

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

**SECOND APPEAL NO.711 OF 2017
WITH
CIVIL APPLICATION NO.1513 OF 2017
IN
SECOND APPEAL NO.711 OF 2017**

M/s. Shree Hanuman International
Corporation & Ors.

... Appellants

vs.

Shri Shrichandra S. Gupta
since deceased through his legal heirs
Shri Vinay Shrichandra Gupta & Ors.

... Respondents

Mr. Sugandh Deshmukh for the Appellants.

Mr. Aditya Pimple i/b M/s. T.N. Tripathi & Co. for the Respondents.

Coram : **A.A. Sayed, J.**

Date : 30 November 2017

ORDER:

1 This Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, impugning the judgment and order dated 2 December 2016 passed by the Principal District Judge, Thane, dismissing the Appeal of the Appellants/original Defendants. By the impugned order, the judgment and order dated 20 February 2015 passed by the 2nd Joint Civil Judge Junior Division, Bhiwandi, decreeing the suit filed by the Respondents/original Plaintiffs and further directing the Appellants/original Defendants to hand over vacant and peaceful possession of the suit shop within a period of six months, came to be confirmed. For convenience of reference, the parties are hereinafter

referred to as per their status in the suit viz. the Appellants as Defendants and the Respondents as Plaintiffs.

2 The subject matter of the suit is Shop No.3 admeasuring 50' x 20', Survey No.256, village Rahnal, taluka Bhiwandi, District Thane. The Plaintiffs' predecessor (one Chandra S. Gupta) had let out the suit shop to one Hiralal Jhunjunwala in the year 1985 on monthly basis. The Lease Agreement dated 2 April 1985 reflects the name of the tenant as 'Hiralal Jhunjunwala, partner of M/s. Shree Hanuman International Corporation. The tenancy of Hiralal Jhunjunwala was terminated vide Advocate's notice dated 25 November 2008. By Reply dated 15 December 2008 through Advocate it was pointed out that the said Hiralal Jhunjunwala had expired. In the Reply it is stated that the suit shop was in possession of the Defendant No.1 firm as tenant and Pramod Kumar Hiralal Jhunjunwala, Smt. Kusumlata P. Jhunjunwala, Smt. Kamalakantin P. Jhunjunwala are the partners of the Defendant No.1 firm. Therefore, another notice dated 1 April 2009 was issued through the Advocate addressed to M/s. Shree Hanuman International Corporation as also to Defendant Nos.2 to 4 viz. Pramod Kumar Hiralal Jhunjunwala, Smt. Kusumlata P. Jhunjunwala, Smt. Kamalakantin P. Jhunjunwala. In this notice it was interalia stated that "since you are representing yourself to be the tenants in respect of the said gala (suit shop) and claiming through the deceased Hiralal Jhunjunwala ... you

are liable to vacate the suit shop by the end of 30 April 2009“. In the said notice it was further stated that “your tenancy and other rights accruing therein, if any, are also hereby terminated”

3 In the Complaint, the Plaintiffs had averred that the suit shop was originally let out to Shri Hiralal Jhunjunwala in the year 1985. It was further averred that the Defendants were representing themselves as tenants in respect of the suit shop and claiming through the deceased Hiralal Jhunjunwala and they were liable to vacate the suit shop.

4 In the Written Statement filed on behalf of the Defendants, it was contended that the tenancy of the Defendants, M/s. Shree Hanuman International Corporation is not properly and legally terminated.

5 The trial Court after appreciating the evidence on record noted that it was the specific contention in the Complaint that the Defendants are on monthly tenancy of the Plaintiffs and the original lease agreement executed between them dated 2 April 1985 is also admitted. The trial Court recorded that during the course of arguments both the Advocates for the parties to the suit did not deny that there was monthly tenancy. The trial Court noted that the suit falls under the Transfer of Property Act and learned Advocates for the parties to the suit also accepted the position that the suit is filed under the Transfer of Property Act. The trial

Court noted that the grounds of bonafide requirement and alternate accommodation was not available to the Plaintiffs. The trial Court found that 15 days clear notice was given as per the amended sub section (1) of section 106 of the Transfer of Property Act and decreed the suit.

