

(2016) 08 CAL CK 0030
In the Calcutta High Court
Case No : F.A.T. No. 464 of 2013.

M.N. Dastur and Co. (Pvt.) Ltd. - Appellant @HASH Sri Dhruves Chandra Chakraborty (Assigned)

Date of Decision : 24-08-2016

Acts Referred:

Registration Act, 1908 — Section 17(d)
Transfer of Property Act, 1882 — Section 106, Section 111(h)
West Bengal Premises Tenancy Act, 1997 — Section 3(e), Section 3(e), Section 6, Section 6

Citation : (2016) 4 CalLT 328

Hon'ble Judges : Soumitra Pal and Mir Dara Sheko, JJ.

Bench : Division Bench

Advocate : Mr. Pratap Chatterjee, Mr. Saptanshu Basu, Mr. Samrat Sen, Senior Advocates, Mr. Debashis Roy, Mr. Debabrata Saha Roy, Mr. Amitava Mitra, Mr. Snehasis Sen, Mr. P. Chaturvedi and Mr. Paritosh Sinha, Advocates, for the Appellant; Mr. Sakti Nath Mukherjee, M

Final Decision : Dismissed

Judgement

Mir Dara Sheko, J. - Aggrieved by the judgment and decree delivered by the Learned Civil Judge (Sr. Division) 2nd Court Alipore, 24-Parganas (South), in Title Suit No. 2027 of 2010 on July 29, 2013, the defendant-appellant has preferred the instant first appeal.

2. The admitted facts are set out hereunder:-

(a) The respondent/plaintiff is the owner of the suit premises described in the plaint schedule.

(b) Tenancy was created in respect of the suit premises in the year 1957 at a monthly rent of Rs. 475/- in favour of the appellant company of which M.N. Dastur, since deceased, was the Chairman and Managing Director.

(c) Tenancy right was continued in favour of the defendant company despite the demise of M. N. Dastur and his wife.

(d) In view of negotiation between the parties monthly rent of the suit premises was enhanced to Rs. 50,000/- payable according to English Calendar month on and from January 1, 2009.

(e) The appellant continued payment of such rent at the enhanced rate month by month and the respondent-plaintiff accepted the same in respect of the suit premises from the appellant-defendant up to June 2009.

(f) The appellant received notice to quit under Section 106 of the T.P. Act dated 19.4.2010 by which the respondent asked to vacate the suit premises "by end of May 2010".

(g) The appellant did not vacate the suit premises and the suit for eviction and mesne profits from June 1, 2010 was filed on July 15, 2010.

Specific defence is that the notice for eviction was illegal and invalid by which the relationship of the landlord and tenancy between the parties was not terminated and, therefore, the continuation of possession by the appellant is not that of a trespasser.

3. Learned Trial Court framed the following issues:-

1. Is the suit maintainable in its present form?
2. Does the plaintiff have cause of action to institute the suit?
3. Was the defendant a tenant in respect of the suit premises under the plaintiff?
4. Was the tenancy of the defendant terminated by a leg and valid notice U/S. 106 of the Transfer of

Property Act? Whether notice U/S. 106 of the T.P. Act duly served upon the defendant?

5. Is the plaintiff entitled to get the reliefs as prayed for?

6. To what other reliefs if any, is the plaintiff entitled to?

4. On the side of the respondent/plaintiff only one witness was examined as P.W. 1 and on the side of the appellant/defendant two witnesses were examined as D.W. 1 & 2.

5. Although on the side of the respondent/plaintiff and the appellant/defendant six and twelve documents respectively were exhibited, however as there is no dispute regarding identity of the suit premises, relationship between the landlord and the tenant, on the quantum of rent at enhanced rate, and regarding the period upto which rent was realised by the respondent, regarding the documents, namely the copy of notice dated 19.4.2010, its connected postal receipts and A.D. Card Exts. 4/1 and 4/2 coupled with the oral evidence on the issue and receipt of notice to adjudge the propriety and legality of the impugned judgement, on the following points require consideration which are:

(i) Since initial tenancy was started in the year 1957 with a monthly rent payable at the rate of only Rs. 475/- when West Bengal Premises Tenancy Act, 1956 Act was prevalent, whether protection against decree of eviction is available under the same West Bengal Premises Tenancy Act, or,

(ii) Whether provision of Transfer of Property Act would apply and if so, in that case whether the decree of eviction under challenge suffers from any illegality?

