



GAHC010076452021

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

Case No. : CRP/40/2021

PROFESSIONAL SALES REPRESENTATIVE UNION DULY REPRESENTED BY
1. SRI RANJAN SEN, PRESIDENT, AGED 58 YEARS, S/O LATE R.N. SEN,
P/R/A PALACE COMPOUND, AGARTALA, P.O.-AGARTALA, PIN-799001

2: 2. SRI UTPAL KUMAR ROY
SECRETARY
AGED 62 YEARS
S/O LATE SUSHIL KUMAR ROY
R/O MOJID ROAD
SIBNAGAR
AGARTALA
PIN-79900

VERSUS

BIBUPADA GUPTA AND 2 ORS
S/O LATE BISWAJIT GUPTA AND R/O SAHID HITESH BISWAS ROAD,
AMBICAPATTY, P.O. AND P.S.-SILCHAR, DIST-CACHAR, ASSAM

2:RUPAK GUPTA
S/O LATE BISWAJIT GUPTA AND R/O SAHID HITESH BISWAS ROAD
AMBICAPATTY
P.O. AND P.S.-SILCHAR
DIST-CACHAR
ASSAM

3:BISWADEEP DAS
S/O LATE BIDHU BHUSAN DAS
R/O KALIBARI ROAD
UDHARBOND
P.O. AND P.S.-UDHARBOND
DIST-CACHAR
ASSA



Advocate for the Petitioner : MR. D CHAKRABARTY

Advocate for the Respondent : MR GAURAV R DUTTA

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT

Date : 08.12.2021

Heard Mr. D Chakrabarty, learned counsel appearing for the petitioner. Also heard Mr. D Mazumder, learned senior counsel for the respondent.

2. This application under Section 115 of the CPC is filed challenging the judgment and decree dated 25.01.2021 passed by the Civil Judge No.1, Cachar at Silchar in Title Appeal No.14/2019 whereby the judgment and decree dated 15.11.2019 passed by the Munsiff No.1 Cachar at Silchar in Title Suit No.94/2016.

3. Before entering into the facts of the case, it would be relevant to note that the petitioners have 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-assess 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 reconsideration 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. Brief facts of the instant case is that the respondent Nos.1 and 2 herein had filed a suit for eviction of the defendants (the petitioners herein) from the suit premises and recovery of khas possession and for realisation of arrear rent of Rs.9,000/- being the arrear rent for the period of May 2016 to July 2016 and for permanent injunction. The plaintiffs in

the said suit alleged that the respondent Nos.1, 2 and 3 who are the officials of a Trade Union in the name & style of Progressive Sales Representatives Union had taken on rent the suit premises at a monthly rent of Rs.450/- from the father of the plaintiffs one Biswajit Gupta (since deceased) for the period of 3 years with effect from 01.01.1984 by way of a written agreement. Subsequent thereto, vide another agreement dated 09.06.1987 the period of the tenancy was extended for another period of three years with effect from 01.01.1987 to 31.12.1989 at a monthly rent of Rs.550/-. Thereafter from time to time the monthly rent was enhanced and the last enhancement was Rs.3,000/- per month. At this stage it is also relevant herein to take note of that on 26.09.1988 the plaintiffs' father had issued a notice requesting the defendants to vacate the tenanted premises by 31.12.1988 stating the reason that the plaintiff's father was in requirement of the said suit premises. However, the defendants did not vacate. The father of the plaintiff expired and thereupon in terms with the probate granted by the District Judge, Cachar in connection with Misc Probate Case No.84/2000, the plaintiffs became the owners of the suit premises. Thereafter the plaintiffs had on various occasions requested the defendants to vacate the suit premises but they did not do so and directly deposited the rent in the bank account of plaintiff No.1 and 2 as per their desire without the consent of the plaintiff. On 10.04.2013 a notice was issued to the General Secretary of the defendant herein requesting to vacate the tenanted premises by 15.06.2013 as the said tenanted premises was bona fide required by the plaintiffs. No heed was paid to the said notice dated 10.12.2013. It was also alleged in the plaint that for many years the President or the Secretary of the defendant No.1 never visited the tenanted premises nor ever stayed in the tenanted premises but the defendant No.3 who

