

(2026) 01 BOM CK 0402

In the Bombay High Court

Case No : Civil Revision Application No. 672 Of 2009

Oriental Insurance Company Ltd

APPELLANT

Vs

D.J Shukla and Company

RESPONDENT

Date of Decision : 05-01-2026

Acts Referred:

Civil Procedure Code, 1908 — Section 115

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4(2), 7(3)

Transfer of Property Act, 1882 — Section 106, 111, 112

Citation : (2026) 01 BOM CK 0402

Hon'ble Judges : Gauri Godse, J

Bench : Single Bench

Advocate : V.Y. Sanglikar

Final Decision : Allowed

Judgement

Gauri Godse, J

1. This civil revision application is filed under Section 115 of the Civil Procedure Code, 1908 ('CPC') to challenge the order passed by the learned City Civil Court in the appeal preferred by the respondent to challenge the order of eviction and damages passed by the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ('said Act').

2. Learned counsel for the applicant submitted that during the pendency of this civil revision application, the possession of the subject premises was handed over to the applicant. Accordingly, in the present civil revision application, the only issue to be decided is the applicant's claim for damages arising from the respondent's unauthorised occupation.

BASIC FACTS:

3. The proceedings are initiated in respect of the premises, which consist of a cabin on the mezzanine floor of a building known as the Oriental House, owned by the applicant. The respondent occupied the subject premises in the said

building as a monthly tenant of the applicant.

4. The applicant issued a notice dated 13th March 2001 terminating the lease in favour of the respondent, on the grounds of default in payment of rent and other charges, and breach of the terms and conditions by changing the user of the premises from an office to a godown. The respondent was therefore called upon to vacate the premises within one month, failing which the respondent would be liable to pay damages for the unauthorised occupation. The respondent was also informed about the payment of the arrears at 24% interest and thus called upon the respondent to pay the arrears within two weeks. Thereafter, the applicant filed an application for eviction and damages before the Estate Officer. The show cause notice for eviction was issued by the estate officer on 6th September 2001 on the ground that the lease was terminated and the respondent was in unauthorized occupation since 1st May 2001. A notice dated 6th September 2001 was also issued under Section 7(3) of the said Act for payment of damages.

5. The estate officer held that the respondent was in unauthorised occupation and the tenancy was terminated by a valid notice. The applicant was held entitled to an order of eviction and to recover arrears of rent and damages at the rate of Rs. 6,900/- per month from 1st May 2001 till the date of actual delivery of the possession, along with simple interest at 9% per annum. However, in an appeal preferred by the respondent, the first appellate court held that the lease was valid and subsisting upto 2003, and there was no valid termination of tenancy. It was held that the respondent paid the arrears of Rs. 32943/- by cheque along with a letter dated 28th March 2001; hence, in view of receipt of the arrears as demanded, the forfeiture under Section 111(g) of the Transfer of Property Act ("the TP Act") stood waived under Section 112 of the TP Act. It was held that although the respondent had shifted to a new office premises, the subject premises was not fully closed; hence, there was no change in user. The first appellate court allowed the respondent's appeal and reversed the estate officer's order.

SUBMISSIONS ON BEHALF OF THE APPLICANT:

6. Learned counsel for the applicant submitted that a Section 7 notice was issued in the prescribed Form-F, claiming damages arising from the termination notice dated

13 th March 2001, as the respondent's occupation was unauthorised. Once the requirement of termination of tenancy as contemplated under Section 106 of the TP Act is satisfied, the respondent's occupation becomes unauthorised as his authority to occupy the premises ends. The notice of termination dated 13th March 2001 is validly issued as contemplated under Section 106 of the TP Act. According to the learned counsel for the applicant, since it was a monthly tenancy, the requirement to issue notice was 15 days. The eviction application was filed on 28th August 2001. Therefore, the requirement of 15 days' notice under Section 106 was satisfied and thus, in view of Section 7 of the said Act,

the applicant is entitled to recover damages.

7. Learned counsel for the applicant relied upon the list of documents produced before the estate officer to support the quantification of damages claimed by the applicant. He submitted that the respondent led no evidence to controvert the applicant's evidence in support of the quantification of the damages. The respondent failed to make any payment following service of the termination notice. Accordingly, for the quantification and assessment of damages, the estate officer rightly ordered payment under Section 7 of the said Act.

8. Learned counsel for the applicant submits that an unregistered lease would be a monthly lease and thus, there was a valid termination of the tenancy and the occupation of the respondent was rendered unauthorised. To support his submissions, learned counsel for the applicant relied upon the decision of the Hon'ble Apex Court in the case of Babulal Agrawal Vs. Food Corporation of India and Others (2004) 2 SCC 712. He submitted that the learned appellate court erred in holding that, upon receipt of the notice dated 13th March 2001, the respondent paid the demanded amount, and as no evidence was adduced to show that the applicant had accepted the amount under protest, there was no valid termination of the lease.

