

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.26 OF 2015
IN
CIVIL APPEAL NO.23 OF 2014
IN
R.C.S. NO.14 OF 2013**

**WITH
CIVIL APPLICATION NO.1687 OF 2014**

Baljendarsingh Mukhtyarsingh Lote Appellant
Vs.
Shantaram Mangru Ray Respondent

Mr. Mehul R. Thakker, Advocate for the Appellant.

Mr. V.A. Gangal alongwith Mr. Ashok Gade, Advocate for the Respondent.

Coram : Smt. R.P. SondurBaldota, J.

Date : 28th January, 2015

P.C.

1 The appellant herein is the original defendant, who challenges the concurrent findings of the courts below that the tenancy of the suit premises in his favour over an open piece of land stood determined by the notice sent by the respondents-landlord. The notice had been sent after the appellant was in substantial arrears of payment of rent. There is no dispute as

regards the fact that the appellant was in fact in arrears of payment of rent. This is established by paragraphs 6 and 7 of the written statement filed by the appellant, where he claimed that he was unable to utilise the suit premises for the purpose of his business and that by the money order dtd. 16th December, 2012, he had forwarded to the respondents a sum of Rs.4,800/- being the arrears of rent with the rent @400/- per month. Apparently, thereafter again on 7th March, 2013, the appellant had sent further sum of Rs.800/-. Since the demised premises are the open piece of land, the appellant did not enjoy protection of Maharashtra Rent Control Act. The respondent had terminated the tenancy by serving the statutory notice and the appellant become liable to vacate the suit property.

2 Mr. Thakker, the learned advocate for the appellant submits that the appellant did not get an opportunity to lead evidence before the trial court. As recorded by the lower appellate court, the respondent closed his evidence on 16th December, 2013. The Advocate for the appellant also filed his pursis of closing evidence on 7th January, 2014. Then the Advocate filed his written arguments on 17th February, 2014. Mr. Thakker argues that the pursis had been filed by the advocate without instructions from the appellant. On a query from the court, Mr. Thakker states that the documents available with the

appellant for production in the court are the consent terms arrived at between the parties in the earlier proceedings, the notice of termination sent by the respondent and the money orders sent by the appellant. Out of the three documents, the first two documents already form part of the record. The third document are receipts of money orders. Nothing would turn on this document. Therefore, it cannot be said that the appellant did not have an opportunity of hearing before the courts below.

3 It is sufficiently clear from the record that the appellant was a tenant in respect of the suit premises without any protection under the Maharashtra Rent Control Act, his tenancy stood terminated on issuance of the notice for the purpose by the respondent and on termination of tenancy, the appellant becomes liable to handover possession of the demised premises to the respondent. In the facts of the case, there is hardly any contest as regards the facts alleged. There is also no substantial question of law for consideration of the court. The Second Appeal is therefore dismissed.

4 In view of dismissal of the Second Appeal, the Civil Application does not survive, the same is accordingly disposed off.

(Smt. R.P. SondurBaldota, J.)