

(1974) 04 BOM CK 0016
In the Bombay High Court
Case No : A.F.A.D. No. 80 of 1973

Gangabisan Deokaran Gattani

APPELLANT

Vs

Talakchand Waghajibhai

RESPONDENT

Date of Decision : 20-04-1974

Acts Referred:

Constitution of India, 1950 — Article 227
Transfer of Property Act, 1882 — Section 106, 111, 114

Citation : AIR 1975 Bom 242 : (1974) MhLj 613

Hon'ble Judges : Masodkarm, J

Bench : Single Bench

Advocate : S.G. Ghate, for the Appellant; J.N. Chandurkar, for the Respondent

Judgement

1. This is the defendant's appeal questioning the validity of the decree in ejectment passed by the trial Court and confirmed in appeal by the District Judges, Amravati.

2. To understand the submission made at the Bar, a few facts are necessary. The Plaintiff-landlord sought permission from the Rent Controller to determine the lease on the grounds under Clause 13 (3) (ii) and (vi) of the Rent Control Order. He was permitted to give quit notice for the tenant was found to be a habitual defaulter within the meaning of Clause 13 (3) (ii) of the Order. This permission was given to the landlord on September 5, 1967, and on the very next day, the landlord served a notice u/s 106 of the Transfer of Property Act determining the monthly lease of the present defendant by the end of the month of September 1967. The tenant filed an appeal under the provisions of the Rent Control Order and the appellate Authority, on September 20, 1969 allowed the appeal and set aside the permission granted by the Rent Controller. Meanwhile, the landlord, acting upon the cause of action of determining the lease u/s 106 of the Transfer of Property Act, had filed a suit in ejectment on December 16, 1967. That suit was pending. Against the order made by the appellate authority, the landlord took the proceedings under Article 227 of the Constitution and in these

proceedings obtained an order directing the stay of that suit. Eventually on July 16, 1971, the High Court allowed the writ petition, set aside the appellate order and reported the permission given by the Rent Controller. Thereafter the suit proceeded and a decree has been made in ejectment against the present appellant by the Third Joint Civil Judge (Junior Division), Amraoti, and has been affirmed in appeal by the District Judge, Amraoti.

3. Two submissions have been made on the basis of these facts. First, it is contended that as the landlord sought permission on the ground that he tenant was the habitual defaulter, he was essentially and in substance seeking permission to forfeit the tenancy or the lease of the present defendant for non-payment of rent under the terms of the lease. It is submitted that the determination of the lease, therefore, is on the cause of action of a forfeiture of a tenancy and that being the position, the Court having civil jurisdiction either u/s 114 of the Transfer of Property Act or on the equitable principles should have exercised the powers to relieve the forfeiture, for the tenant was always willing to abide by the terms of the lease and to undo the damage, i.e., the breach of the covenant with respect to payment of rent. In fact, it is submitted, that the tenant has paid all the arrears and was also paying during the pendency of the litigation every month the amount ordered by the Court. There is thus a plea that the Courts below could not have passed such a decree in ejectment without relieving the defendant of the penal consequences for mere non-payment of rent. Even assuming the learned counsel submits, as a second wing of his argument, that this is a determination of the lease u/s 106 of the Transfer of Property Act, there is no valid notice which can be the effective basis of decree in ejectment. Alternatively, it is said that once the permissions was vacated by the appellate order, mentioned above, the notice was merely conditional and its operation depended upon the chance of litigation undertaken by the landlord in the High Court. Such a notice by itself was invalid. Thus, it is submitted that the first notice given on the basis of the Rent Controller's permission was either vacated by the appellate order, or was invalid because it depended upon the chance of success in litigation.

