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**(2008) 03 AHC CK 0222**  
**In the Allahabad High Court**

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|-------------------------------------------|------------|
| Mahesh Dubey alias Mahesh Narayan Dwivedi | APPELLANT  |
| Vs                                        |            |
| Shivaji Katiyar and Others                | RESPONDENT |

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**Date of Decision :** 27-03-2008

**Acts Referred:**

Transfer of Property Act, 1882 — Section 106, 111

**Citation :** (2008) 03 AHC CK 0222

**Hon'ble Judges :** Dilip Gupta, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Dilip Gupta, J.—The tenant has filed this petition for setting aside the Judgment and order dated 10th May 2006 passed by the Judge Small Causes Court, Kanpur Nagar whereby the suit filed by the landlord was decreed. The petitioner also sought for quashing of the Judgment and order dated 7th March 2008 by which the revision filed by the tenant for setting aside the aforesaid Judgment and order, has been dismissed.

2. The records of the writ petition indicate that prior to the filing of the aforesaid SCC Suit No. 70 of 2003 by the landlord, the petitioner had filed Original Suit No. 2390 of 1995 seeking permanent injunction to restrain the defendants from dispossessing the plaintiff from the premises in dispute on the ground that the plaintiff was a tenant of the premises in dispute and he could not be evicted except in accordance with law. The Trial Court granted temporary interim injunction in favour of the plaintiff. Subsequently, the landlord filed SCC Suit No. 70 of 2003 with the assertion that as Mahesh Dubey had treated himself to be a tenant of the premises in dispute, his tenancy had been duly terminated by the notice sent by the landlord u/s 106 of the Transfer of Property Act. The suit was, therefore, filed for eviction and for recovery of rent and damages. The suit was decreed and the revision filed by the tenant for setting aside the Judgment and order, was dismissed.

3. Learned Counsel for the petitioner submitted that the Courts below fell in error in treating the petitioner as a tenant of the premises in dispute since tenancy was to be established by the landlord and in the present case the landlord had not even indicated from which date the tenancy commenced.

4. Sri Amaresh Chandra Mishra learned Counsel appearing for the landlord, however, submitted that Mahesh Dubey had filed Original Suit No. 2390 of 1995 in which he claimed himself to be a tenant of the premises in dispute and so it was not necessary for the landlord to establish the relationship of landlord and tenant particularly when in reply to the notice sent by the landlord u/s 106 of the Transfer of Property Act, and in the written statement the defendant-petitioner did not state that he was not a tenant and all that was asserted was that the date of commencement of the tenancy had not been indicated.

5. As seen above, the defendant himself admitted that he was a tenant and, therefore, the landlord was not required to prove this fact. The date on which the tenancy commenced was not material for determination of the issue involved in the case.

6. Learned Counsel for the petitioner then contended that even if he was treated as tenant then too the notice sent by the landlord u/s 106 of the Transfer of Property Act was not a valid notice as his tenancy had not been terminated by the said notice. Elaborating his submission he contended that the notice does not specifically mention that the tenancy will be terminated by thirty days notice and all that the notice recites is that the tenant should handover the vacant possession of the shop immediately after the expiry of 30 days.

7. In order to appreciate this contention it would be necessary to examine the notice that was sent by the plaintiff to the defendants. The notice dated 28th August 2002 mentions, amongst other facts, that the family of the landlord had increased and the landlord did not want the tenant to continue to remain in possession any longer and, therefore, he should handover the vacant possession of the accommodation immediately after the expiry of 30 days from the date of receipt of the notice failing which a suit for ejectment shall be filed against the tenant.

8. There is no prescribed form or language in which a notice u/s 106 of the Act has to be given. In such circumstances, the notice has to be liberally construed and has to be read as a whole. All that is necessary is that the notice should express clearly the intention to terminate the tenancy. The language of the notice is immaterial and in such a case the word "terminate" may not be used at all.

