

**HIGH COURT OF TRIPURA
AGARTALA
RSA No.37 of 2018**

Sri Krishna Sudam Roy,
son of late Jogesh Chandra Roy,
resident of Noagaon,
P.S. Kamalpur, P.S. Kamalpur,
District: Dhalai

----Appellant(s)

Versus

Sri Debasish Bhowmik,
son of Sri Shanti Bhushan Bhowmik,
Kamalpur Town, P. S. Kamalpur,
District: Dhalai

---- Respondent(s)

For Appellant(s)	:	Mr. S. Deb, Sr. Adv. Mr. K. Nath, Adv.
For Respondent(s)	:	Mr. H. Laskar, Adv.
Date of hearing	:	05.05.2021
Date of judgment & order	:	04.06.2021
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order

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By means of this appeal under Section 100 of the CPC, the defendant has challenged the judgment dated 16.04.2018 delivered in Title Appeal No.01 of 2017 by the Addl. District Judge, Unakoti Judicial District, Kamalpur as it then was.

By the said judgment the Addl. District Judge has dismissed the first appeal being Title Appeal No.01 of 2017 by returning the finding that the defendant is not entitled to get the benefit of Section 114 of the Transfer of Property Act, 1882. Analogy has been drawn from **R.S. Lala Praduman Kumar vs. Virendra Goyal and Others** reported in **1969 (1) SCC 714** where the apex court has stated that in a suit of eviction against the tenant, the appellate court in appropriate case may relieve the tenant of default. It is open to the appellate court at the hearing of the appeal to give relief to the tenant in default against forfeiture, but the aforesaid power of the court is no doubt is to exercise discretion for equity. The appellate court should verify the conduct of the tenant before granting such equitable relief.

02. In the case in hand, on appreciation of the records, it appears that the defendant has made a conditional offer for getting such relief against forfeiture. In that backdrop, the appellate court has denied to exercise discretion in favour of the defendant for giving the relief against forfeiture as provided under Section 114 of the Transfer of Property Act, 1882. The said finding has been challenged by the defendant, the appellant

herein. Briefly stated the relevant facts are that the plaintiff entered into a rent agreement with the defendant for letting out his rooms situated in his premises, appertaining to Khatian No.904, plot No.1188 of mouja Kamalpur under Kamalpur Sub-Division, opposite to the Kamalpur Super Market. The plaintiff had put up the defendant in the rooms No.6 & 7 as a temporary monthly tenant. At one point of time, a serious dispute broke out between the plaintiff and the defendant and with other tenants. The defendant and other tenants filed a writ petition before this court being W.P.(C) No.83 of 2009. The said writ petition was disposed of on compromise by recording the conditions in the Miscellaneous Application being CM Appl. No.289 of 2014 which had arisen from the said writ petition. On the basis of the said settlement/compromise, by the order dated 25.06.2014, the said writ petition was disposed of, with further direction as under:

"The instant writ petition was partly heard earlier and today when the matter is taken up, the learned counsel for the petitioners submits that the disputes between the Landlord, the respondent No.3 and 4 and the petitioners have been settled and both of them have filed a compromise petition stating the terms and conditions of the settlement which is registered as C.M. Application No.289 of 2014.

The writ petition in question was filed for setting aside the memorandum dated 05.03.2009 issued by the Executive Officer, Nagar Panchayet, Kamalpur Dhalai wherein the owner of the building, where the petitioners are tenants, was directed to deposit the cost of demolition to the office of

Nagar Panchayet in consultation with the Asstt. Engineer/Jr. Engineer in the office of the Nagar Panchayet, Kamalpur within seven days from, the date of issue of the memo, as the petitioners are providing rent for the said dangerous building. As the petitioner tenants and the landlord, respondents 3 and 4 have compromised the matter on the basis of the terms and conditions stated in the compromise petition, the writ petition is disposed of directing the petitioners and the respondents 3 and 4 to act on the basis of the terms and conditions mentioned in the compromise petition. At the same time, when the matter is settled between the tenant petitioners and the landlord respondent No.3 and 4, the respondent No.1 and 2, Kamalpur Nagar Panchayet is directed not to act upon the impugned memorandum dated 05.03.2009 (Annexure-B to the writ petition), as the landlord himself will go for necessary repairing and renovation as required for the building. The compromise petition will form as a part of this order.

