

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

CIVIL REVISION APPLICATION NO. 996 OF 2010

Shri Amarnath G. Sharma. (since expired, through heirs)	.. Petitioners. (Org. Defendants)
Vs.	
The Board of Trustees of the Port of Bombay	.. Respondent (Org. Plaintiff)

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Mr. R.A.Thorat, Sr. Advocate a/w Mr. P.J.Thorat Advocate for applicant.
Mr. Ajai Fernandes a/w Ms. Sneha Pandey I/by Motiwalia & Co. for Respondent.

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***CORAM : G.S. KULKARNI, J.
DATE : 9th JANUARY, 2018.***

P.C. :

1. Heard learned counsel for the parties. This Revision Application has been filed by the petitioner-tenant, challenging the judgment and order dated 07/08/2009 of the appellate bench of the Small Causes Court in Appeal No. 530 of 1989 whereby the appellate bench has confirmed the possession decree as awarded by the learned judge Small Causes Court Mumbai in the respondent's eviction Suit being L.E. & C. Suit No. 491/620 of 1980.

2. The respondent Board of Trustees of the Port of Bombay are the landlords of the suit premises which is plot No. 27-A admeasuring 516.36 sq. metre alongwith shed situated at Coal Depot Mazagaon, Sewri Reclamation Estate, Mumbai. The suit premises were let out to the petitioner under a tenancy agreement dated 4th October, 1963 for the purpose of storage of charcol as per the terms and conditions of the tenancy agreement. It is the case of the respondent landlord that the

plot was let out without any structure. The respondent by their advocate's notice issued to the petitioner dated 01.04.1980 terminated the tenancy of the petitioner. Even prior to this notice, there were earlier notices issued terminating the tenancy which however are not relevant for the purpose of the suit in question.

3. As the notice was not complied by the petitioner, the respondent instituted the suit in question under Section 41 of the Presidency Small Causes Court being Eviction Suit No.491/620/1980 *inter alia* for a decree of possession of the suit property on the ground of arrears of rent, mesne profit etc.

4. The learned Trial judge considering the evidence on record more particularly notice dated 01.04.1980 by which the tenancy was terminated by granting 30 days time to the petitioner to vacate the suit premises observed that the requirement of Section 106 of the Transfer of Property Act was only a 15 days notice to be issued. The discussion in this regard can be found in paragraph 38 and 39 of the judgment of the learned Trial Judge. The learned Trial Judge held that the petitioner was in arrears of rent and was liable to pay rent at the rate of Rs. 516.38/- per month. Accordingly, the learned Trial Judge decreed the respondent's suit by the judgment and order dated 28th July, 1989 in the following terms

- “1. Suit is decreed with costs.
2. Defendant is directed to hand over vacant possession of the suit premises to the plaintiffs within 90 days from the date of this order.
3. The defendant is also directed to clear up all the arrears upto the date of suit at the rate of Rs.516.36 per month.
4. Enquiry be made into the future means profits.
5. Defendant is permanently restrained from parting with

possession of the suit premises or from inducting any third person in the suit premises till he hands over the same to the plaintiffs.”

5. Being aggrieved by the above judgment of the learned Trial Judge the petitioner preferred appeal No. 530/1989 before the appellate bench of Small Causes Court. A perusal of the appeal memo shows that there were several grounds which were asserted by the petitioner to challenge the findings of the learned trial judge. However, in regard to the challenge to the decree of possession the only ground which can be traced in the appeal memo is ground No.7 which according to the petitioner assailed the decree of possession. The said ground reads thus:-

“ Para 7: The Learned Trial Judge erred in coming to the conclusion that the Plaintiffs are entitled to possession of the suit properties.”

6. Apart from the above solitary ground the decree of the possession has not been assailed by the petitioner on any other ground.

7. The Appellate Bench of the Small Causes Court by the impugned judgment and order dated 07.08.2009 has partly allowed the Appeal of the petitioners, however, maintaining the decree of eviction and possession passed in favour of the respondent. The Appellate Bench by the impugned judgment and order dated 07.08.2009 dismissed the Appeal of the petitioners and allowed the cross-objection of the respondent in the following terms:-

“1. The Appeal is hereby dismissed with costs.