9. This is what was observed by this Court in *Tikka Ram v. Prakash Chandra* 1966 ALT 1016 and the relevant portion of the Judgment is as follows:

The short answer to this argument is that the plaint does contain this averment. In para. 4, the respondent alleged that he had served a notice on the appellant

that the tenancy was no longer acceptable to him and had further demanded (in the notice) that the appellant should vacate the premises on the expiry of 30 days from the service of notice. Mr. Chaturvedi contended that this was not enough, and the notice should have expressly stated that the tenancy was being terminated. I cannot agree. No particular words have been prescribed u/s 106 of the Transfer of Property Act as amended by the U.P. Legislature, which merely provides that "a lease...shall be terminable on the part of either lessor or lessee by one month's notice." Section 111(h) of the same Act provides that "a lease of immovable property determines...(h) on the expiry of a notice to determine the lease, or to quit or of intention to quit, the property leased, duly given by one party to another.

D.F. Mulla in his commentary on the Transfer of Property Act, 4th edition, has observed, "...the notice to quit must indicate in substance and with reasonable clarity an intention on the part of the person giving it to determine the existing tenancy at a certain time." (p. 619). The same author has observed, "a liberal construction is therefore put on a notice to quit in order that it should not be defeated by inaccuracies either in the description of the premises or the name of the tenant, or the date of expiry of notice. The author's observation is based on authorities cited in the footnote on this page.

Thus the crucial test is (1) whether the language of the notice indicates a clear intention to terminate the tenancy, and (2) whether the date of determination of the tenancy is certain.

Applying these principles and tests to the notice in the present case, I think it is a valid notice of termination. If a landlord writes to the tenant, "I am no longer willing to continue this tenancy, you are therefore given notice that you should vacate the premises on the expiry of one month which is the time limit prescribed by law failing which I shall file a suit for your ejectment," this indicates a clear intention to terminate the tenancy on the expiry of the period of one month.

(emphasis supplied)

The Supreme Court in *Mangilal Vs. Suganchand Rathi*, while commenting on the language used in the notice sent u/s 106 of the Act observed:

On April 11, 1959 the plaintiffs served a notice on the defendant bringing to his notice the fact of his being in arrears of rent for 12 months and requiring him to remit to them Rs. 1,020/- within one month from the date of service of notice and stating that on his failure to do so, a suit for ejectment would be filed against him. In addition to this the notice called upon the defendant to vacate the premises by April. 30, 1959 upon two grounds.

...The requirement of Section 106 of the Transfer of Property Act is that a lease from month to month can be terminated only after giving fifteen days' notice expiring with the end of a month of the tenancy either by the landlord to the

tenant or by the tenant to the landlord. Such a notice is essential for bringing to an end the relationship of landlord and tenant. Unless the relationship is validly terminated the landlord does not get the right to obtain possession of the premises by evicting the tenant.

...Now, the learned Additional Solicitor General states that the notice of April, 1959 may be a good notice for the purposes of Section 4(a) of the Accommodation Act but it is not a good notice for the purposes of Section 106 of the Transfer of Property Act for two reasons; in the first place it does not purport to determine the tenancy and in the second place the notice falls short of the period of 15 days specified in Section 106 of the Transfer of Property Act. The High Court has, however, treated this as a composite notice u/s 4(a) of the Accommodation Act and Section 106 of the Transfer of Property Act and in our opinion rightly. It has to be observed that the plaintiffs, after requiring the defendant to pay the rental arrears due up to the end of March, 1959 within one month from the date of service of the notice, proceeded to say "failing which suit for ejectment will be filed". These recitals clearly indicate the intention of the landlord to terminate the tenancy of the defendant under the relevant provisions of both the Acts.

