*
2. *Whether there is any cause of action in this suit?*
3. *Whether the suit is barred by limitation?*
4. *Whether the agreement executed on 10.02.2005 & 11.02.2005 was enforceable in law?*
5. *Whether the plaintiff is bonafide owner as possessor of the suit premises?*
6. *Whether the defendant is a defaulter in payment of rent in respect of suit premises?*
7. *Whether the plaintiff is bonafide requirement of the suit premises?*
8. *Whether the plaintiffs are entitled to decree?*
9. *What relief/releifs the parties are entitled to get?*

10. In support of the claim of the plaintiffs, the plaintiffs adduced evidence of plaintiff No.2, Sri Prabhu Dayal Dewra and exhibited three documents which were incorporation certificate of the plaintiff No.1 (Ext.1); agreement dated 10.02.2005 executed between the plaintiff No.2 and the defendant No.2 (Ext.2) and the agreement dated 11.02.2055 executed between the plaintiff No.2 and the defendant No.2 (Ext.3). The defendants' side examined the defendant No.2 and exhibited various documents which were rent deposit challan (Ext.A1 to Ext.A22); petition dated 30.07.2007 (Ext.B); records of Misc. (NJ) Cases (Ext.C1 to Ext.C20); rent receipts and bills (Ext.D1 to Ext.D10).

11. The trial court, i.e. the Court of the Civil Judge No.3, Kamrup (M) at Guwahati vide the judgment and decree dated 28.05.2012 decreed the suit of the plaintiffs thereby ordering ejectment of the defendants, their men along with all the materials belonging to

the defendants and their men from the suit premises as described in Schedule-A and Schedule-B of the plaint; recovery of arrear licence fee and electricity charges of Rs.18,584/- for the month of November, 2005 till May, 2006; decree for realization of pendente-lite and future licence fee and electrical charges from the defendants from the date of institution of the suit till realization and for costs of the suit. In doing so, the trial court while deciding the Issue No.4 as to whether the agreements executed on 10.02.2005 & 11.02.2005 were enforceable in law, the trial court came to a finding that the agreement between the parties were not tenancy agreements within the meaning of the Act of 1972. However, it was a licence in view of the principles laid down in the Indian Easement Act and as such the court was of the view that the agreement executed on 10.02.2005 & 11.02.2005 were enforceable in law. In respect to Issue No.5 as to whether the plaintiffs are bonafide owner as possessor of the suit premises, the trial court observed that the defendants have not disputed or challenged that the plaintiffs are not the bonafide owner and possessor of the suit premises and as such the Issue was decided in favour of the plaintiff. In Issue No.6 as to whether the defendants were defaulters in payment of rent in respect of suit premises, the trial court came to a finding that there was no cogent evidence that the defendants offered rent to the plaintiff. Apart from that there was no tenancy agreement between the parties. It was further observed that there was leave and licence agreements between the parties and as such the proceedings is not governed under the Act of 1972 for depositing money in the court. It was mentioned that as per the leave and licence agreements, the said agreements were for a period of 11 (eleven) months and the same was not renewed and as such it expired on 31.10.2005 and since then, the defendant acted as a trespasser and as such the trial court was of the view that the defendants were trespassers and defaulters in payment of the licence fee/rent. On the Issue No.7 as to whether the plaintiffs had bonafide requirement of the suit premises, the trial court observed that the grounds mentioned by the plaintiffs for bonafide requirement were good grounds and as such the Issue was decided in favour of the plaintiffs. On the basis of the said decision on the contentious

issues, the suit was decreed in favour of the plaintiffs.

12. Being aggrieved and dissatisfied, the defendants as appellants preferred an appeal before the Court of the District Judge, Kamrup (M) at Guwahati which was registered and numbered as Title Appeal No.08/2012. The First Appellate Court, after taking into account the various grounds of objection so taken and after hearing the learned counsel for the parties framed a point of determination to the effect as to "*whether the impugned judgment and decree dated 28.05.2012, passed by the learned Civil Judge No.3, Kamrup (M) at Guwahati in Title Suit No.151/2006 are sustainable in law and facts of the case?*"

