

Assam Schedule VII, Form No. 133.

HIGH COURT FORM NO.(J) 3.
HEADING OF JUDGMENT ON APPEAL

District :Kamrup (M)

**IN THE COURT OF THE CIVIL JUDGE (SR. DIVISION) No. 2,
KAMRUP (M) AT GUWAHATI**

Present: Smt. P. Shyam, AJS.,
Civil Judge (Sr. Division)No. 2,
Kamrup (M), Guwahati.

Title Appeal No. 28 of 2022

From the judgment and decree dated 28-09-2022 passed by
the Learned Munsiff No.2, Kamrup (M), Guwahati,in Title Suit No.
190/2022

Mrs. Meera Bhattacharyee

W/o late Achyut Sankor Bhattacharjee,
resident of M.L. Mehru Road, Panbazar,
Guwahati-781001, P.S. Panbazar, District
Kamrup (M), Assam

.....Appellant

-versus-

1. M/s Fairdeal Enterprise,

A proprietorship Firm having its office at
P.P. Road, P.O. Rehabari, Guwahati-
781008, Dist-Kamrup (M), Asam.

**2. Mr. P.K. Deorah @ Pradip Kr.
Deprah,**

S/o late Prahladrai Deorah, Proprietor of
M/s Fairdeal Enterprise, P.P. Road, P.O.
Rehabari, Guwahati-781008, Dist-Kamrup
(M), Asam.

.....**Respondents**

On final hearing on 19.04.2025 of :

Sri J.H. Saikia..... Advocate for the appellant.

Sri S. K. Sangania.....Advocate for the respondents

This, the 17.06.2025, this Court delivered the following judgment :-

J U D G M E N T

1. The instant appeal under section 96 r/w Order XLI Rule 1 of the CPC, is directed against the judgment and decree dated 28.09.2022, passed by Learned Munsiff no.2, Kamrup (M), Guwahati, in Title Suit no. 190/2022.
2. On admission of the appeal, the case record of the Trial Court was called for and received. I have perused the case record and heard argument of the contesting parties.
3. In order to decide the appeal, the facts leading to this appeal need to be discussed :-

Case of the Plaintiff/Appellant

4. The case of the plaintiff/appellant, in brief, is that the plaintiff is the absolute owner of the suit room, measuring 360 sq.ft. on the ground floor of a building named 'OM Bhawan', described in schedule A of the

plaint. The defendant no.2 is the proprietor of defendant no.1, i.e. M/s Fairdeal Enterprise, dealing in business of medicine distribution. In the year 2009, the defendant no.2 and his son, Sri Vishal Deorah, approached the plaintiff requesting for a room for the purpose of running office-cum-sale center of M/s Fairdeal Enterprise on monthly rental basis and on such request, the plaintiff agreed to lease out the suit room on a monthly rent basis for a period of three years commencing from 01.10.2009.

5. The plaintiff and the defendant no.2, representing defendant no.1, executed a lease agreement dated 30.09.2009. The monthly rent was fixed at Rs 9,500/-, payable within the 15th day of each succeeding English Calendar month. The lease agreement was for a period of three years from 01.01.2009 to 30.09.2012. As per the agreement dated 30.09.2009, the defendants paid Rs. 2 lacs as security deposit to the plaintiff though the defendants promised to pay Rs. 3 lacs. Thereafter, the son of the defendant no.2 issued a cheque for an amount of Rs. 1 lac dated 5.10.2009 but said cheque was dishonoured due to insufficient fund.
6. It is stated that the defendants used to pay monthly rent through bank cheque but were irregular in their payments. The defendants paid house rent of Rs. 9,500/- for the month of June, 2012, on 09.06.2012 vide cheque no. 575099 but said cheque was dishonoured due to insufficient fund in the account of defendant no.1 and, therefore, the defendants became a defaulter in payment

of rent for the month of June, 2012. It is stated that the defendant also violated the agreement by renovating the suit premises without the permission of the plaintiff. The defendant has done the renovation of the suit premises stealthily when the plaintiff was out of Guwahati for a few days.

7. It is stated that the tenanted premises is required *bona fide* by the plaintiff to accommodate the plaintiff's daughter, who is a doctor by profession and had passed her MD in Pathology. The daughter of the plaintiff intends to start medical clinic in said premises with the sole intention to serve the people in and around her locality and there is no other suitable room to start medical clinic except the suit room. The plaintiff alleged that the defendants are illegally occupying the suit room after expiry of the lease agreement on 30.09.2012. The plaintiff served legal notice through her counsel on 26.03.2012, requesting the defendants to vacate the rental premises but the defendants have failed to do so.
8. The defendants have not paid electricity bills due to which the electric line got disconnected and, thereafter, the defendants took electric line from their business premises in violation of the agreement. The defendants have also not offered the monthly rent nor served any notice about deposit of monthly rent in the Court since the month of June, 2012. Hence, the suit.