happened to be the local unit secretary of the defendant herein was using the suit premises for illegal purposes thereby allowing certain anti social elements to use the suit premises for the purpose of consuming alcohol in the said suit premises which not only created disturbance to the family members of the plaintiff No.2 but also the neighbouring people and this alleged nuisance being created by the defendants was an embarrassment to the plaintiffs in front of its neighbours but also the wife of the plaintiff No.2 who was staying at her residence adjacent to the suit premises alone as the plaintiff No.2 at that time was serving as Chief Executive Officer, Zila Parishad, Hailakandi.

5. Further to that it was also averred that the plaintiff No.1 had also retired from the Indian Police Service and as there was no sufficient accommodation for him to stay in the paternal property , he bonafidely required the suit premises as whenever he had to come to Silchar he had to either stay in a hotel or in the Government Guest house. The plaintiffs have also averred in the plaint that the suit premise was about 60 years old and was in dilapidated condition for which it required urgent reconstruction by demolishing the same is another reason why the plaintiffs claim to have no bonafide requirement of the suit premises.

6. Apart from the above it has also been alleged in the plaint that from the month of May 2016 onwards the defendants have not made payment of the rent till the date of filing of the suit which was done in the month of July 2016 and as such the Defendants were defaulters in the payment of rent.

7. The defendants filed joint written statement denying the statements and allegations made in the plaint. As regards the default in making payment it was specifically averred that the payment of the rent for the

month of May was made to the bank account of plaintiff No.1 and for the month of June was made to the bank account of plaintiff No.2. As regards the allegation of bonafide requirement made by the plaintiffs, it was alleged that the plaintiff No.1 had his own house at Guwahati and is staying there with his family. In paragraph No.10 of the said written statement filed by the defendants, it was also specifically stated that the members of the defendant union used the rented premises for their stay for one or two days, alternatively, in the course of their service only and nobody stays there permanently. As regards the allegation of nuisance the same was denied.

8. On the basis of the said pleadings as many as 7 issues were framed which for the sake of convenience is quoted herein below:

- I. Whether there is cause of action for the suit?*
- II. Whether the suit is maintainable in its present form?*
- III. Whether the suit is bad for non-joinder of necessary parties?*
- IV. Whether the defendants are defaulters in payment of rent in respect of the rented premises mentioned in schedule of the plaint and are liable to be evicted therefrom?*
- V. Whether the suit premise is bonafide required by the plaintiffs?*
- VI. Whether the plaintiffs are entitled to the decree as prayed for?*
- VII. To what other relief/reliefs the parties are entitled?*

9. The plaintiff examined two witnesses and exhibited as many as 8 documents. The defendant however did not adduce any evidence. The

issue No.4 which was in relation to defaulter in payment of rent, the Trial Court after taking into consideration that as it was specifically alleged that from the month of May 2016 there was no payment of rent till the date of filing of the suit and the defendants who were the tenants were to discharge the burden as per law to show that there was no default in payment of rent and having failed to discharge the same as no evidence was led came to a finding that the defendant was a defaulter in payment of rent. As regards the issue No.5, the Trial Court on the basis of the plaintiff pleadings and evidence came to a finding that as the plaintiffs who were the landlords were the best judge of the requirement for residential or business purpose and the evidence of the Pw-1 made to the effect that the plaintiff did not have available accommodation sufficient for both the families and the plaintiff No.1 has to stay at Circuit House or Hotel whenever he has to come to Silchar and the further evidence of Pw-2 that the suit premises was in dilapidated condition and requires urgent reconstruction came to a finding that the plaintiffs have bona fide requirement in respect to the suit premises.