2. Three months time is given to the Appellant / Defendant to handover the possession of the suit premises I.e plot of land bearing No.27A and admeasuring approximately 516.36 square meters together with Bamboo Matting shed with C.I.Sheet roof standing thereon and situated at Coal Depot, Mazagaon Sewri Reclamation Estate, Bombay to the Plaintiff from the date of the

Judgment.

3. The Cross Objection filed by the Respondent / Plaintiff is allowed as under :

4. The standard rent of the suit premises is fixed by the Trial Court to the tune of Rs.516.36 is hereby set aside.

5. The Plaintiff / Respondent do deposit Court Fees of the Cross-Objection in the Court if not deposited up till now as per law.

6. Decree be drawn up accordingly.”

8. Mr. Thorat, learned Senior Counsel for the petitioner in assailing the concurrent findings of both Courts below on the decree of possession against the petitioner has made submissions only on the nature of the termination of tenancy by the respondent by the suit notice dated 01.04.1980. It is submitted that prior to the issuance of the suit notice there were two earlier notices which were issued by the respondent, whereby the respondent had purported to terminate the tenancy. It is submitted that the petitioner was however continued in possession of the suit premises on fresh terms and conditions despite the issuance of the earlier notices dated 12.08.1968, 20.11.1971 and 3rd notice dated 01.04.1975. In this context, my attention is drawn to the relevant extract in the cross-examination of the witness examined on behalf of the respondent who has stated that after the earlier notices were issued terminating the tenancy, fresh conditions were imposed on the petitioner who accepted the said conditions and continued to accept the suit premises which was a open plot. It is thus submitted that the suit notice dated 01.04.1980 cannot be construed to terminate the fresh tenancy which was arrived between the parties. It is thus submitted that the Trial Court as well as the Appellate Court had completely overlooked

this particular aspect in granting/confirming the decree of eviction and possession against the petitioner. It is submitted that this petition would thus require interference.

9. On the other hand learned counsel for the respondent has supported the decree to submit that the suit notice dated 1.4.1980 was validly issued. My attention is drawn to the relevant observations as made by the learned Trial Judge as also to the fact that there is no specific ground raised on behalf of the petitioner in the appeal memo as filed before the appellate court to assail the findings of the learned trial Judge in that regard. It is submitted that thus there is no perversity in the findings by the court below and the eviction decree therefore ought to be confirmed.

10. Having heard learned counsel for the parties and also having perused both judgments of the Trial Court as also of Appellate Court, I am not persuaded to accept the submissions as made on behalf of the petitioner. The only submission made to assail the eviction and possession decree is on the ground of the legality of the suit notice dated 01.04.1980. Perusal of the findings of the learned trial judge and as pointed out during the course of the arguments, it is quite clear that the petitioner had accepted that the earlier tenancy notice issued prior to the suit notice dated 01.04.1980 is of no consequence as the petitioner was permitted to occupy the suit premises as tenant on some fresh terms and conditions. It is also not in dispute that suit notice dated 01.04.1980 necessarily complied with the requirements of Section 106 of the Transfer of Property Act inasmuch as it clearly called upon the petitioner to vacate the suit premises. As the law would require a 15 days notice is necessary to be issued to a monthly tenant to vacate the

tenanted premises. A perusal of para 9 of the plaint would show that there are clear averments in that regard as made on behalf of the respondent that by suit notice the petitioner-tenant was called upon to vacate the suit premises by terminating the tenancy. However, though the petitioner accepted the said notice, petitioner did not vacate the suit premises. In the Written statement petitioner disputed the suit notice and stated that the suit is bad, illegal and void which can be clearly seen from para 14 of the Written Statement which reads thus:

Para 14 : “With reference to para 9 of the Plaint, the Defendant says that the alleged notice dated 1-4-1980 of the Plaintiffs' Advocate is bad, illegal and void and not binding upon the Defendant. Without further prejudice to the above the Defendant put the Plaintiffs to the strict proof about the service of the said notice dated 1-4-1980.”