13. The First Appellate Court, after taking into consideration the evidence on record came to a finding that from the cross-examination of the defendant witness, it was apparent that the said defendant witness who was the defendant No.2 in the suit took the suit premises on rent from the plaintiffs by Ext.2 and Ext.3 (leave and licence agreements). It was observed that the defendants cannot say that they were not aware about the terms and conditions of Ext. 2 and Ext.3. The said leave and licence agreement which were Ext.2 and Ext.3 expired on 31.10.2005 and the defendants did not enter into any fresh leave and licence agreement with the plaintiffs. Consequently, the defendants if not trespassers are tenants at sufferance and hence they can be evicted by following due process of law. It was observed that the plaintiffs by filing the instant suit have followed the due process of law for evicting them. The First Appellate Court also taking into consideration the cross-examination of the defendant No.2 to the effect wherein he had admitted that he did not know whether the licence fee after November, 2005 was paid or not held that the defendants were rent defaulters. It was further observed that the defendant No.2 had also deposed during cross-examination that he had been depositing the rent in the court as per the provisions of the Act of 1972 and as he had admitted that NJ Cases were filed some time in the 3rd week or 4th of each succeeding month, the same was no deposit in the eye of law. It was observed that admittedly, the defendants

did not deposit the rent after November, 2005 within a fortnight of its becoming due, the defendants were rank defaulters. It was observed that during the cross-examination of the defendants' witness he has stated that he did not know whether he has produced or exhibited any NJ petitions of treasury challan after July, 2007 and while submitting the Ext.C-7, had stated that he had not submitted the court fee and process fee. The First Appellate Court further took into consideration that during the cross-examination of the defendant he had stated that in Ext.C-11 and Ext.C-12 he did not take steps for service of notice and also did not pay the process fee for the same. Therefore, the First Appellate Court also came to a finding that the defendants were rank defaulters and the trial court has rightly held that the defendants were defaulters in payment of rent and passed the impugned judgment and decree dated 28.05.2012.

14. The First Appellate Court, however, interfered with the finding of the trial court holding that the defendants were not tenants in as much as per the First Appellate Court that though the plaintiffs have filed the suit for ejectment of the defendants and recovery of arrear rent and licence fee etc., the suit was actually for ejectment of the defendants and recovery of arrear rent and licence fee etc. on the ground of bonafide requirement and default in paying the rent. It was observed that the nomenclature used in the Ext.2 and Ext.3 agreements and leave and licence agreements cannot take away the basic fact that the defendants were tenants in respect to the suit premises. It was further observed that as the defendants were defaulters in payment of rent as per the provisions of the Act of 1972, they were, therefore, liable to be evicted from the suit premises and the trial court has rightly decreed the suit.

15. On the question of bonafide requirement, the First Appellate Court had duly interfered with the same holding *inter-alia* that the plaintiffs having let out the other premises to the tenants, the plaintiffs cannot pick and choose the premises let out to the defendants as bonafide required for their own use and occupation.

16. As the defendants were found to be defaulters in payment of rent, the appeal was

dismissed thereby affirming the judgment and decree dated 28.05.2012, passed by the Court of Civil Judge No.3, Kamrup (M) at Guwahati in Title Suit No.151/2006. It is against the said judgment and decree dated 22.10.2019 passed in Title Appeal No.08/2012, the present proceeding has been initiated under Section 115 of the Code.

17. As already noted in paragraph No.3 herein above, the jurisdiction to be exercised under Section 115 of the Code is limited. In the backdrop of the above, let this Court take into consideration the contentions raised by the learned counsel for the parties.

18. Mr. S. Chamaria, the learned counsel for the petitioners submitted that from the deposition of PW1 recorded on 26.08.2008, it was evidence that PW1 candidly accepted that the plaintiffs used to receive rent on 26th day of the next month. It would also be seen from the records that during the period of agreements dated 10.02.2005 and 11.02.2005, even the plaintiffs accepted the rent collected after expiry of the fortnight from it becoming due and to substantiate the said documents have also been exhibited in the suit. It was further mentioned that from the perusal of NJ Cases commencing from the month of November, 2005 it is also evidence that the rent was deposited in the manner and practice followed up earlier between the parties and the said modus even have not been opposed or controverted by the plaintiffs during the trial. This very aspect of the matter was not taken into consideration by the First Appellate Court in the impugned judgment and decree dated 22.10.2019. It was submitted by the learned counsel for the petitioners that in terms with the Companies Act it is the mandate of law that without having proper authority a suit cannot be instituted on behalf of the Company. However, in the instant case the plaintiff No.2 who had represented the plaintiff No.1 had failed to produce any document to substantiate his authority to represent the said Company in the said suit.

