DEPOSIT OF RENT IN COURT- A REVISIT

By

Sri S.M. DEKA
Academic Adviser
NEJOTI

1. PREFACE

In sub-section (5) of Section 6 of the Assam Urban Areas Rent Control Act, 1946 for the first time in a rent control legislation in Assam a provision for deposit of rent in Court by the tenant on refusal to accept rent offered by the landlord was made. Before that Assam Urban Areas Rent Control Order 1945 framed under Rule 81 of the Defence of India Rules of the World War-II vintage contained a provision for deposit of rent with a prescribed officer on similar offer of and refusal to accept rent. The Assam Urban Areas Rent Control Act, 1946 was replaced in turn in 1949, 1955, 1961, 1966 and 1972 and since the 2nd of May, 1972 the Assam Urban Areas Rent Control Act, 1972 (Rent Control Act), has been continuing in force. All the above mentioned Acts contained a provision for deposit of rent in Court by the tenant on refusal by the Landlord to accept the same. A long line of decisions of the High Court by Single Benches, Division Benches, a Full Bench comprising of three Judges and a Full Bench comprising of four Judges dealt with the provision in the Acts regarding deposit of rent in Court. Differing fact situations excepted, the unanimous law emerging from these decisions is that the provision for deposit of rent in Court in its substantive and procedural aspects is mandatory. Unless the tenant proves offer, refusal and then deposit in accordance with the said provision he becomes a defaulter and is not protected from eviction. By a judgement dated 07.02.1986 **MUHIT KUMAR DEB ROY & OTHERS –VS- GAURANGLAL ROY (1986)1 GLR 442** (**MUHIT KUMAR** hereinafter) the High Court for the first time took a restrained step towards casting a hazy shadow over the settled law indicated above inspired by **DR. BRAHMANAND –VS- SMT. KAUSHALYA DEVI AND ANOTHER, AIR 1977 S.C. 1198** (**BRAHMANAND** hereinafter). Except for saying that **MUHIT KUMAR** has been decided "in the light of" **BRAHMANAND** there is hardly any exposition of the supposed "light" drawn therefrom. The infection of **BRAHMANAND** through **MUHIT KUMAR** spread to **SHRI SWAPAN KUMAR SAHA Vs SHRI BISWA NATH SUREKA 2014 (1) GLT 252, (2014) 2 GLR 180** dated 28.10.2013 (**SWAPAN KUMAR** hereinafter). What began as a limited hazy shadow over the settled law as to deposit of rent in court by the tenant in **MUHIT KUMAR** attained depth and darkness in **SWAPAN KUMAR** obliterating the settled law indicated earlier.

This revisit attempts to dispel the shadow over the settled law as to deposit of rent in court by the tenant.

2. TWO PRINCIPLES :

To set the theoretical background of this exercise two broad principles, one relating to use of precedents and the other relating to use of pari materia statutes to interpret the statute in hand need to be highlighted.

(A) On use of precedents apart from the text books a plethora of decisions of the Supreme Court leave no room as to the theoretical aspect of the matter. Practice of the principles however is a different matter. For a cogent exposition of the principle as to correct use of precedents a selection of following three judgments of the Supreme Court would suffice. They are first the five Judge Constitution Bench decision **STATE OF ORISSA Vs SHUDHANSHU SEKHAR MISRA, A.I.R. 1968 S.C. 647**; second the three Judge Bench decision **HARYANA FINANCIAL CORPORATION Vs JAGADAMBA OIL MILLS (2002) 3SCC 496** and the third the three Judge Bench decision **BHAVANAGAR UNIVERSITY Vs PALITANA SUGAR MILLS (P) LTD, (2003) 2 SCC 111**. Paragraphs 12 of the first decision, 19 and 21 of the second one and 59 of the third decision contain the crux of the principle. Four aspects of the same would be these. Courts should not place reliance on decisions without discussing the factual situations in the decision and those in the case in hand. A decision is an authority for what it actually decides and not for what can be logically deduced from it or from each and every observations in the judgment. The text and the context of a decision and the law there are determinative of its ratio decidendi. Judgments need not be read as stalute law.

