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MANIK CHAND JAIN

v.

MD. AHIYA

(Civil Appeal No. 3421 of 2017)

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MARCH 06, 2017

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

C *Assam Urban Areas Rent Control Act, 1972: s.5(1)(e) – Eviction for non-payment of rent – Appellant was tenant in respect of Assam Type House and paying monthly rent of Rs.700 – Agreement entered into between the tenant and plaintiff-landlord that tenant shall pay Rs.1 lakh to plaintiff-landlord who proposed to construct a RCC building in place of Assam Type House – Monthly rent fixed was Rs.2400 – It was agreed that the advance of Rs.1 lakh would be adjusted from monthly rent @ 50% and tenant shall pay to*
D *landlord in cash, balance rent of 50% till adjustment of advance in full – Tenant was put in possession in April 1990 – However, tenant continued to pay rent @ Rs.700 p.m. and from April 1994 started depositing Rs.700 in court – Suit for eviction claiming arrears from August 1996 till August 1999 @ Rs.2400 p.m. – Prior to August*
E *1996, claim not made as it was time barred – Trial court held that tenant was defaulter – Appellate court upheld the said finding – Appellate court also took into consideration the total amount of Rs.1.82 lakhs that was paid by tenant and after adjusting the same in the rent to which plaintiff was entitled, it held that still the tenant was defaulter to the tune of Rs.7614 – Revision – High Court upheld*
F *the finding of the Appellate court – On appeal, held: In view of terms of the Agreement and as per findings recorded by the Appellate Court as well as High Court, the monthly rent from April, 1990 was Rs.2400/- – Taking into consideration Cl. 7 of the Agreement, which provided for adjustment of 50% of the rent towards advance and*
G *payment of rent @ Rs.1200/-, the tenant was liable to pay rent @ Rs.1200/- – The other part of Rs.1200/- was to be adjusted towards the advance made – Thus, lawful payment which plaintiff-landlord was entitled to receive was Rs.1200/- – Admittedly, the tenant paid only Rs.700/-, even after taking possession of shop in April, 1990 and deposited the same amount in the court from April, 1994 – The*
H *deposit made by the tenant in the court was not the deposit of the*

lawful rent and, therefore, no error was committed by the courts below in holding the defendant as defaulter – No interference in exercise of jurisdiction u/Art.136 called for – Rent control and eviction.

Dismissing the appeal, the Court

HELD: Section 5 of the 1972 Act, contains a heading “Bar against passing and execution of decree and order for ejection”. The provision of Section 5(1)(e) clearly indicates that where the tenant has not paid the rent lawfully due from him in respect of the house within a fortnight of its falling due, he is not saved from ejection. Section 5 sub-section (4) further provides that where the landlord refuses to accept the lawful rent offered by his tenant, the tenant may, within a fortnight of its becoming due, deposit in Court the amount of such rent together with process fees for service of notice upon the landlord. In view of Clause 6 of the Agreement and as per findings recorded by the Appellate Court as well as High Court, the monthly rent from April, 1990 was Rs.2400/-. Clause 7 of the Agreement refers to the adjustment of the rent to the extent of 50% of the rent and further contemplates payment of 50% of rent in cash. Thus the liability of the defendant to pay the rent from the date of taking the possession in cash was Rs.1200/- with adjustment of balance Rs.1200/-. The advance was to be adjusted in accordance with the aforesaid condition. Lawful rent in cash, which was to be paid by the defendant-tenant was Rs. 1200/- per month. Right from April, 1990 till the institution of suit, defendant-tenant has claimed the payment of rent at the rate of Rs.700/- per month only. Lawful rent, thus, was not paid by the defendant-tenant to which the plaintiff-landlord was entitled to as per Agreement dated 01.08.1988. The Agreement dated 01.08.1988 being admitted to the tenant, he cannot be heard in saying that by mere payment of Rs. 700/- per month i.e. payment at the old rate, he can be saved from the eviction. The findings of the Appellate Court that defendant is defaulter affirmed by the High Court are findings of the facts based on appreciation of entire evidence. There is no error in the judgment and order of the Appellate Court directing eviction and arrears of rent. The High Court did not commit any error in dismissing the revision. [Paras 14, 15, 16, 19 and 20] [570-A-B, F-II; 571-A-B; 572-G-II; 573-A-B]

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3421 of 2017.