(iii) Whether the evidence adduced by the respondent was not in consonance of the plaint case?

6. Mr. Pratap Chatterjee learned Senior Advocate assisted by Mr. Saptanshu Basu, learned senior advocate argued that the respondent/plaintiff had to prove his case depending upon the foundation of the case made out in the plaint and not upon any case beyond the pleadings. As the plaint case was not proved by leading evidence in consonance with the pleading therefore, discussion or presumption should not be stretched in order to pass a decree of eviction.

7. Referring to the evidence of the sole P.W. 1 at Page 15 of the Paper Book and the unregistered deed of lease dated April 1, 1981 (Ext. 1) and paragraph Nos. 2 and 4 of the plaint, Mr. Chatterjee argued that the foundation for creation of tenancy was Ext. 1. Therefore, the respondent had to succeed in view of the terms of such unregistered lease deed and no evidence could be accepted as admissible in the absence of pleadings. Relying on the judgment in the case of Bachhaj Nahar v. Nilima Mandal reported in AIR 2009 Supreme Court 1103, and in Siddik Mahomed Shah v. Mt. Saran and other reported in AIR 1930 PC 57, Mr. Chatterjee submitted that the monthly tenancy is a creature of contract through negotiation. Therefore tenancy right in the suit premises having been created by virtue of Ext. 1, the payment of rent month by month ipso facto does not necessarily create monthly tenancy for its termination by notice under Section 106 of the Transfer of Property Act.

8. Relying on the judgment in the case of Suhash H. Pophale v. Oriental Insurance Co. Pvt. Ltd. reported in (2014) 4 SCC 657 it was submitted on behalf of the appellant that since tenancy right in the suit premises was created fixing rent at the rate of Rs. 475/- during existence of West Bengal Premises Tenancy Act, 1956, the protection against eviction as available under West Bengal Premises Tenancy Act would not be wiped out applying the provisions of the Transfer of Property Act due to enhancement of rent from January, 2009. Submission was, to evict such a tenant the provisions of West Bengal Premises Tenancy Act and not Transfer of Property Act would apply.

9. Relying on the judgment in the case of Y. Krishna Murthy & Others v. A. Subba Rao reported in AIR 1988 Andhra Pradesh 193 was that the notice under Section 106 of the Transfer of Property Act was illegal since in terms of Section 106 clear fifteen day's notice was not served. Rather by using the words "hereby terminates the said tenancy" in the notice dated April 19, 2010 the respondent purported to terminate the tenancy from the very date of notice.

10. Mr. Saktinath Mukherjee, learned Senior Advocate for the respondent/plaintiff submitted that the tenancy is created under Section 105 of the Transfer of Property Act and not under the West Bengal Premises Tenancy Act. Since Section 111 of the Transfer of Property Act (hereinafter referred to as the T.P. Act), determines the different modes of termination of tenancy, and since in view of exceptions under Section 3(e) of the West Bengal Premises Tenancy Act, 1997, the tenancy of the appellant was terminated in view of provisions of Section 111(h) of the T.P. Act as admittedly the notice under Section 106 of the Act was served upon the appellant.