(B) The second principle has been cogently dealt with in Principles of Statutory Interpretation 11th Edition, 2008 by Justice G.P. Singh at pages 287 to 307 under the heading REFERENCE TO OTHER STATUTES. The highlight of the discussions there are a two fold caution that context may be different even in pari materia statutes and that variance in language may be decisive. Several Supreme Court decisions have been digested in the discussions there. The following extract from **NATHIA AGARWALLA –VS- JAHANARA BEGUM, A.I.R. 1967 S.C. 92,** a Five Judge Constitution Bench decision is very relevant for the present purpose, instructive and interesting. Interesting because the decision arose from a Judgment of the then Assam High Court dealing with the question whether the provisions of section 5(1) (a) of the Assam Non-agricultural Urban Areas Tenancy Act 1955 apply to pending execution proceedings. The exctract runs thus :

> "(5) *Two methods of approach were adopted by counsel in this appeal. One was to construe the words in the fifth section taken by themselves or in comparison with those employed in other Acts of the Assam Legislature. The second was to compare and contrast S.5. of the Assam Act with enactment in Rent Control Acts of other States. The second method although sometimes instructive, is not to be commended because similarity or*

variation in the laws of different States is not necessarily indicative of a kindred or a changed intention. Enactments drafted by different hands, at different times and to satisfy different requirements of a local character, seldom afford tangible or sure aid in construction. We would, therefore, put aside the Rent Control Acts of Madras, Bihar, Delhi and other States, because in these States the problem of accommodation in relation to the availability of lands and houses and the prior legislative history and experience, cannot be same as in Assam.

Principles stated thus, since **BRAHMANAND** of the Supreme Court has been the reason for the aberration in the settled law as to deposit of rent in Court by a tenant caused by the two Judgments of the Gauhati High Court mentioned in the preface one may now take a close look at the cause and the effect.

3. CLOSE UP ON BRAHMANAND

In **BRAHMANAND** a three Judge Bench of the Supreme Court construed the provisions of Section 7C of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 dealing with Deposit of rent in Court. Relevant portion of the Section reads thus :

"7-C- Payment by Deposit of Rent –

(1) when a landlord refuses to accept any rent lawfully paid to him by a tenant in respect of any accommodation the tenant may in the prescribed manner deposit such rent and continue to deposit any subsequent rent which becomes due in respect of such accommodation unless the landlord in the meantime signifies by notice in writing to the tenant his willingness to accept.

(2) ……

(3) The deposit referred to in Sub-Section (1) or (2) shall be made in the Court of the Munsiff having jurisdiction in the area where the accommodation is situate.

(4) On any deposit being made under Sub-Section (1) the Court shall cause a notice of the deposit to be served on the landlord, and the amount of deposit may be withdrawn by the Landlord on application made by him to the Court in this behalf.

(5) ……

(6) In any case where a deposit has been made as aforesaid, it shall be deemed that the rent has been duly paid by the tenant to the Landlord.

Rules have been framed under Section 7-C as above. The Rules prescribe a Form of application for permission to deposit rent to the Court of Munsiff. The application Form requires the tenant to state "Fact in brief that the Landlord had refused to accept the rent" and to state briefly the "circumstance of refusal".

That the above provisions are in stark contrast with the provisions of Section 5(4) of the Assam Rent Control Act 1972 becomes apparent even

on a cursory glance of the provisions in the said Act. That apart in **BRAHMANAND** " the facts are glaring. The relations between the parties appear to be extremely strained and they are living in adjacent premises." A criminal case by the tenant there against the Landlord ended in an acquittal "Even now there is a pending prosecution by the tenant of the Landlord for offences of a serious nature. It is common ground that not merely bitterness and friction but potentially violent terms mar the life of these parties." In this context of facts the Supreme Court felt that the phrase in Section 7-C (1) of U.P. Act needs to be "read realistically". Harmoniously construing the phrase "paid to him by a tenant" in Section 7-C(1) with the clause "where a deposit has been made as aforesaid" in Section 7-c(b) the Supreme Court laid down the ratio of **BRAHMANAND** which is in the context of strained relation existing in a case where physical tender/offer becomes troublesome and impractical such tender/offer may be replaced by tender through money order, through a messenger or by sending a notice to nominate a Bank where deposit may be made. "If the Landlord refuses under these circumstances, then a court deposit will be the remedy."

The Supreme Court remanded the case to the lower appellate court to ascertain " whether any of the alternatives we have indicated, or may otherwise be made out by the tenant as equivalent to payment of rent, is present in the case". It was further held, "if no such circumstance is made out by the tenant justifying deposit of rent in Court, the decree for eviction will stand."

BRAHMANAND, thus, does not dispense with tender/offer of rent because of strained relationship between the Landlord and tenant but to meet the necessities of the situation replaced physicall tender or person to person tender by the three means indicated there. The expression "continue to deposit any subsequent rent" in Section 7-C(1) of the U.P. Act clearly indicates that the scope of the Section there is entirely different from that of Section 5(4) of the Assam Rent Control Act. The two Acts may be in pari materia but the two provisions are definitely not. It is trite to say that two Acts may not be in pari materia yet two provision in such Acts may be in pari materia and amenable to same construction. Here we confront a reverse situation. U.P. Rent Control Act dealt with in **BRAHMANAND** may be in pari materia with Assam Rent Control Act the scope of both being rent control in general but the provisions of Section 7 –C(1) of the U.P. Act and those of Section 5(4) of Assam Rent Control Act both dealing with deposit of rent in Court being of widely differing scope are not in pari materia. Provisions of Section 7-C(1) of the U.P. Act enables a tenant covered thereby on obtaining permission from the concerned Munsiff to deposit rent in the Munsiff's Court on tender and refusal (as enunciated in **BRAHMANAND)** once. Such a tenant can continue to deposit the subsequent rents in court until the Landlord signifies by notice his willingness to accept the rent. It is obvious that a tenant covered by the Assam Rent Control Act cannot do likewise because the statutory provisions are distinctly different in scope and content. It may be useful to note here that **BRAHMANAND** is not the only Supreme Court Judgment dealing with Section 7-C (1) of the U.P. Act. Two

