

GAHC010228602025



2026:GAU-AS:3695

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

Case No. : CRP/143/2025

DHANRAJ SURANA
S/O LATE SAMPATLAL SURANA, R/O JANIGANJ, SWARUPA COMPLEX, P.O.
AND P.S.- SILCHAR, DIST- CACHAR, PIN-788001, ASSAM

VERSUS

ABHIJIT ROY
S/O LATE APURBA BHUSAN ROY, R/O CENTRAL ROAD, P.O. AND P.S.-
SILCHAR, DIST- CACHAR, PIN-788001, ASSAM

Advocate for the Petitioner : MR. P DAIMARY, R BORAH, J MEDHI, MS. N M
LONGKENG, MR. P K DEKA

Advocate for the Respondent : MR S CHOUDHURY, MR. P SENGUPTA

BEFORE

HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved: 16.02.2026

Date of pronouncement of judgment: 13.03.2026

Whether the pronouncement is of

the operative part of the judgment?: No

Whether the full judgment has been pronounced: Yes

JUDGMENT AND ORDER (CAV)

1. Heard Mr. P.K. Deka, learned counsel for the appellant. Also heard Mr. S. Choudhury, learned counsel for the respondent.

2. This civil revision petition is directed against the judgment and decree passed on 24.05.2023 by the Court of the learned Munsiff No.2, Cachar, Silchar in Title Suit No. 25 of 2015, dismissing the suit of the plaintiff/appellant and decreeing the counter claim of the present petitioner/defendant.

3. The facts of the case may be briefly adverted to. The plaintiff/appellant is a monthly tenant under the defendant/respondent in respect of the shop room as described in the schedule of the plaint with effect from 01.04.2005 on execution of Tenancy Agreement for a period of 3 (three) years fixing monthly rent @ 3,400/- mentioning the terms and conditions thereon including the payment of Rs.50,000/- as interest free security deposit and advance rent of Rs.14,000/- with provision of adjustment thereof at the rate of Rs.500/- per month from the amount of monthly rent. By said tenancy agreement dated 04.04.2011 the period of tenancy granted by the defendant/respondent was for a period of 3 (three) years w.e.f. 04.04.2011 and monthly rent was fixed at Rs.4497/- and Rs.50,000/- as interest free security remained with the defendant/respondent and " further Rs.14,000/- was paid by the plaintiff/appellant to the defendant/respondent as advance rent With provision of adjustment thereof with the monthly" rent @ Rs.500/- per month. Such advance rent has already been adjusted and the security deposit amount of Rs.50,000/- as mentioned above still remains with the defendant/respondent.

It was also contended that the defendant always used" to come to the

business place and residence of the plaintiff to collect monthly rent and issue receipt thereof and on 02.04.2014 the defendant came to the said premises of the plaintiff for the last time and collected rent for the month of March, 2014 from the plaintiff by issuing receipt. The defendant did not come to the business place or residential premises of the plaintiff in the month of May, 2014 for which the plaintiff talked with the defendant over phone as to make payment of rent for April, 2014 to which the defendant expressed that he would collect the rent for the months of April, 2014 to September, 2014 at a time in 1st week of September, 2014 and also would get fresh Tenancy Agreement executed by and between them for another 3 years.

The plaintiff/appellant also contended that because of the long standing relationship in between him and the defendant/respondent, the plaintiff believed the defendant in good faith and made attempt to contract with the defendant for payment of the monthly rent of the said months and for execution of fresh tenancy agreement and ultimately talked with the defendant over phone on 08.08.2014. But surprisingly the defendant changed his stand and expressed that he would not accept any rent from the plaintiff and further he would not grant any further tenancy in favour of the plaintiff in respect of the suit schedule room. Under such circumstances the plaintiff was compelled to pay rents for all months with effect from September, 2014 to January, 2015 @ Rs.5173/- and advance rent for February to June, 2015 @ Rs.5173/- per month in view of the fact that always the defendant declined to accept such sum from the plaintiff in various rent deposit cases such as Misc. (R/C) Case No. 464 of 2014, Misc. (R/C) Case No.514 of 2014 and Misc (R/C) Case No.70 of 2015 of the Court of Learned Munsiff No.1, Silchar. It was alleged that the defendant/respondent started taking resort to unfair means so as to evict the plaintiff/appellant from

the suit premises. As such, the plaintiff filed the suit with prayer for decree of declaration of his tenancy right along with other prayer.

