

(1969) 10 AHC CK 0019
In the Allahabad High Court
Case No : S.A. No. 1168 of 1969

The Saharanpur Cooperative Marketing Society Ltd.
Saharanpur

APPELLANT

Vs

Devendra Kumar

RESPONDENT

Date of Decision : 30-10-1969

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 117

Citation : (1970) 40 AWR 134

Hon'ble Judges : J.S. Trivedi, J

Bench : Single Bench

Advocate : N.D. Ojha and H.S. Nigam, for the Appellant;

Final Decision : Dismissed

Judgement

J.S. Trivedi, J.—This is a Defendant's second appeal against the judgment and decree of the Additional District Judge, Saharanpur.

2. The Appellant is admittedly the tenant and the Respondent the landlord of the premises in dispute. The suit was filed by the Plaintiff Respondent for arrears of rent, damages and ejectment. The accommodation in suit admittedly was of post-1951 construction and the UP Act No. 3 of 1947 did not apply to it. A notice u/s 106 of the Transfer of Property Act determining the tenancy on the expiry of thirty days was given to the Appellant and after the expiry of the period the suit out of which this appeal arises was filed. The trial Court decreed the Plaintiff's suit. An appeal against the decree for ejectment alone was filed by the Appellant and the lower appellate court confirmed the decree of the trial court. Hence this appeal.

3. The first contention of the learned Counsel for the Appellant is that the notice determining the tenancy was illegal and invalid because it terminated the tenancy forthwith. The notice Ext. 1 is on record. The relevant recital is as under:

Mera muwaqqil apko ainda kiray-adar rakhna nahin chahta ha. Apki kirayedari

bazariye notice haza khatm ki jati hai. Lihaza bazariye notice haza apko muttal kiya jata hai ki notice haza wasul hone ke tees yomke akhtetan par jaidad...mere muwaqqil ko de do, warna inkazai miad notice haza apke khilaf karwai zabta yani bedakhli wagaira adalat mayaz main dayar ki javegi.

According to the learned Counsel for the Appellant the notice terminated the tenancy forthwith whereas according to the learned Counsel for the Respondent the tenancy was determined on the expiry of thirty days. A bare reading of the relevant contents given above would disclose that the landlord only expressed his intention to determine the tenancy through the notice. The tenancy under the notice stood determined only after the expiry of thirty days when the tenant was directed to deliver possession of the accommodation to the landlord Respondent. I am therefore not prepared to accept that the notice contemplated the determination of the tenancy forthwith and was invalid on that account.

4. The next contention of the learned Counsel for the Appellant is that the suit against the Appellant which is a cooperative marketing society and governed by the UP Cooperative Societies Act, 1966, was not competent in the absence of a notice u/s 117 of the said Act. The said section reads as under:

No suit shall be instituted against a cooperative society or any of its officers in respect of any act relating to the constitution, management or the business of the society until the expiration of two months next after the notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the Plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

A notice in respect of a suit against a cooperative society is essential only where the suit is in respect of any act relating to the constitution, management or business of the society. A suit for ejectment would not be a suit in respect of the business of the society. "Business" referred to in Section 117 is the business for which the society is registered and in relation to the objects of the society. Taking the house on rent cannot be deemed to be one of the objects of the society. The prohibition of a suit u/s 117 therefore cannot apply in the present case.

5. Moreover, the plea of want of notice was never taken either in the trial court or in the lower appellate court and in the absence of any such plea it is not open to the learned Counsel for the Appellant to "argue" that no notice was given or that the notice was not waived by the Appellant.

6. The learned Counsel for the Appellant contends that the section expressly provides that the plaint shall contain a statement that such notice has been so delivered or left and in the absence of any recital in the plaint the presumption would be that no notice was given and the suit therefore would be invalid.

7. The purpose of a notice is to acquaint the party of the nature of the claim and is only a procedural condition for the filing of a suit. There can be no bar to a

party waiving the notice. In any event, where the point was never taken in the written statement or in the lower appellate court, the court will be justified in inferring that the objection is waived. The following cases support the above proposition-Dhyan Singh Shobha Singh v. Union of India AIR 1958 SC 275 and The District Board, Banaras Vs. Churhu Rai and Another, . Under headnote (c) in the Allahabad case it was laid down as under:

It is open to the Defendant for whose benefit a notice is prescribed by law to waive it. Thus, where the plea of defect in or want of notice was not pressed in the trial court, nor was it raised in the memorandum of first appeal and of second appeal, the High Court, in the circumstances of the case, held that the right based on the ground of notice was waived.

For the reasons given above, the suit against the Appellant was not in respect of an act relating to the business of the society and no notice was necessary u/s 117 of the UP Cooperative Societies Act and even if a notice was necessary the same was waived as the objection to the notice was neither taken in the trial court nor in the lower appellate court.

8. The result, therefore, is that this appeal has no force and is accordingly dismissed with costs. The decree for ejectment, however, shall remain stayed for a period of three months provided the rent and damages due upto 30-11-1969 is paid or deposited by 7-12-1969 and the rent for December 1969 and January 1970 is also deposited by 7-1-1970. In case of default, the decree would be executable forthwith.