Case of the Defendants/Respondents:

9. The defendants filed written statement-cum-counterclaim in which it is *inter alia* stated that the plaintiff has filed the suit as a pressure tactics to compel the defendants to pay rent @ Rs. 15,000/- per month as per her demand and to further pay a sum of Rs. 1 lac as advance. It is stated that the suit premises let out by the defendants comprises of area measuring 400 sq.ft. and not 360 sq.ft. as averred by the plaintiff. The defendants admitted that the suit premises has been let out on rent since the year 2009 on monthly rental basis and the rent was fixed at Rs. 9,500/- per month to be payable within 15 days of every succeeding English Calendar month. It is stated that the defendants agreed to pay a sum of Rs. 1 lac to the plaintiff on condition that the plaintiff shall provide a passage to have access to the rental space through the front garage and accordingly, the son of the defendant issued a cheque for a sum of Rs. 1 lac to the plaintiff but the plaintiff failed to provide such passage and returned the cheque to the son of the defendant no.2.
10. Denying that the rents were paid through cheque, the defendants stated that the rents were paid sometimes in cash and sometimes through cheque and the cheque dated 9.6.2012, which was handed over to the plaintiff, was not for payment of monthly rent but for payment of advance money. It is stated that the rent for the month of June, 2012, was tendered to the plaintiff on 3.7.2012

but the plaintiff refused to accept the same and demanded enhancement of rent @ Rs. 15,000/- per month. The defendant no.2 agreed to enhancement of rent but refused to pay exorbitant rate of rent demanded by the plaintiff and as no mutual understanding was arrived at between him and the plaintiff, the plaintiff refused to accept the rent and the defendant started to deposit the rent in Court after complying with all formalities. The rent for the month of June, 2012, was deposited in the Court vide NJ Case no. 3506/12 and since then, the defendants have been paying rent every month in Court and cannot be considered as defaulter.

11. The defendants admitted that they carried out repair works like repairing the walls, doors, coloring, plastering, etc., and have constructed two toilets but stated that the same was done with the consent and full knowledge of the plaintiff and the defendants incurred expenditure to the tune of Rs. 1.5 lacs in doing such repairs, which the plaintiff promised to refund at the time of vacating the tenanted premises. The defendants stated that the alleged plea of *bona fide* requirement is a *mala fide* plea, taken to justify the filing of the suit by the plaintiff as the real intention of the plaintiff was to get the rent enhanced to Rs. 15,000/- per month, which was not agreed to by the defendants. It is stated that after the defendants started depositing rent in the Court, the plaintiff and the defendants came to a mutual understanding in the month of September, 2012, and the defendants agreed to pay rent @Rs. 13,000 per month. A draft agreement was sent by the plaintiff to the

defendants but the defendants did not agree to the terms and conditions as the plaintiff demanded further advance of Rs. 1 lac and the plaintiff was interested in entering into an agreement with the son of the defendant no.2 and not with the defendants. It is stated that if the plea of the *bona fide* requirement would have been genuine, the plaintiff would not have agreed to let out the premises for a further period of three years to the son of defendant no.2.

12. The defendants denied the allegation that they have not paid electricity bills and instead, alleged that the plaintiff disconnected the electricity line in order to compel the defendants to pay enhanced rent @ Rs 15,000/-. The defendants filed a Writ Petition before the Hon'ble Gauhati High Court, being WP(C) no. 5034/13, and the High Court passed an order directing the ASEB authorities to provide electricity connection but before the ASEB could act, the plaintiff restored the electricity connection, but later on, again disconnected the electricity line in the first week of December, 2013. Pleading that the defendants are the tenants of the plaintiff and are in lawful possession of the suit premises as tenants and have also incurred huge expenditure in carrying out repairing works in the suit premises and in construction of toilets, the defendants filed counterclaim seeking refund of the expenses amounting to Rs. 1.5 lacs along with interest as well as the advance amount of Rs. 2 lacs paid to the plaintiff as security deposit.

13. On the above pleadings, the Id. Munsiff no.2, Kamrup (M), framed the following issues:

- I.** Whether there is any cause of action for the suit.
- II.** Whether the suit is maintainable in its present form and manner.
- III.** Whether the defendant had defaulted in respect of payment of rent vis-à-vis suit premises.
- IV.** Whether the defendant has violated the terms of tenancy agreement.
- V.** Whether the suit premises is bona fide requirement of the plaintiff.
- VI.** Whether the plaintiff is entitled to decree and/or relief as prayed for.
- VII.** Whether the counter-claim is maintainable in its present form.
- VIII.** Whether the defendant/counter claimant is entitled to realize Rs 3,00,000/- from the plaintiff with interest as prayed for.
- IX.** To what other relief or reliefs, parties of this suit are entitled for.