19. On the other hand, Mr. N. Alam, the learned counsel appearing on behalf of the respondents submitted that Section 5 of the Act of 1972 prescribes various grounds on which a decree for ejectment can be passed. The learned counsel for the respondents

submitted that in the instant case both the courts below have concurrently held that the defendants in the case were defaulter in payment of rent. The learned counsel for the respondents further submitted that such concurrent finings of facts arrived at by both the courts below cannot be interfered with in the proceedings under Section 115 of the Code unless and until the findings so arrived at suffer from jurisdictional error and the findings so arrived at are by ignoring or overlooking material irregularities or such findings are so grossly erroneous that if allowed to stand would occasion miscarriage of justice. The learned counsel for the respondents submitted that from a perusal of the written statement filed by the defendants and more particularly at paragraph No.29 there is mention that on account of demanding enhancement of rent from Rs.11,778/- to Rs.15,000/- per month, the defendants after approaching the plaintiffs several times for accepting the rent deposited the rent before the court below. However, it would be seen from a perusal of some of the NJ Cases which were part of the exhibited documents that there is no mention whatsoever after November, 2005 when the defendants had approached the plaintiffs for deposit of rent and thereupon, after refusal thereof, had deposited the rent before the court. In that regard, the learned counsel for the respondents drew the attention of this Court to Misc. (NJ) Case No.297/06, Misc. (NJ) Case No.208/06, Misc. (NJ) Case No.247/06 as well as Misc. (NJ) Case No.832/2005. The learned counsel for the respondents further referred to Misc. (NJ) Case No.823/05 wherein the defendant No.2 has categorically stated that when the plaintiffs approached the defendant No.2 for claiming rent for the month of November, 2005, he demanded an enhanced amount of rent of Rs.16,629/- without any prior notice and intimation. However, when the defendants refused to pay the said enhanced amount, the plaintiffs refused such tendering of the rent for which the defendants sought the permission of the court to deposit the rent in favour of the plaintiffs for the month of November, 2005 before the court. The learned counsel for the respondents submitted that a perusal of the said application filed under Section 5 (4) of the Act of 1972 was filed on 22.12.2005 which was after the fortnight of falling due, and as such, the said deposit so made under

Section 5 (4) of the Act of 1972 is no deposit in the eye of law. Referring to the other petitions which are Misc. (NJ) Case No.297/06, Misc. (NJ) Case No.208/06, Misc. (NJ) Case No.247/08, the learned counsel for the respondents drew the attention to the contents of the said petitions to show that a perusal of the said petitions there is no mention whatsoever as to for which month of the year 2006 the rent was deposited. The learned counsel for the respondents further submitted that there is also no mention when the defendants as tenants approached the landlord and when the landlord refused and for which month the said amount was tendered. The learned counsel for the respondents submitted that this clearly goes to show that the burden of the defendant to prove the he is not a defaulter in payment of rent has not been discharged.

20. On the question of that the plaintiff No.2 did not have authority to file a suit and given evidence on behalf of the plaintiff Nos.1 & 3, the learned counsel for the respondents submitted that from a perusal of the written statement there is no mentioned whosoever that the plaintiff No.2 did not have the authority to file a suit and sign and verify on behalf of the plaintiff No.1 & 3. Referring to paragraph Nos.9 to 14 of the written statement, the learned counsel for the respondents submitted that there is even no denial to the agreements which were exhibited as Ext.2 and Ext.3 as well to the statement made therein except stating that the burden lies upon the plaintiffs. The learned counsel for the respondents submitted that the laws of pleadings demand that there has to be specific denial to such statement and sans any specific denial, it would be deemed to have been admitted by the defendants. The learned counsel for the respondents therefore submitted that as there was no averment in the written statement that the plaintiff No.2 did not have the authority to file, sign and verify the pleadings on behalf of the plaintiff Nos. 1 & 3, there was no issue even framed. The learned counsel for the respondents further submitted that even a perusal of the grounds of objection taken in the Memo of Appeal filed before the First Appellate Court there is no mention challenging the authority of the plaintiff No.2 to institute the suit and sign and verify the

