

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

Present:

Mr. Justice Syed Mahmud Hossain, *Chief Justice*
Mr. Justice Hasan Foez Siddique
Mr. Justice Md. Nuruzzaman
Mr. Justice Obaidul Hassan

CIVIL APPEAL NO.138 OF 2010

*(From the judgment and order dated 08.04.2009 passed by the Appellate Division
in Civil Petition for Leave to Appeal No.1685 of 2008)*

Md. Masumur Rahman and :Appellants
others

Versus

Mrs. Shahar Banu Begum :Respondent

For the appellants : Mr. N.K. Saha, Senior
Advocate, instructed by
Mr. Nurul Islam
Bhuiyan, Advocate-on-
Record.

For the respondent : Mr. Surujit Battacharjee,
Advocate, instructed by
Mr. Zainul Abedin,
Advocate-on-Record.

Date of hearing and judgment : **The 22nd day of
September, 2020.**

JUDGMENT

Obaidul Hassan, J. This civil appeal, by leave, has arisen out of leave granting order dated 31.01.2010 passed by this Division in Civil Review Petition for Leave to Appeal No.105 of 2009 which has been filed against the judgment and order dated 08.04.2009 passed by this Division in Civil Petition for Leave to Appeal No.1685 of 2008 dismissing the leave petition which arose out of judgment and order dated 24.07.2008 passed by a

Single Bench of the High Court Division in Civil Revision No.5677 of 2001 making the Rule absolute.

The present appellants as petitioners have filed Rent Control Case No.21 of 1997 on 05.11.1997, under section 19(1) of the Premises Rent Control Ordinance, 1991 in the Court of Senior Assistant Judge and Rent Controller, Sadar, Sylhet praying for allowing them to deposit of rent in Court instead of the respondent herein.

The facts, leading to the filing of this petition, in brief, are that the shop premises described in the schedule of the application originally belonged to the defendant. The predecessor of plaintiff's Moulana Aatur Rahman was a monthly tenant in respect of the premises under the opposite party landlady at a monthly rent of taka five hundred who had been carrying out business of Homeopathic Pharmacy. Moulana Aatur Rahman died on 21.08.1997 leaving behind the petitioners No.1-6, who became tenants in respect of the disputed shop premises under opposite party Shahar Banu and have been carrying out the business. The petitioner No.2, Md. Marufur Rahman on behalf of all the petitioners paid monthly rent of August, 1997 to the land lady by obtaining rent receipt in support of the payment. The petitioner No.2 along with his

uncle Md. Lutfur Rahman on 07.10.1997 when went to pay the rent of September, 1997 to the landlady, she refused to accept the monthly rent for September, 1997. Thereafter, the petitioner tenants on 15.10.1997 sent the rent to the landlady through Money Order which was returned back on 27.10.1997 with remark 'refused' and, as such, the tenants filed the House Rent Control Case and have been depositing the monthly rent regularly.

Thereafter, the respondents as opposite parties contested the case by filing a written objection denying the material allegation contending, inter alia, that the premises of the case schedule originally belonged to the opposite parties. The predecessor of the petitioners Moulana Aatur Rahman was a monthly tenant at a rent of taka five hundred. After the death of the predecessor of the petitioners, relationship as landlord and tenant does not exist. The petitioners are not in possession of the case premises. One Shafiqur Rahman is now in illegal possession of the shop premises. The opposite parties are taking steps to evict him. The petitioners are no more the tenants under the opposite parties. They did not pay any rent to the opposite parties from September, 1997; the petitioners brought the case against this opposite parties on false plea, with

an ulterior motive; the petitioners, therefore, have no reason for depositing the rent in the Court, thus the case is liable to be dismissed.

The learned Senior Assistant Judge, Sylhet and House Rent Controller by his judgment and order dated 07.04.1999 dismissed the Rent Deposit Case No.21 of 1997 on the ground that since the original tenant Aatur Rahman died, thus the tenant landlord relationship between the petitioners and opposite parties became seized.

Being aggrieved by and dissatisfied with the judgment and order of the Senior Assistant Judge and House Rent Controller, Sylhet, the petitioners preferred Miscellaneous Appeal No.38 of 1999 before the Court of District Judge, Sylhet, who after consideration of evidence on record by his judgment and order dated 12.07.2001 allowed the miscellaneous appeal by reversing the decision of the House Rent Controller on the reasoning that the landlord and tenant relationship is heritable. Thus, after death of the father of the petitioners they became the tenants and are not the defaulter.

Then, against the said judgment and order dated 12.07.2001 passed by the Appellate Court, the respondents as petitioner preferred Civil Revision being No.5677 of 2001 before

the High Court Division, wherein a Rule was issued and the same was heard and disposed of by a Single Bench of the High Court Division by judgment and order dated 24.07.2008 making the Rule absolute.

