

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4383 OF 2017
(@ Special Leave Petition (C) No.26281/2015)

MANJUSREE CHAKRABORTY & ORS. ... APPELLANT(S)

VS.

M/S. M. AHMED BHUYAN & CO. & ANR. ... RESPONDENT(S)

O R D E R

1. Dr. Lalit Kumar Chakraborty filed a suit in the Court of Civil Judge (Junior Division), Dibrugarh, in the year 2000, seeking the eviction of the defendants therefrom. The trial court dismissed the above suit on 23.02.2005. The judgment rendered by the trial court, was assailed before the learned Civil Judge (Senior Division), Dibrugarh, by way of an appeal. The said appeal was allowed on 22.08.2008. The defendants in the suit assailed the judgment dated 22.08.2008, before the Gauhati High Court by preferring C.R.P.No.417/2008. The High Court accepted the above petition, on 19.05.2015. A challenge is now raised against the above order dated 19.05.2015, passed by the High Court, through the instant special leave petition.

2. Leave granted.

3. Even though eviction of the respondent-tenant herein, was sought on various grounds, we shall deal with the singular ground of non-payment of rent. The relevant statutory provision, which was relied upon by the learned counsel representing the appellant-landlord, was Section 5(1)(e) of the Assam Urban Areas Rent Control Act, 1972 (hereinafter referred to as the "1972 Act"). It is also relevant to mention, that reliance was also placed on Section 5(4) of the above Act. An extract of Section 5 of the 1972 Act, as is relevant for the adjudication of the present case, is reproduced below :

"5. (1) No order or decree for the recovery of possession of any house shall be made or executed by any Court so long as the tenant pays rent to the full extent allowable under this Act and performs the conditions of the tenancy :

Provided that nothing in this sub-section shall apply in a suit or proceedings for eviction of the tenant from the house:-

- (a)
- (b)
- (c)
- (d)

(e) Where the tenant has not paid the rent lawfully due from him in respect of the house within a fortnight of its falling due."

4. The claim of the appellant, is based on express pleadings in the suit. Accordingly, paragraphs 3, 4 & 6 of the suit, which are relevant for the question being

debated, are extracted hereunder :

"3. That on or about 30/40 years back, the plaintiff rented out a house premises, morefully described in the schedule herein below to M/s. M. Ahmed Bhiyan & Co. on monthly rent @Rs.90/- P.M. payable to him on the 1st week of each succeeding English Calender Month. Md. Abdul Hussain Bhuyan son of late Noor Md. Bhuyan is now the owner Cum Proprietor of M/s. M. Ahmed Bhuyan & Co. and for that, he used to pay the monthly House rent to the plaintiff in a very irregular way.

4. That Md. Abdul Hussain Bhuyan is very much irregular in making payment of monthly house rent to the plaintiff since long, and in the process, the defendants have become a heavy defaulter in making the payment of the monthly house rent of Rs.90/- per month since August, 1999, as such the defendants have no right to stay any further more in the house premises to the plaintiff, under reference, and thus, the defendants have become undesirable tenant of the plaintiff and for that, they are liable to be evicted from the house premises under reference. The said house premises is the subject matter of the suit, and as such, it is herein after called as Suit premises.

6. That on several occasions, the plaintiff requested the defendants to pay the arrear house rent to him, pending therefore since August, 1999 and also to vacate and deliver the peaceful vacant possession of the suit premises to him, as they have no right, title and interest over the same to stay any further more, but they without doing so, started residing therein unauthorisedly and illegally and that also without paying any rent whatsoever."

5. As against the afore-stated pleadings raised in the suit (by the appellant-landlord), the respondent-tenant in the written statement asserted as under :

"9. That the contents of para 3 of the plaint are also denied by the defendants.

It is specifically denied that on or about 30/40 years back the plaintiff rented out the suit premises to M/s M. Ahmed Bhuyan & Co., and that Md. Abdul Hussain Bhuyan is now the owner cum Proprietor of M/s M. Ahmed Bhuyan & Co.

10. That the contents of the para 4, 5 and 6 of the plaint are also denied by the defendants.

It is submitted that the defendant are not defaulter in respect of payment of monthly rent.

It is also specifically denied that the plaintiff need the suit premises for extension of his sons business.