4. The defendant by filing written statement as well as counterclaim contended that he is the absolute owner of the suit premises described in the schedule of the W.S.; The plaintiff is a businessman and approached the defendant for the grant of tenancy of the suit premises for a period of 3 (three) years with effect from 4th day of April, 2011 in consideration of payment of monthly rent of the rate of Rs.4497/- (Rupees Four Thousand Four Hundred Ninety Seven) only. The defendant granted the tenancy in favour of the plaintiff with respect to the suit premises for a period of 3 (three) years with effect from 4th day of April, 2011 on execution of a bilateral deed of tenancy agreement dated 4th day of April, 2011 executed by and between the plaintiff and the defendant. The tenancy was granted by the defendant to the plaintiff in consideration of payment of monthly rent at the rate of Rs.4497/- payable by the plaintiff to the defendant within the 15th day of the following English Calendar month and on receipt of the monthly rent the defendant is to execute receipt without which no acknowledgment to be recognized. The defendant has stated that a sum of Rs.50,000/- was paid by the plaintiff to the defendant as interest free security deposit. The plaintiff further paid an amount of

Rs. 14,000/- as advance to be adjusted with the monthly rent of the rate of Rs.500/- per month and rest of the pix. Monthly rent to be paid by the plaintiff to the defendant. The plaintiff agreed to pay the electric bills for the suit premises along with 1/3rd of Municipal taxes. It was agreed in the tenancy agreement that plaintiff shall deliver khas possession of the suit premises to the defendant immediately after the termination of tenancy agreement, to which

the defendant allowed the plaintiff to enjoy tenancy over the suit premises over the entire period on receipt of the monthly rent on adjustment of Rs.500/- each month till the entire amount of Rs.1400/- was adjusted. After adjustment, the plaintiff has been paying rent at the rate of Rs. 4490. In the above manner, the plaintiff paid rent lastly on 02.04:2014 for the month of March, 2014. As per the defendant/respondent, the tenancy expired on 31st day of 2014 and has not been renewed thereafter. But, the plaintiff even after expiry of the tenancy period did not deliver his possession of the suit premises to the defendant nor the plaintiff paid any rent for the period after March, 2014. Hence, the plaintiff is a defaulter in respect of payment of monthly rent in respect of the suit premises and therefore, the plaintiff/appellant is an evictable tenant in view of the provisions of Assam Urban Areas Rent Control Act, 1972. The defendant has stated that the suit premise is required by him for his own requirements. The defendant several times requested the plaintiff to deliver khas possession of the suit premises, but the plaintiff did not pay any heed to it. Hence, the defendant served legal notice dated 17.11.2014 upon the plaintiff through his Advocate demanding the plaintiff to vacate the suit premises within 15 days of receipt of the notice, but the plaintiff did not comply with the notice and rather filed a case vide No.1436™/2014 U/S. 144 Cr.P.C.

5. In the said counter claim the defendant prayed for a decree with declaration that the plaintiff is liable to be evicted from the suit premises being a defaulter and in view of the bona fide requirements of the defendant/present respondent and recovery of khas possession of the suit premises in delivery of possession of the same to the plaintiff/present respondent. The learned trial court upon conclusion of the trial dismissed the suit of the plaintiff and decreed the counterclaim of the defendant and held the plaintiff/present petitioner to be a

defaulter and therefore liable to be evicted.

6. The aforesaid findings of the learned trial Court were affirmed in appeal it was held by the learned appellate court there is no denial on part of either sides that the plaintiff/appellant started to deposit rent in the Court from the month of September, 2014 but the plaintiff/appellant did not make any payment of monthly rent for the months of April, May, June July, August, 2014 prior to September, 2014 and it is admitted by the plaintiff/appellant himself.

7. The learned Court took note of this decision of the Gauhati High Court in the case of ***United Commercial Bank vs. Rekhav Chand Sohanlal (First Appeal No. 82 of 1984)*** wherein it was observed that "a statutory default or neglect on the part of the tenant to pay or deposit rent, even for a month, whatever may be its cause, the landlord acquires a legal right under the provision of sub section (1) of Section 5 of the Assam Urban Areas Rent Control Act, 1972 to obtain a decree for eviction" and the case of ***M/S. Bata India Ltd. vs. M/S. Dr. P.K. Das*** reported in ***(1984) 1 GLR 297***, wherein the High Court has observed that " the protection granted to a tenant by Section 5 would not be available to a tenant if he fails to pay the rent due from him within a fortnight of its falling due."