6 The lower Appellate Court noted that in view of the admitted facts, the only aspect which is required to be considered is whether the Plaintiffs had validly and legally terminated the tenancy of the Defendants by notice dated 1 April 2009. The lower Appellate Court found that considering the date of the notice 1 April 2009 and the notice was replied by the Defendants on 7 April 2009, it can be said that after receipt of the Plaintiffs' notice, the Defendants were given 15 days time to vacate the suit shop as per the amended sub section (1) of section 106 of the Transfer of Property Act, 1882 and held that the Plaintiffs had validly and legally terminated the Defendants' tenancy by the said notice. The lower Appellate Court concluded that once it is held that the Plaintiffs had validly and legally terminated the Defendants' tenancy of the suit shop, the Plaintiffs are entitled to possession of the suit shop from the Defendants. The lower Appellate Court accordingly dismissed the Appeal. Hence, the present Second Appeal.

7 I have heard the learned Counsel for the parties.

8 It is an admitted position before the Court that the only issue for consideration is whether the tenancy was legally and validly terminated under amended sub section (1) of section 106 of the Transfer of the Property Act, since the Defendants do not enjoy the protection of the Rent Control Act.

9 Learned Counsel for the Appellants/original Defendants submitted that the notice of tenancy was not legally and validly terminated inasmuch as the Respondents/original Plaintiffs had come with the case in the Plaint was that the suit shop was originally let out to Hiralal Jhunjunwala in the year 1985, however, notice dated 1 April 2009 was addressed to M/s. Shree Hanuman International Corporation as well as Shri Pramod Kumar Hiralal, Smt. Kusumlata Jhunjunwala, Smt. Kamalkantin Jhunjunwala in their capacity as partners and not in the individual capacity as heirs of the deceased Hiralal Jhunjunwala. Learned Counsel for the Appellants/original Defendants has placed reliance on the judgments in the case of (i) Ashok Transport Agency vs. Awadhesh Kumar and another, (1998) 5 SCC 567, and (ii) Devasahayam (Dead) By LRS vs. P. Savithamma and others , (2005) 7 SCC 653.

10 Learned Counsel for the Respondents/original Plaintiffs on the other hand submitted that the notice dated 1 April 2009 was addressed

to M/s. Shree Hanuman International Corporation as they claimed to be in possession of the suit shop and also Shri Pramod Kumar Hiralal, Smt. Kusumlata Jhunjunwala, Smt. Kamalakantin Jhunjunwala, since they were representing themselves as tenants in respect of the suit shop and claiming through the deceased Hiralal Jhunjunwala. Moreover, in the said notice, it was also stated that the tenancy and/or other rights accruing thereon were also terminated. He further pointed out that these contentions were never raised before the trial Court or the lower Appellate Court and both the Courts proceeded on admitted facts. Learned Counsel for the Respondents/original Plaintiffs submitted that in view of the finding of facts recorded by both the courts below, the scope of Second Appeal under section 100 of Code of Civil Procedure, 1908 is restricted to substantial questions of law and the finding of facts cannot be gone into by this Court.

11 Having considered the rival contentions of the parties, in my view, the parties before the trial Court as well as the lower Appellate Court proceeded on the admitted position before it and no contention as regards the notices being wrongly addressed to Shri Pramod Kumar Hiralal, Smt. Kusumlata Jhunjunwala and Smt. Kamalakantin Jhunjunwala as partners of the Defendant No.1 firm were raised or canvassed before the Court below. Even in the present Memo of the Second Appeal, no such contention has been raised by the Appellants/original Defendants. In the instances, it is not open for the

Defendants to raise this contention for the first time before this Court. Both the Courts below have rightly concluded that the tenancy was validly terminated.

12 Even otherwise, it cannot be said that the notice dated 1 April 2009 was addressed to Shri Pramod Kumar Hiralal, Smt. Kusumlata Jhunjunwala, Smt. Kamalakantin Jhunjunwala only in the capacity as partners as the said notice clearly records that the said persons were representing themselves to be the tenants and claiming through the deceased Hiralal Jhunjunwala. In the plaint also in paragraph No.10 it is stated that the tenancy rights and/or other rights accruing thereon, if any, are also terminated. The contention of the learned Counsel for the Appellants/original Defendants therefore cannot be accepted. The judgments relied upon by the learned Counsel for the Appellant/original Defendants are distinguishable on facts and are not applicable in the present case.

13 There are concurrent findings by the trial Court as well as the Lower Appellate Court. No substantial questions of law arise in the Second Appeal. The Second Appeal is dismissed. There shall be no order as to costs.

14 The Civil Application does not survive and to stand disposed of.

15 On the request of learned Counsel for the Appellants/original Defendants, it is directed that though the execution proceedings may go on, the final order shall not be passed for a period of eight weeks from today. It is clarified that in view of the above order, the issue in respect of breaches under section 114-A of the Transfer of Property Act, 1882 is not pressed by the learned Counsel for the Appellants.

(A.A. Sayed, J.)