other Judgments of the Supreme Court similarly considering the section are ; **MAIKU –VS- VILAYAT HUSSAIN, AIR 1986 S.C. 1645** and **RAM SEWAK – VS- MUNNA LAL, AIR 1988 S.C. 452** where **BRAHMANAND** has been relied on and further explained thus :-

> *"……. this court took the view that irrespective of the fact of deposit u/s 7-C, the tenant has to show when a suit is u/s 3(1) (a) the existence of circumstances justifying a deposit u/s 7-C"*

It is time now to see how far these distinctive feature of **BHRAMANAND** as also of the Statutory provisions of Section 7-C (1) of the U.P. Act has been considered and applied in **MUHIT KUMAR** and **SWAPAN KUMAR.**

4. APPRAISAL OF MUHIT KUMAR AND SWAPAN KUMAR

Out of the scarce materials contained in the decision following important features emerge from **MUHIT KUMAR**. On refusal by the Landlord to accept the rent of November 1978 the tenant deposited the rent in Court from November 1978 to October 1981 and some of these deposits were in advance. The learned counsel for the petitioner in the High Court on the said materials highlighted the palpable non conformity of the deposit with the provisions of Section 5(4) of the Assam Rent Control Act. The Judgment says that "the records also show that the parties had become unfriendly (estranged relationship)". Thereafter, **BRAHMANAND** was allowed to rule the matter. In the process no notice was taken that **BRAHMANAND** originated from a construction of Section 7-C (1) of the U.P. Act which was as different from Section 5(4) of the Assam Act as chalk from cheese. It was also not noticed that under the U.P. Act for deposit of rent in court application in prescribed statutory form has to be made and permission has to be obtained but under the Assam Act no application and no permission is needed. Deposit in Assam is an act in U.P. it is an application. Thus without discussing the law applicable as well as the context of facts a provision not in pari materia with the provision applicable in the matter was allowed to rule the case. Both the principles already indicated in para 2 above have been overlooked. Only saving grace is that the Judgment records that "it must not be presumed that I have expressed any opinion on the question raised by Mr. Achayya" (who was the learned counsel urging the question of law). Paragraph 7 of the Judgment also contains certain assumptions regarding Landlord's entitlement to object to making of a deposit by the tenant which is not even permissible even under the U.P. Act.

The non reading, misreading of facts and mis apprehension of the law explicit in **MUHIT KUMAR** spread to **SWAPAN KUMAR**. This becomes apparent on perusal of paragraphs 23, 24 and 25 of the latter decision. Both these decisions picked up the phrase "strained relation between the parties" from **BRAHMANAND** and ignored all the crucial factual and legal difference in the decision with the respective case at hand. Even for the finding of "Strained relation" both the judgments relied on evidence without pleading. None of these two decisions even considered whether provisions of law

relating to deposit in court in U.P. and Assam are in pari materia. Paragraph 24 of **SWAPAM KUMAR** contains the following.

> *"In DR.* **BRAHMANAND** ***(Supra)*** *the Apex Court..... has observed ..... and hence such deposit of rent in Court without offering the same to the Landlord, once the Landlord refuses to accept the same for the previous month, would be the valid deposit in Court."*

No such holding is there in **BRAHMANAND**. At best this is an inference deduced from **BRAHMANAND**. Drawing of inference from a precedent and thereby bestowing authority on it is not permissible.

In sum, both these decisions seem to suggest that once strained relation between the parties is pleaded and proved or assumed the tenant need not follow the prescription of the statute. This is not even the law in U.P. as settled by **BRAHMANAND** and certainly not in Assam, where law has been settled by a long time of decisions. Both these decisions in so far as they ruled on the question of deposit of rent in Court under the Assam Urban Areas Rent Control Act, 1972 are per incurium being in the teeth of statutory provisions and of binding precedents, which are considered in the next paragraph. But before that an interesting feature of **SWAPAN KUMAR** deserves some space. In paragraph 15 of **SWAPAN KUMAR** it has been stated that the learned counsel for the Landlord relied on three decisions **BRAHMANAND AND BATA INDIA LTD. & ORS. –VS- UNITED PUBLISHERS & ANR., 2005 (1) GLT 437** are among the three, Unfortunately, the High Court used **BRAHMANAND** against the Landlord. The Landlord thus furnished an example of being hoist with one's own petard. However what precisely are the submissions of the learned counsel for the Landlord has not been indicated in **SWAPAN KUMAR**. **BATA INDIA** though by the same Single Bench of the High Court was overwhelmed by **BRAHMANAND** and was disposed of by dubbing the same as not relevant in paragraph 25 of **SWAPAN KUMAR.**