From the Judgment and Order dated 21.03.2013 of the High Court of Gauhati in Civil Revision Petition No. 380 of 2012.

B Rajiv Dhavan, S. R. Singh, Sr. Advs., Manish Goswami, Rameshwar Prasad Goyal, Advs. for the Appellant.

Kumar Parimal, Aniruddha P. Mayee, Advs. for the Respondent.

The Judgment of the Court was delivered by

C **ASHOK BHUSHAN, J.** 1. This appeal has been filed by the appellant-tenant against the judgment dated 21.03.2013 of Gauhati High Court by which judgment Civil Revision Petition No. 380 of 2012 filed by the appellant against the judgment of the Appellate Court directing the eviction of the appellant had been dismissed.

D 2. Brief facts of the case necessary to be noted for deciding this appeal are:

E The appellant was the tenant since 1965 in respect of a Assam Type House and paying rent at the rate of Rs. 700/- per month. An agreement was entered into between the defendant-tenant and the plaintiff-landlord on 01.08.1988 by which it was agreed that the appellant shall pay an amount of Rs.1,00,000/- in three installments to the respondent-landlord who proposed to construct a RCC building in place of Assam Type House. The appellant was to be given the shop after construction of room in his occupation. It was further agreed that monthly rent of the RCC shop room would be at the rate of Rs.10/- per Sq. ft. F The room proposed was 24ft. X 10ft. It was further agreed that the advance of Rs. 1,00,000/- shall be adjusted from the monthly rent at the rate of 50% and tenant shall pay to the landlord in cash, the balance rent of 50% till the aforesaid advance is adjusted in full. The construction of the shop room was completed in April, 1990.

G 3. The appellant obtained an order under 144 Cr.P.C. and was put in possession of the newly constructed RCC shop room in April, 1990. However, the appellant continued to pay rent at the rate of Rs.700/- per month. From April, 1994, the appellant started depositing rent of Rs.700/- per month in the court of Sadar Munsif No. 1 under the provisions of the Assam Urban Areas Rent Control Act, 1972(hereinafter referred to as '1972 Act') in a miscellaneous case. H

4. The respondent-plaintiff filed Title Suit No. 174 of 1999 praying for decree of ejection in respect of suit premises and a decree for recovery of Rs.86,400/- as arrears of rent alongwith interest. The respondent-plaintiff also claimed ejection on the ground of *bona fide* need for setting up his son in the business. The plaintiff's case was that in view of the agreement dated 01.08.1988 the rate of rent was Rs.2400/- per month from the date of possession. The construction was completed in April, 1990. The possession of RCC shop room was taken by the appellant in April, 1990 and as per agreement, he was liable to pay Rs.2400/- per month out of which, Rs.1200/- was to be paid in cash and Rs.1200/- was to be adjusted against the advance made.

5. In the suit, plaintiff-landlord claimed arrears from 01.08.1996 till 31.08.1999 at the monthly rent of Rs. 2400/-. The plaintiff-landlord did not claim the rent prior to 01.08.1996, as that had become barred by time.

6. A written statement was filed by the tenant; in the written statement, it was claimed that at the present moment monthly rent is only Rs.700/-. Defendant-tenant pleaded that he had agreed to pay Rs.2400/- per month on completion of construction and since shop is not complete, there is no question of cash payment of Rs.1200/- and adjustment of Rs.1200/-. He claimed that total amount paid to the plaintiff was Rs.2,09,360/-. Both plaintiff and defendant filed their evidence and were cross-examined.