pleading on behalf of the plaintiff Nos.1 & 3. He submits that in view of the above, the said submission, therefore, cannot be taken into account at this revisional stage. Be that as it may, the learned counsel for the respondents referring to the judgment of the Supreme Court in the case of ***United Bank of India vs. Naresh Kumar and Others***, reported in ***(1996) 6 SCC 660*** submits that even without absence of a formal letter of authority or power of attorney has been executed, a person referred to in Rule 1 of Order 29 of the Code can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation.

21. I have heard the learned counsel for the parties and perused the materials on record. Let this Court first take up the issue of maintainability of the suit taking into account the submission made by the counsel for the petitioners that the person who had filed the suit was not property authorized to file, sign and verify the pleadings on behalf of the plaintiff Nos.1 & 3. On perusal of the plaint it would be seen that the plaintiff No.1 is a General Merchant and Commission Agent and one of the units of plaintiff No.3 and is represented by its director Sri Prabhu Dayal Dewra. The said Sri Prabhu Dayal Dewra is the plaintiff No.2 who claims to be the Director of the plaintiff No.1 and the plaintiff No.3 which had been described as a limited Company incorporated under the provisions of Companies Act, 1956 wherein the plaintiff No.1 is one of its units. It has been mentioned that the plaintiffs are the owners of the plot of land measuring 8 Bighas 2 Lechas wherein the plaintiffs have constructed Assam Type small godowns, some of which were given to different lincencees. The whole land of the plaintiffs is known as “Sreeniwas Basudeo Company” situated at Ganeshguri, Guwahati. In the affidavit so filed by the plaintiff No.2 in support of the pleadings it is categorically stated that he is the Director of the plaintiff No.1 & 3 and conversant with the facts and circumstances of the case.

22. Now coming to the written statement, there is no denial to the statement made in paragraph Nos.1, 2 & 3 of the plaint except stating that it is for the plaintiffs to prove the

same. In paragraph No.29.5, the defendants categorically admitted that in the month of October, 2005, the plaintiff No.2 came to the Office of the defendants and demanded enhancement of rent from Rs.11,778/- to Rs.15,000/- per month. It was further mentioned that the defendants requested the plaintiff No.2 to accept the existing rent or to enhance it reasonably to which the plaintiff No.2 did not agree. As there was no specific pleadings taken to the effect that the suit was not maintainable on account of non-adherence to the provisions of Order XXIX Rule 1 of the Code or for that matter the plaintiff No.2 did not have the authority to file, sign and verify the pleadings on behalf of the plaintiff Nos.1 & 3, there was no issue framed. However, it is seen during the cross-examination various questions were put to the plaintiff No.2 who was the witness on behalf of the plaintiffs as regards his right to file, sign and verify pleadings on behalf of the other plaintiffs.

23. I have also perused the Memo of Appeal which contained various grounds of objection. Surprisingly, in the grounds of objection, there is no mention about the suit being filed by the plaintiff No.2 without any authority from the plaintiff No.1 & 3. It is for the first time that in the revision proceedings such questions have been raised. As noted herein above, this Court's jurisdiction under Section 115 of the Code is limited to jurisdictional issues and as such this Court is of the opinion that as neither in the pleadings nor even in the grounds of objection before the First Appellate Court, the issue as regards the plaintiff No.2 having no authority to file the suit and/or sign and verify the pleadings on behalf of the plaintiff Nos.1 & 3 was taken, the said aspect of the matter cannot be raised for the first time is a proceedings under Section 115 of the Code.

24. Further to that, the said issue can also be looked into from another point of view. The Supreme Court in the case of ***United Bank of India vs. Naresh Kumar and Others***, reported in ***(1996) 6 SCC 660*** had also taken into consideration such a plea that the person who sign and verify the pleadings was not properly authorized. It may be relevant to take note of that in the written statement filed in that case a specific plea was taken to

the effect that one Shri L. K. Rohatgi could not have signed and filed the plaint on behalf of the appellant as he has no authority. On the basis of the said pleadings taken in the written statement an issue was also framed which was Issue No.1. The said issue was decided against the plaintiffs by the trial court which was again upheld by the First Appelalte Court as well as by the Second Appellate Court. The Supreme Court in its decision observed at paragraph Nos.9 to 11 as to how such pleas when raised are to be decided. Paragraph nos.9 to 11 being relevant are quoted herein below:-

> "***9.*** *In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.*
>
> ***10.*** *It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and dehors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of*

attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.

