GAHC010066192021

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

Case No. : CRP/35/2021

ROHIT HAZARIKA
S/O- LATE KAMAL AHMED MUSTAFA HAZARIKA, R/O- H/NO. 49,
SUHAGPUR, REHABARI, GUWAHATI- 781008, DIST.- KAMRUP(M), ASSAM

VERSUS

SMRITI REKHA DUTTA AND 2 ORS.
W/O- LATE NIRMAL DUTTA, R/O- H/NO. 49, SUHAGPUR, REHABARI,
GUWAHATI- 781008, DIST.- KAMRUP(M), ASSAM

2:NARMAN DUTTA
S/O- LATE NIRMAL DUTTA
R/O- H/NO. 49
SUHAGPUR
REHABARI
GUWAHATI- 781008
DIST.- KAMRUP(M)
ASSAM

3:NEWTON DUTTA
S/O- LATE NIRMAL DUTTA
R/O- H/NO. 49
SUHAGPUR
REHABARI
GUWAHATI- 781008
DIST.- KAMRUP(M)
ASSA

BEFORE

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the petitioner : Mr. A. Sattar,
Mr. Z. Mukit,
…. Advocates.

For the respondents : Mr. B.K. Sen.
… Advocate.

Date of hearing : 01.11.2021

Date of judgment : 10.11.2021

JUDGMENT AND ORDER (CAV)

Heard Mr. A. Sattar, learned counsel appearing for the petitioner and Mr. B.K. Sen, learned counsel appearing on behalf of the respondents.

2. This is an application under Section 115 of the Code of Civil Procedure challenging the judgment and decree dated 19.12.2020 passed by the Court of the Civil Judge No.1, Kamrup(M) at Guwahati in Title Appeal No.24/2018, whereby the judgment and decree dated 30.01.2018 passed in Title Suit No.332/2012 was confirmed.

3. Before entering into the facts of the case, it would be relevant to note that the petitioner has invoked the revisional jurisdiction under Section 115 of the Code of Civil Procedure. It is no longer *res-integra* that the revisional jurisdiction is limited in scope inasmuch as, the said jurisdiction cannot be exercised to correct errors of facts however gross or even errors of law unless the said error have relation to the jurisdiction of the Court to try the dispute itself. A plain reading of Clauses (a) and (b) of Section 115 is in reference to

exercise of jurisdiction by the Court not vested in the Court by law or has failed to exercise jurisdiction so vested in the Court. Clause (c) is in relation to exercise of jurisdiction illegally or with material irregularity. Therefore, under Section 115 of the Code of Civil Procedure a jurisdictional question may arise not only when a Court acts wholly without jurisdiction but also in a case where jurisdictional errors are committed while exercising jurisdiction. There may be various facets of jurisdictional errors for example the finding arrived at is perverse, based on no evidence or misreading of the evidence or such finding has been arrived at by ignoring or overlooking the material evidence or such finding so grossly erroneous that if allowed to stand will occasion in miscarriage of justice. This limited scope is so permitted in view of the fact that the finding of fact recorded by the Court below, if 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 result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. However, as held by the Constitution Bench of the Supreme Court in the Case of *Hindustan Petroleum Corporation Limited vs. Dilbahar Singh,* reported in *(2014) 9 SCC 78*, this Court in order to satisfy itself as regards the regularity, correctness, legality or propriety of the impugned decision or the order cannot exercise its power as an Appellate Court to re-appreciate or re-assesse the evidence to a different finding of fact. This Court in exercise of its revisional jurisdiction is not and cannot be equated with the power of re-consideration of all questions of fact as a Court of First Appeal. In the backdrop of the above proposition the facts material for the adjudication of the disputes involved in the instant proceedings are taken up for consideration.

4. The respondents herein as plaintiffs had let out the suit premises which have been described in Schedule-2 to the plaint to the defendant (the petitioner herein) at a monthly rent of Rs.5,000/- only payable by the defendant to the plaintiffs within the 5th day of every English calendar month for a period of 11 months by executing a tenancy agreement dated 25.10.2007. After the expiry of the said tenancy agreement dated 25.10.2007 another tenancy agreement dated 01.11.2008 was executed by and between the plaintiff no.1 and the defendant. It is the case of the plaintiffs that after the expiry of the tenancy agreement

dated 01.11.2008, the plaintiff no.1 requested the defendant to vacate the suit premises as the suit premises was required bonafidely by the plaintiffs for their own use and occupation. But the defendant did not vacate the suit premises on one pretext or the other. However, the defendant had assured the plaintiffs that he would vacate the suit premises on or before 31.12.2011 accordingly another tenancy agreement dated 12.09.2011 was executed in between the plaintiff no.1 and the defendant wherein it was specified that the defendant would vacate the suit premises on or before 31.12.2011. In spite of the agreement dated 12.09.2011, the defendant did not vacate the suit premises. Situated thus, a Pleader's Notice was issued requesting the defendant to vacate the suit premises and the defendant in spite of receipt of the same did not vacate. It is also the case of the plaintiffs in the suit that the defendant paid monthly rent uptil November, 2011 and thereafter till the date of filing of the suit, the defendant failed to pay the rent and as such the defendant is a defaulter in payment of the rent for the period from December, 2011 till the date of filing of the suit.