14. From the judgment and order delivered by the Id. Munsiff no.2, Kamrup (M), on 28.09.2022, it is seen that the Trial Court dismissed the suit of the plaintiff and also dismissed the counter-claim of the defendant and the appellant/plaintiff, on being aggrieved and dissatisfied with the impugned judgment and order, preferred the present appeal on the following grounds:

GROUND OF APPEAL

"i) For that the impugned Judgment passed by the Learned trial Court is not sustainable in law and on facts and in law and as such the same is liable to be set aside and quashed.

*ii) For that the Learned trial Court committed a **error in holding that the respondent/defendant was not defaulter on the ground that the plaintiff/appellant as PW-1 admitted in her cross examination that she mentioned in her objection of the NJ Cases that the list of NJ cases were enough to prove that the defendant/respondent had deposited rent in the Court but mere depositing of rent in the Court without fulfilling the condition precedents as laid down under Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 would not depart the tenant from the periphery of being a defaulter** and as such the finding of the learned trial Court is not only perverse but contrary to the provisions of law.*

*iii) For that there being no evidence at all that **the defendants before depositing the rent in Court offered the rent to the plaintiff and that the plaintiff refused to accept the***

same be the precondition for depositing the rent in Court would not be fulfilled and would not be a valid deposit of rent in Court even if one admits about the NJ cases and as such the Hon'ble Court may be pleased to record a finding that the defendant is a defaulter thereby entitling the plaintiff to a decree of the suit for eviction of the defendants.

*iv) For that the learned Trial Court committed error in **deciding the issue of bonafide requirement of the appellant on the ground that the appellant was more interested in renewal of the agreement as the defendants** have sent a draft renewal agreement but the same was not agreed to by the appellant and she had sent a draft agreement without any signature inasmuch as the same cannot be construed as having no requirement of the appellant.*

v) For that the learned Trial Court also negated the issue of bona fide requirement of the plaintiff/appellant on the ground that on earlier occasion the plaintiff obtained a decree for eviction of tenant 'Kitap Ghar' but later on the premises were let out to other inasmuch as in such cases there is a specific provision under Section 5(3) of the above Act for filling application to the Court by the aggrieved party seeking appropriate relief.

*vi) For that the finding arrived at by the Learned trial Court **while passing the judgment dated 28-9-2022 erred in law and facts in not considering the breach of agreement that respondent carried out unauthorized construction of toilet inside the tenanted room and the tenant under no circumstances is allowed to carry out such kind of construction under Section 108 (m), (o) and (p) of the Transfer of Property Act since the tenanted room has been given for running office cum sale center of M/S Fairdeal Enterprise for which a common toilet is existed for their use and there was no provision for construction of toilet inside the tenanted room.** As such the learned trial Court ought to have held that the defendant had acted contrary to the provisions of clause (m), (o), (p) of Section 108 of the Transfer of Property Act, 1882 and ought to have decreed the suit.*

vii) For that there being overwhelming evidences that the room was required for opening of a clinic for the daughter of the plaintiff who is a doctor by profession in order to provide services to the people in general and local people in particular and that there was no alternative accommodation other than the tenanted room, the plaintiff is entitled to a decree of eviction of

the defendant on the ground of bonafide requirement.

viii) For that in sum and substance from the pleadings and evidences on record there is enough proof of the fact that the defendant is a defaulter and constructed toilet as well as carried out unauthorized constructions contrary to the provisions of clause (m), (o), (p) of Section 108 of TP Act and that the suit room was bonafidely required by the plaintiff for starting a medical clinic for her daughter and as such the plaintiff is entitled to a decree for eviction of the defendants from the tenanted premises.

ix) For that in any view of the matter, the Judgment and Decree impugned herein is liable to be reversed under the facts and circumstances of the case and the suit of the plaintiff deserves to be decreed."

15.From the points of argument as well as the Memo of Appeal, it is seen that the appellant/plaintiff has challenged the decision of the Trial Court on issues no.3, 4 and 5.

16.From the pleadings as well as evidence on record, this first appellate Court, in the forthcoming discussion, shall ascertain the following questions:-

- (i) Whether the learned Munsiff rightly decided and answered the issues;
- (ii) Whether the learned Munsiff rightly decreed the suit of plaintiff by providing sufficient reasons;
- (iii) Whether the learned Munsiff appreciated the evidence adduced by both parties properly; and
- (iv) Whether findings of the learned Munsiff are based upon lawful consideration and settled provisions of law.