4. None of these submissions can be upheld. The cause of action for the suit is not based on the forfeiture of the tenancy, nor the permission is given to forfeit the same. As the law of property stands but for the provisions. of the Rent Control Order, u/s 106 of the Transfer of Property Act where the demise is under a monthly lease the same is determinable by notice given either by the lessor or the lessee. The right is absolute and recognised statutory. To exercise this right by virtue of the Rent Control Order the landlord has to satisfy the authorities as is provided for under clause 13 of that Order. The Controller upon the satisfaction of any of the grounds is enabled to permit the landlord to give notice determining the lease. The grounds mentioned in sub-clause (3) of clause 13 are not the grounds of forfeiture of the lease nor the permission given by the Rent Controller has the same effect. It can be well conceived that even after obtaining the permission, the lease may still continue and the landlord may not exercise the

right of determination of lease by giving notice. The provisions of S. 106 of the Transfer of property Act and the effect of the Rent Control litigation has been considered by this Court in *Hajrat Pirane Chilla of Khwaja Trust, Akola Vs. The Manager, United Transport Motor Co. Ltd. and Others*, and it has been observed that apart from the Rent Act, the landlord was entitled to eject the tenant on the expiry of the period mentioned in the notice to quit. The provisions of clause 13 were in the nature of protection to the tenant from eviction except in certain specified causes. Once the ground mentioned in clause 13 of the Order is made out, the protection was lifted.

5. The submission, therefore, that an attempt to satisfy the Rent Controller by referring to the provisions in clause 13(3) (ii) was an attempt to forfeit the tenancy under the provision of the Transfer of Property Act, cannot be accepted. These are two independent statutory provisions. The forfeiture provided by Section 111(g) of the Transfer of property Act, to which a referenced was made, cannot be confused with the ground that is required to be made out by the landlord for seeking permission to give quit notice. The notice mentioned in Clause 13(i) (a) is the notice by which the landlord can determine the lease and it is a conceivable notice u/s 106 of the Transfer of Property Act. That being the position, the reliance placed by the learned counsel on the doctrine of forfeiture of the lease and further the equity is not available. The decision in *Praduman Kumar Vs. Virendra Goyal (Dead) by L. Rs., and Janab Veliathi, v. Smt. K. Kadarvel*, AIR 1958 Mad 232 relied are not at also apposite. There the cause of action on which the ejectment was sought was the forfeiture of the lease. The present case is not a case of forfeiture but of a valid determination by notice. Well recognised distinction between such determination of the lease and forfeiture cannot be lost sight of.

6. Similar is the position with second submission. As the facts indicate, by the ultimate order of the High Court which is not questioned in any manner to be without jurisdiction, the permission of the Rent Controller was restored. In fact during the pendency of the proceedings in this High Court, the eviction suit was stayed and the effect of the High Court's decision was to restore the permission granted by the Rent Controller on September 5, 1967. Consequently, it would follow that the notice given by the landlord on September 6, 1967. Consequently, it would follow that the notice given by the landlord on September 6, 1967 for the purpose of eviction furnished him a good cause of action to proceed with the suit once the High Court adjudged the permission given by the Rent Controller as valid one. It cannot also be accepted that such a notice was uncertain because as the learned counsel puts, it I depended upon the success in the High Court. Such a plea in fact is not available. The independent proceedings started under the Rent Control Order were very much pending before the High Court. The notice was already given and the lease stood determined. Whether upon determination by that notice effective decree could be made or not merely depended upon the final adjudication as to the legality of the permission given by the Rent Controller. once the High Court allowed the writ petition and restored the

permission of the Rent Controller, it cannot be said that the notice, which was given after a valid permission, was a notice based on chance litigation's, or future success therein. There is no uncertainty in the notice as such. It is not in dispute that the notice is clearly indicative of the determination of the lease by the end of the tenancy month of September 1967 and that furnishes a good ground for evicting the tenants who was no more holding the property under lease after September 1967. Merely because proceedings were taken in the higher Courts, the position did not change.

7. These being the only submissions, the present appeal will stand dismissed with costs. The tenant, however, is given time to vacate the premises and hand over possession to the plaintiff by July 1, 1974.

8. Appeal dismissed.