
(2014) 01 BOM CK 0142
In the Bombay High Court
Case No : Second Appeal No. 421 of 1998

Smt. Suman

APPELLANT

Vs

Sau. Suman and Shri Ramesh Vyankatrao Bargat

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2015) 3 ALLMR 661 : (2014) 3 BomCR 661 : (2014) 4 MhLj 414

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : Badal Lonare, for the Appellant;

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—The present second appeal is preferred, against judgment and order dated 31.7.1998, passed by the learned Joint District Judge, Amravati, in Regular Civil Appeal No. 1 of 1993, which arose from the decree dated 31.10.1992, passed by learned 5th Joint Civil Judge, Junior Division, Amravati, in Regular Civil Suit No. 308 of 1991.

The facts in brief, are thus:

The plaintiff-landlord had filed a suit for recovery of possession of House No. 199, Ward No. 9, which was re-numbered as House No. 600, Ward No. 24 at Sham Nagar, Amravati. According to plaintiff-landlord, defendant-Smt. Suman Wankhede was monthly tenant, paying rent at the rate of Rs. 250/- per month inclusive of Municipal Taxes. She fell in arrears. Therefore, on the ground that she was habitual defaulter and house needed essential repairs which could not be carried out unless vacant possession was given by the tenant, the plaintiff-landlord had applied to the Rent Controller, to grant permission to issue eviction notice. Thus, notice dated 8.2.1991 was issued by plaintiff-landlord to defendant-tenant terminating its tenancy on the aforesaid ground.

2. The plaintiff-landlord also claimed damages at rate of Rs. 10/- per day apart

from the arrears of rent and applied for relief of possession as well.

3. The defendant-tenant had disputed the arrears of rent in the sum of Rs. 6,750/- in written statement and questioned the legality of notice u/s 106 of the Transfer of Property Act, 1882 (for short, "the Act"). The learned trial Judge, upon evidence led before it, found that defendant-tenant was in arrears of rent from February, 1989 to March, 1991 in the sum of Rs. 6,250/-. He also held that the termination notice to quit the premises was valid and legal and the tenancy was validly terminated. The plaintiff-landlord was also held entitled to claim damages as prayed for. Thus, the decree was granted by the trial Court for possession as well as arrears of rent apart from the enquiry into mesne profits.

4. The defendant-tenant, being aggrieved by the judgment and order, passed by the learned trial Judge, preferred Regular Civil Appeal No. 1 of 1993 before the learned Joint District Judge, Amravati, which by impugned judgment and order dated 31.7.1998 came to be dismissed with costs. The learned First Appellate Judge also found that the learned trial Judge passed just, legal and proper decree after valid termination of the tenancy pursuant to quit notice dated 8.2.1991.

5. It appears, that in the evidence, the tenant had admitted that it was monthly tenancy which started from first day of each month and ended on the last day of the same month while notice (Exh. 25) to quit was issued by the plaintiff-landlord to the defendant-tenant on 8.2.1991, which was acknowledged on 16.2.1991 (Exh. 23). The notice was also served under postal certificate for which the postal receipt (Exh. 24) dated 8.2.1991 was relied upon.

6. Under these circumstances, the learned First appellate Judge also observed that notice (Exh. 25) issued on 8.2.1991 by RPAD as also under postal certificate was served and delivered on 16.2.1991. The learned counsel does not dispute that the suit was filed on 12.4.1991 much after the lapse of period of 15 days statutorily required u/s 106 of the Act. The said Section reads thus:

106. "Duration of Certain leases in absence of written contract or local usage.-

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months" notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days" notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) 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 subsection.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

7. It is clear that the tenancy, in the present facts and circumstances of the case, was monthly tenancy terminable under general law at the option of the lessor by 15 days notice. The period of 15 days" has to be calculated from the date of receipt of the notice (16.2.1992) in this case. That being so, the suit was filed on 12.4.1991 which was after expiry of the notice period of 15 days. Therefore, notice could not have been assailed on the ground that it did not provide sufficient period of 15 days or more to the tenant to vacate the suit premises.

8. The present appeal was admitted on 10.12.1998 on the point of substantial question of law as to whether the notice of termination against the appellant tenant which was served u/s 106 of the Act, was actually served on 16.2.1991 and whether it gave clear 15 days margin to vacate the suit premises. The reading of Section 106 of the Act, makes it clear that period mentioned under sub section (1) of the said Section may be calculated from the date of the receipt of the notice to find out as to whether period of 15 days required by the defendant monthly lessee to vacate the suit premises was available to lessee.

9. Considering the fact that, the suit was filed on 12.4.1991 after tenant had received the notice to quit on 16.2.1991 more than sufficient period was available at the disposal of the tenant to comply with the notice to quit. Accordingly notice to quit issued u/s 106 of the Act cannot be assailed on the ground that it did not gave sufficient period to vacate the suit premises. That being so, there is no merit in the appeal considering the concurrent judgments and orders recorded against the present appellant (original defendant-tenant). Hence, the appeal has no merits and the same needs to be dismissed. In the result, the appeal is dismissed.