5. The defendant filed his written statement. In his written statement it has been alleged that at the time of entering into the tenancy agreement dated 25.10.2007, the defendant paid an amount of Rs.20,000/- as advance. Subsequent thereto when the defendant again entered into the tenancy agreement dated 01.11.2008 the defendant paid another amount of Rs.14,000/- in cash and it is also the case of the defendant that an amount of Rs.500/- per month was required to be adjusted was not adjusted. The defendant challenged the agreement dated 12.09.2011 as false, fabricated and manufactured document by alleging therein that the signatures appearing in the agreement dated 12.09.2011 was forged and manipulated. As regards the allegation of non-payment of rent since December, 2011 till the date of filing of the suit as made in paragraph 8 of the plaint, the defendant replied to the said statements and allegations in paragraph 12 of the written statement, stating *inter alia* that the defendant had paid the rent for the month of December, 2011 to the plaintiff no.1 and as the plaintiffs refused to accept the rent for the month of January, 2012 the same upon being tendered and offered by the defendant, the defendant had deposited the monthly rent for the month of January, 2012 in the Court as per the law and the defendant have been paying regular monthly rent to the plaintiffs without any default. As regards the question of

bonafide requirement, it has been denied by the defendant stating *inter alia* that the plaintiffs are having permanent dwelling houses at Udalbakra, Galganesh, Guwahati which is sufficient enough to accommodate all family members of the plaintiffs. It was also averred that the suit premises was only meant for letting out to the tenants on monthly rental basis and the plaintiffs have sufficient space for accommodation in the first floor of the said RCC building, which is lying vacant for last several years. Upon the pleadings as many as 5 (five) Issues were framed and for the sake of convenience the said five Issues are quoted hereinbelow :

"ISSUES

1. Whether there is cause of action for the suit?
2. Whether the defendant is a defaulter in payment of rent?
3. Whether the tenanted premises is bonafidely required by the plaintiff?
4. Whether the plaintiff is entitled to the decree as prayed for?
5. To what other relief/reliefs the plaintiff is entitled to?"

6. The plaintiffs adduced evidence of 4 (four) witnesses and exhibited as many 3 (three) documents whereas the defendant adduced evidence of 2 (two) witnesses and exhibited various documents.

7. The Trial Court vide judgment and decree dated 30.01.2018 decreed the suit in favour of the plaintiffs holding *inter alia* that the defendant is a defaulter in payment of rent on the ground that the defendant being completely silent as regards the issuance of notice to the plaintiffs after such alleged deposit, the defendant had failed to comply with the provisions of Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 (for short the Act) and consequently the defendant is a defaulter in payment of rent. As regards the issue pertaining to bonafide requirement of the plaintiffs the same was also held in favour of the plaintiffs holding *inter alia* that the plaintiffs were able to establish their bonafide requirement over their suit premises. Accordingly while decreeing the suit in favour of the plaintiffs the defendant was granted time to handover the suit premises within 2 (two) months from the date of the decree and also that the plaintiffs were entitled to arrear rent @ Rs.5,000/- per

month from January, 2012 till the eviction of the defendant.

8. Being aggrieved the petitioner herein as appellant preferred an appeal before the Court of the Civil Judge No.1, Kamrup(M) at Guwahati, which was registered and numbered as Title Appeal No.24/2008. Upon admission of the appeal the Trial Court framed a point of determination to the effect as to whether the decision on Issue No.2 and 3 were erroneous on facts and law and liable to be modified and or set aside. In this regard, I have also perused the Memo of Appeal and the grounds of objections raised therein. The Appellate Court vide the impugned judgment and decree dated 19.12.2020 dismissed the appeal thereby confirming to the findings of the Trial Court passed in the judgment and decree dated 30.01.2018 in Title Suit No.332/2012. Being aggrieved by the said judgment and decree by the First Appellate Court dated 19.12.2020, the petitioner is before this Court by invoking the revisional jurisdiction of this Court under Section 115 of the Code of Civil Procedure.

