

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Jahangir Hossain.

Civil Revision No.732 of 2015

Hazi Md. Abdul Mushabbir @ Md. Mushabbir
Ahmed and others

.....Petitioners.

Vs.

Sree Ajit Kumar Das and others

..... Opposite-Parties.

Mr. Surojit Bhattacharjee with
Mst. Farhana Siraj Ronnic with
Mr. Monishankar Sarkar, Advocates

..... For the petitioners.

None appears,

..... For the opposite parties

Mr. S.M. Nazrul Islam, D.A.G

..... For the state

Heard on 19.03.2024 and 22.03.2024
Judgment on 23rd April, 2024.

This Civil Revision No. 732 of 2015 has been filed under section 115(1) of the Code of Civil Procedure. The rule was issued on 22.03.2003 which was below:

Let a Rule be issued calling upon the opposite party Nos.01-04 to show cause as to why the judgment and order dated 20.01.2015 passed by the learned Special District Judge, Sylhet, in Miscellaneous Appeal No. 66 of 2011 allowing the appeal and reversing the judgment and order dated 19.06.2011 passed by the learned Senior Assistant Judge and Rent Controller, Sadar, Sylhet, in

Rent Deposit Case No. 15 of 2001 should not be set aside and / or pass such other or further order or orders as to this court may seem fit and proper.

At the time of issuance of the rule the operation of the judgment and said impugned order was stayed for a period of 03 (three) months which was extended later on.

The short fact of the case for disposal of this Rule is Abani Kumar Das the predecessor of present tenants the opposite parties of the Rule had been a monthly temporary tenant in respect of the premises under original owner, Durga Prashad Tribedi rental of Taka 45/- per month. After death of the owner his son Ram Prasad Tribedi became owner of the case premises. Abdul Quddus and his brother Abdul Khaleque, the predecessors of present petitioners purchased the case premises from Ram Prashad Tribedi who constructed building thereon demolishing the previous structure and entered in to a registered agreement on 5th Magh 1377 B.S. corresponding to 19.01.1971 on condition to delivery of possession after construction of the premises but could not construct the case premises according to terms and condition of the said deed within Falgun 1377 B.S. After liberation war, they constructed the case premises on Magh 1378 B.S. and the tenant used to carry out a business of Grocery in the case premises on payment of rent Taka 60/- to the predecessors of the petitioners. Aboni Das died subsequently, the opposite parties

1-4 became tenant under aforesaid land lord as payment of taka 800/- per month of Kartik 1407 B.S. Thereafter they paid rent of Agrahanyan 1407 B.S. on 4th Poush 1407 B.S to the aforesaid land lord but did not give any rent receipts asserted that the receipt book has been finished and assured to give rent receipts on publishing the receipt book but denied to give the same on 4th Magh, 1407 B.S and also refused to accept the rent so tenants filed Rent Deposit Case and before filling of the case sent rent to the land lord through money order on 21.01.2001 which was returned back with remark “refused”. The tenants have been depositing rent regularly before the court.

At the time of hearing the learned Advocate for the opposite parties was not present in the court and there was none on behalf of the petitioner.

On the other hand the learned Advocate Mr. Surojit Bhattacharjee for the petitioner was present before the court.

It appears the case was in the list regularly but the opposite party did not take any proper steps for hearing.

It appears from the record the defence case is that the case premises belong to petitioners on the basis of purchase. Aboni Kumar Das, predecessor of the opposite parties died and the previous land lord also died and the alleged deed of agreement executed between the deceased parties is inoperative and ineffective, agreement of the deed became in operative during liberation war,

newly constructed case premises has been given rent to predecessor of tenants orally and the deed became infructuous. The opposite parties became unauthenticated occupier of the case premises.

It transpired from the record both the parties adduced single witness as PW.1 and O.P.W.1 respectively, besides they adduced documentary evidences. The learned Assistant Judge and Rent Controller, Sylhet by judgment and order dated 19.06.2011 disallow the Rent Deposit Case No. 15 of 2021. Thereafter the opposite parties No. 1-4 filed Miscellaneous Appeal No. 66 of 2011. The said appeal was heard by learned Special District Judge, Sylhet and allow the appeal reversing the judgment of the trial court on 20.01.2015.

The learned Advocate for the land lord petitioner Mr. Surojit Bhattacharjee submits that the appeal court did not consider the point that the opposite parties were tenants on the basis of oral arrangement at the newly constructed case premises, which they admitted in para 02 of their petition of the case and according to terms and condition of the deed dated 19.01.1971 the predecessor of present land lord could not constructed the case premises within Falgun 1377 B.S. and delivered possession of the same to the predecessor of tenants.

Further he submits Ekrarnama dated 19.01.1971 is not valid document. The land lords are not bound by the document since both the executants and recipients are not alive. As such the agreement

has become infructuous in the eye of law. He further submits the learned appeal court without consideration of material of evidence on record in respect of the invalid deed dated on 19.01.1971 and treating the tenants are not defaulter passed the impugned judgment and order.

It appears from the record that the premises have been given rent to the predecessor of tenants orally. Further it appears from the record that the tenants did not pay rent for Agrayan 1407 B.S. The tenant filed the rent deposit case on 22.02.2001 by depositing rent for two months together for the month of Agrayan and Pous.

Upon such consideration they became defaulters. The appeal court allowed the appeal upon erroneous findings that the terms of Ekrarnama dated 19.01.1971 is binding upon the present land lord which is invalid document or not effective as because the case premises was not constructed within the time mentioned in the deed. As such alleged deed was not effective.

It further appears that the rent control court in his findings correctly stated that the tenants were in default to pay the rent as per statute of the rent control ordinance. It clearly shows in this case the land lord of the case premises have been changed, the ownership of the land lords was not as the same as 1971. So the tenant has right to pay the rent but cannot claim the ownership of tenancy.

Furthermore it clearly shows that after purchasing the said land or case premises, the predecessor of this petitioner constructed the premises for new tenancy as per new contract for new deed. So, it appears the new deeds are not executed and effective fully between the parties. Further it appears in the miscellaneous case the rent premises are a very old one premises and the ownership has been charged from the old owner of 1971. Further it transpired that there was a claim that, the heirs of the old tenants or previous tenants sublets the premises to the 3rd person. Regarding this matter the appeal court did not give any findings. However the lower appellate court misread and mis-appreciated pleadings of the parties.

So the decision of the lower appellate court is required to be interfered.

Upon such I find substance in the Rule.

Hence the Rule is absolute.

Send down the L.C. record along with the copy of the judgment at once.