

GAHC010038762022



2026:GAU-AS:4592

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

**Case No. : CRP/22/2024**

NARAYAN GHOSH AND ANR.  
S/O LATE JASHODALAL GHOSH,  
A.T. ROAD, C/O NARAYAN BAKERY, OPPOSITE SARAB MOTORS,  
GUWAHATI, DIST.- KAMRUP (METROPOLITAN), ASSAM, PIN- 781001

2: SMT. ITI GHOSH  
D/O LATE JASHODALAL GHOSH

A.T. ROAD  
C/O NARAYAN BAKERY  
OPPOSITE SARAB MOTORS  
GUWAHATI  
DIST.- KAMRUP (METROPOLITAN)  
ASSAM  
PIN- 78100

VERSUS

ON THE DEATH OF ASHA ROUT, HER LEGAL HEIRS-  
W/O SRI NARAYAN ROUT,

1.1:SRI NARAYAN ROUT  
HUSBAND OF ASHA ROUT AND S/O (UNKNOWN).  
RESIDENT OF KALASHANI APARTMANT  
FLAT NO. 1H  
SOLAPARA ROAD  
PALTAN BAZAR  
GUWAHATI  
DISTRICT- KAMRUP(M)  
ASSAM. PIN- 781008.

1.2:SRI SANJAY ROUT  
S/O ASHA ROUT AND SRI NARAYAN ROUT.  
RESIDENT OF KALASHANI APARTMANT

FLAT NO. 1H  
SOLAPARA ROAD  
PALTAN BAZAR  
GUWAHATI  
DISTRICT- KAMRUP(M)  
ASSAM. PIN- 781008.

1.3:SMTI. SANJEEMA ROUT  
D/O ASHA ROUT AND SRI NARAYAN ROUT.  
RESIDENT OF KALASHANI APARTMANT  
FLAT NO. 1H  
SOLAPARA ROAD  
PALTAN BAZAR  
GUWAHATI  
DISTRICT- KAMRUP(M)  
ASSAM. PIN- 781008.

1.4:SRI SAROJ ROUT  
S/O ASHA ROUT AND SRI NARAYAN ROUT.  
RESIDENT OF KALASHANI APARTMANT  
FLAT NO. 1H  
SOLAPARA ROAD  
PALTAN BAZAR  
GUWAHATI  
DISTRICT- KAMRUP(M)  
ASSAM. PIN- 781008.

1.5:SMT. SUDHA ROUT  
D/O ASHA ROUT AND SRI NARAYAN ROUT.  
RESIDENT OF KALASHANI APARTMANT  
FLAT NO. 1H  
SOLAPARA ROAD  
PALTAN BAZAR  
GUWAHATI  
DISTRICT- KAMRUP(M)  
ASSAM. PIN- 781008

**Advocate for the Petitioner** : MS P D NAIR, MD F FARIDI,MR. A DHAR,MR. K N  
CHOUDHURY,N GAUTAM,MS A BEGUM

**Advocate for the Respondent** : MR A K BHUYAN, MR S SANCHETI(R-1.1,1.2,1.4),MR. A  
SANCHETI(R-1.1,1.2,1.4),R C SANCHATI (R-1.1,1.2,1.4),MS. S BHUYAN,MR J DAS,MR A  
TALUKDAR,MR. A KHOUND,MS B BORA,MR. M BORAH,MS. N CHOUDHURY,MS. B  
BHUYAN

**BEFORE  
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**31.03.2026**

Heard Mr. A. Dhar, learned counsel for the petitioners and Mr. R. C. Sancheti, learned counsel for the respondent.

**2.** In this petition, under Section 115 of the Code of Civil Procedure, read with Section 151 of the Code of Civil Procedure, the petitioners have challenged the Judgment and Decree, dated 11.09.2019, passed in Title Appeal No. 57/2015, by the learned Civil Judge No. 1, Kamrup (Metro), Guwahati; and the Judgment and Decree, dated 11.08.2015, passed by the learned Munsiff No. 4, Kamrup (Metro), Guwahati.

**3.** It is to be noted here that vide impugned Judgment and Decree, dated 11.09.2019, the learned Civil Judge No. 1, Kamrup (Metro), Guwahati (hereinafter, learned Appellate Court); has dismissed the appeal preferred by the petitioners herein and thereby, affirmed the Judgment and Decree, dated 11.08.2015, passed by the learned Munsiff No. 4, Kamrup (Metro), Guwahati, in Title Suit No. 463/2012.