9. Learned counsel for the applicant submits that the appellate court erroneously held that, as the period of the lease agreement was extended, as per clause (e) of the lease agreement of 1971, the notice period was 90 days for valid termination of the lease. Because the 90-day termination notice was not issued, there was no valid termination of the tenancy. According to the learned counsel for the applicant, the appellate court has ignored that, under Section 106 of the TP Act, notice of termination requires 15 days, as the respondent's tenancy continued without any registered agreement. Considering the date of filing the application for eviction, there was sufficient compliance with the required period for termination of the tenancy. Hence, the appellate court has erroneously held that the respondent cannot be held as an unauthorised occupier and therefore would not be liable to make payment towards damages.

10. Learned counsel for the applicant submitted that even if the possession of the suit premises is handed over, the applicant would be entitled to get the impugned order reversed on the point of valid termination of tenancy and the applicant's entitlement to seek damages. Once the termination of tenancy is accepted as a valid termination as held by the estate officer, the estate officer's order for payment of damages needs to be restored. He submits that, although possession has been handed over, the applicant is entitled to recover damages from the date of termination until the date of handover of possession, i.e., 23rd March 2023. Learned counsel for the applicant, therefore, submits that the impugned order be set aside and the estate officer's order be restored.

CONSIDERATION AND ANALYSIS:

11. Though served with the notice of the final disposal of this civil revision

application, no one appears for the respondent. I have considered the submissions made on behalf of the applicant. I have perused the relevant documents relied upon by the learned counsel for the applicant. There is no dispute that the tenancy agreement was initially executed for a period of three years, i.e. from 1st June 1970 to 31st May 1973, with a monthly rent of Rs. 207/-. The lease deed was executed by the erstwhile company, the New Great Insurance Company, which merged with the applicant company. The applicant continued to receive the rent, water, and electricity charges from the respondent. The record shows that the applicant offered to renew the lease by issuing a letter dated 2nd November 1995. Earlier, the monthly rent was fixed at Rs. 540/- and service charge at Rs. 519/- per month, with an increase of 25% after five years from 1st April 1993. of Rs. 1059/- for a period of 10 years from 1st April 1993 and with a provision for an increase in rent by 25% after 5 years. Thus, as on 1st April 1998, the rent of Rs. 675/- and repairs and maintenance charges of Rs. 649/- per month were fixed. No agreement was executed after the expiry of the initial three-year period as per the lease deed. Thus, after determination of lease by efflux of time, the respondent continued to occupy the premises and make payment of rent as per the terms agreed between the parties.

12. The applicant thereafter issued a notice of termination dated 13th March 2001. It was contended that despite repeated demands the respondent had defaulted in payment of arrears of rent and that the premises had been locked for a long period and were unauthorisedly used as a godown. Thus, the applicant initiated the proceedings under the said Act for eviction and for damages. A show cause notice was issued by the estate officer under Section 4(2) and Section 7(3) of the said Act. The respondent responded to the show-cause notice and raised preliminary objections to the notice of termination. The respondent denied any change in the use of the premises as alleged. The respondent contended that, as demanded, the arrears of rent were paid, and that the respondent was no longer in arrears of rent. Hence, the respondent contended that they were not in unauthorised occupation of the premises and that the applicant was not entitled to seek eviction or any damages.

13. On the issue of termination of tenancy, the estate officer held that the tenancy was terminated by the termination notice dated 13th March 2001, upon expiry of the next calendar month from the date of service of the notice of termination upon the respondent. The notice dated 13th March 2001 was received by the respondent on 21st March 2001. Accordingly, the estate officer accepted the valid termination of the tenancy under Section 106 of the Transfer of Property Act.

14. So far as the allegations of the breach of terms and conditions are concerned, the estate officer held that the respondent violated the terms and conditions of the agreement by keeping the premises locked for a long time and by using it as a godown. Hence, based on the evidence on record, the estate officer held that there was a change in use of the premises. Since the valid

termination of the tenancy was accepted, the estate officer held that the applicant was entitled to recover damages.

15. As to the evidence supporting the quantification of damages, the applicant produced relevant evidence, which was accepted by the estate officer. There is no dispute that the respondent failed to lead any evidence to controvert the evidence on the quantification of damages. However, the appellate court reversed the estate officer's findings on the valid termination of the tenancy. It was held that without a valid termination of tenancy, the respondent cannot be held to be in unauthorised occupation. On the point of change in user, the appellate court disbelieved the applicant's contention.

