

GAHC010104562025



2026:GAU-AS:6215

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : CRP/96/2025**

KAMALESH AGARWALLA  
S/O RAM NARAYAN AGARWALLA, PERMANENT RESIDENT OF PIOLI  
NAGAR, KALI MANDIR ROAD, P.O AND P.S- MORAN, DISTRICT-  
DIBRUGARH, ASSAM, PRESENTLY RESIDING AT MORAN TOWN, WARD NO  
3, P.O AND P.S- MORANHAT, DISTRICT- CHARAIDEO, ASSAM

VERSUS

JAY KISHORE SAHU  
S/O LATE JAY NARAYAN SAHU, RESIDENT OF MORAN TOWN, WARD NO 3,  
P.O AND P.S- MORANHAT, DISTRICT- CHARAIDEO, ASSAM

**Advocate for the Petitioner** : MR G KHANDELIA, MR. K DEKA

**Advocate for the Respondent** : MR R PAUL, MR. R BORA

**BEFORE**  
**HON'BLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**05.05.2026**

Heard Mr. G. Khandelia, learned counsel for the petitioner and also heard Mr. R. Bora, learned counsel for the respondent.

2. In this petition, under Section 115 of the Civil Procedure Code, 1908 read with Article 227 of the Constitution of India, the petitioner has challenged the judgment and decree dated 13.02.2025, passed by the learned Civil Judge (Sr. Division), Charaideo, Sonari, in Title Appeal No.10/2021. Notably, vide impugned judgment and decree dated 13.02.2025, passed by the learned Civil Judge (Sr. Division), Charaideo, Sonari (hereinafter referred to as the learned Appellate Court), has affirmed the judgment and decree dated 20.05.2019, passed by the learned Munsiff, Charaideo, Sonari, in Title Suit No.7/2017. It is also to be noted here that vide judgment and decree, dated 20.05.2019, the learned Munsiff, Charaideo, Sonari (hereinafter referred to as the learned Trial Court), in Title Suit No.7/2017 has decreed the suit of the plaintiff, the respondent herein, on contest with cost.

3. In this petition the status of the parties, as indicated in the title suit, before the learned Trial Court, is adopted to avoid confusion and for the sake of convenience.

4. The background facts leading to filing of this revision petition are briefly stated as under:-

“The respondent herein, as plaintiff, had instituted a title suit, being Title Suit No.7/2017 before the Court of learned Munsiff, Charaideo against the present petitioner as defendant for a decree of arrear rent, ejectment of the defendant from the suit premises on the ground of defaulter in payment of rent and also on the ground of **bona-fide** requirement of the suit premises.

The plaintiff is the owner of a shop room, which is a part of RCC building, consisting of 4 rooms, as described in the Schedule 'A' of the plaint. The father of the plaintiff, namely, Jay Narayan Sahu (since deceased) was the owner of the said 4 rooms, standing on a plot of land bearing P.P. No.133, Dag No.288, situated at Moran Town, and he let out one of the shop rooms to the defendant during his lifetime, at the rate of Rs.800/- per month, payable within 3<sup>rd</sup> day of

the succeeding month as per English Calendar. The father of the plaintiff suffered demise on 11.02.2005, leaving behind the plaintiff and two brothers as his legal heirs. And after the death of the plaintiff's father, the plaintiff got the Schedule 'A' shop room as his share in the father's property, by way of succession. The plaintiff then informed the defendant regarding the ownership of the scheduled shop room and the defendant has accepted the plaintiff as his landlord and became the tenant of the plaintiff. Thereafter, from July, 2010 the initial rent of Rs.800/- per month was enhanced to Rs.2,000/- per month. And since January, 2014, the monthly rent was enhanced to Rs.2,500/- payable on the 3<sup>rd</sup> day of the succeeding month. It is the case of the plaintiff that the defendant was irregular in paying rent. And it is the further case of the plaintiff that he took a sum of Rs.35,000/- (Rupees Thirty Five Thousand) as loan from the defendant in the month of June, 2010 with a condition to refund the loan amount by deducting Rs.500/- from the rent payable to the plaintiff from the month of July, 2010 and the refund of the loan amount stood completed in the month of April, 2016 and it is also the case of the plaintiff that the defendant defaulted in payment of rent for the said shop room for the month of May, 2016 till the month of May, 2017, on account of which he is liable to be evicted from the said shop room. It is also the case of the plaintiff that out of the 4 rooms of the RCC building, one room is used as an entrance to the adjacent residence of the plaintiff and the said room fallen in the share of Raj Kumar Sahu, the elder brother of the plaintiff and due to hostile relation with Raj Kumar Sahu, the plaintiff has no alternate route to enter into his residence, except the shop room rented out to the defendant and as such, the shop room is **bona-fide** required to the plaintiff for his own use as entrance to his residence. Thereafter, the plaintiff had served a notice on 06.03.2017 to the defendant to vacate the shop room and to pay the arrear rent within 15 days, but the defendant did not pay heed to the same and the defendant has also not vacated the room, for which