**4.** It is also to be noted here that vide impugned Judgment and Decree, dated 11.08.2015, the learned Munsiff No. 4, Kamrup (Metro), Guwahati (hereinafter, learned Trial Court); has decreed the suit filed by the petitioners herein and held that the petitioners herein/defendants, are liable to vacate the tenanted premises.

**5.** The background facts leading to filing of the present petition, are briefly stated as under-

“The respondent herein, as plaintiff, had instituted a title suit, being T.S. No.

463/2012, for ejectment of the petitioners from the tenanted premises which was given to them on rent. The petitioners herein were running a bakery shop, in the tenanted premises which is an Assam type house and were living in another Assam type house in the same campus and were paying monthly rent @ Rs. 700/-.

The respondent had proposed to develop the land and obtain NOC from the GMC and when the respondent requested the petitioners herein to vacate the tenanted premises, then they refused to vacate the same; and from the month of July, 2012, the petitioners herein, had stopped paying the house rent and from then onwards, they became defaulter also.

And the son of the respondent has been doing business of tent house in a rented premises and as such the tenanted premises under occupation of the petitioners, are **bona-fide** required by the respondent and as the petitioners herein have failed to vacate the tenanted premises.

Then the respondent herein had instituted a title suit for ejectment of the petitioner, being Title Suit No. 463/2012, and the petitioners herein, as defendants, had filed their written statement, denying that they are defaulters and also challenged the **bona-fide** requirement of the tenanted premises upon the said pleadings of the parties, the learned Trial Court has framed the following issues-

- (i) Whether there is any cause of action for the suit?
- (ii) Whether the suit is maintainable?
- (iii) Whether the suit is properly valued?
- (iv) Whether the defendant has been a defaulter in payment

of rent since July, 2012?

(v) Whether the suit is bad for non joinder of necessary parties?

(vi) Whether the plaintiff is entitled to any relief/reliefs as prayed for?

Thereafter, taking the evidences of both the parties and also, hearing the arguments of the learned counsel for both the parties, the learned Trial Court had, though, decided all the issues, right from Issue No. I to VI, in affirmative in favour of the plaintiff/respondent herein; and thereafter, decreed the suit in favour of the plaintiff/respondent herein, by holding that the defendants are liable to vacate the tenanted premises.”

**6** Then being aggrieved, the petitioners herein has preferred the present petition on the following grounds:-

- I) The learned trial court and the appellate Court, both have committed grave error in law as well as in facts.
- II) Both the learned Courts below have failed to appreciate the evidence on records and as such the finding given are completely perverse.
- III) The learned appellate Court below had failed to exercise its jurisdiction vested in it by law.
- IV) The plaint of the respondent transpires that due to her bona-fide requirement, she has filed the title suit for ejection of the petitioners from the tenanted premises. But, to that effect, no issue has been framed by the learned trial Court for deciding the core issue involve in the suit and consequently, there is no finding regarding bona-fide

requirement of the respondent as stated in the plaint for construction of the building therein for her son's business and there is also absence of any finding regarding fund or other steps for such alleged construction of the building.

- V) For that, it is no longer res integra that the word "required" signifies that mere desire on the part of the landlord is not enough, but, there should be an element of need and landlord must show, the burden being upon him, that he genuinely requires the suit premises in question for the purpose. This aspect of the matter was not considered by both the learned Courts below while passing its impugned judgments and decrees.
- VI) Both the learned Courts below have failed to appreciate the statements of the respondent as PW1, who during her cross examination, had admitted that the petitioners had deposit the monthly rents in the learned Court since the month of June 2012 in her favour, which was alleged to be the defaulted period. And as such the respondent has miserably failed to prove her case that the petitioners are defaulter in payment of the monthly rents.
- VII) The learned appellate Court had failed to correctly frame the point of law for determination the subject matter of the suit of the respondent and also failed to make any discussion on the core issue involved in the suit and did not stress upon the question of law, which is also involved in the appeal.
- VIII) The learned Courts below failed to consider that the respondent has to prove her own case and the burden is on the respondent as plaintiff to

prove her own case, but, the respondent has miserably failed to prove her assertion that the petitioners are the defaulters and the suit premises is **bona-fide** required to her.

IX) The findings and reasons recorded by the learned Courts below regarding default and decree of ejectment are absolutely perverse and contrary to the settled law and statute.