16. The appellate court held that the applicant produced no evidence that the cheque amount was received under protest. Accordingly, once the demanded amount was received, the respondent was not in arrears. It was held that once the demanded amount was accepted without protest, the forfeiture as per clause (g) of Section 111 was waived as per section 112 of the TP Act. On the issue of the period for service of the termination notice, the appellate court held that as per clause (e) of the lease deed, termination of the period of three months was stipulated, and thus, for want of sufficient time in the termination notice, the notice was not accepted as a valid termination. The appellate court thus held that 90 days' notice as contemplated under the lease deed was not issued and hence, there is no valid termination of tenancy. Thus, on the ground of the invalid termination of the tenancy, the eviction order and the order of damages by the estate officer was reversed.

17. To consider the submissions on the valid termination of tenancy, it is necessary to refer to Sections 111 and 106 of the TP Act, which provides a fifteen-day notice for termination of a monthly tenancy. The Apex Court in Food Corporation of India Ltd., held that in the absence of a lease deed or a registered lease deed, a tenancy is a monthly tenancy terminable by fifteen days' notice under Section 106 of the TP Act. The determination of lease is provided under Section 111 of the TP Act. Clause (g) of Section 111 provides for determination of lease by forfeiture as explained in the said clause. Therefore, mere breach of any terms and conditions will not attract forfeiture, unless there is an express condition of re-entry by the lessor, in case of breach. Therefore, in the absence of a fresh lease deed or renewal of the lease deed, after determination of the lease by efflux of time as provided under clause (a) of Section 111, if a lessee remains in possession and the lessor accepts rent or otherwise assents to continue in possession, it would be the effect of holding over as provided under Section 116 of the TP Act. Therefore, in such contingency in the absence of an agreement to the contrary, the lease would be renewed from year to year, or from month to month, according to the purpose for which the property was leased, as specified in Section 106 of the TP Act. Therefore, such lease can be terminated on expiration of a notice under Section 106 read with clause (h) of Section 111 of the TP Act.

18. In the present case, admittedly, after the expiry of the initial lease period under the lease deed, no fresh deed was executed. The lease as per the lease deed was determined by efflux of time. However, the respondent continued in possession as per the terms and conditions agreed between the parties for payment of monthly rent for use of the subject premises for office purpose. In the absence of a fresh lease deed, the respondent continued in possession on payment of the monthly rent for use of the premises as office, as contemplated under Section 116 of the TP Act. Therefore, clause (g) of Section 111 of the TP Act, will not attract in the present case. Hence, waiver of forfeiture under Section 112 of the TP Act would not apply. Thus, determination of lease, in the present case is not under clause (g) but it is under clause (h) of section 111 of the TP Act. The ninety-day termination clause in the initial lease deed, which expired at the end of the lease term, shall not apply. Therefore, the tenancy is rightly terminated by a fifteen-day notice under Section 106 of the TP Act. Receipt of the notice dated 13th March 2001 terminating the tenancy is not disputed. The eviction application under the said Act was filed on 28th August 2001. Thus, the tenancy was validly terminated as contemplated under Section 111 (h), read with Section 106 of the TP Act. Accordingly, the findings of the appellate court regarding the waiver of forfeiture under Section 112 read with Section 111(g) of the TP Act are unsustainable in the facts of the present case. As per Section 2(g) of the said Act, the occupation is unauthorised after the authority under which the occupation was allowed has been determined for any reason whatsoever. Therefore, once the termination as per the notice under Section 106 is held valid, the respondent's occupation would be rendered unauthorised from the date of expiry of the period of notice. Thus, the respondent would be liable to pay damages as held by the estate officer.

19. As far as quantification and the amount of damages is concerned, the appellate court reversed the estate officer's order only on the ground of an invalid termination notice. No reasons are recorded by the appellate court to disbelieve the applicant's evidence on the quantification of damages. The estate officer's findings on quantification of damages are not disturbed. The respondent failed to produce any evidence to controvert the quantification of the amount towards damages claimed by the applicant. Thus, once the notice of termination is held valid, the findings recorded by the estate officer in quantifying damages based on the evidence on record must be upheld. The impugned order shall therefore warrant interference.

20. For the reasons recorded above, the civil revision application is allowed by passing the following order:

a) The judgment and order dated 29th July 2009 passed by the City Civil Judge, Greater Bombay, in Miscellaneous Appeal No. 138 of 2008 is quashed and set aside. Miscellaneous Appeal No. 138 of 2008 is dismissed.

b) The judgment and order dated 5th March 2008 passed by the Estate Officer in Case Nos. 5, 5A and 5B of 2001 is confirmed.