10. On the basis of the decision taken in issue Nos.4 and 5 the Trial Court held that the plaintiffs were entitled for a decree of eviction for ejectment of the defendants from the suit premises as well as for the recovery of arrear rents and permanent injunction vide a judgment and decree dated 15.11.2019.

11. Feeling aggrieved and dissatisfied the petitioners herein preferred an appeal before the Court of Civil Judge, Silchar which was registered and numbered as Title Appeal No.40/2019.

12. The First Appellate Court after framing the point of determination took up all the issues one by one. As regards the issue No.4 the First

Appellate Court after taking into account the evidence of the plaintiffs and the fact that the defendant have failed to adduce evidence to discharge the burden as regards the non payment of rent for the month of May 2016 to July 2016 and also taking into account that during the pendency of the suit the defendants failed to adduce evidence that they have been regularly making payment of the rent confirmed the findings of the trial Court to the effect that the defendants/appellants therein were defaulters in payment of rent. In respect to the issue No.5 which relates to bona fide requirement the First Appellate Court after taking into consideration the evidence on record of the plaintiff which could not be dislodged during the cross-examination in respect to the requirement of the plaintiffs of the suit premises confirmed the findings of the Trial Court insofar as the issue of bona fide requirement of the plaintiff was concerned. On the basis thereof the First Appellate Court passed the impugned judgment and decree dated 25.01.2021.

13. It is against the concurrent findings of fact arrived at by the Courts below as regards the issue of defaulter in payment of rent as well as also the bona fide requirement, the petitioners have approached this Court under section 115 of the CPC. As noted already herein above the revisional jurisdiction under section 115 of the CPC insofar as exercise of jurisdiction is limited it can only be done so if the findings arrived at are perverse or if the findings so arrived at are based on no evidence or if the findings are based on misreading of the evidence.

14. I have perused the impugned judgment and decree of the First Appellate court as well as also the Trial Court.

15. The law as regards the burden of proof insofar as the default in payment of rent is no longer res-integra, inasmuch as it is for the tenant

to prove that he is not a defaulter in payment of rent. There is a specific allegations made in the plaint to the effect that from the month of May 2016 till the date of filing of the suit there was no payment made towards rent. The defendants have stated in the written statement that for the month of May 2016 payment was made to the bank account of plaintiff No.1 and for the month of June 2016 payment was made to the bank account of plaintiff No.2. The defendants are silent as regards the month of July 2016 in their pleadings. But pleading is not proof for which it is the requirement of law that the defendants ought to have proved their statements made in the written statement by way of adducing evidence. As no evidence has been led in the instant case, I am of the opinion that the Court below was justified in holding that the defendants were defaulter in payment of rent.

16. The next question which arises as to whether the plaintiff had bona-fide requirement of the suit premises. I have looked into the pleadings as well as the judgments passed by the Court below. Although in the plaint, the plaintiffs have categorically mentioned why they have bona-fide requirement for the suit premises i.e. the parental property cannot accommodate both the families of plaintiff No.1 and plaintiff No.2. The plaintiff further stated in their plaint that the plaintiff No.1 who is a retired officer of the Indian Police Service had to stay at Guwahati and in spite of his wishes have not been able to come to his home town to reside in his later years of life and whenever the plaintiff No.1 comes to Silchar he has to seek accommodation either at the Circuit house or at the hotel. The plaintiffs also stated in their plaint that the suit premises is 60 years old and it urgently requires reconstruction. On the other hand, the defendants in their written statement states that the plaintiff No.1 stays at Guwahati and there is no specific denial to the averments made by the

plaintiffs as regards the bona-fide requirement. The defendants also have stated in their written statement that they use the suit premises only for a day or two alternatively in course of their service only and nobody stays there permanently. The plaintiffs have further substantiated their pleadings by way of evidence as have been duly noted and appreciated by both the Court below. The defendants have not adduced any evidence to that effect. Under such circumstances the findings arrived insofar as the issue No.5 by the Court below which relates to bonafide requirement of the plaintiff has been rightly decided.