9. I have heard the learned counsel for the petitioner Mr. A. Sattar, who submits that both the Courts below have erred in law as well as on facts in coming to a finding as regards Issue No.2 and 3. He has specifically drawn my attention to the tenancy agreement dated 24.10.2007 (Exhibit-A) to show that an amount of Rs.20,000/- was paid as security which will be adjusted on monthly basis @ Rs.500/- per month. He has also taken me to Exhibit-1 i.e. the agreement dated 01.11.2008 wherein it was mentioned that Rs.14,000/- has been received by the plaintiffs as advance as interest free security deposit which would be refundable at the time of vacating the tenanted premises. On the basis of these Exhibit-A and Exhibit-1, Mr. Sattar, the learned counsel for the petitioner tried to impress upon this Court with his submission that both the Courts below did not take into consideration that an amount of Rs.34,000/- was lying as advance and as such taking into consideration that in the suit the cause of action as alleged was that the defendant failed to make payment of rent from the period from December, 2011 to June, 2012, the findings of the Courts below of not holding that the said amount was lying with the respondents as advance and adjustable, the question of the petitioner being held as a defaulter did not arise. As regards findings of bonafide requirement, Mr. Sattar sought to canvass before this Court that it is the burden of

the plaintiffs to plead and prove that the plaintiffs had a bonafide requirement for the suit premises and he further submits that both the Courts below completely erred in deciding the said issue against the defendant/petitioner as per the well settled principles of law.

10. Mr. B.K. Sen, learned counsel for the respondents submits that the issue of adjustment which has been sought to be raised in the Appellate Forum for the first time is totally contrary to the evidence on record as well as the pleadings and as such the Trial Court as well as the Appellate Court were justified in not taking into consideration of the said plea. He further submits that the language employed in Exhibit-A and in Exhibit-1 are completely different inasmuch as, in Exhibit-A the said amount of Rs.20,000/- was to be adjusted on monthly basis @ Rs.500/- per month whereas the Exhibit-1 the language is that the amount of Rs.14,000/- has been paid as a security which shall be refunded at the time of vacating the suit premises. He further submits that as per the well-established principle of law, it is the landlord who is the best judge of his requirement of the suit premises and it is not for a tenant to dictate the landlord to choose this premises or that premises for satisfying his requirement.

11. I have heard the learned counsels at length and have perused the materials on record. The question as to whether there was default in payment of the rent and as to whether the plaintiffs had bonafide requirement in respect to the suit premises are essentially questions of facts and the exercise of the revisional jurisdiction can only be done, as already stated hereinabove, within the limited scope permitted under law. I have perused the written statement and it is the specific plea as already mentioned hereinabove of the defendant/petitioner that he paid the rent for the month of December, 2011 to the plaintiff no.1 and thereafter on refusal to accept rent for the month of January, 2012 the defendant/petitioner deposited the rent before the Rent Deposit Court. There is no mention in the pleadings that the amount paid as advance could very well be adjusted against the rent for the period from December, 2011 to June, 2012. There is also no mention in the pleadings of the defendant/petitioner that he had deposited the rent before the Rent Deposit Court after tendering the rent on each and every occasion. It is well established that in order that

the tenant can avail of the protection under Section 5(1) of the Act, it is the requirement of law that the tenant has to comply with the conditions mentioned in *Section 5(4)* of the said Act. There is also no explanation as to why the petitioner/defendant did not tender the rent for the months of February 2012 to June 2012 before depositing the same in the Court. I have also perused both the Exhibit-A as well as Exhibit-1. While Exhibit-A stipulates that the amount of Rs.20,000/- could be adjusted on monthly basis @ Rs.500/- per month, Exhibit-1 stipulates that the amount of Rs.14,000/- shall be the security deposit which is refundable at the time of vacating the tenanted premises. There is a difference between advance being taken while letting out a premises on rent from security deposit being taken. While an advance can be adjusted, a security deposit cannot. On a specific query being made to the counsel for the petitioner as to whether the defendant had submitted any evidence that the amount of Rs.500/- was not adjusted against the amount of Rs.20,000/-, he has fairly submitted that there has been no evidence laid in that regard. In this regard, I have also perused the evidence on affidavit of the defendant and more particularly paragraph 4 wherein he has admitted that the amount of Rs.14,000/- have been adjusted due to efflux of time but there was an outstanding amount of Rs.14,500/- which remained as balance out of Rs.20,000/- paid on 21.04.2007. The said paragraph 4 is quoted hereinbelow :

> "4. That I say that on the day of execution of the tenancy agreement for the second time on 1.11.2008, I paid an amount of Rs.14,000/- in cash to the plaintiff and the same is acknowledged by her. The earlier advance amount of Rs.20,000/- was not totally adjusted by the plaintiffs in the monthly rent @ Rs.500/- p.m. and remains as outstanding unadjusted advance. It is incorrect to say that the advance amounts so paid by the defendant has already been adjusted. In this context it may be relevant to say that the advance amount of Rs.14,000/- taken by the plaintiff vide agreement dated 1.11.2008 might have been adjusted due to the efflux of time but the real problem started, when I demanded for adjustment of the outstanding advance amount to the tune of Rs.14,500/- which remained as balance out of Rs.20,000/- paid on 24.10.2007."