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13. Thereafter taking the said land on lease said Smti Saudamini Devi raised a temporary structure thereon and rented out the same to Late M. Ahmed Bhuyan grand father of defendant No.2 in the year 1920 at a rent of Rs.5/- per Bengali Calendar month. The tenancy continued as such but some time in the year 1935 the old house of Smti Saudamini became dilapidated and fell down. The said land lady had no money to raise the building as such she allowed said M. Ahmed Bhuyan to raise a shop - house with his own money and materials measuring 20 ft. x 25 ft. and continue his business therefrom. The said land-lady also allowed said M. Ahmed Bhuyan raise to his residential house at the back side measuring 18 ft. x 32 ft. and also a kitchen measuring 11 ft. x 15 ft. with a laterine and bathroom. She assured M. Ahmed Bhuyan that in the event of his raising the said construction he will not be evictable therefrom subject to payment of the monthly rent for the land only. At the time of creation of the tenancy there was no stipulation as to the date of payment of the monthly rent. The same was payable as per the convenience of Late M. Ahmed Bhuyan, some time for two months, some time 4 months and or more.

There was no specific date within which the rent was payable."

It is the aforesaid pleadings alone, which would need our consideration, to determine the legal controversy emerging out of the claim raised on behalf of the appellant.

6. Needless to mention, that the undisputed factual position is, that the respondent-tenant did not tender any rent from August, 1999. The appellant-landlord made a demand for rent in August, 2000, first orally and thereafter through a legal demand notice, dated 12.8.2000. The factual position is, that the demand notice dated 12.8.2000, was served on the respondent-tenant, on 17.8.2000. The accepted factual position also is, that even though the tenants made a first personal tender to the appellant-landlord on 10.8.2000, the said tender was refused. A second personal tender was made on 15.8.2000, which was likewise declined. In the above circumstances, the respondent-tenant deposited all the arrears of rent due, before the trial court on 1.9.2000.

7. The clear position emerging from the pleadings of the rival parties was, that the rent was payable and became due at the end of the month. It is also the accepted position, that rent was never tendered by the respondent-tenant, from month to month. Rent was paid to the appellant-landlord, as and when demanded. It is not necessary for us to deal with the oral demands, allegedly made by the

appellant-landlord in the month of August, 2000 (which pertained to arrears with effect from August, 1999). The only relevant consideration in our considered view is, the issuance of the demand notice on 12.8.2000 (which was served on the respondent-tenant on 17.8.2000). Since arrears of rent were payable, with reference to at least the twelve preceding months, which obviously became due at the end of every such month, yet in view of the practice acknowledged between the parties, it has to be accepted, that the same would be due on such demand being raised by the appellant-landlord. The aforesaid demand, undoubtedly, must be accepted to have been raised through the demand notice dated 12.8.2000. And the said demand, must be deemed to have become known to the respondent-tenant on 17.8.2000 (the date when the notice was served).

8. In terms of the provisions of Section 5 of the 1972 Act (extracted hereinabove), we are satisfied to conclude, that the rent became due and payable, when the aforesaid demand notice, came to be served on the respondent-tenant. Insofar, as the above inference is concerned, we find nothing to the contrary depicted even in the written statement filed on behalf of the respondent-tenant. In response to the averments made on behalf of the landlord (in the suit preferred by him), it was acknowledged, that the tenancy was a monthly tenancy. In paragraph 13 of the written statement (extracted in the earlier part of this

order) it stands acknowledged, that the rent became due as per the Bengali Calendar, at the end of the month. In our considered view, it makes little difference, whether the rent became due at the end of the Bengali calendar month, or the English calendar month because from August 1999 to August 2000, rent became due at the end of each one of the 12 intervening months. And as per the demand notice, last of all when the demand notice was served (on 17.8.2000). In view of the clear depiction in Section 5(1)(e), wherein, from the date due, arrears of rent are to be tendered within a fortnight. That alone, will save a tenant from eviction on the ground of non-payment of past rent.

9. The question to be determined is, whether the respondent-tenant, factually tendered arrears of rent, from the date due. Having accepted the date of receipt of the demand notice, namely, 17.08.2000, as the date when the rent became due and payable, the same had to be tendered within a fortnight thereof. It is the case of the respondent-tenant, that the same was factually and actually tendered within a fortnight, contemplated under Section 5(1)(e), but the personal tender made by the respondent-tenant, was not accepted by the landlord. It is in the aforesaid circumstances, that the arrears of rent came to be deposited before the trial court on 1.9.2000.

10. The situation where rent tendered by the tenant is not accepted by the landlord, is governed by Section 5(4) of the 1972 Act. By virtue of the liberty available to a tenant under Section 5(4) of the 1972 Act, the period of deposit of arrears of rent, with the concerned Court is also a fortnight from the date when the rent had become due. Since we have already concluded hereinabove, that the rent had become due and payable on 17.8.2000, we are of the view, that the period of a fortnight to make a deposit of arrears of rent in a Court, would expire on 31.8.2000. The deposit made by the respondent-tenant on 1.9.2000 was, therefore, clearly beyond the period contemplated under Section 5(4) of the 1972 Act. It is therefore apparent, that the claim raised by the appellant-landlord for non-payment of arrears of rent was liable to be accepted, as the arrears were not deposited within the postulated time.