11. Submission is that for the purpose of decree for recovery of possession from the tenant, except the protections available under Section 6 of the West Bengal Premises Tenancy Act, 1997, protections, which were available previously under the then West Bengal Premises Tenancy Act, 1956 are no more available to the tenant since said Act 1956, has been repealed. Since the fate of the eviction suit would hinge upon the first sentence of 3rd paragraph of the notice to quit (Ext. 4) served upon the appellant, and since the lease deed (Ext. 1) was not a registered document, the bona fide act and conduct of payment and receipt of agreed rent month by month gave rise to the legal inference of tenancy. Submission was assuming there was any inaccuracy in the language of notice, termination of the said tenancy was effected by notice dated April 19, 2010 on expiry of May 2010. Relying on the judgment in Biswanbani Pvt. Ltd. v. Santosh Kumar Dutta reported in (1980) 1 SCC 185 and on the commentary on "notice" under Section 106 from Mulla's The Transfer of Property Act (11th Edition) submission was the appeal be dismissed.

12. Admittedly as we find that the suit premises mentioned in the plaint schedule was a tenement of a dwelling house located at Ballygunge Park Road within P.S. Koraya. On the findings of learned Trial Judge over the issue Nos. 1, 2 and 3, no argument was made before us. Therefore we do not delve on those issues.

13. It is needless to mention that by enacting the West Bengal Premises Tenancy Act, 1997, the Act of 1956 has been repealed. A few changes have been brought in the Act, 1997. Section 6 of such Act 1997 gives protection to a tenant against decree for recovery of possession by way of eviction if the landlord succeeds in the suit, to be filed by him after complying Section 6(4) on either of the grounds mentioned under Sections 6(1) (a) to (l) of the 1997 Act. However, Section 3 of the said 1997 Act puts an exception about applicability of Section 6 of the Act in given cases. In respect of the case in hand Section 3(e) will be appropriate to set out since admittedly the suit premises is a tenement of dwelling house and after negotiation during lifetime of wife of M.N Dastur (who expired on 09.06.2009 since her husband Dr. Dastur predeceased her vide paper book at page 16) the rent of Rs. 25,000/- (Ext.2) w.e.f. April 01,1995 was further enhanced to Rs. 50,000/- (Ext.3) w.e.f. January 01, 2009 payable according to English Calendar month. Section 3 of the West Bengal Premises Transfer Act, 1997 is set out to cite the exemption clause in the Act:-

Exemption:-

(e) any premises let out for residential purpose, not being a premises within the purview of clause (c), which carries more than-

(i) (six thousand and five hundred rupees) as monthly rent in the areas included within the limits of the Kolkata Municipal Corporation or the Howrah Municipal Corporation, or

(ii) (three thousand rupees) as monthly rent in other areas to which this Act extends;

(f) any premises let out for non-residential purpose, which carries more than-

(i) (ten thousand rupees) as monthly rent in the areas included within the limits of the Kolkata Municipal Corporation or the Howrah Municipal Corporation, or

(ii) (five thousand rupees) as monthly rent in other areas to which this Act extends.

Explanation - Where any premises is let out partly for residential purpose and partly for non-residential purpose, the provisions of clause

(f) shall apply to such premises in proportion to respective areas.

14. To avoid any confusion we make it clear that the 1997 Act applies to the areas extending the limits defined under Section (1) Sub-Section (3) of the Act where obligations of the landlord and protection of tenant have been specified. But it is needless to mention that Clause (C) of Section 3 of the West Bengal Premises Tenancy Act, 1997 would not come as a saviour to the appellant since the lease deed Ext. 1 was not a registered document and other requirements of the Clause (C) of Section 3 of the Act, 1997 are absent in the document. Rather Clause (e) of Section 3 of the Act is applicable.

15. Before entering into further discussion it is now appropriate to set out paragraphs 11, 12 & 13 from Biswabani Pvt. Ltd. (supra) to appreciate the legal position when a document of lease cannot be enforceable under law for being not registered.

Paragraph 11: - Even if it is assumed that the appellant was put in possession for the first time under a lease which turns out to be void, the appellant came into possession of the premises with the consent of the landlords and paid rent from month to month. As the lease was to be for a period of 5 years, for want of registration no operative lease came into existence. In almost identical circumstances in Ram Kumar Das v. Jagdish Chandra Deb Dhabal Deb an inference of tenancy was made and the duration of the tenancy in such circumstances was held to be from month to month.