7. The trial court framed ten issues. Trial court held that construction of premises was complete in April 1990. Trial court, however, held that rent is Rs.700/- per month which shall be treated as Rs.2400/- per month from the date of judgment. Issue No. 5 was answered holding that defendant is a defaulter. Trial court further held that total amount paid by the defendant is Rs.1,82,785.95. Trial court passed an order holding the plaintiff entitled for recovery of possession. Trial court ordered plaintiff to deposit Rs.1,82,785.95 before execution. Aggrieved by the judgment of the trial court, the defendant filed an appeal. A cross appeal was also filed by the plaintiff.

8. The Appellate Court *vide* its judgment dated 21.06.2012 considered the evidence on the record pertaining to issue No. 3 which was regarding the rate of monthly rent. Appellate Court returned the finding that monthly rent of suit premises was Rs.2400/- per month from the date of possession. The finding recorded by the trial court that

A defendant is a defaulter was affirmed by the Appellate Court. Appellate Court also took into consideration, the amount of Rs.1,82,785.95 and after adjusting the same in the rent to which plaintiff was entitled, it was held that still the defendant is defaulter to the tune of Rs.7614/-. The appeal filed by the defendant was dismissed whereas cross appeal of the plaintiff was allowed. It was held that the plaintiff is entitled to get decree of ejectment and recovery of arrears of rent amounting to Rs.7614/-.

9. The defendant aggrieved by the judgment of the Appellate Court filed the civil revision before the High Court. High Court considering the submissions of both the parties upheld the finding of the Appellate Court that defendant is defaulter. High Court also held that the rate of rent was Rs.2400/- per month from the date of taking possession i.e. April, 1990. The deposit of rent at the rate of Rs.700/- was not held to be valid deposit within the meaning of Section 5(4) of the 1972 Act. This appeal has been filed against the dismissal of the civil revision of the defendant by the High Court.

10. Learned senior counsel, Dr. Rajiv Dhawan, appearing on behalf of the appellant contended that High Court did not advert to the question of adjustment of advance rent which admittedly was advanced by the defendant to the plaintiff to the tune of Rs.1,82,785.95/-, hence, the judgment of the High Court is erroneous. He further contends that in the suit plaintiff claimed arrears of rent only from 01.08.1996 to 31.07.1999, for which period the total amount due at the rate of Rs.2400/- is only Rs.86,400/- and after taking into consideration the rent paid at the rate of Rs.700/- per month, there is still surplus rent in view of the advance made and the courts below had committed error in holding the defendant as defaulter. It is further contended that plaintiff had accepted the rent of Rs.700/- per month till April, 1994 and after April, 1994 till July 1999 if the total rent due is calculated it shall come as Rs.1,53,600/- and taking into consideration the rent paid and the advance amount there shall still be surplus hence, the finding of the default is unsustainable.

11. Learned counsel for the respondent refuting the submission of the counsel for the appellant contends that in view of the agreement dated 01.08.1988, the tenant was liable to pay Rs.2400/- from the date of taking possession and out of the rent of Rs.2400/-, Rs.1200/- was to be adjusted towards advance and Rs.1200/- was to be paid in cash. Admittedly, the defendant claims the only payment of Rs.700/- per month

since April 1990 till filing of the suit, hence there is a clear default since the rent became due of Rs.2400/- per month from April, 1990 and the courts below have rightly come to the conclusion that default has been committed by the defendant. A

12. We have considered the submissions of the learned counsel for the parties and perused the record. There is no dispute between the parties that the rent of the shop room, an Assam Type House Construction, was Rs.700/- per month. The plaintiff-landlord proposed to construct the RCC building in place of the above Assam Type House including the room, which was in occupation of defendant. An agreement dated 01.08.1988 was entered into between the parties, which agreement is admitted to both the parties. The agreement records that the second party is willing to advance a sum of Rs.1,00,000/- and further a security amount of Rs.50,000/- at the time of handing over the possession. Paras 6 and 7 of the agreement are relevant, which are to the following effect: B C

