

Ram Karanji More Vs. Keshardev Jalan

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Court : Guwahati

Decided On : Jun-07-1996

Reported in : AIR1997Gau4

Judge : M. Sharma, J.

Acts : Assam Urban Areas Rent Control Act, 1972 - Sections 5(2) and 5(4)

Appeal No. : Civil Revn. No. 487 of 1995

Appellant : Ram Karanji More

Respondent : Keshardev Jalan

Advocate for Def. : G.N. Sahewalla, Adv.

Advocate for Pet/Ap. : B.K. Gorswami, V.K. Dewan and T. Goswami, Advs.

Disposition : Revision dismissed

Judgement :

1. This revision petition has been preferred by the Revision petitioner against the judgment and decree dated 31-10-95 passed by the Assistant District Judge, Dibrugarh In Title Appeal No. 39 of 1985 reversing the judgment and decree dated 31-7-85 and 3-8-85 respectively passed' by the Munsiff No. 1, Dibrugarh in Title Suit No. 111 of 1981.

2. The respondent as plaintiff filed the above mentioned Title Suit against the Revision Petitioner as defendant for ejectment from the suit premises on the ground of defaulter, bona fide requirement and unauthorised construction.

3. The plaintiff/respondent's case was that he is the owner of the suit premises described in the Schedule of the plaint. The suit premises originally belonged to M/s. Jugal Kishore Kanaiyalal at New Market, Dibrugarh. Being the Karta of the undivided Hindu family, the plaintiff became the owner of the property in question by a partial partition amongst the family members and became the absolute owner thereof. The defendant came into occupation of the premises as monthly tenant according to English Calendar month agreeing to pay rent at the end of each English month. Further agreement was that the defendant will not make any alteration, addition or any new construction; that he will vacate and deliver the khas possession of the premises to the plaintiff whenever called upon to do so; that the defendant will use the premises with care and caution and maintain it properly. The rent was subsequently raised to Rs. 121/- per month from 1-7-1972. The defendant became irregular and ultimately defaulted to pay rent since 1980 and made unauthorised constructions to the premises in spite of protest from the plaintiff. The plaintiff further also claimed the bona fide requirement of the suit premises for re-construction of the same and for his own use and occupation. Further prayer for khas possession of the suit premises, the plaintiff claimed for arrear rent with effect from September, 1980 to February, 1981 and compensation at the rate of Rs. 10/- per diem up to 7-12-1981.

4. In the plaint as well as in the evidence, the plaintiff claimed that the defendant was a defaulter from September, 1980 and not from earlier date.

5. The defendant's case is that he came to occupy the suit premises in the year 1950; that the monthly rent was never agreed to be payable regularly at the end of each month and that he was allowed to pay the rent at his convenience and not beyond five months at a time, since, he had no source of fixed income at that time; that the defendant on his own by and large paid the rent regularly though it was never the essence of the lease. Further defendant's stand is that he was allowed to make any addition, alteration or new construction in the suit premises as per his

convenience and requirement at his own cost and was allowed to occupy the same so long as he desired. The defendant further stated that the tenancy was continued as before by enhancing rent from time to time under the plaintiff as Karta of M/s. Jugal Kishore Kanaiyalal, an Hindu undivided family; that the defendant did not attorn to the plaintiff as the owner of the suit premises as the defendant has no notice of it. That the plaintiff was the absolute owner of the suit premises, but in the course of argument Mr. Goswami submits that there is no dispute regarding the relationship as landlord and tenant and this relationship has not been denied by the defendant, Therefore the relationship of landlord and tenant has been admitted and defendant's objection regarding the title of the plaintiff is not required to be examined. It is also admitted position that the landlord/plaintiff issued receipt for each payment of rent and accordingly the rent for the months of July 1979, August, 1979, September, 1979, October, 1979 and November 1979 were paid on 1-8-79, 1-9-79, 1-10-79, 1-11-79 and 1-12-79 respectively and receipts were given on the 3rd day of each month and also on 2nd November, 1979. But it is alleged that the receipt for the month of November, 1979 was never issued by the defendant in spite of demands;

6. The contention of the defendant in the courts below as well as in this court is that apprehending some foul play on the part of landlord/plaintiff to make the defendant a defaulter he deposited the rents in the court for the month of November and December, 1979 on 13-12-79 and that since then he has been regularly depositing the rent in the Court. He denied that he is the defaulter. The petitioner also denied plaintiffs bona fide requirement and also allegation of addition, alteration or new construction on the suit premises except sinking of a tube-well at his own cost.