11. *The courts below could have held that Shri L.K. Rohatgi must have been empowered to sign the plaint on behalf of the appellant. In the alternative it would have been legitimate to hold that the manner in which the suit was conducted showed that the appellant-Bank must have ratified the action of Shri L.K. Rohatgi in signing the plaint. If, for any reason whatsoever, the courts below were still unable to come to this conclusion, then either of the appellate courts ought to have exercised their jurisdiction under Order 41 Rule 27(1)(b) of the Code of Civil Procedure and should have directed a proper power of attorney to be produced or they could have ordered Shri L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Shri L.K. Rohatgi to sign the plaint. Such a power should be exercised by a court in order to ensure that injustice is not done by rejection of a genuine claim."*

25. From the above quoted paragraphs it would be seen that the Supreme Court observed that Order VI Rule 14 of the Code mandates that a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order XXIX Rule 1 of the Code, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. It has observed that reading Order 6 Rule 14 together with Order XXIX Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed, a person referred to in Rule 1 of Order XXIX can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the

corporation. The Supreme Court went to the extent of stating that if for any reason the power so authorized is not there, then also it should be the endeavour of the court including the appellate court to direct to produce a proper power of attorney or any document to prove ratification of the authority to sign the plaint. The reason behind the said observation by the Supreme Court is that on account of procedural defect which does not go to the root of the matter, the same should not be permitted to defeat the just cause.

26. In the instant case as already stated herein above there is also no pleading to that effect that the plaintiff No.2 did not have the authority to file as well as sign and verify the plaint on behalf of the plaintiff Nos.1 & 3. Taking into account that the said issue does not go through the root of the matter and that the plaintiff No.2 being a Director who admittedly had signed the agreement of leave and licence and to whom the defendants have admitted in the written statement had approached to deposit the rent as stated in paragraph No.29.5 of the written statement, the plaintiff No.2 cannot be said that he did not have the authority on the basis of the fact that he was a Director of the plaintiff Nos.1 & 3 and he was also able to depose to the facts of the case. Consequently, this Court, therefore, rejects the said submission made on behalf of the petitioners to the effect that the plaintiff No.2 did not have the authority to file, sign and verify the pleadings on behalf of the plaintiff Nos.1 & 3.

27. The next contention is a question as regards defaulter. The First Appellate Court has come to a finding that the defendant was a defaulter in payment of rent. Such finding is a question of fact and can be interfered with when such finding of fact is based on no evidence or opposed to the totality of the evidence and contrary to the rational conclusion on which the state of evidence must be reasonably led.

28. Section 5 (1) (e) of the Act of 1972 stipulates that a decree for eviction can be passed where the tenant had not paid the rent lawfully due from him in respect to the houses within a fortnight of it falling due. Section 5 (4) is a deeming provision when a

tenant who had made the deposit in terms with said Section shall not be treated as a defaulter under Clause (e) of the proviso to sub-section (1) of Section 5 of the Act of 1972. Section 5 (4) of the Act of 1972, being relevant, is quoted herein below:

> *"5. Bar against passing and execution of decree and orders for ejections (4) Where the landlord refuses to accept the lawful rent offered by his tenant, the tenant may within 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."*

29. From a perusal of the said Section, it would be seen that exercise of the right by the tenant to deposit the rent in the court is subject to fulfillment of the condition that the landlord refuses to accept the lawful rent offered by the tenant. Therefore, unless there is the tendering of the lawful rent by tenant, Section 5 (4) does not have any application. Further to that, it would be seen that only upon the landlord refusing to accept the lawful rent offered by the tenant, the tenant has the option within a fortnight of it becoming due to deposit in the court the amount of such rent together with process fee 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 made thereafter be withdrawn by the landlord on application made by him to the court in that behalf. It is only upon the fulfillment of the said condition that a tenant shall not be treated as a defaulter under Section 5 (1) (e) of the Act of 1972.