03. There is no dispute that in the settlement, it was agreed between the plaintiff and the defendant that the respondents No.3 & 4, the land lord, would take up the necessary renovation work and such renovation work would be completed within a defined period from the date of commencing the work. To facilitate the said repairing work and renovation work, the petitioners [the tenants, including the appellant] shall hand over the vacant possession of their respective rented rooms which were under their occupation/possession within a period of 7(seven) days from the date of order disposing the writ petition. It was further agreed upon that after completion of the repairing/renovation work, the tenants shall be given possession in their respective rooms which they had vacated for enabling

(the landlord) carry out the renovation. It had been agreed that before re-handing over the possession the petitioners [in the previous writ petition] shall execute separate rent agreements with the respondents No.3 and 4 delineating the period of tenancy etc. It was agreed that the tenancy shall be for a period of five years from the date of execution of the tenancy agreement with a further clause for renewal for another period of six years after completion of the initial five years period on 10% enhancement of the rent after every two years thereafter.

04. It was agreed that the rent shall be Rs.750/- per month per door [per room]. Amongst other conditions, it was also settled that after taking over possession on completion of renovation etc., the petitioners [including the appellant] shall themselves carry on business in their respective premises and shall not induct any sub-tenant without the prior written consent from the respondents No.3 & 4. Rent for every month shall be paid by the tenants within the first week of the following month. The plaintiff complied with the terms and conditions of settlement as afore-stated and entered into a rent/tenancy agreement with the defendant [the appellant] on 06.04.2011. It

was also agreed that the tenant shall deposit an amount of Rs.5000/- per door meaning total Rs.10,000/- for fixing of rolling shutters over the doors of the rented premises which will however, be refunded at the time of termination of the tenancy. It was in addition, decided that the said agreement shall continue for a tenure of five years from the date of execution of the tenancy agreement and on expiry of five years term, the said agreement can be renewed for another period of six years with 10% enhancement in the rent, which shall be enhanced after every two years.

05. As stated, on the basis of the said agreement of tenancy, the defendant was inducted as temporary monthly tenant in the suit premises and he paid the monthly rent up to August, 2015. From the month of September, 2015, the defendant did not pay monthly rent that fell due and therefore, the defendant (the appellant) has become defaulter in payment of monthly rent. Since the defendant has failed to make payment of monthly rent for more than five consecutive months, the defendant has become liable to be evicted from the suit premises, described in schedule below.

06. The plaintiff served a notice on the defendant on 10.02.2016 through a lawyer demanding handing over of vacant possession of the suit premises, described in the schedule of the plaint within a period of one month from the date of the receipt of the said notice. But the defendant did not vacate the said premises, nor did he pay the outstanding rent. The plaintiff, thereafter, instituted the suit for ejectment and recovery of possession as consequential relief. The defendant did not deny the facts laid in the plaint. The defendant filed the written statement and stated that he incurred expenditure of Rs.8000/- for purpose of renovation and repairing of the suit premises. The defendant, the appellant herein, has further asserted in the written statement as follows:

"That, the contention of the Para 8 and 9 to the effect that, the Plaintiff is entitled to get the vacant possession of the suit premises on the purported ground of default of the Defendant in making payment of the monthly rent, is hereby strongly denied and disputed by the Defendant. It is the Plaintiff who has been refusing to accept the monthly rent from the Defendant on the ground, the adjustment of the monthly rent with the expenditure incurred by the Defendant for the purpose of repairing the suit premises has not yet being completed."

07. In the said written statement, most of the pleadings have been disputed by the defendant. But in para-16, he made a solemn statement which reads as under:

"16. That, in respect to contention of Para 13, the Defendant submits, that, the Defendant has not become defaulter in making payment of monthly rent since September 2015, monthly rent is being adjusted with Rs.8,000/- (Rupees eight thousand) which had incurred by the Defendant for the repairing of the suit premises, However, the Defendant is ready with the monthly rent from September, 2015, till date and is willing to tender the monthly rent for the aforesaid period before the Ld. Court at once without waiving his claim/right to adjustment of monthly rent with Rs.8,000/- (Rupees eight thousand) that was incurred by the Defendant for the repairing of suit premises."