Being aggrieved by and dissatisfied with the judgment and order dated 24.07.2008 passed by a Single Bench of the High Court Division, the present appellant preferred Civil Petition for Leave to Appeal being No.1685 of 2008 before this Division. Upon hearing of the leave petition, this Division dismissed the same (leave petition) by judgment and order dated 08.04.2009.

Then, the appellants preferred this Civil Review Petition for Leave to Appeal being No.105 of 2009, after hearing the review petition, this Division granted leave, which, gave rise to the instant appeal.

Mr. N.K. Saha, learned Senior Counsel appearing on behalf of the appellants submits that the High Court Division while dismissing the Rent Control Case failed to appreciate that in the proceeding under section 19(1) of the Premises Rent Control Act, 1991, the Court is to see whether the tenant is depositing rent within fifteen days of the refusal by the landlord. Admittedly, money order sent by the petitioners was

returned back to them on 27.10.1997 and they deposited the rent on 01.11.1997 by filing Rent Control Case No.21 of 1997 which is sufficient compliance of the Premises Rent Control Act, 1991 and, as such, the judgment of the High Court Division is not sustainable in law. He also submits that the High Court Division committed error of law in failing to appreciate that under section 19(1) of the Premises Rent Control Act, 1991 the rent controller has no jurisdiction to see whether the tenant is defaulter or not and erroneously made the Rule absolute, which caused failure of justice.

Mr. Surujit Battacharjee, learned advocate appearing on behalf of the respondent submits that the appellants admitted that his uncle Makfar Rahman had been running business in the case premises paying rent to the landlord, thus Makfar Rahman is a subtenant under the tenant appellants. Without the consent of the landlord-respondent the tenant appellants sublet the case premises area, as such the tenant violated the terms of agreement and acted contrary to section 108(p) of the Transfer of Property Act, which makes them liable to come within the mischief of section 18(1)(Ka) of the Premises Rent Control Act and bind themselves to vacate the suit premises for

which they are not entitled to get any protection of law from eviction.

He also submits that the decree holder respondent as plaintiff filed Title suit No.26 of 2012 (Title Suit No.345 of 2008) against the judgment debtor-appellants impleading them as defendants, praying for recovery of khas possession into the suit schedule premises by evicting them there from, summons of the suit were duly served by process-server and also by postal peon to the defendants, but they did not take any steps with regard to the suit, the suit decreed ex-parte on 02.09.2013 and the respondent judgment debtor obtained delivery of possession on 15.09.2013 through the process of the court in Execution Case No.06 of 2012 and on 18.09.2013 the judgment debtors filed a petition for not confirming the execution process in the execution case, thus he was very much aware about the ex-parte decree. Since the appellants have been evicted from the case premises, the appeal has become infructuous.

He also submits that the present appellants were not in possession of the premises, one Makfar Rahman was in unauthorized and illegal possession on the suit premises and the decree holder took possession by evicting the appellants. Thus, the purpose of filing the present appeal has become

infructuous. He next submits that the appellants did not pay monthly rent to the decree holder, the trial Court correctly found that the plaintiff became defaulter in paying the rent for the case premises on the death of their predecessor Moulana Aaur Rahman. Thus, the trial Court correctly evicted the appellants. He also submits that the appellants have brought the appeal at the end of the execution process in the Execution Case No.06 of 2012, when the decree holder took possession through the process of the Court on 15.09.2013, the decree holder already got benefit of the decree obtained long before.

We have considered the submissions of the learned advocates appearing on behalf of the parties concerned, perused the impugned judgment and order passed by the High Court Division and other connected papers on record. It appears from the record that after passing the judgment and order by the High Court Division in Civil Revision No.5677 of 2001 the appellants preferred Civil Petition for Leave to Appeal No.1685 of 2008 which was dismissed by the judgment and order dated 08.04.2009. Thereafter, the appellants have preferred this appeal, but in the meantime the admitted position is that one Makfar Rahman became subtenant under the present appellants, who ultimately was found unauthorized

and illegal possessor of the suit premises. The plaintiff-respondent decree holder took possession by evicting the judgment debtor-appellants (judgment and order passed in Title Suit No.26 of 2012) and obtained delivery of possession on 15.09.2013 through the process of the Court in Execution Case No.06 of 2012. It also appears from the record that on 18.09.2013 the judgment debtor filed a petition for not confirming the execution process in the execution case. Fact remains the judgment debtors have been evicted from the suit premises. Admittedly, the appellants are not in possession of the suit land, who were dispossessed from the case premises on 15.09.2013 and as such the tenant and landlord relationship does not exist, which has already been terminated by the process of the Court. Thus, this appeal cannot proceed as the same has become infructuous.

In the result, the appeal is dismissed without any order as to costs.

C.J.

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