**DISCUSSION, DECISION AND REASONS FOR
DECISION**

17. Taking note of the questions formulated, this first appellate Court shall answer the questions above including the grounds of appeal in light of evidence adduced by the parties. The following issues are found relevant for consideration by this Appellate Court.

ISSUE NOS. 3 & 4: Whether the defendant had defaulted in respect of payment of rent vis-à-vis suit premises.

&

Whether the defendants violated the terms of tenancy agreement.

18. To begin with, it is an admitted fact that the defendant no.1 is the tenant of the plaintiff and has been in possession of the suit room since the year 2009 but the

defendant no.2 disputed that the area of the suit room is 360 sq.ft. and asserted that the suit room comprises of an area measuring 400 sq.ft. on the ground floor of the building named 'Om Bhawan'. Admittedly, the parties entered into a lease agreement on 30-09-2009 (Ext-1) and the rent was fixed at Rs 9,500/-. On perusal of the lease agreement, it is seen that the suit room comprises of an area measuring 400 sq.ft. and though the plaintiff, as PW1, stated that she had filed the suit with respect to a room measuring 360 sq.ft. but at the same time, admitted that as per the lease agreement, the area of the suit room has been mentioned as 400 sq.ft. The plaintiff filed the suit based on said lease agreement and there is nothing on record to show that the defendant actually took possession of an area measuring 360 sq.ft. only on the ground floor of the building named "Om Bhawan" and as per the lease agreement, the area of room let out on rent consists of area measuring 400 sq.ft.

19. It is an admitted fact that the defendant no.1 paid an advance of Rs 2 lakhs to the plaintiff. The plaintiff pleaded that though the defendant promised to pay Rs 3 lakhs as advance money but had paid Rs 2 lakhs only and the cheque amounting to Rs 1 lakh, issued by the son of defendant no.2 in favour of the plaintiff, got dishonoured due to insufficient fund. In reply to said plea, the defendants pleaded that the defendants had agreed to pay a sum of Rs. 1 lakh to the plaintiff on condition that the plaintiff shall provide a passage to have access to the rental space through the front garage

and accordingly, the son of the defendant issued a cheque for a sum of Rs. 1 lakh to the plaintiff but the plaintiff failed to provide such passage and returned the cheque to the son of the defendant no.2. The lease agreement reveals that the suit room taken on lease was for a period of three years from 01-10-2009 to 30-09-2012 on monthly rental of Rs 9,500/- and Rs 500/- as maintenance charges and refundable advance of Rs 3 lakhs and the plaintiff was to provide passage to access the rented space through the front garage. It is also mentioned that in case if during the duration of lease, if the landlady wished to provide access only through the two back doors, the tenant would have to pay Rs 9,000/- rent with no additional maintenance charges and advance of Rs 2 lakhs and in such case, an amount of Rs 1 lakh from the previous deposited advance shall be returned to the tenant by the landlady. It is also mentioned that the advance deposit shall be refunded in full on expiry of the lease. On perusal of pleadings and evidence, it is seen that the cheque dated 05-10-2009 for an amount of Rs 1 lakh (Ext-2) issued by the son of defendant no.2 was dishonoured due to insufficient fund and the DWs, too, admitted that the cheque bounced due to insufficient funds but neither in the plaint nor in her evidence did the plaintiff plead that she had provided passage to have access to the tenanted premises through the front garage as per the agreement, which was the condition precedent for payment of advance money of Rs 3 lakhs. Thus, it cannot be held that the defendants did not pay the advance money of Rs 3 lakhs as promised.

20. Coming to the issue of defaulter, the plaintiff alleged that the defendants were irregular in payment of monthly rent and that the defendants defaulted in payment of rent for the month of June, 2012, as the cheque dated 09-06-2012, for an amount of Rs 9,500/- (Ext-3), issued by the proprietor of defendant no.1 towards payment of rent for the month of June, 2012, got dishonoured due to insufficient funds. The defendants took the plea that said cheque was not issued for payment of rent for the month of June, 2012, but was for payment of advance money.
21. In the case of **Professional Sales Representative Union Vs Bibupada Gupta and two others, in CRP/40/2021**, the Hon'ble Gauhati High Court held that- *"The law as regards the burden of proof insofar as the default in payment of rent is no longer res-integra, inasmuch as it is for the tenant to prove that he is not a defaulter in payment of rent. There is a specific allegations made in the plaint to the effect that from the month of May 2016 till the date of filing of the suit there was no payment made towards rent. The defendants have stated in the written statement that for the month of May 2016 payment was made to the bank account of plaintiff No.1 and for the month of June 2016 payment was made to the bank account of plaintiff No.2. The defendants are silent as regards the month of July 2016 in their pleadings. But pleading is not proof for which it is the requirement of law that the defendants ought to have proved their statements made in the written statement by way of adducing evidence. As no evidence has been led in the instant case, I am of the opinion that*

the Court below was justified in holding that the defendants were defaulter in payment of rent.”

