

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.449 OF 1994

Shri Nandkishor Mohanlal Nabra

...Appellant
(Original Defendant)

vs.

Shri Gunaji Govind Vibhute

...Respondent
(Orig. Plaintiff)

....

Mr. P.N. Joshi, a/w. Ms. R.M. Khairnar, for the Appellant.

.....

CORAM : S.C. GUPTE, J.

DATED : 2 FEBRUARY 2017

P.C. :

. Heard learned Counsel for the Appellant. The Respondent is absent despite notice.

2. This Second Appeal challenges a judgment and order passed by the District Court at Nasik in Civil Appeal No.116 of 1990. By this judgment and order, the learned District Judge dismissed the appeal filed by the Appellant herein challenging a judgment and decree passed by the Court of Civil Judge, Junior Division at Niphad in Regular Civil Suit No.148 of 1985. The Appellant is the Original Defendant. The Respondent, who claims to be a landlord of the Appellant, had filed the original suit for recovery of possession based on a termination notice issued under Section 106 of the Transfer of Property Act on account of default in payment of rent. The provisions of Bombay Rent Act admittedly do not apply to the suit property. Both Courts below have

held that the notice of termination issued by the Respondent on 31 July 1985, was a valid notice of termination and that the Respondent was, accordingly, entitled to recovery of possession. Learned Counsel for the Appellant submits that the notice of termination was not valid in accordance with the provisions of Section 106 of the Transfer of Property Act and that the courts below are not justified in refusing the relief against forfeiture in favour of the Appellant. It is submitted that the Appellant has complied with the notice of termination by sending the entire rent by money order requisitioned to the Respondent. Both Courts below have come to a concurrent finding of fact that the Appellant was in arrears of rent since March 1983 to July 1985 and that the termination notice issued by the Appellant was legal and valid. The tenancy was a month to months tenancy terminable on the part of the lessor by a notice under Section 106 of the Transfer of Property Act. There is a concurrent finding of fact that the notice has not been complied with by the Appellant. A valid notice to quit served under Section 106 of the Act not having been complied with, the Respondent is clearly entitled to decree of eviction, as prayed by him. The impugned judgment and order of the first Appellate Court cannot be said to be suffering from any error of law.

3. The Second Appeal is, accordingly, dismissed. No order as to costs.

(S.C. GUPTE, J.)