8. Mr. P.K. Deka, learned counsel appearing for the petitioner has hammered much on the point that an amount of Rs. 50,000 was deposited with the landlord as security deposit in addition to advance rent for 2 months, the latter having been already adjusted at the rate of Rs. 500 per month. However, the amount of Rs. 50,000 was still lying with the landlord and even if the tenant i.e. the present petitioner had failed to pay the rent due from the month of April till the month of August within the time stipulated under the act, the petitioner was entitled to have such shortfall in payment adjusted against the security deposit

and that being the case, even on the basis of enhanced rent of 15% after expiry of the tenancy period the total quantum of default has been comfortably covered by the amount of Rs. 50,000 lying with the landlord as security deposit.

9. Learned counsel for the petitioner has relied upon a decision of this High Court in ***Bridhichand Pannalal (M/s.) and Ors Vs. Bhanwarlal Dugar (M/s.) and Anr Ors.*** reported in ***2010 (3) GLT 490*** in which case the court had held as follows:-

“(22) In the case before me, there was no statutory transfer of the leased property. Only by way of mutual settlement the suit premise was given to one branch of the joint family members. Be that as it may one of the plaintiffs was the signatory to Ext. 'ka', and as such, his liability to redeem the advance of Rs. 70,000/- continued within the provisions of Section 109 of the Transfer of Property Act. Hence, I told that until and unless the said amount of Rs. 70,000/-is paid to the petitioners/defendants, neither the defendants can be said to be defaulter nor the tenancy can be determined.”

10. Per contra, Mr. S. Choudhury learned counsel for the respondent has submitted that there is no dispute that the petitioner herein had failed to deposit rents from the period from April 2014 to August 2014 and thereby in view of the provisions of the some urban areas tenancy Act, had become a defaulter and once a defaulter always a defaulter. Being the dictum of law, the security deposit of Rs. 50,000 cannot come to the aid of the petitioner specially there being no such provision in the aforesaid act.

11. Learned counsel has relied upon the decision of this High Court in ***M/S. Bata India (supra)*** already referred to herein before and also ***United Commercial Bank (supra)***, wherein it has been held that the statutory default or neglect on the part of the tenant to pay or deposit rent even for a month, whatever might be its cause gives a legal right to the landlord under the provisions of sub-section 1 of Section 5 of the Assam Urban Areas Rent

Control Act to obtain a decree for eviction.

12. I have given my anxious considerations to the rival submissions and to the materials on record. A perusal of the agreement executed between the parties reflects the existence of a clause which indicates that the petitioner/tenant deposited an amount of Rs. 50,000 with the landlord as security deposit. However, there is no mention of about the purpose for which such security deposit has been made or for which it can be used by the landlord.

13. The term what "security deposit" has not been defined anywhere in the act. However, it is generally understood as a deposit of money that is kept by the landlord during the subsistence of the tenancy period, so, that any loss caused to the landlord by way of damage to the property or shortfall in payment of rent may be adjusted against such deposit but it is the considered opinion of this Court that the manner in which such security deposit is to be adjusted rests on the sole discretion of the landlord and that the tenant cannot claim as a matter of right that the said deposit is bound to be adjusted against any shortfall in rent. It may also so happen that if the security deposit is exhausted upon being adjusted against unpaid rent and subsequently upon vacating the premises damages to the property are noticed, then the landlord will be left with no security to make good the said damages.

14. It is the clear provision of the law as laid down in the Assam Urban Areas Rent Control Act that in the event the tenant fails to pay the rent to the landlord or deposit the same after tendering to and refusal by the landlord in Court within the period stipulated, he is to be deemed as a defaulter. The law has not made any exception in respect of cases where a security deposit has been made by the tenant with the landlord. Had there been any clear stipulation in the

agreement that the deposit amount is to be adjusted against unpaid rent then the situation would have perhaps been different, but in the present case there is no such stipulation. In the cited case of **Birdhichand (supra)** there was a clear stipulation in writing that the amount of Rs. 70,000/- deposited with the landlord would be refunded with interest @1.5% to the tenant before the tenant can be evicted, and since the same was not refunded, the Court held that until and unless the said amount was refunded the tenants cannot be treated as defaulter nor can the tenancy be determined. In the instant case however, the only stipulation is that the amount will be refunded after expiry of the tenancy and the tenancy cannot be said to have expired. In real terms, as long as the tenant remains in occupation of the tenanted premises and thereby remains liable to pay rent until he vacates the same. Needless to say, the landlord/respondent herein is bound to refund the amount of Rs. 50,000/- less permissible deductions as indicated herein before.

15. That being the case, I do not find any cause warranting invoking of the revisional jurisdiction of this Court under Section 115 CPC.

16. Consequently, the petition stands **dismissed**.

JUDGE

Comparing Assistant