22. The lease agreement reveals the rent was to be payable within the 15th of each succeeding month of English calendar in cash/cheque against a written receipt to be issued by the landlady or her authorized representative. It is seen that there is no mention anywhere either in the pleadings or in the evidence of the plaintiff (PW1) that the plaintiff issued receipts against payment of rent. As per the plaintiff, the rents were paid to her through cheques only whereas the defendant pleaded that the rent was sometimes paid in cash and sometimes through cheque. It is seen that during cross-examination, the plaintiff stated that the defendants used to pay rent on the 24th or 25th of every month, a plea which the plaintiff took for the first time. The defendants produced only one rent receipt (Ext-A), issued by the plaintiff, which shows payment of rent of Rs 9,500/- and maintenance charges of Rs 500/- for the month of March, 2012, on 11-04-2012, which is within the stipulated time as per the lease agreement. The plaintiff did not produce counterfoil of rent receipts or any document to show that the defendants were irregular in payment of rent. The plaintiff thus, failed to discharge her burden.

23. The next question which needs to be decided is whether the defendant defaulted in payment of rent for the month of June, 2012. Admittedly, the defendants issued cheque dated 09-06-2012 for an amount of Rs 9,500/- (Ext-3), which was the amount equivalent to monthly

rent and the same got dishonoured due to insufficient funds. The defendants took the plea that said cheque was issued for payment of advance money and not for payment of rent for the month of June, 2012. This is an incomplete plea for it is not understood for what advance payment the cheque was issued. Be that as it may, admittedly the security deposit of Rs 2 lakhs was lying with the plaintiff at the time of filing the suit. In the case of **Modern Hotel, Gudur Vs. K.Radhakrishnaiah and Ors.** reported in **(1989) 2 SCC 686**; the Supreme Court, after taking into account the judgment in M/s Sarwan Kumar Onkar Nath, held at paragraph no. 10 that –“*The tenant cannot be held to be a defaulter when the landlord already is holding to an amount which would cover the arrears.*”

24. Thus, the law is settled to the effect that without adjustment of the advance amount, the tenant cannot be held to be in arrears and consequently, cannot be held to be a defaulter in payment of rent. In the instant suit, admittedly, the defendants paid Rs 2 lakhs as security deposit to the plaintiff and as per the lease agreement, the same was to be refunded in full on expiry of lease agreement. The security deposit of Rs 2 lakhs is still lying with the plaintiff and in view of the above law laid down by the Supreme Court, the defendants cannot be termed as defaulters under section 5(1)(e) of the Assam Urban Area Rent Control Act, 1972.

25. In the memo of appeal, the appellant/plaintiff took the plea that the defendants did not lead evidence to show

that the defendants, before depositing the rent in Court, offered the rent to the plaintiff and that the plaintiff refused to accept the same, which is a pre-condition for depositing the rent in Court and, therefore, deposit of rent in the Court is not a valid deposit.

26. It is a settled law that for deposit of rent in Court to be a valid deposit within the meaning of Section 5(4) of the Act, the rent has to be first offered to the landlord, otherwise the deposit made in Court would not be a valid deposit and in that case, the defendant would not be protected from eviction under Section 5 of the Act, the provision being mandatory in nature. According to the defendant, the rent for the month of June 2012, was tendered to the plaintiff on 03-07-2012 but the plaintiff refused to accept the same and, therefore, the rent for the month of June, 2012, was deposited in Court vide N.J case no. 3506/12 and since then, the defendants are regularly depositing rent of every month in the Court. As per the lease agreement, the rent was to be paid within the 15th of each succeeding month of the English calendar in cash/cheque. The plaintiff, during her cross-examination, admitted that rent for the month of June 2012, was given to her by the defendants on 03-07-2012, which is within the due date of rent for the month June, 2012. Further, perusal of NJ cases and the challans marked as Ext-E(1) to Ext-E(64), show payments of rent till the month of September, 2017, in compliance with the provisions of the Assam Urban Area Rent Control Act, and the plaintiff/appellant did not allege subsequent default in payment of rent by the defendants during

pendency of the suit or appeal. That being so, the plea of the plaintiff that she was not offered rent by the defendants for the month of June 2012, before the defendants deposited the rent in the Court does not hold any ground and the defendants, therefore, are not defaulters under section 5 (4) of the Assam Urban Areas Rent Control Act.