30. In the instant case it would be seen that from perusal of the written statement which was filed on 18th November, 2006, there is no mention whatsoever that after refusal to accept the rent and the deposit to the said rent for the month of November, 2005, the defendants had approached the plaintiffs at any point of time for tendering the

rent before depositing the rent in the court. The rent deposit cases so exhibited, i.e. Misc. (NJ) Case No.297/06, Misc. (NJ) Case No.208/06 and Misc. (NJ) Case No.247/06 would clearly go to show that after the month of November, 2005, the defendants have not approached the plaintiffs to tender rent and as such the question of refusal to accept the rent which is a condition precedent for deposit of rent within a fortnight of its due in terms with Section 5 (4) of the Act of 1972 does not arise. A perusal of the said application, on the other hand, shows that there is no mention for which month the rent was tendered, when the rent was tendered and when it was refused. The Ext.2 and Ext.3 by its nomenclature shown as leave and licence agreement and the defendants during the cross-examination duly admitted the said documents. In the said documents, it was mentioned that the licence fee/rent has be paid on or before 7th day of each succeeding month. Section 5 (4) of the Act of 1972 categorically mentioned that the said deposit has to be made within a fortnight of its due. The First Appellate Court came to a finding that from the evidence on record, the Ext. C-1 to C-10 were filed some time in the 3rd week or the 4th week of each succeeding month. It would be seen that the defendants duly admitted that in respect to Ext.C-7, Ext.C-11 & Ext.C-12, the defendants witness duly admitted that he did not submit court fee and process fee and he did not take steps. This also clearly shows that the alleged deposit of rent was not in conformity with Section 5 (4) of the Act of 1972 and consequently the defendants be said to be not defaulters.

31. The defendants haing failed to prove from the said documents adduced that the defendants have deposited the rent in the court in accordance with Section 5 (4) of the Act of 1972, which the First Appellate Court duly had taken into account on the basis of the evidence on record, therefore, the findings arrived at by the First Appellate Court that the defendants were defaulters do not call for any interference.

32. Considering the above, this Court is of the opinion that this is not a fit case for exercise of jurisdiction under Section 115 of the Code.

33. Taking into consideration that the defendants have been carrying on their business since long and Mr. Mr. S. Chamaria, the learned counsel appearing for the petitioners/defendants submitted that if the defendants are immediately evicted, serious irretrievable injury would be caused as it would be very difficult to immediately find an alternative location for carrying out its business. Taking into consideration that the defendants have been carrying on their businesses in the suit premises for more than a decade, it would be just and reasonable to grant them six months of time to vacate the suit premises provided that they submit an undertaking before the Trial Court within **19.10.2022** to the effect that they shall vacate the suit premises within a period of six month from the date of the instant judgment i.e. on or before **31.03.2023**. Failure to submit the undertaking within the period, the plaintiffs shall be entitled to initiate execution application for evicting the defendants.

34. It is clarified that during this period of six months the defendants shall continue to make payment of amount of Rs. 6,228/- per month for Schedule-A premises and Rs.23,556/- for the Schedule-B premises in the form of compensation to the plaintiffs.

35. It is further observed that granting of extension of the period of six months subject to filing undertaking as aforesaid and the payment of total compensation of Rs.29,784/- (Rs. 6,228/- + Rs.23,556) per month during this period of six months shall not create any right or interest in favour of the defendants in respect to the suit premises. It is also clarified that during this period, the defendants shall remain in possession of the suit premises as the custodian of the plaintiffs and shall not do any act or acts which may effect the rights of the plaintiffs over the suit premises in any manner whatsoever.

36. The respondents herein shall be entitled to rent for the period of the eviction proceedings either through adjustment from the rent already deposited in the Court or by making an application before the Executing Court to decide on their entitlement of the rent during the pendency of the eviction proceedings and the Executing Court would permit the tenant/petitioner herein to controvert the allegations of non-payment of rent

during the pendency of the eviction proceedings and thereupon decide in accordance with law.

37. With the above observation, the instant petition stands dismissed.

38. Send back the LCR.

JUDGE

Comparing Assistant