Paragraph 12: - Woodfall on "Landlord and Tenant", Volume 1, 27th Edn., p.187, para 446 in this context states as under:

Moreover, if the tenant enters into possession under a void lease, he thereupon becomes tenant from year to year upon the terms of the writing, so far as they are applicable to and not inconsistent with a yearly tenancy. Such tenancy may be determined by the usual notice to quit at the end of the first or any subsequent year, and it will determine, without any notice to quit, at the end of the term mentioned in the writing. But if the lessee does not enter, he will not be liable to an action for not taking possession; nor will an action lie against the lessor for not giving possession at the time appointed for the commencement of the term but before the lease is executed.

Paragraph 13: - In the context of fiction enacted in Section 106 of the Transfer of Property Act depending upon the nature of lease, namely, one of a theatre, the person so put in possession would be a tenant from month to month.

16. As noted in view of the unambiguous position of law, and after examining the oral evidence of P.W. 1, D.W. 1 and D.W. 2 and verifying the findings of learned Trial Judge on issue no.3, we accepted the inference of monthly tenancy of the applicant, as established by payment of monthly rent till notice to quit was issued, which gave a legal inference, since such tenancy became creature of the statute by payment of rent to his landlord and acceptance of the same by the landlord from his tenant month by month.

17. In view of above, we accordingly hold that the suit premises being a tenement of residential house and its monthly rent being more than Rs. 6,500/- and thereby having fallen within the exemption under Section 3(e) of the 1997 Act and since the West Bengal Premises Tenancy Act, 1956 Act has been repealed by the introduction of the coming of the New 1997 Act w.e.f July 10th, 2001 the argument of Mr.Basu about non-applicability of T.P. Act, on the logic that the protection of tenant would be available since tenancy commenced under 1956 Act at the rate of monthly rent of Rs. 475/- is not accepted. The judgment in the case of Subhash H. Pophale v. Oriental Insurance Co. Pvt. Ltd. (supra) is inapplicable since it deals with the rights and retrospectivity of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Moreover facts are different.

As the protections under the Act, 1956, are no more available with the introduction of the 1997 Act, therefore we hold that in view of Section 3(e) of the 1997 Act the protection under Section 6 of the Act against decree of eviction from the suit premises being not available to the appellant, the right of tenancy or its termination are governed by the provisions of T.P.Act and not by the 1997 Act.

18. We take note of the fact that the respondent filed the suit for recovery of possession and mesne profits w.e.f June 1, 2010 since despite of service of notice under Section 106 of the T.P. Act the appellant did not deliver vacant possession of the same on expiry of May 2010.

19. The judgment of Y.K. Murthy (supra) of Andhra Pradesh High Court as was

referred to before learned Trial Court also was placed before us, since, as argued on behalf of the appellant, due to putting the words "hereby terminates" in the notice dated 19.4.2010 under Section 106 of the T.P. Act the respondent indicated determination of lease from that date of issue of notice i.e. April 19th, 2010, and for the period upto 31st May, 2010 was allowed only to vacate the premises, by which attempt was made to apprise us that a notice of clear 15 days was not served resulting violation of Section 106 of the T.P. Act, since it was served on April, 21, 2010.

20. Let us now examine the relevant part of the notice dated 19.4.2010 (Ext. 4) which is as follows:-

"My client, through me, hereby terminates the said tenancy and advises you to quit, deliver vacant and peaceful possession of the same by the end of May 2010 after which you will be deemed a trespasser."

In the case Judgment in Y.K. Murthy (supra) the relevant portion of language used in the notice under Section 106 of the T.P. Act reads as follows:-

"That my client hereby terminates the tenancy in your favour and requests you to vacate the premise by the end of October 1977 by which date the tenancy expires,....."