the plaintiff instituted the suit aforesaid for recovery of khas possession and for ejection of the defendant and for arrear rent of Rs.32,500/-, (Rupees Thirty Two Thousand) being the rent for the months from May, 2016 to May, 2017.

The defendant has contested the suit by filing written statement, wherein he denied the statement and averment made by the plaintiff. His case is that the suit premises had been taken on rent more than 20 years ago from Mathura Prasad Sahu (since deceased), who was the uncle of Jay Narayan Sahu (since deceased), the father of the plaintiff. The defendant had paid a sum of Rs.1,20,000/- (Rupees One Lac Twenty Thousand) only, as security to Mathura Prasad Sahu, the landlord of the defendant. The monthly rent was Rs.800/- at that time and after the death of Mathura Prasad Sahu, as per family settlement the RCC building, which includes the suit premises falls into the share of the father of the plaintiff, Late Jay Narayan Sahu, and accordingly, Jay Narayan Sahu started taking monthly rent of the suit premises from the defendant.

Thereafter, Jay Narayan Sahu also passed away in the year 2005 and after his death, his elder son Shiv Kumar Sahu started to take the rent from the defendant and he demanded Rs.50,000/- as security amount for the suit premises on the plea that earlier amount was paid to Late Mathura Prasad Sahu, who had not paid or transferred the amount to their father, Late Jay Narayan Sahu, at the time of family settlement. The defendant then raised objection, but, he paid a sum of Rs.35,000/- as security, to Shiv Kumar Sahu in the year 2010 and after about one year of taking the security amount by Shiv Kumar Sahu, he asked the defendant to pay the monthly rent to Raj Kumar Sahu, the 2<sup>nd</sup> son of Late Jay Narayan Sahu, and accordingly, the defendant started to pay the monthly rent to Raj Kumar Sahu.

And during the year 2014, the defendant had done electrification of the suit premises at his own cost and also paid the amount for new connection in the

suit premises and as such, he had to bear a sum of Rs.10,000/- (Rupees Ten Thousand) approximately, for electrification of the suit premises and it was assured that the amount for electrification in the suit premises will be refunded to the defendant at the time of vacating the suit premises by the defendant. Thereafter, in the month of December, 2015, Raj Kumar Sahu asked the defendant to pay the monthly rent as per their family arrangement, to his younger brother Jay Kumar Sahu. As per advice of Raj Kumar Sahu, the defendant had started paying monthly rent for the suit premises to Jay Kishore Sahu, since the month of January, 2016. Thereafter, the plaintiff started to threaten the defendant by saying that he would get the defendant ousted from the shop room.

However, he has accepted the monthly rent @ Rs.2,000/- (Rupees Two Thousand) per month, till the month of March, 2016. But, the plaintiff refused to accept the rent from the month of April, 2016, when the defendant tendered/offered rent for the month of April, 2016 in the first week of May, 2016. Thereafter, the plaintiff had demanded a sum of Rs.5,000/- (Rupees Five Thousand) as monthly rent and also demanded Rs.2,00,000/- (Rupees Two Lacs) as "Salami" and the defendant is/was not in a position to pay the rent at an exorbitant rate and also the "Salami" and he also requested the plaintiff to accept the rent for the month of April, 2016 at the rate of Rs.2,000/-, but the plaintiff flatly refused to accept the rent and threatened the defendant that he would see the defendant in the Court.