08. Based on the said rival pleadings, as it appears, several issues have been framed by the Civil Judge, Junior Division, Kailashahar, Unakoti District. The issues are as follows:

- 1. Whether the suit is maintainable in its present form and nature?**
- 2. Whether there is any cause of action for filing the present suit?**
- 3. Whether the defendant has not been paying rent of the suit premises and consequently has been illegally possession the suit premises?**
- 4. Whether the plaintiff is entitled to relief(s) as prayed for?**
- 5. Whether the plaintiff is entitled to any other relief(s)?**

09. The plaintiff adduced three witnesses and introduced few documentary evidence [Exbt.1 to Exbt.5]. The defendant has also adduced four witnesses and few documentary evidence [Exbt.A-Exbt.F.1]. The trial court having due regard to the evidence and the reliefs as claimed in the suit, returned the finding that a lease can be determined in case the lease bears an express condition/clause which provides that on the breach

thereof, the lessor may re-enter the premise. It has been further observed having regards to the conditions of the settlement that nowhere in the settlement it has been mentioned that the defendant is a tenant in perpetuity or that tenancy shall be year to year basis.

10. It is apparent that the tenancy agreement dated 06.11.2014 is not a lease within the meaning of Section 105 of the Transfer of Property Act which has defined lease in the following terms:

"A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically on specified occasions to the transferor by the transferee, who accept the transfer on such terms."

11. Since a transfer of right takes place, the lease deed is mandatorily registerable, as it has been provided in Section 107 of the Transfer of Property Act, 1882 that *a lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.*

12. There is no dispute that the said agreement has been executed for five years on monthly rent of Rs. 750/- per month and it has been admitted by the appellant herein, the defendant in the suit, that from the month of September, 2015 the appellant did not pay the monthly rent till now, even after the landlord asked him to pay the said amount by a notice.

13. The appellant being the defendant has filed the written statement in the said suit being Title Suit 02 of 2016. In the said written statement, the defendant has challenged the purported ground of default in making payment of the monthly rent as the plaintiff, the respondent herein, has been refusing to accept the monthly rent from the defendant as he abhorred the adjustment of the monthly rent with expenditure incurred by the defendant for purpose of repairing the said premises.

14. In para 16, the appellant, has categorically stated, as follows:

“That, in respect of the contention in para 13, the defendant submits that the defendant has not become defaulter in payment of monthly rent since September, 2015 monthly rent is being adjusted with Rs.8,000/- (Rupees eight thousand) which was incurred by the Defendant for the repairing of the suit premises. However, the Defendant is ready with the monthly rent from September, 2015, till date and is willing to tender the monthly rent for the aforesaid period before the Ld. Court at once without having his claim/right to

adjustment with Rs.8,000/- (Rupees eight thousand) that was incurred by the Defendant for the repairing for the suit premises."

15. Mr. S Deb, learned senior counsel assisted by Mr. S Bhattacharjee has submitted that a notice for eviction as sent by the respondent is not a notice in terms of Section 106(1) of the Transfer of Property Act, 1882. According to Mr. Deb, learned senior counsel, on a reading of the said notice dated 29.01.2016 it would appear. The said notice was drawn up completely on different premise. Mr. Deb, to buttress his submission has referred the following passages from the said notice [Exbt.-5] to demonstrate that the said notice cannot be considered as a notice under Section 106(1) of the Transfer of property Act. For purpose of reference, the passages as indicated above, are reproduced:

"7. That, you the Notice Receiver being defaulter in payment of monthly rent have no right to continue with the tenancy in terms of said agreement and you the Notice Receiver have become liable to be evicted from the said rented premises and therefore, my said client is entitled to get vacant possession of the said rented premises.

8. That, since you the Notice Receiver have become defaulter in payment of monthly rent, you the Notice Receiver are required to put my said client into possession of the vacant rented premises described in schedule below. You the Notice Receiver are required to vacate the said rented premises in favour of my said client within a period of one month from the date of receipt of this notice failing which if my client is compelled to take shelter of law, you the Notice Receiver

would be liable for all civil and criminal consequences and costs.