Therein the Hon'ble Single Bench of Andhra Pradesh High Court did not accept such argument made on behalf of the landlord, and by interpreting the words "hereby terminates" held the notice as invalid. Paragraph 7 from the judgment in the case of Y.K. Murthy and Others (supra) is set out hereunder:-

"I am unable to agree with the contention of the learned counsel for the respondent. A reading of notice Ex. A-4 would appear to manifest that the intention of the respondent is that he determined the lease of the appellants under Ex. A-4 itself forthwith from that date and calls upon the appellants to vacate the premises by the end of Oct., 1977 till which date under law that lease subsisted. The words "hereby terminates" would indicate that the respondent intended to determine the lease by that notice from that date itself and has given one month time to the appellants to vacate the premises.

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Therefore, the material question is as to when the lease was determined? As stated earlier, a fair reading of the notice itself clearly mentions that the respondent intended that lease stood determined by the issue of the notice itself and thus the respondent used the words "hereby terminates". It is normal practise that in a notice determining the monthly tenancy we would come across with the language with expiry of 15 days from the date of receipt of this notice. But that is not the language used in the notice and moreover he knows that he intends tenancy and the effect thereof. Under these circumstances, I am of the view that Ex. A-4 notice which determines the lease of the appellants is invalid."

21. We took note that learned Trial Judge dealt well with the interpretations of the words "hereby terminates" with the aid of the decisions reported in AIR 1981 Allahabad 312, and AIR 1976 Rajasthan 56 to indicate the meaning of the word "hereby" as "by means of this". In this regard the relevant portion from paragraph 7 of the judgment in the case of Chandika v. Sukhnandan (supra) is set out hereinunder:-

"The word "hereby" as used in the context in which it occurs in the aforesaid paragraph means nothing more than that the tenancy of the defendant was being terminated through the notice.....

The use of the word "hereby", therefore, cannot lead to the conclusion that the plaintiff intended to terminate the tenancy of the appellant in praesenti."

Similarly relevant portion from paragraph 25 of the judgment in the case of M/s. General Auto Agencies v. Hazari Singh (supra) is set out to look into the meaning of words "hereby terminates":-

"Learned counsel for the respondent urged that there could not be any quarrel with the law laid down by Desai C.J. because according to Mr. Pareekh if the tenancy is terminated forthwith then the relationship of a tenant with his landlord comes immediately to an end and thereafter if the landlord requires the tenant to hand over the possession of the demised premises after some time then for that period the position of the tenant is that of a licensee or of a tenant on sufferance.

In Hakim Ziaul Islam v. Mohd. Rafi AIR 1971 All 302 I find that the notice indicated that the landlord wanted to terminate the tenancy immediately. This authority can help the appellant only if I hold that in the present case the counsel who had drafted the notice on behalf of the plaintiff indicated to the defendant the intention of his client to terminate the relationship of the landlord and the tenant immediately. The notice however, does not state that the tenancy was terminated forthwith. The expression "hereby terminates" cannot be read to mean "terminated forthwith". The word "hereby" means that the tenancy was terminated by that notice. The sentence when read as a whole makes it abundantly clear that the request was made by the landlord for the delivery of possession of the demised property either by the end of 31st October, 1969 or on such day on which the tenant considered that his month of tenancy came to an end. The notice in the light of its unambiguous language can be interpreted to mean that the counsel of the landlord indicated to the defendant that his client wanted to synchronise the act of termination of tenancy with the act of the delivering of vacant possession thereof. In my opinion the language used by the counsel for the plaintiff was intended to terminate the tenancy either on 31st of October or on the day on which the tenant considered that his month of tenancy expired. The notice Ex. 5 does not in any manner carry the idea that the landlord was keen to terminate the tenancy of the defendant immediately on the receipt of the notice. I therefore, do not find any life in this argument also."