**7.** Mr. Dhar, learned counsel for the petitioners submits that the respondent herein has failed to establish bonafide requirement of the suit premises and no issue has been framed by the learned Trial Court to decide this issue and as such, the findings of the learned Trial Court as well as of the learned Appellate Court are perverse and contrary to the settled proposition of law and on such ground, the impugned Judgment and Decree, dated 11.09.2019, passed by the learned Appellate Court and the impugned Judgment and Decree, dated 11.08.2015, passed by the learned Trial Court, are liable to be interfered with.

**7.1.** Mr. Dhar also submits that the respondent herein has examined only one witness and she has failed to establish that the petitioners herein are defaulters of rent and on such ground, the impugned judgment and decree, passed by the learned Courts below, are liable to be interfered with and in support of his submissions, Mr. Dhar has referred to a decision of a Co-ordinate Bench of this Court in the case of **Chittaranjan Bora & Ors. Vs. Romoni Kumar Bhattacharyya & Ors.**, reported in **(2018) 1 GLT 172.**

**8.** Per contra, Mr. Sancheti, learned counsel for the respondent submits that the burden of proof that the petitioners are not defaulters rests upon them and they have failed to discharge it. Though, a stand has been taken that the rent is deposited in the Court and a copy of the receipt is produced before the Court,

yet, the rent was not tendered in accordance with law; as, they used to deposit the rent in the Court after 15 days of the succeeding month, which is not permissible under Section 5(4) of the Assam Urban Areas Rent Control Act, 1972.

**8.1.** Mr. Sancheti, further submits that the tenanted premise is bonafide required for business establishment of the son of the respondent and though, it is the prerogative of the landlord what business he is to establish. Though, no issue was framed on this ground, yet, on the ground of defaulter alone, the petitioners herein are liable to be evicted from the said premises and under such circumstances, Mr. Sancheti has contended to dismiss this petition. In support of his submission, Mr. Sancheti has referred to a decision of a Co-ordinate Bench of this Court, in the case of **Abdul Matin Chotjdhury and Ors. Vs. Nilyananda Dutta Banik**, reported in (1997) 2 GLT 590 and **Arunamayee Bishaya and Ors. Vs. Rabindra Kumar Bora and Ors.**, reported in (2008) 1 GLT 421.

**9.** Having heard the submissions of the learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record; perused the impugned Judgment and Decree, dated 11.09.2019, passed by the learned Appellate Court and the impugned Judgment and Decree, dated 11.08.2015, passed by the learned Trial Court; and also gone through the relevant provisions of law and also, the decisions referred by the learned counsel for both the parties.

**10.** It appears that no issue was framed either by the learned Trial Court or by the learned Appellate Court on the point that whether the tenanted premise is

**bona-fide** required by the respondent herein or not, even though, an averment in the suit has been made by the respondent herein. The petitioners herein, however, in their written statement, evasively denied the same. It is to be noted here that in the case of *Ram Dass vs. Ishwar Chander*, reported in (1988) 3 SCC 131, a three-Judge Bench, has held as under:-

“11. Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the landlord subject to the satisfaction of certain statutory conditions. One of them is the bona fide requirement of the landlord, variously described in the statutes as ‘bona fide requirement’, ‘reasonable requirement’, ‘bona fide and reasonable requirement’ or, as in the case of the present statute, merely referred to as ‘landlord requires for his own use’. But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a ‘requirement’ in law must have the objective element of a ‘need’. It must also be such that the court considers it reasonable and therefore, eligible to be gratified. In doing so, the court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down.”

**10.1.** In the case of *Chittaranjan Bora (supra)*, so referred by Mr. Dhar, learned counsel for the petitioners, a co-ordinate bench of this court, in para No. 18, while dealing with the issue of bona-fide requirement, has held as

under:-

“18. When the plea set up by the landlord that the house is bona-fide required for his own use and occupation, the Court has to see whether the plaintiff genuinely and honestly needs the accommodation. It is for the Court to determine the truth of assertion and also whether it is bona-fide. The test that is to be applied in determining the question is objective and not a subjective one. Bona-fide requirement must be manifested in actual and not in mere desire to have the accommodation. The requirement must be the outcome of a sincere and honest requirement qua a mere pretence or pretext. The landlord is the best judge of his requirement and the tenant cannot dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. Undoubtedly, it is the burden of the landlord to prove his genuine requirement but this burden does not warrant a presumption that his need is not bona-fide.”

**10.2.** In the instant case, the need of the tenanted premises by the petitioner, its genuineness, however, remained undisputed. Because of the evasive reply to the averment made in the plaint, specially in para No.3 and 4 by the plaintiff, the said averment remained uncontroverted and un-traversed. That being so, the court cannot deny considering its reasonableness.