7. The trial Court dismissed the suit on merit with cost and compensation of Rs. 2,000/- to be paid to the defendant/Revision petitioner. Against this the respondent, plain-tiff preferred an appeal before the Assistant District Judge, Dibrugarh. The learned lower appellate Court rejected the contentions of bona fide requirement and the unauthorised construction. But came to the finding that the tenant did not offer the rent to the landlord/ plaintiff before depositing the same in the Court. Against this judgment and decree of the lower appellate Court passed in

T.A. 39/ 85, the present Revision petitioner preferred Civil Revision No. 383/89. By order dated 4-11-92 the revisional Court set aside the impugned judgment and decree passed by the Assistant District Judge, Dibrugarh in Title Appeal No. 39 of 1985 and remanded the appeal to the first appellate Court to consider all the evidence on record afresh and then come to a finding whether the plea taken by the respondent-landlord was correct and or what was the actual mode of payment of rent. After such remand the first appellate Court allowed the appeal on the evidence on record coming to the finding that the mode of payment of rent was payable at the end of each English Calender month and that the mode of payment of rent and the date of which it became due was on the end of each English month and accordingly the rent was paid all along by the tenant and that there was no refusal by the landlord and no tender of the rent by the tenant to the landlord was made and the deposit of the rent in the Court by the tenant were no deposit in the eye of law.

8. As many as 244 rent receipts were exhibited. More than 90% of those rent receipts showed that the rent was paid at the end of each English calender month and that the tenant was defaulter in respect of the rent for the month of September, 1980 having been deposited in the Court on 22-10-80.

9. The point before this Court for consideration is whether in law of the first appellate Court's finding the revision petitioner/defendant is defaulter in terms of the tenancy.

10. Regarding the question of mode of payment as stated above the finding of the Court below is that the mode of payment was monthly payment payable at the end of each English Calender month. The admitted position is that there is no written agreement between the landlord and the tenant. The tenancy continued on the verbal agreement between the parties.

11. The position of law in this respect is that when there is no written contract the tenancy is always a monthly tenancy and the rent is due/payable at the end of the month. In that view of the matter the finding of the Court below has been on the basis of evidence on record and unassailable.

12. Now it is to be seen what was the mode of payment, as would be evident from records. The question of default has to be decided from the facts available before the Court. Even in a case of monthly payment, landlord may agree to accept the rent at the convenience of the tenant but this indulgence cannot change the nature of monthly tenancy even to accommodate the tenant in some given circumstances. The landlord may accept rent beyond the stipulated period of tenancy in certain occasion, but this cannot be a deviation from the payment of rent at the stipulated date. In that case for ascertaining the mode of payment and default therefore, Court requires to determine it according to conduct of the parties on the basis of the evidence and the circumstances appearing in evidence.

13. In this case the lower appellate Court to ascertain the mode of payment relied on the rent receipts issued to the defendant petitioner by the landlord regularly.

14. In the case of Kalikumar Sen v. Makhanlal Biswas, AIR 1969 Assam 66 (FB), this Court held that the tenant would normally try to pay the rent in accordance with contract, if any, or in the absence at the end of the month when the rent will be normally due. In the case of Hari Sankar Sahu, 1989 (2) GLJ 209 (DB) it was held that in a case of monthly tenancy rent is due on the expiry of the month or the next day following the end of month; that its payment is however subject to agreement as to when the landlord would take payment of the rent due.

15. As stated above from the nature of the tenancy, in this case the due date of payment of rent falls in the last date of the month of the English Calendar month.

16. The petitioner's case is that the monthly rent was never agreed upon to be payable regularly at the end of each month and he was allowed to pay the rent at his convenience, but not beyond the five months at a time, since he had no source of fixed income "at that time"; that the "defendant on his own by and large paid the rent regularly though it was not the essence of the agreement.

17. The first appellate Court rejected the plea of such mode of payment as on the materials before him no support could be found out. Some names i.e. Hanuman Box Supaniwala (since dead), Brinjraj Darakh were mentioned by the defendant/petitioner, but those were not examined as defence witnesses to prove

his case. The Court below, therefore relied on the rent receipts, to ascertain the mode of payment and the question of default. The evidence on record shows that the plaintiff (P. W. 1) received the rents for the period from 18-10-50 to 17-3-51 as per Ext. Ka (1), while the rent for 3 to 5 months received at a time as per Ext. Ka (27), Ka (29) and Ka (36) and also Ext. Ka (3) relates to 3 months rent at a time; this irregular payment was objected but the defendant did not pay heed to it. As many as 244 rent receipts were exhibited and marked as Ext. Ka (1) to Ext. Ka(224). These exhibits show that rents were sometimes paid for two months to five months at a time ununiformly on many occasions. This fact was admitted by the plaintiff (P. W. 1) that the rents from 1-9-56 to 31-1-57 were paid for a period of five months on 8-2-57 (Ext. Ka 38). Likewise rents for 4 months together were paid vide Ext. Ka (56) and Ext. Ka (58) and rent for 3 months together was paid vide Exts. Ka(14), Ka(27), Ka(31), Ka(59), Ka(66), Ka(179), Ka(201), Ka(203) and Ka(206).