5. RENT DEPOSIT – THE SETTLED LAW

In the preface to this essay it has been indicated that a long line of decisions under the Rent Control Legislation in Assam spanning the years from 1946 to 1972 has settled the law as to deposit of rent in Court by the tenant. For the sake of brevity in this paragraph only three among the said decisions are being considered. They are (1) the unreported decision in Second Appeal No.93 of 1957 **TABARAK HUSSAIN** (DEFENDANT) – **VS- SANTOSH CHANDRA PAL AND OTHERS** (PLAINTIFFS) a Two Judge Bench decision of the Assam High Court dated 19.09.1958 (2) **KALI KUMAR SEN AND ANOTHER –VS- MAKHAN LAL BISWAS AND ANOTHER, AIR 1969 Assam and Nagaland, 66**, a Three Judge Full Bench decision dated 17.09.1968 and (3) **AMAR BAHADUR THAPA AND ANOTHER –VS- ABDUL HAI AND ANOTHER, AIR 1970 Assam and Nagaland 59**, a Four Judge Full Bench decision of the Assam & Nagaland High Court dated 23.08.1967.

The first case is important because it dealt with offer by sending money orders and refusal thereof which is one of the methods suggested in **BRAHMANAND** to prove refusal to accept. This case also was considered by

the Three Judge Bench in **KALI KUMAR** (Supra). The Judges in **KALI KUMAR** (Supra) wrote three concurring Judgments only two judgments differing on the question of the effect of withdrawal of the rent deposited by the tenant in Court. The Full Bench held that the deposit in Court there being beyond the time prescribed under the law is no deposit and cannot save the tenant from being a defaulter and evictable. This enunciation of the law resulted from the facts that rent of Baisakh was offered but the employee of the Landlord refused to accept it then the rents for Baisakh and Jaistha was deposited in Court in Ashara.

Lastly, the Four Judge Bench in **AMAR BAHADUR THAPA** (Supra) dealing with the provisions of Section 6(4) of the Assam Urban Rent Control Act 1955 in paragraph 4 of the Judgments held thus :

> "*Accordingly, that court held that under the provisions of section 6(4) of the Act the defendants should have deposited the rent for the month of April, 1961 on or before the 15th of May, 1961 and not later. The period prescribed for the deposit of rent is a fortnight as laid down in Section 6(4), quoted above. We are, therefore, satisfied that both the courts below were correct in their finding that there has been an irregularly in the deposit of rent made by the defendants as the deposits did not conform to the requirements of the statute.*

There the rent for November and December 1960 was deposited only on 04.01.1961, the rent for January, February and March 1961 was deposited on 21.04.1961 and the rent for April and May 1961 was deposited on 05.06.1961.

The above extract from **AMAR BAHADUR THAPA** (Supra) forms part of the paragraph 4 of the judgement there where four rent deposit cases were considered. In paragraph 26 of **SWAPAN KUMAR** similar Rent deposit cases concerned were considered. The approach of the Single Bench in **SWAPAN KUMAR** is in flagrant conflict with the approach of the four Judge Bench in **AMAR BAHADUR THAPA** (Supra). All this is caused by misapprehension of the law as well as facts in **BRAHMANAND** and wrong use of the same as a precedent.

To end this paragraph one may notice the Single Bench judgment **UNITED COMMERCIAL BANK & ORS. –VS- M/S REKHAB CHAND SOHANLAL (1988)1 GLR 121**, where in paragraph 9 of the judgment the law in Assam has been pithily summed up by the catch phrase : " **ONCE A DEFAULTER, ALWAYS A DEFAULTER."**

6. CONCLUSION

An appropriate end to this writing may be the following two observations of a Three Judge Bench decision of the Supreme Court in **GANAPAT LADHA –VS- SASHIKANT VISHNU SHINDE, AIR 1978 S.C. 955** dated 21.02.1978.

(1) "*Unfortunately, there are not infrequent instances where what should have been clear and certain, by applying well established cannons of*

statutory construction becomes befogged by the vagaries, if one may use a possibly strong word without disrespect of judicial exposition divorced from these cannons."

(2) "If the statutory provisions do not go far enough to relieve the hardship of the tenant the remedy lies with the legislature. It is not in the hands of courts."

The Three Judge Bench was dealing with a case of statutory default by a tenant under Section 12(3) (b) of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947.