**10.3.** It is to be noted here that the doctrine of non-traversal, as provided under Order VIII Rule 5 of the Code of Civil Procedure can be invoked by the courts when the defendant's response is evasive, general, or entirely absent regarding specific facts, rather than providing a clear point-by-point denial. Courts treat such non-denial as implied admission, narrowing disputed issues without needing further proof. In the case of **M. Venkataramana Hebbar (D) By L.Rs vs M. Rajagopal Hebbar & Ors** on 5 April, 2007, in Appeal

(Civil) 7061 of 2000, Hon'ble Supreme Court has held that –“if a plea which was relevant for the purpose of maintaining a suit had not been specifically traversed, the Court was entitled to draw an inference that the same had been admitted. A fact admitted in terms of [Section 58](#) of the Evidence Act need not be proved.”

**11.** It also appears that the petitioners herein had failed to deposit the rent within 15 days of each of the succeeding month. Further, it appears that before depositing the rent in the Court, they had also failed to tender the rent to the landlord and if, without tendering the rent to the landlord first, they deposit the same in the Court, the same cannot be considered as payment, in view of Section 5(4) of the Assam Urban Areas Rent Control Act, 1972; and Mr. Sancheti, learned counsel for the respondent has rightly pointed this out during argument and the decisions referred by him also supported his version. Notably, in the case of **Abdul Matin Chotjdhury (supra)** a co-ordinate bench of this court had held that in order to avoid the bar of defaulter as laid down in Clause (e) to the proviso the rent must be paid to the landlord within the stipulated time and when the landlord refuses to accept, it must be deposited in Court within the period prescribed in Sub-section (5).

**11.1.** Again in the case of **Arunamayee Bishaya (supra)** a co-ordinate bench of this court had held as under:-

“12. A careful reading of Sub-section (4) of [Section 5](#) of the said Act shows that the right of a tenant to deposit rent in the court arises, when a lawfully due rent is offered by him to the landlord and the landlord refuses to accept the offer of payment of such a lawfully due rent. Sub-section (4)

of Section 5 of the said Act also shows that on such refusal, the rent can be deposited within a fortnight of the rent having become due and that such deposit has to be together with the process-fees for service of notice upon the landlord. The language, used in Sub-section (4) of Section 5 of the said Act, makes it abundantly clear that it is only on refusal to accept the lawfully due rent offered by the tenant to his landlord that the tenant acquires the right to deposit the rent in the court. If the rent does not become due and payable to the landlord and/or if such a lawfully due rent is not offered to be paid to the landlord and such offer is not declined by the landlord, the tenant would not be entitled to deposit rent in the court.”

**12.** Though, Mr. Dhar, learned counsel for the petitioners submits that there is document of payment of rent in the Court, yet, such contention, though made in the written statement; could not be proved by adducing any evidence.

**12.1.** It is well settled in the case of *Vidhyadhar Vs. Manikrao & Anr.*, reported in (1999) 3 SCC 573, that when a party failed to appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct.

“17. Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in *Sardar Gurbakhsh Singh v. Gurdial Singh* [AIR 1927 PC 230 : 32 CWN 119]. This was followed by the Lahore High Court in *Kirpa Singh v. Ajaipal Singh* [AIR 1930 Lah 1: ILR 11

Lah 142] and the Bombay High Court in *Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh* [AIR 1931 Bom 97: 32 Bom LR 924]. The Madhya Pradesh High Court in *Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat* [AIR 1970 MP 225: 1970 MPLJ 586] also followed the Privy Council decision in *Sardar Gurbakhsh Singh case* [AIR 1927 PC 230 : 32 CWN 119] . The Allahabad High Court in *Arjun Singh v. Virendra Nath* [AIR 1971 All 29] held that if a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a Division Bench of the Punjab and Haryana High Court in *Bhagwan Dass v. Bhishan Chand* [AIR 1974 P&H 7] drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box.

**13.** It is to be noted here, even for the sake of argument, if it is accepted that the **bona-fide** requirement has not been established herein this case, yet, on the ground of defaulter alone, the petitioners herein are liable to be evicted and as the petitioners herein have failed to discharge their burden that they are not defaulters.

**14.** Under the given facts and circumstances, this Court is of the view that this petition, filed by the petitioners are devoid of merit and accordingly, the same stands dismissed, leaving the parties to bear their own costs.

**JUDGE**

Comparing Assistant