27. Moving onto the next issue regarding violation of lease agreement by the defendants, the plaintiff alleged that the defendants committed breach of agreement by carrying out unauthorized construction of toilet inside the tenanted room and the tenant, under no circumstances, is allowed to carry out such kind of construction under Section 108 (m), (o) and (p) of the Transfer of Property Act since the tenanted room has been given for running office-cum-sale center of M/S Fairdeal Enterprise and there is a common toilet for their use and there was no provision for construction of toilet inside the tenanted room.

28. The defendants admitted that they had constructed toilet inside the tenanted premises and had done repairing of the walls, doors, coloring, plastering, etc., but stated to have done it with the permission of the plaintiff in the month of June 2011. The defendants pleaded that the plaintiff had full consent and knowledge as the pipe lines were taken from the backside of the building which was kept under lock and key of the plaintiff and those could not have been fitted without the consent of the plaintiff. It is pertinent to mention that the defendant stated to

have incurred Rs 1.5 lakhs towards such construction and repair and claimed said money from the plaintiff by way of counter-claim, which has been dismissed by the Trial Court and against said dismissal, the defendants had not preferred any appeal. DW1, i.e. the defendant no.2, admitted that he did not produce any bill to show the costs of construction of toilet and repairing works carried out by him in the suit premises.

29. Section 5 of the Assam Urban Area Rent Control Act, 1972, reads as under:- "*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:*

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

(a) Where the tenant has done anything contrary to the provisions of clause (m), clause (o) or clause (p) of Section 108 of the Transfer of Property Act, 1882 or to the spirit of the aforesaid clause in areas where the said Act does not apply, or

(b) Where the tenant has been guilty of conduct which is a nuisance or an annoyance to the occupiers of the adjoining or neighbouring houses, or

(c) Where the house is bonafide required by the landlord either for purposes of repairs or rebuilding, or for his own occupation or for the occupation of any person for

whose benefit the house is held, or whether the landlord can show any other cause which may be deemed satisfactory by the Court, or

(d) Where the tenant sublets the house or any part thereof or otherwise transfers his interest in the house or any part thereof without permission in writing from the landlord, or

(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

(f) Where the tenant has built, acquired or been allotted a suitable residence."

30. Section 108 of the Transfer of Property Act, deals with the right and liabilities of the lessor and lessee.

Section 108. Rights and liabilities of lessor and lessee.—

In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—

(A) Rights and Liabilities of the Lessor

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover;

(b) the lessor is bound on the lessee's request to put him in possession of the property;

(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption. The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and Liabilities of the Lessee

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease;

(e) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void: Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision;

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor;

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the

lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor;

(h)the lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased but not afterwards all things which he has attached to the earth; provided he leaves the property in the state in which he received it;

(i)when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them;

(j)the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;

Nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee;

(k)the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest;

(l)the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;

(m)the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;

(n)if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor;

(o)the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted,

or commit any other act which is destructive or permanently injurious thereto;

(p)he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;

(q)on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

31.DW1, i.e. the defendant no.2, confirmed during his cross-examination that there was no clause in the lease agreement for providing toilet and that there is a common toilet in the backside of the building of the tenanted premises. DW1 also confirmed that there was no provision for construction of toilet in the suit premises. DW1 further confirmed that there was no written permission by the plaintiff to construct toilet in the suit premises.

32.It is seen that PW1, i.e. the plaintiff, stated during her cross-examination that - *"I have not filed any FIR against the tenant regarding construction of toilet, but I verbally told them regarding construction. I have not written in my plaint and in my evidence in affidavit that I have verbally informed the tenant regarding the construction of toilet and other construction."* The Trial Court took the view that said statements amount to admission on part of the plaintiff.

33.Besides that, it has surfaced during evidence that the plaintiff resides on the third floor in the same building where the defendants carry on their business as tenant

and the garage of the plaintiff is adjacent to the tenanted premises. The plaintiff took the plea that the defendants carried out construction works in her absence while she was not in Guwahati but neither in the plaint nor in her evidence-on-affidavit did the plaintiff mention about the date, time and year when the constructions were carried out by the defendants, or where was she at that time. There is also no mention anywhere as to when did the plaintiff discover that such constructions were carried out. The date and time of construction is significant, for, the defendants pleaded that the constructions were carried out in the month of June, 2011, with the permission of the plaintiff and if the plaintiff pleaded that she was elsewhere the onus lies on the plaintiff to prove the same. Consent may be express or implied. It is a fact that the plaintiff resides in the same building where the defendants carry on their business and with no evidence on side of the plaintiff to show that said constructions were carried out in her absence, it can be safely concluded that the plaintiff had her consent in the construction of toilet and repairing works carried out by the defendants. It is further seen that the Trial Court took note of the fact that the lease agreement, marked as Ext-1, is an unregistered one and contrary to provisions of section 17(1)(d) of the Registration Act. The unregistered lease agreement was for a period of three years and the plaintiff has invoked section 5(1)(a) of the Assam Urban Area Rent Control Act alleging that the defendants have acted contrary to the provisions of Section 108 of the TP Act. There is no bar under the Assam Urban Area Rent Control Act that

the provisions of section 108 of the TP Act cannot be applied if a lease agreement is not registered while considering the rights and obligations of the parties.