9. That, since the said tenancy agreement was made by you the Notice Receiver and my said client after the order of the Hon'ble High Court passes in W.P.(C) No.83 of 2009 in terms of compromise as aforesaid and you the Notice Receiver as a party to the said case agreed with such terms and conditions reduced therein were/are bounded by the terms and conditions reduced therein. In fact, the said Deed of Agreement was made following the terms and conditions of the parties of the said W.P.(C) No.83 of 2009 and in such case you the Notice Receiver was a party. In that view of the matter by not paying the due monthly rent to my said client, you the Notice Receiver have committed an offence punishable under Contempt of Court Act. Therefore, my said client reserves right to take appropriate action against you the Notice Receiver for willful disobedience of the order of the Hon'ble High Court and/or any other offence which may be constituted by you the Notice Receiver by violating the terms and conditions reduced in the said compromise petition.

Under the above circumstances, it is demanded and expected that you the Notice Receiver shall vacate the said rented premises described in schedule below in favour of my said client within a period of one month from the date of receipt of this notice and you the Notice Receiver would vacate the said rented premises in schedule below by putting my said client into vacant possession of the said rented premises in schedule below within the aforesaid period failing which if my said client is compelled to take shelter of law you the Notice Receiver would be liable for all civil and criminal consequences and costs."

16. Mr. Deb, learned senior counsel has further submitted that the said notice has been issued under Section 108 of the Transfer of Property Act, 1882 which deals with rights and liabilities of lessors and lessees. Section 108 of the Transfer of Property Act, 1882 deals with the modalities, rights and liabilities of the lessor and lessee in particular, in two different parts [A and B]. It has been provided in the said section that the lessee

can also raise a notice to demand or remove any defects. Certain prohibitions have also made against the lessee. What has been provided in the agreement is that when the lease is determined, the lessee is bound to put the lessor in the possession of the property.

17. Mr. Deb, learned senior counsel has further submitted that the appellant who had testified as DW1 in the proceeding has admitted the arrear rent as Rs.30,000/- since September, 2015 till the day of deposition or filing the suit for eviction. But Mr. Deb, has submitted that following such admission, the appellant (DW1) has categorically stated to the court that, *"I am ready to pay the rent to Debasish Bhowmik (the respondent herein) right now, even in the court also. I do not have any malice regarding rent. I do not want to keep rent with me and I can pay it whenever it is required."*

18. Mr. Deb, learned senior counsel has drawn attention of this court to the clear admission made by the respondent, the plaintiff of the suit. In his cross-examination he (the plaintiff) has stated that, *"the deed of rent submitted by me has not been registered. It is a fact that I have not submitted any document to*

show that I have conducted repairing works on the suit premises.”

19. Finally, Mr. Deb, learned senior counsel having criticized the impugned judgment dated 16.04.2018 passed in Title Appeal No. 01/2017 has contended that the first appellate court while revisiting the issues has observed that the defendant is entitled to get the benefit of Section 114 of Transfer of Property Act, 1882, but the said power of the court can only be exercised with due regard to conducts of the tenant, [see **R.S. Lala Praduman Kumar** (supra)]. The first appellate court has also observed that the defendant (the appellant herein) has failed to prove that there was anything for adjustment. The defendant made no expenditure for repairing of the suit premises.

20. Mr. Deb, learned senior counsel has quite strenuously submitted that a technical interpretation of Section 114 of the Transfer of Property Act, 1882 would frustrate the very object of such provision. According to him, if the intention is conjointly read, the court should give the tenant an opportunity to remove the defect when the defect is relating to default in payment of

rent. In support of his contention, Mr. Deb, learned senior counsel has referred a decision of the apex court in ***Rakesh Wadhawan and Ors Vs Jagadamba industrial Corporation & Ors.*** reported in **(2002) 5 SCC 440.**