12. From the pleadings of the defendant, the Exhibit-1 as well as Exhibit-A and paragraph 4 of the evidence on affidavit of the defendant would clearly go to show that the question of adjustment does not arise and as such the Appellate Court was justified in negating the said

contention of the said petitioner. As regards the question of payment of rent by depositing of the same before the Rent Deposit Court was a valid deposit, I have perused the findings arrived at by both the Courts below and I am of the opinion that the findings of facts arrived at by the Courts below is on the basis of the well-established principles of law as well as after taking into consideration the evidence on record for which the said findings do not call for any interference in the facts and circumstances of the case more so when there is no pleading that the defendant had on each and every occasion when he deposited the rent tendered the rent to the plaintiffs and the plaintiffs had refused to do so. The evidence on record only shows that certain rent deposit challans have been exhibited and it is a well-established principle of law that mere marking of a document as exhibit does not dispense with proof of it. In that view of the matter the finding as regards that the defendant is a defaulter in payment rent is not required to be interfered with.

13. Now the second question which arises as to whether the findings of the Courts below as regards the requirement of the suit premises by the plaintiffs being bonafide or not is also an essential question of fact. The petitioner has not been able to place anything before me to show that the findings arrived at by the Courts below to the effect that the plaintiffs bonafidely requires the suit premises suffers from perversity or mis leading of evidence or is grossly erroneous thereby occasioning the failure of justice. Consequently the findings in respect to the Issue No.3 by the Courts below is not interfered with.

14. The learned counsel for the petitioner Mr. A. Sattar during the course of the argument had submitted upon instructions that in case this Court is not inclined to interfere with the judgment and decree impugned in the proceedings, the petitioner would suffer irreparably if he is to vacate the suit premises immediately and had requested this Court that a period of 6 (six) months may be given to the petitioner to vacate the suit premises so that he can make alternative arrangements. I have also heard the learned counsel for the respondents who submits that he would have no objection if the petitioner is granted six months' time provided he vacates the suit premises without filing an execution application seeking a Writ for delivery of possession. Mr. Sattar had also submitted that as in Exhibit-1 it has been mentioned that

the amount of Rs.14,000/- would be refunded at the time of vacating the suit premises, the respondents may be directed to refund the amount of Rs.14,000/- at the time of handing over possession of the suit premises. To the said submission, the learned counsel for the respondents had submitted that as per the decree of the Courts below the petitioner had been directed to make payment of the rent from January, 2012 till the date of eviction and further a cost of Rs.10,042/- have already been imposed upon the petitioner by the Courts below. I have given an anxious consideration to the said submissions made by the counsel for the petitioner as well as the counsel for the respondents and it would be in the interest of justice that six months' time may be granted to the petitioner from the date of the instant judgment i.e. 10.11.2021 and accordingly the said submission made by the counsel for the petitioner upon instruction be construed as an undertaking before this Court and the petitioner shall vacate the suit premises on or before 10.05.2022. During this time period the petitioner shall be liable to pay an amount of Rs.5,000/- per month as compensation. The question of refund of the amount of Rs.14,000/- does not arise taking into account the cost of the instant proceedings which I intend to impose including the costs imposed in the proceedings before the Courts below. It is further clarified that the possession of the petitioner during this period shall be that of custodian of the respondents in respect to the suit premises and the petitioner shall not do or cause to do anything during this period till handing over of possession to the respondents which might adversely impact and/or effect the rights of the respondents in respect to the suit premises. It is also clarified that the permission to remain in possession during this period of six months i.e. upto 10.05.2022 and the payment of Rs.5,000/- per month during this period as compensation shall not confer any right or interest upon the petitioner in respect to the suit premises.

It is further clarified that the respondents shall be at liberty to file appropriate proceedings before the Executing Court for recovery of the arrear rent as directed by the Court below w.e.f. January 2012 till today. It is also clarified that taking into consideration the undertaking given by the petitioner to vacate the suit premises within 6 (six) months for which this Court had permitted the petitioner to continue in possession till 10.05.2022 it shall be open to the respondents to initiate appropriate proceedings including invoking the contempt jurisdiction of this Court, if the petitioner fails to hand over the possession within

10.05.2022.

15. With the above observations, the instant petition stands dismissed with cost of Rs.4,000/-.

JUDGE

Comparing Assistant