11. Despite our aforesaid conclusion, learned counsel for the respondent-tenant placed reliance on Section 5 of the Assam Non-Agricultural Urban Areas Tenancy Act, 1955 (hereinafter referred to as the "1955 Act"), to contend, that the respondent-tenant was a protected tenant, and was not liable to be evicted under the provisions of 1972 Act. Section 5 relied upon by the learned counsel is extracted hereunder :

"Section 5 - Protection from eviction

(1) Notwithstanding anything in any contract or in any law for the time being in force -

(a) where under the terms of a contract entered into between a landlord and his tenant whether before or after the commencement of this Act, a tenant is entitled to build, and has in pursuance of such terms actually built within the period of five years from the date of such contract, a permanent structure on the land of the tenancy for residential or business purposes, or where a tenant not being so entitled to build, has actually build any such structure on the land of the tenancy for any of the purposes aforesaid with the knowledge and acquiescence of the landlord, the tenant shall not be ejected by the landlord from the tenancy except on the ground of non-payment of rent:

["Provided that where the tenant having built a permanent structure within the period specified above and for any of the purposes mentioned therein, renews the tenancy on expiration of the original contract he shall always be deemed to have built such permanent structure within the period of five years from the date of the renewed Contract :

Provided further that a person having a right, title and interest over a permanent structure by whatever mode of acquisition he may have taken the tenancy from the landlord of the land wherein the said structure stand, shall not be ejected except on the ground of non-payment of rent"] (Added "proviso" in Section 5, by the Assam Act No.XVI of 1968 Sec.2 (with effect from 22-6-1968) (Published in the Assam Gazette (Extraordinary), dated 22nd June, 1968).

(b) where a tenant has effected improvements on the land of the tenancy under the terms whereof he is not entitled to effect such improvements, the tenant shall not be ejected by the landlord from the land of the tenancy unless compensation for reasonable improvements has been paid to the tenant.

(2) No tenant shall be ejected by his landlord from the land of the tenancy except in

execution of a decree for ejectment passed by a competent Civil Court.

(3) No decree for ejectment passed on the ground of non-payment of rent shall be executed within a period of thirty days from the date of the decree and if the tenant pays into the Court whose duty it is to execute the decree the entire amount payable under the decree within the aforesaid period, the Court shall record the decree as satisfied."

12. It is not possible for us to accept the contention, that the respondent-tenant was a protected tenant, with reference to a claim for ejectment on account of non-payment of rent. The instant conclusion of ours, is drawn from the second proviso to Section 5(1)(a) of the 1955 Act, which excludes the applicability thereof, when the same emerges on account of non-payment of rent. It is therefore, not possible for us to accept the submission canvassed at the hands of the learned counsel for the respondent-tenant based on Section 5 of the 1955 Act. We would have even otherwise not permitted the respondent to raise and canvass, any such claim as has been raised before us for the first time under the 1955 Act, for the simple reason, that it was never the case of the tenant, that he was a protected tenant. Since, the appellant had no opportunity to controvert the same, the plea cannot be permitted to be raised for the first time.

13. The instant appeal stands allowed in the above terms.

14. After the order was dictated, learned counsel for the respondent-tenant, sought some time to search for an alternative accommodation, and to vacate the premises. Learned counsel for the appellant-landlord has no objection to grant of some reasonable time to the respondent tenant. In view of the above, the respondent-tenant is directed to vacate the premises by handing over vacant possession thereof, to the appellant-landlord on or before 31.12.2017. Any infringement of the above direction, is liable to give rise to adverse consequences, as may emerge from such disobedience.

.....CJI.
[JAGDISH SINGH KHEHAR]

.....J.
[Dr. D.Y. CHANDRACHUD]

.....J.
[SANJAY KISHAN KAUL]

New Delhi;
22nd March, 2017.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).26281/2015

(Arising out of impugned final judgment and order dated 19/05/2015
in CRP No. 417/2008 passed by the High Court Of Gauhati)

MANJUSREE CHAKRABORTY & ORS.

Petitioner(s)

VERSUS

M/S. M. AHMED BHUYAN & CO. & ANR.

Respondent(s)

(With interim relief)

Date : 22/03/2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. Parthiv K. Goswami, Adv.
Ms. Diksha Rai, Adv.
Mr. Sagar Vaish, Adv.

For Respondent(s) Ms. Priya Hingorani, Adv.
Mr. Azim H. Laskar, Adv.
Mr. Sachin Das, Adv.
Mr. Chandra Bhushan Prasad, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application, if any, stands disposed of.

(Sarita Purohit)
Court Master

(Renuka Sadana)
Assistant Registrar

(Signed order is placed on the file)