Thereafter, the defendant has deposited the rent for the month of April, 2016 in the Court and since the month of May, 2016 he has been offering monthly rent of Rs.2,000/- each and every month within the 1<sup>st</sup> week of the succeeding month, to the plaintiff, but in every month he refused to accept the same and so he has been depositing the rent in Government Treasury, through

the Court till filing of his written statement and he denied the statement and averment made by the plaintiff in the plaint.

Upon the aforementioned pleadings, the learned Trial Court has framed following issues:-

1. Whether the suit is maintainable in law as well as facts or not?
2. Whether there is cause of action in the suit or not?
3. Whether the plaintiff is entitled to a decree for khas possession of the Schedule A land by ejecting the defendant or not?
4. Whether the plaintiff is entitled to a decree for arrear rent of Rs.32,500/- from the month of May, 2016 to May, 2017 or not?
5. Whether the plaintiff is entitled to future rent from filing of this suit till the date of delivery of khas possession or not?
6. To what other reliefs the parties are entitled to?

Thereafter, the learned Trial Court, having examined one witness of the plaintiff and another witness of the defendant and also considering the documents exhibited by both the parties and having heard the argument of learned counsel for both the parties, had decided all the issues in affirmative and thereafter, decreed the suit.

Being aggrieved by the aforementioned judgment and decree, passed by the learned Trial Court, the defendant has preferred an appeal before the learned Appellate Court, being Title Appeal No.10/2021. And thereafter, hearing learned counsel for both the parties, the learned Appellate Court had formulated one point for determination as under:-

Whether the judgment and order of the learned Trial Court needs

interference by this Court?

And thereafter, hearing learned counsel for both the parties and also considering the records, of the learned trial court, the learned Appellate Court, vide impugned judgment and decree dated 13.02.2025, had dismissed the appeal, and thereby affirmed the judgment and decree dated 20.05.2019, passed by the learned Trial Court, in Title Suit No.7/2017."

5. Being aggrieved, the defendant has filed the present petition, challenging the impugned judgment and decree, so passed by the learned Appellate Court, dated 13.02.2025 on the following grounds:-

- (i) That, admittedly, the plaintiff was holding an advance amount against the rent, which was in excess of the amount of rent just due, up to filing of the suit and a sum of Rs.1,20,000/- was paid in advance to Mathura Prasad Sahu and a sum of Rs.35,000/- (Rupees Thirty Five Thousand) was paid to Shiv Kumar Sahu, the elder brother of the plaintiff and the plaintiff has failed to prove that he took loan of Rs.35,000/- and the same was adjusted and the security amount was never adjusted and the learned Trial Court has failed to deal with the said issue.
- (ii) Since the plaintiff had received a sum of Rs.35,000/- from the defendant as advance, against the house rent, the defendant cannot be treated as defaulter and the learned Courts below have failed to consider the decision of Hon'ble Supreme Court as well as of this Court that advance amount on the tenancy account, the tenant cannot be treated as a defaulter.
- (iii) The learned Courts below also failed to consider the fact that the defendant has tendered rent to the plaintiff for the month of April, 2016, which he refused to accept and the said piece of evidence could not be rebutted in cross-examination of the defendant and that there was no rent

agreement or any other evidence to show that the rent was payable on or before the 3<sup>rd</sup> day of the succeeding month.