17. In view of the above, the impugned judgment and decree passed by the First Appellate Court confirming the judgment and decree passed by the trial Court do not call for any interference by this Court.

18. The learned counsel for the petitioners Mr. Chakrabarty 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 petitioners would suffer irreparably if they are 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 they can make alternative arrangements.

19. On the other hand, the counsel for the respondents submits that the plaintiffs have already filed an Execution proceedings being registered and numbered as Title Execution Case No.20/2020 and the said proceedings have been kept at abeyance due to the pendency of the instant proceedings. He further submits that the petitioners have no use of the suit premises and the same has been used for the purpose of carrying out anti social activities thereby creating nuisance in the locality. He further submits that the petitioners have also not paid any rent to the respondents during the pendency of the suit till date. However, he admits that on

some occasions the petitioners have intermittently deposited rent in the court though not in accordance with Section 5(4) of the Assam Urban Rent Control Act, 1972.

20. It is well established law that the tenant is liable to pay the rent during the eviction proceedings. The law laid by the Division Bench of this Court in ***Sobha Biswas Vs. Ranjit Lodh*** reported in **(2006) 1 GLT 479** clearly spells out that the tenant is liable to pay the rent during the pendency of the execution proceedings. But if the default in payment of rent during the pendency of the suit proceedings is required to be taken as a ground for eviction it is required that the landlord bring the subsequent fact/event by way of a proper application before the Court and thereupon the tenant can controvert the said allegations of non payment of rent during the pendency of the eviction proceedings. If the same is not done by the landlord, by filing a proper application, the court deciding the *lis* cannot take cognizance of those subsequent events of non payment of rent for the purpose of evicting the tenant on the ground of default in payment of rent.

21. Be that as it may, the failure to file the proper application by the landlord as in the instant case during the pendency of the suit cannot absolve the tenant of his liability to pay rent during the pendency of the eviction proceedings. The landlord can file an execution application before the executing court claiming realisation of the rent for the period during the pendency of the eviction proceedings and the executing court shall put the tenant to notice about such application permitting the tenant to controvert the said allegations and thereupon decide the entitlement of the landlord to the rent during the pendency of the eviction proceedings. Subjecting the landlord to file another suit for realisation of the arrear rent

for the period of the eviction proceedings would result in failure of justice as well as nullify the proposition of law that the tenant is bound to pay rent during the pendency of the eviction proceedings.

22. In the backdrop of the above, I in exercise of Section 151 of CPC, 1908 and Article 227 of the Constitution of India do hereby direct as under:

- a) The petitioners are granted 6 (six) months time to vacate the suit premises provided the petitioners file an undertaking before the executing court in Title Execution Case No.20/2020 on or before 22.12.2021 that the petitioners would hand over the vacant possession of the suit premises on or before 07.06.2022.
- b) During this period of six months, the possession of the petitioners in respect to the suit premises shall be that of a custodian to pay an amount of Rs.3,000/- per month to the respondents herein in the form of compensation. During the said period the petitioners shall not do anything which would affect the rights of the respondents in respect to the suit premises and the extension so granted subject to the undertaking as aforesaid and the payment of Rs.3,000/- per month shall not create any rights or interact in favour of the petitioners herein in respect to the suit premises.
- c) The respondents who are the plaintiffs shall be entitled to file appropriate application in the Title Execution Case No.20/2020 for realisation of rent during the period when the execution proceedings were pending and the executing court shall put the petitioners herein to notice and permit the



petitioners to show cause (if they wish) as regards the realisation of the rent during the period of the eviction proceedings and thereupon decide the entitlement of the respondents herein to the amount of which it is entitled to.

23. With the above observations, the petition stands dismissed with costs of the instant proceedings.

JUDGE

Comparing Assistant