34. This issue is, therefore, rightly decided by the trial Court and needs no interference.

ISSUE NO.5 : Whether the suit premises is bona fide requirement of the plaintiff.

35. The requirement of the suit premises shown by the plaintiff is to accommodate the plaintiff's daughter, who is a doctor by profession and has passed her M.D in pathology and intends to start medical clinic in the suit premises. The defendant challenged said plea on grounds that the alleged plea of *bona fide* requirement is infact a *mala fide* plea taken to justify the filing of the suit inasmuch as the real intention of the plaintiff is to get the rent enhanced to Rs 15,000/- per month, which was not agreed to by the defendants. The defendants pleaded that on an earlier occasion, the plaintiff filed TS no. 279 of 1999 against one of her tenants, namely, KitapGhar, on these very grounds and after getting vacant possession of the suit premises, the plaintiff let out some portion of the premises to the defendants and the rest was converted to a garage. The defendants further pleaded that it is the modus operandi of the plaintiff to file suit and force the tenant to agree to pay enhanced rate of rent as per her demand. The defendants averred in their written statement that

after the defendants started depositing rent in the Court, a mutual understanding was arrived at between the plaintiff and the defendants and the defendants agreed to enhance the rent from Rs 9,500/- to Rs 13,000/- and thereafter, a draft lease agreement was sent by the plaintiff to the defendants and since the draft agreement was not as per the mutual understanding arrived at between the parties, the agreement was not signed. The defendants exhibited said unsigned draft lease agreement as Ext-C and the plaintiff admitted that said document was sent by her to the defendants. Ld counsel of the appellant/plaintiff argued that said act cannot be construed as having no requirement of the suit room by the appellant/plaintiff. This admission on part of the plaintiff, no doubt, goes to show that she did think over the idea of renewal of the tenancy agreement with the defendants but this proposal was sent prior to filing of the suit and the plea of *bonafide* requirement cannot be negated on this ground.

36. The Hon'ble Gauhati High Court, while deciding **CRP no. 76 of 2018**, reiterated the views of the Supreme Court in the case of **Shiv Sarup Gupta V. Dr. Mahesh Chand Gupta [(1999) 6 SCC 222]**, and various other judgments of the apex Court and held that "*the bonafide requirement of the landlord has to be seen on the date of the petition and the subsequent events intervening due to protracted litigation will be relevant for moulding the reliefs provided such events have a material impact on those rights and obligations. In other words, the question of bonafide requirement is to be*

adjudged as on the date of the filing of the suit and it is the burden of the plaintiff or the landlord to prove the said aspect of the matter. If during the pendency of the litigation, if any subsequent event occurred which disentitles the landlord to eviction on the ground of bonafide requirement, it is the burden upon the tenant to prove that such bonafide requirement of the landlord has eclipsed as it is the tenant who seeks to disentitle the landlord a decree for eviction on subsequent events.....It would be clear that for the purpose of bona fide requirement of a landlord what is required is that it must be something more than a mere desire but need not certainly be a compelling or absolute or dire necessity. A bona fide requirement is something in between a mere desire or wish on one hand and the compelling or dire or absolute necessity on the other."

37. Admittedly, the daughter of the plaintiff is a doctor by profession and has completed her MD in pathology. The plaintiff pleaded that there is no other suitable room/place to start a medical clinic for her daughter. The lease agreement between the parties was for a period of three years and as per the lease agreement dated 30-09-2009, Ext-1, the landlady (plaintiff) was to provide an advance notice of 6 months in case of non-renewal of the leased property. It is seen that the plaintiff, in accordance with the terms of agreement, issued a notice dated 26-03-2012, marked as Ext-4, to the defendants, requesting the defendants to vacate the suit room by 30-09-2012, on grounds that the suit room is *bona fide* required for starting a medical clinic. This notice was

issued six months prior to termination of the lease agreement as agreed and even before the plaintiff alleged default in payment of rent by the defendants. The defendants pleaded in their written statement that the plaintiff demanded enhanced rent @ Rs 15,000/- per month from the month of June, 2012, whereas the notice for vacating the suit premises was issued in the month of March, 2012. In such a scenario it cannot be said that plea of *bona fide* requirement taken at the time of filing of the suit was intended to pressurize the defendants to pay enhanced rent.