(emphasis supplied)

This Court in *Suraj Prasad Vs. Smt. Kusumlata Sinha*, also while considering the requirements of the notice u/s 106 of the Act observed:

The third objection to the validity of the notice was that it did not meet the requirement of Section 106 of the Transfer of Property Act as amended by U.P. Civil Law 1954 as it was not a thirty days notice of termination of tenancy. In fact at one stage the learned Counsel strenuously argued that the tenancy has not at all been terminated and there is nothing in the notice terminating the tenancy but merely calling upon the tenant to vacate the premises leased would not amount to terminating the tenancy. The learned Counsel referred to an old Full Bench decision of this Court in the case of *Bardley v. Atkinson* ILR (1885) 7 All 899 (FB). Much water has flown down the bridge since the Full Bench decided that case and I need not encumber this judgment by referring to the numerous cases in which the Full Bench decision in ILR (1885) All. 899 has been considered and explained. A notice calling upon the tenant to vacate the leased premises would always amount to a notice terminating the tenancy. Under clause (h) of Section 111 of the Transfer of Property Act a lease of immovable property determines on the expiration of a notice to determine the lease or to quit, or of intention to quit, the property leased, duly given by one party to the other. Whether the lessor has given a notice expressing an intention that the lease will stand terminated or he by the notice calls upon the lessee to quit, that is, to leave, the legal consequence of both would be that the lease would stand determined. The provisions of Section 106 of the Transfer of Property Act lay down the manner in which such a notice is to be served and fixes the time before which it has to be given. In *Ram Chandra and Another Vs. Lala Dulichand*, a

notice calling upon the tenant to vacate the premises let out has been held to be a notice which successfully determines the tenancy.

(emphasis supplied)

In *Sita Ram Vs. Moti Lal and Others*, similar observations were made by this Court:

Coming to the second contention, the notice sent by the plaintiff terminating the tenancy of the defendant is contained in paper No. Ext. 1. In this notice, the plaintiff claimed Rs. 920/- after adjusting Rs. 111/- sent by the defendant by money order and Rs. 54/- paid by the defendant towards taxes, at the rate of Rs. 15/- per mensem, and in the end, the plaintiff asked the defendant to vacate the premises in dispute on the expiry of 30 days from the receipt of the notice and give its possession to the plaintiff. The plaintiff added that on the expiry of that period, the plaintiff would take legal action for the recovery of the balance and possession of the house in a proper court and the defendant would be held responsible for the expenses. In this notice, the plaintiff has expressed in unambiguous and unequivocal terms that the defendant should vacate the house and give its possession to the plaintiff on the expiry of thirty days after the receipt of the notice.

In the present case, as I have noted above, there is a clear indication in the notice of ejectment that in default by the defendant, the plaintiff would take legal proceedings regarding the ejectment of the defendant in a proper law court.... The notice of ejectment served by the plaintiff on the defendant was perfectly valid and the contention advanced by the appellant to the contrary must be rejected.

(emphasis supplied)

10. The observations made by Supreme Court in *Bhagabandas Agarwalla Vs. Bhagwandas Kanu and Others*, are also relevant:

The only question which arises for determination in this appeal is whether the notice to quit given by the appellant to the respondents was invalid as not being in conformity with the requirements of Section 106 of the Transfer of Property Act. The notice to quit, so far as material, was in the following terms:

You are hereby informed by this notice that you will vacate the said house for our possession within the month of October 1962 otherwise you will be treated as trespassers from 1st November in respect of the said house.

Now, it is settled law that a notice to quit must be construed not with a desire to find faults in it, which would render it defective, but it must be construed *ut res magis valeat quam pereat*. "The validity of a notice to quit" as pointed out by Lord Justice Lindley, L.J. in *Sidebotham v. Holland* (1895) 1 QB 378 "ought not to turn on the splitting of a straw". It must not be read in a hyper critical manner, nor must its interpretation be affected by pedagogic pendantism or over

refined subtlety, but it must be construed in a common sense way. See Harihar Banerji v. Ramsashi Roy 45 Ind App 222 : AIR 1918 PC 102. The notice to quit in the present case must be judged for its validity in the light of this well recognised principle of interpretation.