- (iv) That the learned Appellate Court had failed to apply its judicial mind to the evidence of the defendant, who categorically stated that the rent was offered to the plaintiff by visiting him physically and the same was refused and thereafter, it was deposited in the Court and as such, the pre-condition of offer and refusal in consonance with the provisions of Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 was complied with.
- (v) The learned Appellate Court had erred in rejecting the petition filed by the defendant under Order XLI Rule 27 of the CPC to adduce additional evidence to prove the offer and refusal and date of offer and refusal.
- (vi) The learned Appellate Court has also failed to appreciate that there was specific pleading that initially advance sum of Rs.1,20,000/- (Rupees One Lac Twenty Thousand) only, was paid to Mathura Prasad Sahu and then a sum of Rs.35,000/-(Rupees Thirty Five Thousand) only, to Shiv Kumar Sahu and the rent was paid to Shiv Kumar Sahu and Raj Kumar Sahu and as such, they were necessary parties for proper decision of the case.
- (vii) The learned Appellate Court has also failed to appreciate the plea of **bona-fide** requirement of the suit premises to use as an entrance, which has not been stated in the eviction notice, and also there was a vacant space used as entrance and the plea of **bona-fide** requirement is an afterthought.
- (viii) Under such circumstance, it is contended to allow this petition.

6. Mr. Khandelia, learned counsel for the petitioner, *firstly* submits that the finding, so recorded by the learned Courts below, in respect of the defaulter, is illegal and arbitrary, as there is evidence to show that the defendant had offered the rent to

the plaintiff for the month of April, 2016, and he refused to accept the same, for which the rent is being deposited in the Court and the N.J. cases in depositing the rent have been exhibited by the defendant in support of his contention.

6.1. **Secondly**, Mr. Khandelia also pointed it out that a sum of Rs.1,20,000/- (Rupees One Lac Twenty Thousand) only, was given to the grandfather and a sum of Rs.35,000/- (Rupees Thirty Five Thousand) only, was given to the brother of the plaintiff as "Salami" and while the advance sum was given, then the defendant ought not to have been treated as a defaulter and as such, the finding so recorded by the learned Courts below, in respect of the defaulter is illegal and arbitrary. Mr. Khandelia, further pointed it out that the defendant has filed an application before the learned Appellate Court for allowing it to adduce additional evidence, to prove the factum of offer and refusal of rent, but the said petition was arbitrarily dismissed by the learned Appellate Court.

6.2. And **thirdly**, Mr. Khandelia submits that the finding recorded in respect of **bona-fide** requirement is also not acceptable and the same is an afterthought. And as such, he has contended to interfere with the judgment and decree so passed by the learned Appellate Court.

6.3. **Lastly**, he submits that the petitioner herein is a senior citizen and in the event of dismissing this petition, the petitioner may be granted sufficient time to make alternative arrangement and also to make payment of the arrear rent. In support of his submission in respect of granting time Mr. Khandelia has referred following two decisions:-

(1) **Smt. Santana Kar(Deb) & Anr. -vs- Badal Palit & Ors.** reported in 2018 3 Gau LT 222;

(2) **Sri Pritpal Singh- Mustt. Nur Nahar Begum & Ors.** reported in 2016 4 Gau LT 629;

7. Per contra, Mr. Bora, learned counsel for the respondent has supported the impugned judgment and decrees passed by both the learned Courts below. He submits that both the Courts below have rightly arrived at the finding that the petitioner is a defaulter, as he has failed to prove offering of the rent to the plaintiff, on each and every month and also refusal to accept the same by the plaintiff and the learned Courts have rightly appreciated the said fact and arrived at a reasoned finding. He also submits that there is also no infirmity in the impugned judgments and decrees, so passed by the learned Courts below in respect of *bona-fide* requirement of the suit premises and being the landlord, it is his prerogative as to how he would use the property. Mr. Borah also submits that the room rented out to the defendant is required by the plaintiff to use the same as an entrance, as the previous entrance falls in the part of his elder brother, with whom he has hostile relation. And under such circumstances, Mr. Borah has contended to dismiss this revision petition.

8. Having heard the submission of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record and also perused the impugned judgments and decrees, so passed by the learned Courts below.

