

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Ashfaqul Islam

Mr. Justice S. M. Emdadul Hoque

Mr. Justice A. K. M. Asaduzzaman

CIVIL APPEAL NO. 96 OF 2016

(Arising out of C.P No. 2014 of 2011)

Md. Mamun Akhter Hossain

.... Appellant

-Versus-

Md. Haider Ali Sarker and Respondents
another

For the Appellants : Mr. Abdul Hoque, Advocate
instructed by Mrs. Madhumalati Chy. Barua,
Advocate-on-record

For the Respondent No. 1 : Mr. Md. Mazibar Rahman,
Advocate-on-record.

For the Respondent No. 2 : Not represented

Date of hearing : 23.04.2025 and 20.05.2025

Date of Judgment : 21.05.2025

JUDGMENT

Md. Ashfaqul Islam, J: This Civil Appeal by Leave is directed against the judgment and order dated 16.05.2011 passed by the High Court Division in Civil Revision No. 4567 of 2008, making the Rule absolute.

The facts, in short, are that the present appellant as plaintiff instituted S.C.C. Suit No. 02 of 2006 before the Small Causes Court, Bogra, praying for a decree of eviction of defendant No. 1 from the suit premises and recovery of khas possession thereof. The plaintiff

claimed that the shop in question had originally been let out to defendant No. 2 on a monthly basis under an agreement dated 07.11.1989. Subsequently, defendant No. 2 entered into a separate agreement dated 23.06.1995 with defendant No. 1 and transferred possession of the shop to him upon receipt of a salami of Tk. 2,25,000/-. The plaintiff alleged that the defendant became a defaulter in payment of rents and that the premises were required for his personal use. Accordingly, the plaintiff served notice under Section 106 of the Transfer of Property Act on 21.08.2003.

Defendant No. 1 contested the suit denying all material allegations. He claimed that the plaintiff had no locus standi to file the suit and that he had been regularly paying rents in accordance with the tenancy terms. It was stated that the predecessor of the plaintiff had executed an agreement with defendant No. 2 upon receipt of Tk. 1,30,000/- as security deposit, refundable at the time of surrendering possession. Defendant No. 2, in turn, executed an agreement with defendant No. 1 for Tk. 2,25,000/-, thereby transferring possession. The defendant further contended that upon the

plaintiff's refusal to accept rents, he started depositing rents regularly with the House Rent Controller in House Rent Control Case No. 29 of 2001.

The Rent Controller, by order dated 12.06.2005, held that the defendant was a defaulter and had no right to deposit rent. On appeal, however, the Special District Judge, Bogra, in Miscellaneous Appeal No. 46 of 2005, allowed the appeal and directed the defendant to continue depositing rents in H.R.C. Case No. 29 of 2001.

The Trial Court, upon hearing, decreed the suit on 30.10.2008, finding that the defendant was a defaulter within the meaning of the Premises Rent Control Act. The Court further directed the plaintiff to refund the security money of Tk. 2,25,000/- within 45 days and allowed him to withdraw the rents deposited with the Rent Controller.

Being aggrieved, the defendant preferred Civil Revision No. 4567 of 2008 before the High Court Division, which, by the impugned judgment, made the Rule absolute holding that the defendant was not a defaulter and that the salami or advance money paid could be adjusted

towards rents, relying on earlier judicial decisions.

Hence, the plaintiff has filed this appeal by leave.

Mr. Abdul Haque, learned Advocate for the appellant, submits that the High Court Division erred in law in reversing the concurrent findings of facts of the Trial Court without proper consideration. He contends that the High Court Division failed to appreciate that the defendant had failed to produce any rent receipt for the period prior to April, 2001 and therefore was rightly held to be a defaulter by the Trial Court. He further argues that the amount of Tk. 2,25,000/- paid by the defendant for the purpose of purchasing possession cannot be considered as an advance rent to be adjusted monthly, as such transaction was void and illegal under Section 10 of the Premises Rent Control Act.

On the other hand Mr. Md. Mazibar Rahman, the learned Advocate-on-Record appearing for the respondent No. 1 made his submissions supporting the judgment and order of the High Court Division.

We have considered the submissions of the learned Advocate of both sides, perused the materials on record, and examined the judgment of both the Courts below.

The Trial Court, upon a detailed scrutiny of the evidence, found that the defendant had defaulted in payment of rent as he failed to tender or deposit rents in due time under Section 18(5) of the Premises Rent Control Ordinance. The Trial Court also rightly noted that payment of any salami or advance money for possession of rented premises is prohibited by Section 10 of the Act and does not confer any legal right of possession upon the tenant. The High Court Division, however, without properly construing these statutory provisions, concluded that since the defendant had earlier paid a lump sum to the previous tenant, such amount could be adjusted against rents, thereby negating default. Such a conclusion is inconsistent with the express language of the law and established judicial precedents.

In *Mustaque Hossain (Md.) vs. Md. Shahjahan Miah and another* 57 DLR (AD) 60, the Appellate Division held that under Section 10 of the Premises Rent Control Act, 1991, acceptance of salami or advance money by a landlord is illegal, and such payment does not create any non-ejectable right in favour of the tenant. The tenant is

merely entitled to refund of the salami under Section 14 of the Act, but the illegality of the transaction cannot serve as a shield against eviction on grounds of default.

Similarly, in *East Bengal Paper Traders vs. Md. Waziullah* 21 DLR 572 and *Ramjan Ali Mistry vs. Md. Hedayetullah* 31 DLR (AD) 183, it was consistently held that once a tenant is in default, he cannot claim protection under the Ordinance, and subsequent tender or deposit of rents does not cure the default. The statutory protection under Section 18(5) is available only to a tenant who pays or deposits rents regularly in accordance with law.

The principle was reaffirmed in *P.K. Chakraborty vs. A.P. Chowdhury and others* 33 DLR (AD) 55, where it was observed that payment of rents in lump sum does not protect a tenant from default unless covered by specific contract or waiver on the part of the landlord. These authorities clearly indicate that the High Court Division misdirected itself in law in treating the lump-sum payment or salami as advance rent.

On an overall assessment of the evidence and law, we find that the Trial Court rightly held the defendant to be a defaulter, and its findings were well-founded both in fact and law. The High Court Division erred in reversing such findings without adequate reasoning and in misapplying the settled principles regarding illegal payment of salami and statutory default.

In view of the foregoing discussion and consistent judicial interpretation of the relevant statutory provisions, we find merit in this appeal.

Accordingly, the appeal is allowed. The impugned judgment and order of the High Court Division is set aside, and the judgment and decree passed by the Trial Court is restored. There will, however, be no order as to costs.

J.

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