21. In ***Rakesh Wadhawan*** (supra) the apex court has observed that *it will be for the tenant to pay or tender the amount provisionally assessed by the Controller on the first date of hearing of the application for ejection. On compliance, the Controller would proceed to adjudicate upon the controversy arising for decision by reference to pleadings of the parties and by holding a summary enquiry for the purpose. Such adjudication shall be provisional and subject to the later final adjudication. The finding that may ultimately be arrived at by the Controller may be one of the following three: the Controller may hold that the quantum of arrears as determined finally is (i) the same as was found to be due and payable under the provisional order, (ii) is less than what was determined by the provisional order, or (iii) is more than the one what was held to be due and payable by the provisional order. In the first case the Rent Controller has simply to pass an order terminating the proceedings. In the second case the Controller may direct the amount deposited in excess by the tenant to be refunded to him. In the third case, it would not serve the purpose of the Act if the tenant was held liable to be evicted forthwith. The Controller directing the eviction of the tenant may pass a conditional order affording the tenant*

one opportunity of and a reasonable time for depositing the amount of deficit failing which he shall be liable to be evicted. This power in the Rent Controller can be spelled out from the use of the word "may" in the expression "the Controller may make an order directing the tenant to put the landlord in possession", as also from the principle of equity and fair play that the tenant having complied with provisional order passed by the Controller should not be made to suffer if the finding arrived at by the Controller at the termination of the proceedings be different from the one recorded in the provisional order. It has been further observed that while exercising the discretion to make a conditional order of eviction affording the tenant an opportunity of purging himself of the default the Controller may also take into consideration the conduct of the tenant whether he has even after the passing of the provisional order continued to pay or tender the rent to the landlord during the pendency of the proceedings as a relevant factor governing the exercise of his discretion. Such a course would be beneficial to the landlord too as he would be saved from the trouble of filing a civil suit for recovery of rent which fell due during the pendency of proceedings for eviction before the Controller.

22. The said approach, no doubt, as Mr. Deb, learned senior counsel has pointed out advances the object sought to be achieved by the legislation and it best serves interest of the landlord and the tenant, both. It removes uncertainty in litigation

and obscurity in drafting of the provision and also accords with the principle of justice and equity. Even if it is an innovation, it is in the field of procedural law, without affecting the substantial rights and obligation of the landlord and the tenant and such innovation is permissible on the basis of the authority and supported by the principle of justice, good sense and reason.

23. Mr. Deb, learned senior counsel has also referred a decision of this court in ***Banamali Debnath Vs. Debasish Bhowmik*** [judgment dated 19.06.2019 delivered in RSA 36 of 2018] where this court had occasion to observe as follows, on a similar type of rent agreement:

16. From a cumulative reading which is material before us is that this court is constrained to observe that the first appellate court did not make any mistake in accepting that the notice under Section 106, inasmuch as, an un-registered deed of lease cannot be treated as the lease as per the requirement of Section 107 of the Transfer of Property Act, 1882. Thus, that will be treated as the tenancy beyond any cognate reason and the requirement of the notice period is fifteen days. The second substantial question, on the face of it, is devoid of any merit inasmuch as, no such statement is made in the written statement nor was there any endeavour to derive the benefit of Section 114 of the Transfer of Property Act. That apart, Section 114 has very restricted application. It applies in case of the lease.

24. Mr. H. Laskar, learned counsel for the respondent has clearly submitted that the decision of the apex court in ***Rakesh Wadhawan*** (supra) was under the Rent Control Act and not

under the Transfer of Property Act. Mr. Laskar, learned counsel has submitted that hence the ratio as laid by the apex court may not apply in the present case. He has stated that due notice was served, but the provision under which notice was served wrongly quoted in the notice. But all the ingredients of a notice under Section 106(1) of the Transfer of Property Act, 1882 are available and the demand has clearly spelled out. Despite such notice, the defendant, the appellant herein, did not pay the arrear rent as claimed in the said notice. Even after appearing in the court of the civil judge, Jr. Division, he did not take any attempt to deposit the rent or urge the court to decide provisionally the arrears of rent. Moreover, in the written statement he has disputed the account of arrear rent. Only in his statement before the court, he had stated that he is ready to deposit the said amount even waiving his demand of adjustment as stated for the time being.

25. Mr. Laskar, learned counsel has categorically stated that the plaintiff (the respondent herein) has categorically in his statement in the trial that the defendant did not make any expenditure for repairing of the shop. The first appellate court

has further inferred that there is no evidence to hold that the defendant had spent an amount of Rs.8,000/- for repairing the shop. No document whatsoever has been placed in the trial.