9. It appears that the learned Trial Court had, though, not specifically framed issues on the point of defaulter, and also on *bona-fide* requirement, yet, it has formulated three main issues, which are-

1. *Whether the plaintiff is entitled to a decree for khas possession of the Schedule A land by ejecting the defendant or not?*
2. *Whether the plaintiff is entitled to a decree for arrear rent of Rs.32,500/- from the month of May, 2016 to May, 2017 or not?*
3. *Whether the plaintiff is entitled to future rent from filing of this suit till*

*the date of delivery of khas possession or not?*

9.1. And thereafter, discussing the evidence, the learned Trial Court has arrived at the finding that there is nothing to show that when the rent was offered for the last time and when it was refused, by the plaintiff for depositing the same within the fortnight of its becoming due, is not come in the present scenario and as such, the defendant has failed to prove the fact that the plaintiff had refused to accept the rent and it was deposited within the fortnight of his becoming due and that the mandate of tenancy law is not fulfilled by the defendant in the present suit and it is seen from the above that the defendant is a defaulter in payment of the rent.

9.2. It also appears that while arriving at such a conclusion, the learned Trial Court has also relied upon a decision of Hon'ble Supreme Court in the case of **Rameswar Choudhury v. Ram Niranjana Mow**, reported in **1995 Supp (3) SCC 44** and also a decision of this Court in the case of **Rup Chand Daftary vs. Ashim Ranjan Modak**, reported in **2000 (2) GLT 75**.

10. Further it appears that the learned Appellate Court, also in the impugned judgment and decree has held that it is settled law that the burden of proving that the rent was duly deposited in the Court as per Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 is on the defendant/tenant and in the instant case, the defendant though pleaded and testified that he had offered the rent for the month of April, 2016 to the plaintiff in the first week of May, 2016 and on his refusal, he deposited the rent in the Court, but he failed to state any date on which he went to offer the rent and the plaintiff and that the plaintiff had refused to accept the same. Merely mentioning that he offered the rent in the first week of the every subsequent month and on refusal, he deposited the same in the Court is not sufficient. He had failed to led any cogent evidence to show when and on which date he visited the plaintiff to offer the rent, so as to inspire confidence on his version that he offered the rent to the plaintiff before each date of depositing the rent.

10.1. Thereafter, the learned appellate court had arrived at the finding that there is no evidence to show that the rent was offered and the same was refused by the plaintiff. The deposit of rent in the Court cannot be considered as valid under Section 5(4) of the Assam Urban Areas Rent Control Act, 1972 and in that view of the matter, the deposit of rent in the Court, without the same being offered to the plaintiff, is not a valid deposit and hence, the defendant is a defaulter in payment of rent.

11. The findings, so recorded by the learned Trial Court, as well as the learned Appellate Court, have been examined in the light of the facts and circumstances on the record and also in the light of the submissions advanced by the learned counsel for both the parties. And, this Court finds that the learned counsel for the petitioner has failed to demonstrate any illegality or arbitrariness in arriving at such a finding by the learned trial court, as well as by the learned Appellate Court.

11.1. To a pointed query of this Court, at the time of hearing, Mr. Khandelia fairly submits that neither in the pleading nor in the evidence, had the defendant mentioned any date, on which he offered the rent and the plaintiff had refused to accept the same. However, he submits that the petitioner herein has filed an application under Order XLI Rule 27 of the CPC to adduce additional evidence to prove the offer and refusal, but the same was rejected by the learned Appellate Court. It appears that the petition, under Order XLI Rule 27 of the CPC, was rejected by the learned appellate court on the ground that no date has been mentioned in the pleadings and also deposed in the evidence, as to when and where the rent was offered and as such, the petitioner herein cannot be allowed to improve his case by adducing evidence, subsequently, to establish a fact which was not there in the plaint and in the evidence. And that being so, this Court finds no illegality or infirmity in the finding so recorded by the learned Trial Court as well as by the learned Appellate Court in respect of the defaulter.

