

IN THE HIGH COURT OF SIKKIM, GANGTOK

R.F.A.No.2 of 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

1. Ashok Pradhan
2. Geeta Rai **Respondents.**

For the appellant : **Shri A. K. Upadyaya, Advocate.**

For the respondent No.1 : **None**

For the respondent No. 2 : **Shri N. Rai, Advocate.**

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

Date of Judgment : 3rd November, 2003.

JUDGMENT

R.K.PATRA, CJ.

The plaintiff has filed this appeal challenging the decree dated 22nd October, 2002 passed by the Learned District Judge (South and West) Namchi, in Civil Suit No.2 of 2002 refusing his prayer for eviction of the respondents.

2. Briefly stated, the case of the appellant is that he is the owner of a four-storied r.c.c. building situated at Namchi-Kitam Road, Namchi Bazar, Namchi. In September, 2000 he inducted the

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respondent No.1 as a tenant in respect of two rooms with attached bathroom in the first floor of the building (hereinafter referred to as the suit premises) on a monthly rental of Rs.2000/-. The respondent No.1 however let out the same to the respondent No.2 without the knowledge and consent of the appellant. The respondent No.2 is running business of restaurant under the name and style of 'Sip and Bite' in the suit premises. At the time of letting out the suit premises, the appellant received a sum of Rs.4000/- as advance from the respondent No.1 to be adjusted towards rent of the initial two months. The respondents, however, did not pay the monthly rent since November 2000 despite repeated requests made by the appellant for payment. As the default of payment of rent was willful, the appellant issued a legal notice calling upon the respondents to deliver vacant possession of the suit premises as well as payment of arrears, but there was no fruitful result. In the circumstances, the appellant commenced the suit seeking for decree of eviction and recovery of possession of the suit premises and for realization of arrears of rent.

3. The respondent No.1 remained exparte. Respondent No.2 filed written statement stating inter alia, that she is in fact the tenant of the suit premises. She claimed that she was not negligent in paying the monthly rent. She went to the residence of the appellant several times to offer the house rent, but the latter refused to accept the same.

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4. In order to prove his case, the plaintiff examined himself as PW-1. Respondent No.2 got herself examined as DW-1. Besides this, she got two witnesses examined in support of her case.

5. The learned District Judge on perusal of the evidence, recorded the following findings :-

- (1) Appellant has accepted respondent No.2 as his tenant.
- (2) As the appellant did not accept the rent offered by the respondent No.2, the latter cannot be regarded as a defaulter.
- (3) Admittedly, respondent No.2 is in arrears of house rent with effect from November 2000 till February 2002. The arrear comes to Rs.32,000/- and the respondent No.2 shall pay the same on instalment basis @ Rs.2000/- per month.

6. There is now no dispute at the bar that respondent No.2 is the tenant in respect of the suit premises. Therefore, we will now proceed to consider whether the above findings recorded by the Learned District Judge are correct. There is no dispute that the tenancy between the parties started from September 2000 on a monthly rent of Rs.2000/- (Rupees two thousand). The specific case of the appellant is that from November 2000, the respondent No.2 failed to pay the rent. The respondent No.2's case is that she went to the residence of the appellant on several occasions to pay the rent but he refused to accept the same. It may be noted that the appellant in his evidence denied to have refused acceptance of rent offered by the respondent No.2 but he indirectly admitted by saying that she might have come to his house to deposit the house

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rent. Against this vague type of evidence, respondent No.2 as DW-1 deposed that she went to tender rent to the appellant about four times, but he refused to accept it. She further stated that in one occasion she went with DW-2 and on another occasion with DW-2 and DW-3 to the house of the appellant to tender the house rent but he even did not meet them. This evidence of respondent No.2 practically remained unchallenged in the cross-examination. The above version of the respondent No.2 is fully corroborated by DWs No.2 and 3.

The relationship between the appellant and the respondent No.2 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. Therefore she is required to pay the rent every month. There is however no evidence as to by what date of the succeeding month the monthly rental has to be paid.

From the analysis of evidence made above, it is evident that the respondent No.2 went to the appellant to offer the house rent but he declined to accept it on some pretext. For all the reasons, I am inclined to agree with the learned District Judge, that the respondent is not a defaulter in the matter of payment of rent.

7. With regard to mode of payment of the arrears, the learned District Judge is not justified in permitting the respondent No.2 to pay the same on monthly installment basis. I hereby modify that part of the judgment and decree and direct the respondent No.2 to

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deposit the entire arrears of Rs.32,000/- (Rupees thirty two thousand) from November 2000 till February 2002 in this Court (subject to adjustment of amount paid, if any, in the meantime) within two months hence.

8. 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

**HIGH COURT OF SIKIM
GANGTOK**

**DECREE IN APPEAL
(Under ORDER 41 Rule 35 of C.P.C.)**

The Regular First Appeal No. 2 of 2003 against the Judgment and decree dated 22nd October, 2002 of the Court of District Judge, (South & West) Namchi in Civil Suit No. 2 of 2002.

Jas Bahadur Rai,
Son of late D.M. Rai,
R.O. Tharpu Busty,
Post Office & Police Station Namchi,
South District, Sikkim

..... Appellant.

Versus

1. Ashok Pradhan,
R.O. Namchi Bazar,
Post Office and Police Station Namchi,
South Sikkim.

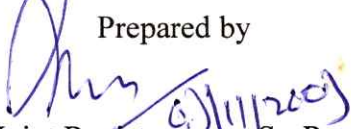
2. Smt. Geeta Rai,
Proprietor of 'Sip & Bite' Restaurant,
situated at Namchi-Kitam Road,
Post Office and Police Station Namchi,
South Sikkim.

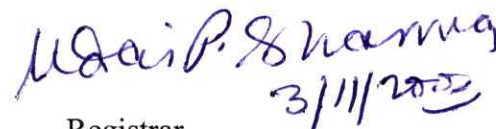
..... Respondents

This appeal coming up for hearing on 22nd day of September, 2003 before Hon'ble Justice R.K. Patra, Chief Justice of this Court in presence of Shri A.K. Upadhyaya, Advocate for the appellant, Shri N.Rai, Advocate for the Respondent No. 2.

On hearing, the Hon'ble Court has directed that the respondent NO. 2 shall deposit the entire arrears of Rs. 32,000/- (Rupees thirty two thousand) from November 2000 till February 2002 in this court (subject to adjustment of the amount paid, if any, in the meantime) within two months hence. The appeal is dismissed without costs.

Given under my hand and seal of the Court on this the 3rd day of November, 2003 at Gangtok.

Prepared by

Joint Registrar-cum-Sr. Reader
High Court of Sikkim
Gangtok.


Registrar
High Court of Sikkim
Gangtok.