38. The Supreme Court, in the case of **Murlidhar Agarwal V Mahendra Pratap Kakan**, reported in **Civil Appeal no. 4275 of 2017**, while reiterating its decision in **Mohd. Ayub and Anr. v. Mukesh Chand, (2012) 2 SCC 155, Ganga Devi v. District Judge, Nainital and Ors., (2008) 7 SCC 770 and Bhagwan Dass v. Jiley Kaur (Smt) and Anr., 1991 Supp (2) SCC 300**, held that- *“One of the circumstances to be seen while appreciating the comparative hardship is to examine whether the tenant has brought on record any material to indicate that at any time during the pendency of the long drawn-out litigation, he made any attempt to seek an alternative accommodation and was unable to get it. This factor will be one of the circumstances to be taken into consideration while determining whether the claim of the landlord is bona fide. In this case, nothing is on record to show that the tenant who has been in the premises for a total of 73 years with*

63 years of them after the expiry of the lease, has made any attempt to seek any alternative accommodation and nothing is brought on record to show that he was unable to get one."

39. It is seen that in the instant suit, the defendants neither pleaded nor showed that they searched for suitable alternate accommodation to shift their place of business after receipt of notice (Ext-4) from the plaintiff, which was issued six months prior to termination of the lease agreement, but were unable to get one. On the other hand, the plaintiff pleaded requirement of the suit room for opening up a medical clinic for her daughter, who passed her MD and stated to have no other suitable room except the tenanted premises. Except for the averment that the plaintiff has no intention to use the suit room for opening medical clinic, the defendants did not plead availability of other rooms in the building of the tenanted premises, which the plaintiff can utilize for opening up medical clinic for her daughter. Thus, in light of the above judgments and also taking into consideration the pleadings and evidence, this Court is of the opinion that the suit room is *abona fide* requirement of a family member of the plaintiff. The decision of the Trial Court on this issue **needs interference and is, hereby set aside.**

40. With respect to issues no. **I and II**, the appellant/plaintiff has not challenged the findings of the Trial Court on any these issues. I have gone through the findings of the Trial Court on these issues and in my

opinion, the findings arrived at by the Trial Court require no interference and are upheld.

41. In the result, the appeal is allowed on contest and the judgment dated 28-09-2022 is hereby set aside. Consequently, the appellant/plaintiff is entitled to recovery of possession of the suit room by evicting the defendants on refund of advance money of Rs 2 lakhs to the defendants.

42. Prepare decree accordingly.

43. Send the case record along with a copy of this judgment and order to the Trial Court.

Given under my hand and seal of this Court on this, the 17th day of June, 2025.

Panchali Shyam
Civil Judge (Sr. Div) No.2
Kamrup (M) Guwahati.

APPENDIX

Plaintiff's Witnesses:

PW-1- Smti. Meera Bhattacharjee.

PW-2- Sri Achyut Sankar Bhattacharjee.

Defendant's Witnesses:

DW-1- Sri Pradeep Deorah.

DW-2- Sri Vishal Deorah.

Plaintiff's Exhibits:

Ext -1 - Lease agreement executed between the parties,

Ext- 2 - Cheque bearing cheque No. 00014 dated
05/10/2009,

Ext- 3 - Cheque bearing cheque No. 575099 dated
09/06/2012 drawn on Central Bank of India,

Ext - 4 - Legal notice dated 26/03/2012.

Defendant's Exhibits:

Ext- A - Rent receipt dated 11.04.2012 for the month of
March 2012,

Ext -B - Photograph,

Ext -C - Lease agreement sent by the plaintiff to the
defendant,

Ext-D - Reply to the notice dated 26.03.2012 given by
the plaintiff,.

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- Ext-E(1) to E(64) - The challans showing deposit of rent,
Ext-F - The draft agreement of tenancy sent
by defendants to the plaintiff,
Ext- G(1) to G(30) - The petitions for depositing the rent,
in the Court.
Ext- G(61) to G(89) – Process fee,
Ext- H - Certified copy of memo of Title
Appeal No. 19 of 2005 filed by the
plaintiff along with the judgment
passed in T.S. No. 279 of 1999,
Ext-I - Certified copy of the order passed in
W.P.(C) No. 5034/2013,
Ext-J(1) to J(6) - Medical documents of DW1,
Ext- K - Power of attorney dated 07.11.2017.

Panchali Shyam
Civil Judge (Sr. Div) No.2
Kamrup (M) Guwahati.