18; Mr. Goswami learned senior counsel for the petitioner has submitted that, from this the logical conclusion would be that the mode of payment Of rent was not monthly payment but was payment by convenience.

19. In this case 244 rent receipts were submitted by the defendants and they are all exhibited which have established that out of these 244 rent receipts; as stated above," 12 exhibits only supported the case of the defendant, but the rest of the rent receipts (Exhibits) reveal that rents were paid monthly. This documentary evidence is also supported by the statement" of the defendant/ petitioner (Para 9) in his written statement (Ext. 17) which is quoted below :--

"9. That the allegations made in para 2 of the plaint are false and denied. The defendant came to occupy the suit premises in the year 1950. The monthly rent was never agreed to be payable regularly at the end of each month. The defendant was allowed to pay the rent at his convenience but not beyond five months at a time since he had no source of fixed income at that time but a big family. But the defendant on his own by and large paid the rent regularly though it was never the essence of the agreement of lease that the rent would be payable regularly at the end of each month. The defendant was also allowed to make any

addition, alteration or new construction in the suit premises as per his convenience and requirement but at his own cost and was allowed to occupy the same so long he desired."

20. Further his evidence on record is that since February 1952, rent was regularised according to English Calendar month and he had thereafter been paying the rent accordingly. From the statement in his written statement it is seen that on some occasions, the plaintiff gave indulgence to the defendant/ petitioner to pay rent at a time, considering his hardship and long association since 1950, but that indulgence cannot be taken as an agreement to pay at the tenant's convenience. In the case of *Bnawani Sankar v. Jugal Kishore*, AIR 1985 Gau 18, court held, on materials on record, that technically the rent would fall due on expiry of the last date of the month of tenancy. The question when the rent fall due would also depend upon other factors also. The landlord may agree, in consideration of some situation that tenant might pay sometime at his convenience. The exhibits show that in all such accumulated payment of rent it varied from 2 to 5 months. It is also seen that the petitioner deposited rent in Court on monthly basis. The admitted position on record that out of exhibitted rent receipts 90% related to the monthly payment of rent. Further as stated above the petitioner in his written statement contended that he was allowed to pay at his convenience, but not beyond five months at a time since he had no source of fixed income at that time (underline supplied) with a big family. It is also admitted that he on his own by and large paid the rent regularly, though it was never the essence of the agreement of lease.

21. The submission of Mr. Goswami, that Court was wrong to accept the statement in the written statement and the defendant's evidence on admission as to the mode of payment of rent by which onus was discharged on the tenant though, under the law, initial burden to prove the same always fall on the landlord, is not sustainable. The pleading (written statement) and the oral statement as evident on record, established the fact that in consideration of the financial hardship of the tenant petitioner, the landlord was lenient and indulgently accepted the rent beyond the due date of pay'ment of rent. The rent, as records revealed, have been paying regularly, except few exception. There was no written lease

agreement and in that case legal position of tenancy is monthly tenancy, and an agreement without any evidenciary support cannot charge the nature of the lease and on records, petitioner used to pay the rent on monthly basis i.e. mode of payment of rent was monthly payment and with lenient indulgence, in consideration of hardship, landlord allowed him to pay collectively some time. There is no written agreement nor any oral evidence to justify the plea of the petitioner, but the majority of the exhibits confirmed the claim of the plaintiff which establish that the essence of agreement was of monthly tenancy with monthly payment of rent at the end of the day of each month which the petitioner was doing till his default. The burden of the landlord to prove the mode of payment of rent has been proved by the landlord/respondent by adducing evidence.

22. In view of the reasons discussed above I am of the view that the landlord established the fact that, the tenancy was monthly tenancy and the mode of payment was payable and paid at the end of day of each month and the deviation was due to lenient indulgence of the landlord and was not the essence of agreement.

23. Further the finding regarding the question of default, the law is that the burden is on the landlord to prove on facts by adducing evidence that the tenant is a defaulter. It is the Court who required to be decided the question of default on appreciating the evidence on record.

24. In the plaint respondents/plaintiffs case is that the petitioner/defendant became irregular and ultimately defaulted to pay rent since September, 1980 and notice of ejectment was given on 22-1-81 under registered post with A/D requiring him to quit and vacate the premises on the expiry of 28-2-81. It is further contended in the plaint that cause of action for the suit arose from the date of default i.e. September, 1980 and each successive month.