"6. That the monthly rent of the RCC room shall be at the rate of Rs. 10/- (Rupees ten only) per square fit and shall be payable within the first week of every subsequent month falling due. The height of the RCC room will be 16' as per approved G. M. C. Plan. The length of the RCC room will be 24' fit and the breadth will 10' at the minimum. It may be mentioned that if the floor of the RCC room after completion construction exceeds more than 24' x 10' sq. ft. the second party shall pay the monthly rent at the agreed rate for the entire floor area under the possession of the second party. D E

7. That the advance amount of Rs. 1, 00, 000/- (Rupees one lakh) are adjusted from the monthly rent at the rate of 50% and the second party shall pay to the first party only the balance rent of 50% till the aforesaid advance is adjusted in full." F.

13. From the pleadings of the parties, it is clear that new construction was completed by April, 1990 and the defendant was put in possession of the shop room in April, 1990. Appellate Court, after considering the evidence on record has held that the monthly rent of the shop premises is Rs. 2400/- per month from the date of taking possession i.e. April, 1990. It is the case of the defendant that even after taking the possession of newly constructed shop he has paid the rent at the rate of Rs.700/- per month which was the old rate of rent. From April, 1994, G H

A the defendant claims to deposit the rent i.e. Rs.700/- per month in the court in the miscellaneous case.

14. Section 5 of the 1972 Act, contains a heading “Bar against passing and execution of decree and order for ejection”. Section 5(1)(e) and Section 5(4) which are relevant for the present case are as follows:

B “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:

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

(a)... ..

(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, or

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(4). Where the landlord refuses to accept the lawful rent offered by his tenant, the tenant may, within a fortnight of its becoming due, deposit in Court the amount of such rent together with process fees for service of notice upon the landlord, and on receiving such deposit, the Court shall cause a notice of the receipt of such deposit to be served on the landlord, and the amount of the deposit may thereafter be withdrawn by the landlord on application made by him to the Court in that behalf. A tenant who has made such deposit shall not be treated as a defaulter under clause (e) of the proviso to sub-section(1) of this section.”

F 15. The provision of Section 5(1)(e) clearly indicates that where the tenant has not paid the rent lawfully due from him in respect of the house within a fortnight of its falling due, he is not saved from ejection. Section 5 sub-section (4) further provides that where the landlord refuses to accept the lawful rent offered by his tenant, the tenant may, within a fortnight of its becoming due, deposit in Court the amount of such rent together with process fees for service of notice upon the landlord.

G 16. In view of Clause 6 of the Agreement dated 01.08.1988 and as per findings recorded by the Appellate Court as well as High Court H monthly rent from April, 1990 was Rs.2400/-. Taking into consideration

Clause 7 of the Agreement, which provided for adjustment of 50% of the rent towards advance and payment of rent at the rate of Rs.1200/-, the defendant was liable to pay rent at the rate of Rs.1200/-. The other part of Rs.1200/- was to be adjusted towards the advance made. Till the entire advance is not adjusted the rent was also not to be increased as per condition of the agreement. Thus, lawful payment which was entitled to be received by the plaintiff-landlord was Rs.1200/-. Admittedly, the defendant-tenant has paid only Rs.700/-, even after taking possession of shop in April, 1990 and deposited the same amount of Rs.700/- in the court from April, 1994. The deposit made by the defendant-tenant in the court was not the deposit of the lawful rent and no error has been committed by the courts below in holding the defendant as defaulter. The decree passed by the Appellate Court for ejectment and arrears of rent as confirmed by the High Court was based on appreciation of relevant evidence on record.