(emphasis supplied)

In Budh Sen Vs. Smt. Rahiman, the language used in the notice sent u/s 106 of the Act was very much similar to the language used in the notice sent in the present case. This Court observed that the tenancy was terminated on the expiry of thirty days and the relevant observations are as follows:

In the notice the appellant has already expressed an intention that he did not wish the respondent to continue in possession of the premises after the expiry of the period of one month. It is true that in notice in question it has not been stated that the tenancy of the defendant-respondent was being terminated. However, if an intention to terminate the tenancy can be clearly discerned by construing the words used in the notice as a whole, the mere fact that the expression that tenancy was being terminated is not used, would not render the notice invalid. The language which has been used in the notice given by the appellant to the respondent, does unmistakably evidence an intention on the part of the plaintiff-appellant not to continue the tenancy of the respondent. The notice would validly terminate the tenancy of the respondent.

(emphasis supplied)

11. In Pyare Lal v. IIIrd Additional District Judge, Allahabad and Ors. 1980 ALT 643 this Court again observed:

As I have mentioned above, the notice under consideration clearly requires the tenant to vacate and deliver up possession to the lessor within thirty days of the notice, failing which, it states, the lessor would be constrained to file a suit for the ejectment of the petitioner. Such a notice is similar to the notice contemplated under illustration F mentioned in the case of Abdul Jalil 1974 ALT. 381. It accords with requirements of Section 106 of the T.P. Act as regards the period. It will hence validly determine the tenancy on the expiry of the period of the notice u/s 111(h).

12. In Smt. Sushila Devi and Anr. v. Mahohar Lal 1985 (1) ARC 34 the notice sent u/s 106 of the Act read as follows:

...In default of payment of rent during the period aforesaid after occupation of the shop for a period of full 30 days you vacate the shop and put it in possession of plaintiff;...on expiry of the said period your status would be that of a trespasser only and you will be liable to ejectment and damages for use and occupation at the rate of Rs. 10 per day....

13. This Court observed that the aforesaid notice terminated the tenancy in accordance with the provisions of Section 106 of the Act. 13. The aforesaid

decisions clearly holds that the crucial test is to find out from the notice whether the language used expresses a clear intention of terminating the tenancy after the expiry of thirty days and in such a case, the absence of the word "terminate" in the notice is not conclusive. The decisions also hold that if the landlord clearly expresses, in the notice, an intention that he does not desire the tenant to continue in possession of the premises after the expiry of one month and asks the tenant to handover the vacant possession of the property after the expiry of the aforesaid period failing which he would file a suit for ejectment then in that case it would be a notice which determines the tenancy after 30 days even though it may not be mentioned in the said notice that "the tenancy shall be terminated on the expiry of the period of one month".

14. In the present case, as pointed out above, the notice clearly mentions that it was not acceptable to the landlord to permit the tenant to continue in occupation of the premises and that he was required to handover the vacant possession immediately after the expiry of 30 days from the date of receipt of the said notice sent to him u/s 106 of the Act and that in the event he failed to handover the possession on the expiry of the said period, the landlord would file a suit for ejectment.

15. In view of the guiding principles enumerated by the Supreme Court and this Court in the aforementioned decisions, it has to be held that the tenancy was validly terminated u/s 106 of the Act.

16. There is, therefore, no merit in any of the contentions advanced by learned Counsel for the petitioner. The writ petition, is accordingly, liable to be dismissed.

17. Learned Counsel for the petitioner, however, prayed that some reasonable time may be given to the petitioner to vacate the premises.

18. The writ petition is dismissed. However, the petitioner shall not be evicted from the premises in dispute for a period of three months from today provided the petitioner gives the following undertaking before the Court below within three weeks from today.

1. That the petitioner shall pay damages at the rate of Rs. 500/- per month beginning from the month of April 2008 up to the date he hands-over the possession of the premises to the landlord.

2. That the petitioner shall not induct any other person in the premises.

3. That the petitioner shall handover peaceful possession of the premises to the landlord on or before the expiry of three months.

19. It is made clear that in the event the petitioner fails to give the undertaking within the aforesaid period or fails to comply with any of the terms of the undertaking, then in that case, it will be open to the landlord to get the decree executed.