25. From the above discussion, this Court holds that the mode of payment of rent was monthly payment of rent due at the end of the day of each succeeding month and being that, the position i.e. monthly tenancy is that the rent fall due on the expiry of the month on the next day following the end of the month. In that view of the matter, whether, in this case the petitioner tenant is a defaulter in payment of

monthly rent within the meaning of Section 5(2)(e) of the Assam Urban Areas Rent Control Act, 1972 which are as follows :--

"5(2)(e).....

(1) When the rent becomes due.

(2) Whether the tenant paid the rent lawfully due from him within a fortnight of its following due

(3) Whether the tenant on refusal of the landlord to accept the lawful rent offered by the tenant within a fortnight of its becoming due, deposited in Court as provided by Section 5(4) of the Act, 1992."

26. From Ext. Ka(I), Ka(38) and from the evidence of P. W. 1 it transpires that tenancy came into existence on 18-10-50 and rent for 5 months were paid at a time. The finding of the Courts below which is affirmed by this revisional Court that collective rent for 5 months was accepted due to the reasons of financial hardship which was accepted very leniently. This Court also affirmed the finding of the Court below that there was an arrangement between the parties regarding the mode of payment on few occasions, such as financial hardship. As stated above, plaintiff alleged that the defendant became irregular in payment of rent and ultimately defaulted on September, 1980. Defence stand was that rent for the month of July, August, September, October and November, 1979 were paid on the first day of the each succeeding month and as the receipt for the month of November, 1979 was not issued, apprehending foul play, deposited the rent for the month of November, 1979 in the Court on 13-12-79 together with the rent for the month of December, 1979 in advance and has been regularly depositing the rent in the Court. In the written statement as many as nine Misc. (Nj) Cases were mentioned in out of which Misc. (Nj) case No. 300/80 relates to the deposit of rent in the Court from September, 1980 to December, 1980. The Court below on examination of the document on record came to the finding that, the petitioner never paid or tendered rent for the month of September, 1980 to the plaintiff and nowhere on record refusal by the landlord was proved. The fact on record that (Misc. case (Nj) 300/80) the defendant was paying rent to the plaintiff but since 3/4

months plaintiff issued rent receipts therefor much hesitantly, sometime after a month from the date of collection of due rent; that apprehending that he (defendant) might be made defaulter and when the rent receipt for the month of November, 1979 was not issued, he deposited the rent for the month also, though he already paid the rent for the month of November, 1979 and started paying rent by depositing regularly on monthly basis.

27. From the above discussion whether the petitioner can be held as a defaulter? From the conduct of the petitioner/defendant it is seen that he did not pay rent, neither in November, 1979 nor in subsequent months, as no scope has been given to the landlord to refuse the same. Admittedly petitioner deposited the rent apprehending foul play. Even if the payment on November, 1979 is believed, it is seen that the rent for that month was accepted. Except the statement of the petitioner/defendant, there is no evidence on record to support that the defendant offered the rent for the month of November, 1979. Under the Rent Control Act, the tenant cannot run to the Court to deposit the rent only on the ground of 'apprehension' without any offer to pay the rent and without proving each subsequent refusal to accept, by the plaintiff. There is no material on record to support that defendant offered the due rent and plaintiff refused to accept the same, thereby enabling him to go to the Court and deposit the rent. In the backdrop of the facts and circumstances of the case, as revealed on the materials on record, it can be held that the requirement of the mandatory provisions of Section 5(4) of the Act have been complied with. The relationship of landlord and tenant has not been disputed as submitted by Mr. Goswami, learned Senior Counsel for the petitioner. Therefore when the fact of offer is not proved the question of refusal does not arise. The requirement of Section 5(4) relating to refusal of rent was not proved by the petitioner tenant.

28. Petitioner/defendant also could not prove that he paid the rent for the month of September, 1980 and that the same was refused. Further petitioner also failed to prove that, even after accepting the rent receipt was not issued. In that view of the matter the deposit made for September, 1980 is not valid on the reason given above and consequently petitioner is a defaulter for non-compliance of the provisions under Section 5(4) of the Act.

29. I find no infirmity or illegality in the findings of the first appellate Court on all the issues including the issue of mode of payment which have been arrived at after elaborately appreciating the evidence on record. In that view of the matter I find no materials to interfere with the findings of fact on mode of payment of rent and the issue of default.

30. In the result the Revision petition is dismissed. Petitioner is directed to pay Rs. 1000/- (one thousand) to the respondent as costs.

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