22. On the issue of notice, we do incline also to set out some relevant portions from the commentary from Mulla's The Transfer of Property Act (11th Edition) of Pages 810-811:-

"Notice to quit under Section 106 is a technical rule. It should not be construed in a pedantic and impractical way so as to pickholes and find fault with the notice. The aim of the interpretation should be only to ascertain whether the person receiving the notice has understood the same. A liberal construction would always enable to do practical justice to the cause. The court should construe the quit notice, in such a way that it should not be defeated by inaccuracies in the language of the notice especially in matters of the description of the premises, the name of the tenant or the name of the landlord or the date of expiry of the notice. The rule has been to make lame and inaccurate notices sensible where the recipient cannot have been misled as to the intention of the giver. A liberal construction is put upon a notice to quit, so that it is not defeated by minor errors. Notice to quit may, notwithstanding erroneous particulars, be still good and effective so long as the recipient is not misled. Still it has to be remembered that it is for the benefit of lessees and so, the construction which deprives a tenant of the minimum period of notice stipulated in the section is not permissible.

A notice must be with respect to the leased property and should contain a sufficient and appropriate description of the same, but where boundaries were correctly described but the area stated was incorrect due to a bona fide mistake the notice would be valid."

23. Thus taking the ratio of the decisions and by analysing relevant laws covering the field we find that in the plaint relief was sought for eviction of the appellant from the suit premises determining the tenancy right which the appellant had therein. In view of the law cited above and also in view of Section 17(d) of the Registration Act, 1908 Ext. 1 the lease deed could not be taken as granted as a document admissible under law for want of its registration. But by conduct of the parties i.e. remaining in continuous possession by the appellant in the suit premises by paying the sum equivalent to monthly rent for years together month by month and the respondent also having received such sum from the appellant regularly month by month as agreed upon, till sometimes before service of notice to quit, we find that it has been established that the appellant was monthly tenant for years together under the respondent, his landlord. In the plaint the respondent did not suppress about the unregistered lease deed dated April 1, 1981. It was very much disclosed. But construction of the plaint did not permit us to accept the contention of Mr. Chatterjee that said unregistered lease deed was made basis of the plaint case, or the lease Ext. 1 was the foundation of the eviction suit. Rather admitted position is that tenancy in the suit premises was created long before the lease deed (Ext.1) i.e. sometimes in 1957. The lease deed came in the year 1981. Though it is unregistered but till before expiry of M.N. Dastur and his wife they were not disturbed as was agreed upon, and on

expiry of the period of that purported lease deed the suit was filed, of course not being led by the terms of said inadmissible document, but being led by the due course of law available in the field. The rate of the monthly rent payable till before determination of tenancy right had no semblance with the rate of rent mentioned in lease deed. Had there been the case of eviction based on any grounds other than Section 111(h) of the T.P Act, there would have been some merit in the submission of Mr. Chatterjee. Therefore without hesitation we do reiterate that the basic structure of the plaint case was not founded on the basis of lease deed, which in fact is hit by Section 17(d) of the Registration Act, 1908. Hence, we are unable to accept the arguments of Mr. Chatterjee to the effect that the respondent would have to succeed on the basis of Ext. 1 the lease deed and payment of rent does not necessarily create monthly tenancy. Thus in between the pleadings, prayers and evidence adduced on behalf of the respondent we found no divergent case which could come on the way in getting appropriate relief. The relief was sought for recovery of possession in the suit premises by evicting the appellant therefrom and for mesne profits on the basis of the plaint case. Since, apart from admission of the appellant both in pleading and evidence, on the basis of the plaint case, coupled with the evidence adduced by P.W. 1, the relief as was sought for, was granted by learned Trial Judge, and the relief as granted was not different than the relief sought for, the judgment in the case of Bachhaj Nahar v. Nilima Mandal and Another, or, even of the Siddik Mahomed Shah v. Mt. Saran and others (supra) do not further help the case of appellant.

24. It is evident that the notice was issued on April 19, 2010 and it was received by the appellant on April 21, 2010, whereby the appellant was requested to vacate and deliver possession of the suit premises "by the end of May 2010", after which the appellant would be deemed as a trespasser. The suit was filed after one and half month i.e. on July 15, 2010. Therefore, even if it is assumed that there was inaccuracy in the language of notice we find that there was no misleading construction in the notice which can deprive the appellant of the minimum period of fifteen days as required under Section 106 of the T.P. Act. Law is settled that in an eviction suit under T.P. Act only the adequacy of a notice under Section 106(1) of the T.P. Act is sufficient to get decree of eviction by termination of tenancy under Section 111(h) of the T.P. Act, where and when the provision of the West Bengal Premises Tenancy Act are not applicable to come in the aid of the appellant.