17. The submission which has been pressed by Dr. Rajiv Dhawan is non-consideration of adjustment of advance to the extent of Rs.1,82,785.95/- by the High Court. Although the High Court has not considered the question of adjustment of the advance rent, but the Appellate Court has specifically considered the adjustment of the above advance. It is useful to extract the detail consideration by the Appellate Court towards the adjustment of above advance. Following has been held by the Appellate Court:

"It is admitted by the defendant in his written statement that the defendant took possession of the newly constructed suit room in the month of April, 1990 and in issue No. 3 it is decided that the defendant is liable to pay rent to Rs. 2400/- p.m. since the month of April, 1990 but the defendant has paid only at the rate of 700/- p.m. in respect of suit room till date. Since the month of April, 1990 till July, 1999(date of filing suit) the defendant is liable to pay rent at the rate of 2400/-p.m. for a period of 112 months which comes to Rs. 2,68,800/- (Rs.2400/- x 112 months). But the defendant has paid the rent at the rate of 700/- p.m. for the said period which comes to Rs. 78, 400/- hence the defendant is liable to pay arrear rent of Rs.1, 90, 400/- till the month of July, 1999. In issue No. 8 it is held that the defendant paid Rs.1,85,785.95 in favour of plaintiff as advance and

A *security. So, after adjustment of said advance of Rs.1,82,785.95 from the arrear due of Rs.1,90,400/-, the arrear rent of Rs.7614.05 (Rs. 1,90,400/- - Rs. 1,82, 785.95)" remains due till the month of July, 1999. From the above, it is clear that no advance amount remain to be adjusted. The advance amount has already been adjusted with the monthly*
B *rent and the plaintiff is entitled to receive arrear rent of Rs. 7614.05. As the plaintiff has not claimed future rent, hence no relief can be granted to him for future rent.*

In view of the decision of the foregoing points, the Appeal is dismissed and the cross appeal is partly allowed with cost. The plaintiff is entitled to get the decree for ejectment of the defendant from the Schedule A premises by removing his men and materials and recovery of arrear rent of Rs. 7611.05. Prepare the decree accordingly."
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D 18. From the findings of the Appellate Court, as noted above, it is clear that even after adjustment of the entire advance amount still there is a default of Rs. 7614/-. The appellate Court, thus, proceeded to adjust the entire advance made by the defendant and still default having been found decree of ejectment had been passed which needs no interference by this Court in exercise of our jurisdiction under Article 136.

E 19. The default on the part of defendant is also proved looking into the matter in accordance with the Agreement dated 01.08.1988. We have already extracted Clause 7 of the Agreement which refers to the adjustment of the rent to the extent of 50% of the rent and further contemplates payment of 50% of rent in cash. Thus the liability of the
F defendant to pay the rent from the date of taking the possession in cash was Rs.1200/- with adjustment of balance Rs.1200/-. The advance was to be adjusted in accordance with the aforesaid condition. Lawful rent in cash, which was to be paid by the defendant-tenant was Rs. 1200/- per month. Right from April, 1990 till the institution of suit, defendant-tenant has claimed the payment of rent at the rate of Rs.700/- per month
G only. Lawful rent, thus, was not paid by the defendant-tenant to which the plaintiff-landlord was entitled to as per Agreement dated 01.08.1988. The Agreement dated 01.08.1988 being admitted to the tenant, he cannot be heard in saying that by mere payment of Rs. 700/- per month i.e. payment at the old rate, he can be saved from the eviction.

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20. In view of the foregoing discussion, we are of the considered A
opinion that Appellate Court has rightly considered the entire evidence
on record and answered the issues framed by trial court correctly. The
findings of the Appellate Court that defendant is defaulter affirmed by
the High Court are findings of the facts based on appreciation of entire
evidence. We do not find any error in the judgment and order of the B
Appellate Court directing eviction and arrears of rent. The High Court
did not commit any error in dismissing the revision.

21. In result, the appeal is dismissed.

Devika Gujral

Appeal dismissed.