12. It also appears that though no issue, on the *bona-fide* requirement, was

framed, yet, the learned Trial Court has discussed the same in Issue No.5. It had discussed as to whether the plaintiff is entitled to future rent from filing of the suit till the date of delivery of khas possession or not and thereafter, arrived at a finding that in the suit in hand, the plaintiff requires the suit premises for his occupation. Being a landlord he is the best judge for his requirement and use of the suit premises, which was let out to the defendant as tenant. Therefore, the law laid down in the case of **Ragzendra Kumar v. Firm Prem Machinery and Co.**, reported in AIR 2000 SC 534 is applicable in the present case. The learned Trial Court has also relied upon another decision in the case of **Dinesh Kumar vs. Yusuf Ali**, reported in (2010) 12 SCC 740, wherein it was held that *bona-fide* requirement of a landlord for a business or commercial premises for carrying his own business due to non-suitability of the present rented space, the landlord is the best judge of his own need, provided it must be real, genuine and *bona-fide* not on the pretext of enhancement of rent and eviction of the tenant.

13. The learned Trial Court has also observed that the plaintiff in the present case has the privilege to choose the place of his business and the tenant has no authority to dictate what he should do and what he should not. The learned Appellate Court also while deciding the Issue No.3, has arrived at a finding that the plaintiff has a *bona fide* requirement of the suit premises and the defendant is a defaulter in payment of rent and the plaintiff is entitled to khas possession of the suit premises by evicting the defendant.

13.1. The learned Appellate Court has also held that it is settled position that *bona-fide* requirement of the landlord has to be judged by the Court sitting in the chair of the landlord and not as merely raised by the defendant and in the instant case, the need of the plaintiff to use the suit premises as entrance to his residence, as the previous entrance fell in the part of his brother with whom his relation is hostile, is a *bona fide* requirement of the plaintiff, and merely, availability of rooms to be used as

entrance which falls in the share of brothers of the plaintiff doesn't show that the plaintiff does not have a *bona-fide* requirement of the suit premises.

13.2. The learned appellate court also held that mere availability of any road on the backside of the building does not negate the *bona-fide* requirement of the plaintiff to use any front entrance to his residence and the defendant cannot dictate the plaintiff to use any back entrance or property of his co-sharers as entrance while he has his own property which can be used as front entrance only for the reason that the same has been let out to the defendant. In arriving at such a finding, the learned Appellate Court has also relied upon a decision of Hon'ble Supreme Court in the case of **Prativa Devi vs. T.V. Krishnan**, reported in (1996) 5 SCC 353, wherein it has been held that the landlord is the best judge of his requirement and Courts have no concern to dictate the landlord as to how and in what manner he should live.

14. Though, the learned Trial Court in its finding has recorded that the plaintiff required the suit premises for occupation, yet, the learned Appellate Court has arrived at a finding that the suit premises is required for being used as entrance as the earlier entrance fall in his brother's part. Thus, having examined the finding of both the Courts below in respect of the *bona-fide* requirement and also considering the submission of learned counsel for both the parties in this regard, this Court is unable to record concurrence with the submission of Mr. Khandelia that the requirement of suit premises by the plaintiff is not *bona-fide* one.

15. Since there is concurrent finding of facts by both the learned courts below, in respect of the defendant is a defaulter and also that bona-fide requirement of the suit premises, and since the learned counsel for defendant had failed to demonstrate from the records and in also in the impugned judgment and decrees, so passed by the learned courts below any illegality or infirmity or any jurisdictional error, this Court is of the considered opinion that there is no merit in this civil revision petition.

16. In the result, this civil revision petition stands dismissed, leaving the parties to bear their own costs.

17. However, in respect of the submission of Mr. Khandelia that the petitioner is a senior citizen and that sufficient time may be granted for making alternative arrangement and also for payment of arrear rent, it appears that the learned Trial Court has granted 2(two) months' time for making such alternative arrangement. Further, it appears that since the time of passing the decree on 20.05.2019, more than 6 years have elapsed. Yet considering the submission of Mr. Khandelia and in view of the decisions of co-ordinate benches of this in the case of **Smt. Santana Kar(Deb) & Anr.(supra)** and in **Sri Pritpal Singh(supra)**, where time to vacate the suit premises were granted, this court is of the view that equity could be balanced, if two more months is granted to the petitioner herein.

17.1. Accordingly, two months time is granted to the petitioner to vacate the suit premises.

18. In terms of above, this civil revision petition stands disposed of.

**JUDGE**

**Comparing Assistant**