26. According to Mr. Laskar, since the agreement cannot be treated as lease within the meaning of Sections 105 and 107 of the Transfer of Property Act, the provision of Section 114 of the Act cannot be applied. Thus, he has emphatically stated that this court should not interfere with the impugned judgment as the question of equity has been taken care of, but the conduct of the defendant did not generate any confidence in the court to provide him relief in equity.

27. Having appreciated the rival contentions raised by the parties and having due regard to the substantial questions of law which were framed while admitting the appeal on 05.08.2019, this court would formulate a common question which reads as follows:

Whether, in terms of the agreement dated 16.11.2014 where it was undertaken that the arrears of rent would be paid to the landlord, the order of

eviction was justified by treating the notice as given by the respondent as valid?

28. For purpose of reference, however, the substantial questions of law as formulated by this Court are reproduced below:

(i) Whether, in the event of undertaking in terms of the agreement dated 16.11.2014, that arrears rent will be paid to the land lord, the Civil Court could have considered of not passing the order of eviction?

(ii) Whether for non-consideration that the tenure of the agreement, being yet to expire the undertaking of making payment of arrear rent vis-a-vis the impugned judgment has suffered illegality or for illegality not giving a valid notice under Section 106 of the Transfer of Property Act?

29. Having perused the content of the notice of ejection/eviction, this Court is convinced that the notice bears all requirements of a notice under Section 106(1) of Transfer of Property Act, 1882. Merely for referring a wrong Section, Section 108 of the Transfer of Property Act, 1882, the notice cannot be held invalid for purpose of eviction. It is not the case of the defendant that the notice did not reveal the details why the eviction or ejection has been sought by the plaintiff. Thus, it will not be appropriate to hold the said notice as invalid.

30. What remains thereafter is to verify whether the order of ejection is valid? Despite the undertaking made in the court

or in the agreement dated 16.11.2014 that the arrears of rent would be paid that was not paid. Hence, the first appellate court was justified in returning the finding that the appellant (the defendant) be evicted and the vacant possession shall be restored in favour of the plaintiff.

31. With all earnestness, this Court has considered the submission of Mr. Deb, learned senior counsel on relieving the defendant (the appellant herein) against for feiture and the decision in **Rakesh Wadhawan** (supra). The soul of the said decision is the innovation which suggests that in the field of procedural law without affecting the substantive rights and the obligation of the landlord and the tenant, following the principles of justice, good sense and reason, discretion can be exercised for affording the tenant an opportunity for making good of the deficit. But while coming to that inference, the elements which were considered by the apex court are totally absent. There had been no effort from the defendant (the tenant) to deposit the amount "at the first instance" in the court of the civil judge. Not only that, he had challenged the arrear, but later on, the defendant has admitted in his statement that he had been

faulting in payment of the agreed rent for his two-doored shop since the month of September, 2015 till then, but he has not deposited any amount either in the court of the first instance or in the first appellate court.

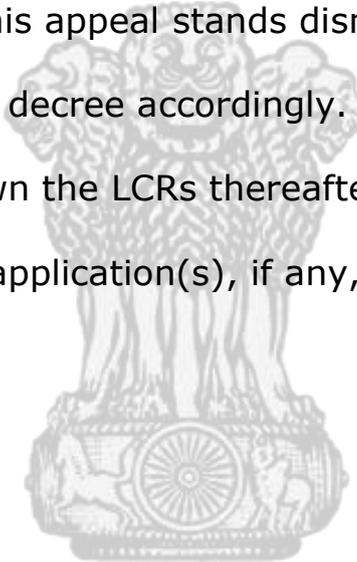
32. Such conduct does not instill confidence in the court to apply discretion by affording opportunity for purging out of the default by way of making payment of arrears to the landlord. Thus, this Court does not find any infirmity in the impugned judgment, either in law or in refusal to the equity jurisdiction.

Hence, this appeal stands dismissed.

Draw the decree accordingly.

Send down the LCRs thereafter.

Pending application(s), if any, also stand disposed of.



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JUDGE