25. Again favouring the contention of the appellant even if we interpret the words "hereby terminates", though there is no ambiguity in its construction as indicated above, nevertheless any short fall of the period of notice as tried to allege in defending on the issue of service of notice, the same "shall not be deemed to be invalid" in view of amended Section of 106(3) of the T.P. Act substituted by the Transfer of Property Act, 2002 enforceable w.e.f. 31st December, 2002.

Section 106(3) of such amended Act runs as follows:-

A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

By substituting new Section of 106 of the T.P. Act w.e.f. December 31, 2002 it has been given retrospective operation.

"Section 3 of the amending Act of 2002 specifically provides that the amended provision shall apply to:

(a) all notices in pursuance of which any suit or proceeding is pending at the commencement of the amending Act; and

(b) all notices which has been issued before the commencement of the amending Act, but where no suit or proceeding has been filed before such commencement.

Therefore, the amendment applies to all present as well as future proceedings. "Suit or proceeding" would include appeals, revisions, etc and hence, at no stage of litigation can the technical pleas as were available under the unamended Section 106, can be raised".

26. It is pertinent to note that before amending old Section 106 of the T.P. Act the legislature examining the report of Law Commission in 181st Report opined that due to technical fault alone in the notice suits would have been dismissed. As a result of which fresh eviction suits would have to be filed after issuing fresh notices which would amount not only serious injustice but also would give birth to multiplicity of litigations amongst the same parties or their descendants nonetheless of the fact that the tenant would get much more time than the prescribed period of notice by the date when the suit would be filed for his eviction. As it happened in this case, notice was issued on April 19, 2010 asking the appellant to quit by the end of May 31, 2010, and the suit was filed on July 15, 2010.

27. Therefore, examining the findings of learned Trial Court on the point of validity of the notice to quit, served upon the appellant, who in turn having failed to comply with said notice (Ext. 4) the tenancy right of the appellant to the suit premises was determined by the mode of Section 111(h) of the T.P. Act since "A lease of immovable property determines: - on the expiration of a notice to determine the lease, or to quit, or of intention of quit, the property leased, duly given by one party to the other".

28. Thus re-examining the findings of learned Trial Court on the remaining pertinent issue nos. 4, 5 & 6, and appreciating the endeavour of learned Trial Judge to deal with the relevant law with fact on the issue we find no illegality in upholding the judgment and decree under challenge answering to the points as we have considered that the appellant is not entitled to get protection under

Section 6 of the West Bengal Premises Tenancy Act, 1997 in view of the exempted provision laid down under Section 3(e) of the Act, and as the provisions of the T.P. Act, are applicable and as the tenancy right of the appellant has been determined under Section 111(h) of the T.P. Act by the service of notice under Section 106 of the T.P. Act, we conclude that the impugned judgment requires no interference.

29. We, therefore, uphold the judgment and decree dated July 29, 2013 delivered by learned Civil Judge (Senior Division) 2nd Court, Alipore, 24-Parganas (South) dismissing the appeal with costs assessed at Rs. 5100/- (five thousand one hundred) only.

Let a copy of such judgment be communicated at once to the Trial Court for information.

Stay order, if any was passed regarding execution proceeding arising out of the decree of the Trial Court stands vacated.

Urgent certified copy be furnished to the parties if applied for.

Soumitra Pal, J. - I agree.

Later:-

After delivery of judgement Mr. Pratap Chatterjee, learned Senior Advocate appearing for the appellant prays for stay of the operation of the judgement and order. Mr. Amiya Narayan Mukherjee, learned advocate vehemently opposes the said prayer. Considering the very short point involved in appeal which has been dealt with dismissing the first appeal we are not impressed to pass any order staying the operation of the judgement and order delivered by us affirming the judgement and decree under challenged.