

IN THE HIGH COURT OF SIKKIM, GANGTOK

R.F.A. No.1/2003.

In the matter of an appeal under section 96 read with Order XLI of the Code of Civil Procedure.

Jas Bahadur Rai ... Appellant.

-versus-

Geeta Rai ... Respondent.

For the appellant : Shri A.K. Upadhyaya, Advocate.

For the respondent : Shri N. Rai, Advocate.

PRESENT: THE HON'BLE MR. JUSTICE R.K. PATRA, CHIEF JUSTICE.

DATE OF JUDGMENT: 03-11-2003

JUDGMENT

R.K. PATRA, CJ

The plaintiff is in appeal which is directed against the decree dated 8-11-2002 passed by the learned District Judge(S&W), Namchi in Civil Suit No.9/2002 refusing his prayer of eviction of the respondent.

2. The appellant's case is that he is the owner of a four storied r.c.c. building located at Namchi-Kitam Road, Namchi Bazar, Namchi. In September, 2000, he inducted the respondent as a tenant in respect of an apartment comprising two bed rooms, one kitchen with attached bath room-cum-toilet in the first floor of the building (herein after referred to as the suit premises) on a monthly rental of Rs.2000/-. Besides the house rent the respondent is liable to pay water charges of Rs.30/- per month and the electricity charges as per the consumption. At the time of induction, the respondent paid a sum of Rs.6000/-(Rupees six thousand) as advance and subsequently she paid Rs.10000/- (Rupees ten thousand) towards arrears of rent. From the month of May, 2001, she has not paid the rental although she is required to

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pay the same every month. Despite the appellant's repeated demand for payment, she did not comply. In view of the wilful default, the appellant issued a legal notice calling upon her to deliver vacant possession of the suit premises as well as payment of arrears but it yielded no results. Finding no other alternative he commenced the suit seeking for decree of eviction and recovery of possession of the suit premises and for arrears of rent.

The respondent in her written statement without disputing the essential averments in the plaint asserted that she never neglected to pay the monthly rent. She made several visits to the house of the appellant to tender the amount but he refused to accept the same on one plea or the other. The arrears have accumulated because of the refusal of the appellant to accept the rent.

3. On behalf of the appellant, he himself was examined as PW-1. In support of his case he examined another tenant as PW-2. The respondent in support of her case, besides examining herself as DW-1, examined two witnesses as DW-2 and DW-3. The learned District Judge on perusal of the evidence, recorded the following findings:-

- (i) Rent was not payable every month.
- (ii) As the appellant himself refused to accept the rent tendered by the respondent the latter cannot be regarded as a wilful defaulter and therefore the appellant is not entitled for decree of eviction and recovery of possession of the suit premises.
- (iii) The appellant is, however, entitled for decree for arrears of rent amounting to Rs.24,000/- (Rupees twenty four thousand) at the rate of Rs.2000/- (Rupees two thousand) from May, 2001 till filing of the suit.

4. The relationship between the appellant and the respondent as landlord and tenant is not in dispute. There is also no dispute that the respondent was inducted as tenant on monthly rental of Rs.2000/- (Rupees two thousand) in the month of September, 2000 and she has been continuing as such till date. Before she was

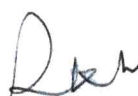
inducted, the respondent paid a sum of Rs.6000/- (Rupees six thousand) as advance and subsequently, another lump sum of Rs.10000/- (Rupees ten thousand) towards arrears of rent. The specific case of the appellant is that from May, 2001, the respondent failed to pay the rent. The respondent's case is that the appellant used to collect the rent as and when he needed the same and she had been paying as per his demand. She specifically denied to have made default in payment of rent. She stated in her evidence that she had gone to his house with house rent and when she tendered the same, the appellant refused to accept it. She went to the house of the appellant to pay the house rent second time but the appellant refused to meet her on the plea that he was ill. For the third time she went to his house with her brother, DW-2 to tender the rent but the appellant refused to meet them and his daughter-in-law told them that rent was to be paid to him personally. The appellant in his cross-examination admitted that he received a sum of Rs.6000/- (Rupees six thousand) from the respondent at the time when she was inducted as a tenant. Subsequently, she paid Rs.10000/- (Rupees ten thousand) to him. He in his evidence candidly stated that the respondent had come to his house to tender the rent but at that time he was ill. He further stated that it might be true that the respondent had come to his house along with some other person to deposit the rent to him but as he was ill, no female member was allowed to enter into his room. The relationship between the appellant and the respondent is one of contract. Although there is no document in writing evidencing tenancy, the lease of the suit premises being not for agricultural and manufacturing purposes, it has to be held to be a monthly one. The evidence on record also established that the respondent is a monthly tenant. Therefore, he is required to pay the rent every month. There is no evidence as to by what date of the succeeding month the monthly rental has to be paid.

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From the analysis of evidence made above it may be seen that the appellant had been receiving the rental on lump sum basis. The appellant in his evidence frankly admitted that the respondent went to him to offer the arrears but he declined to

accept it on some pretext. The conduct of the appellant and the practice followed by the parties indicate that the appellant is not very much insistent that the monthly rental should be paid by the respondent by a particular date of every month. For all these reasons, I am inclined to agree with the learned District Judge, that the respondent is not a defaulter, far less a willful defaulter.

5. With regard to mode of payment of the arrears, the learned District Judge is not justified in permitting the respondent to pay the same on monthly instalment basis. I hereby modify that part of the judgment and decree and direct the respondent to deposit the entire arrears from May, 2001 till date in this Court (subject to adjustment of amount paid, if any, in the meantime) within two months hence.

6. With the aforementioned modification of the decree, the appeal is dismissed. There shall be no order as to costs.


(R.K. Patra)
Chief Justice
03-11-2003.