11. The learned Trial Judge had also framed a specific issue in that regard being issue No.8 namely '*as to whether respondent-plaintiff proves that the tenancy of the defendant was properly terminated by either of four notices*' and made detail observations in that regard. By recording findings on the said issue as can be seen in para 38 and 39 of the judgment, the learned trial judge concluded that there was valid termination of the tenancy by the suit notice dated 01.04.1980. The observations of the learned Trial Judge read thus:-

“38. Then remains the fourth notice dated '1/4/1980 part of Exh.O collectively. It has been sent by the plaintiffs through their advocate Mr. H.H. Lashkari and by the said notice termination is sought in respect of the suit plot plus the shed standing thereon. Mr. Chiniwala advocate of the defendant contended that there is no evidence on record regarding service of this notice to quit dated '1/4/1980 part of Exh.G collectively. For this he drew my attention to para 30 of evidence of P.W.1 Sharad Khopkar wherein he categorically admitted that the acknowledgment part of Exh.G

collectively does not bear the signature of the defendant and he i.e P.W.1 Sharad Khopkar was unable to tell as to who has signed the acknowledgment part of Exh.G collectively. P.W. 1 Sharad Khopkar in his evidence stated that the defendant replied this notice by reply dated 29/8/1980 which is part of Exh.G collectively. Said reply has been sent by the defendant on 29/8/1980 through his Advocate Mr. Shirodkar to the advocate of the plaintiffs and in the said letter the defendant has firstly referred to the plaintiffs' letter dated 31/7/1980 and in the fifth para he has mentioned as under :

“My client has instructed me to state that in reply to your letter dated the 1st April 1980 my client has dealt with all the relevant points in the matter of dispute of his contractual tenancy in respect of the said plot No. 27A at Coal Depot, Mazagaon, Sewree Reclamation Estate, Bombay No.15 and by the said letter my client as called upon your clients through you to give him inspection of the documents mentioned therein.....”

In other words this statement in this letter dated 29/9/1980 part of Exh.G collectively will mean that the defendant received this notice dated '1/4/1980 part of Exh.G collectively. Section 106 of the Transfer of Property Act speaks about termination of tenancy of the tenant and service of said notice on the tenant. As regards service of said quit notice second part of Sec. 106 of the Transfer of Property Act lays down as under.

“Every notice under this section must be in writing signed by or on behalf of the person giving it, and either be sent by post on 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 (is such tender or delivery is not practicable) affixed to a conspicuous part of the property.”

Thus Sec. 106 of the Transfer of Property Act clearly envisages service on the tenant or any member of his family or his servants. Reference in the letter dated 29/8/1980 part of Ex.G collectively by the defendant to plaintiffs' notice dated '1/4/1980 will clearly mean that the defendant received the same through his family member or through his servant. So I negative the contention of Mr. Chiniwla that this notice to quit dated '1/4/1980 part of Ex.G collectively was not served on the defendant.

39. No other point is urged on behalf of the defendant to call the fourth notice dated '1/4/1980 part of Ex.G collectively to be invalid. By said notice tenancy of the defendant in respect of

the suit plot plus structure has been terminated at the expiry of next month in which he will receive the said notice. In other words clear one month of period was given for effecting termination of tenancy of the defendant. As regards month to month tenancy and Transfer of Property Act under Sec. 106 only provides for 15 days clear notice. I find that this notice dated 1/4/1980 part of EX.G collectively is valid one and the same is validly served on the defendant and so it will terminate the tenancy of the defendant and so it will terminate the tenancy of the defendant in respect of the suit plot plus the structure namely the shed standing thereon. So I answer the issue No.4 and 8 in the affirmative.”

12. Perusal of the appeal memo also shows that there are no substantive grounds on which the findings of the learned Trial judge in regard to the suit notice are being assailed. The Appellate Bench of the Small Causes Court accepting the said reasoning of the learned Trial Judge has also confirmed, the decree of possession as awarded by the trial court against the petitioner. I do not find any perversity in the findings of the Courts below on the contentions as asserted on behalf of the petitioner as noted above. The findings are recorded on the basis of the evidence and are within the framework of law. There is no material irregularity in the trial court exercising jurisdiction in granting a decree of possession against the petitioners and appellate court confirming the said decree, in the above terms.

13. The Civil Revision Application lacks merit. It is accordingly dismissed with costs.

14. At this stage, learned counsel for the petitioner seeks continuation of the ad-interim order dated 26th November, 2010. As the ad-interim order is in operation for a substantial period, the said order shall continue to operate for a further period of 10 weeks.

(G. S. KULKARNI, J.)