

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION (ST) NO.4255 OF 2018

M/s.Universal Cables Ltd. ...Applicant/Ori.Appellant

Versus

M/s.Laxmi Properties Ltd. ...Respondents

Mr.Husefa Nasikwala with Mr.Raman Misra, Mr.Ganesh Narkhede,
Ms.Nikita Mahadik i/b. Nasikwala Law Office, for the Applicant.

Mr.Dinesh Dubey, for the Respondent.

CORAM : *G.S.KULKARNI, J.*

RESERVED On: *14 February 2018*

PRONOUNCED On: *2 April 2018*

ORAL JUDGMENT :

1. A short however an interesting question arises for consideration in this civil revision application namely 'whether notice of the respondent-landlord terminating tenancy of the applicant (tenant) was invalid, being not in conformity with Section 106 of the Transfer of Property Act,1882 as amended by Act No.3 of 2003.

2. The applicant/tenant is aggrieved by an eviction decree as passed by the trial Court and as confirmed by the appellate court, in an ejectment suit brought about by the respondent-landlord.

3. The suit premises is a servant quarter being Room No.13 admeasuring 104.81 sq.ft, on the ground floor of a building known as “Birla House” situated at 21, Mount Pleasant Road, Mumbai, which was let out to the applicant on quarterly rent of Rs.326/- for the purpose of accommodating applicant's servant. The tenancy is not in dispute. It is also not in dispute that the protection under the Maharashtra Rent Control Act, 1999 (for short 'the 1999 Act') is not available to the suit premises, in view of Section 3(1)(b) of the 1999 Act, as the applicant company has a paid up share capital of more than Rs.1 crore.

4. By a notice of the respondent's Advocate issued under Section 106 of the Transfer of Property Act,1882 dated 15 February 2006 the respondent terminated the tenancy of the applicant. As the entire controversy revolves around the issue of tenancy being terminated by this notice, it would be appropriate to extract the relevant contents of the said notice which read thus:-

“4. Our client state that entirely without prejudice and the continued efficacy of any previous notices terminating your tenancy and in order to avoid any technical objections or plea which may be raised by you in support of your contentions of the waiver of the earlier notices to quit which might have been served upon you by or on behalf of my client. We have been instructed by my client to give you this notice & to terminate your tenancy which we hereby do

and call upon you to quit, vacate and deliver to my client vacant and peaceful possession of the aforesaid premises namely servant quarter, situated at Birla House, 21 Mount Pleasant Road, Mumbai 400006, occupied by you as my clients quarterly tenant at the expiration of the quarterly tenancy which has expired on 31st December 2005, in which this notice is served upon you.

5. Please take notice that in default of your compliance with the aforesaid requisition my clients shall file a suit against you to eject you from the said premises at your risk, cost and consequences.

6. Please take notice that upon the expiration of the period of this notice my client will be entitled to recover from you & you will be liable to pay to my client mesne profits in respect of the aforesaid premises at the market rate prevalent in the area.”

(Emphasis supplied)

The above notice was responded by the applicant's advocate's letter dated 7 April 2006, however without raising any issue on the time period qua termination of the tenancy. The following is the relevant extract of the applicant's reply:-

5. My clients state that the lease for the said premises is still subsisting. My client has not done anything which gives your client any reason for terminating the lease. Therefore, the purported notice to terminate the purported tenancy through your letter dated 15.02.2006 is not only unjustified but also illegal and untenable.

... ..

7. With reference to para 4 of the said letter dated 15.02.2006, my clients adopts the statements/averments made in para 5 above and denies everything which is contrary to and/or inconsistent therewith. My client also fails to understand as to how the lease came to be expired on 31st December 2005. In any event your client has been regularly accepting money towards the contractual rent even for a period subsequent to 31st December 2005 and issuing receipts for the same i.e., for the period after 31st.

December 2005. Therefore, there is no question of expiry of lease.”

(Emphasis supplied)

5. The respondent thereafter again by its letter dated 1 November 2006 addressed to the applicant called upon the applicant to quit and vacate the suit premises and hand over the premises within fifteen days from the receipt of the said notice failing which the respondent would be constrained to take recourse to legal action. The said letter reads thus:-

“We regret to inform you that despite notice dated 15th February 2006 given by our Advocate Ms.Gauri S. Rao to quit and hand over the premises on expiry of the quarter ending on 31st March 2006 you have unauthorised and illegally continued in the occupation and have failed to comply with the requisition of the said notice.

We further call upon you to vacate and or quit the premises and hand over the possession to us within 15 days from the receipt of this notice failing which we shall be constrained to take recourse through the Court of law as may be advised at your cost and risk. Please note, that this is without prejudice to our notice dated 15th February 2006 by our Advocate Ms.Gauri S.Rao.”

6. Thereafter the respondent's advocate addressed another notice dated 9 January 2007 to the applicant interalia recording that the respondent had terminated the tenancy of the applicant with effect from 31 December 2005 by the Advocate's notice dated 15 February 2006 and that the applicant had failed to vacate and deliver peaceful

possession of the suit premises to the respondent despite termination of the tenancy, such an occupation was an illegal occupation and the respondent was entitled to evict the applicant and recover mesne profit for the period of unauthorized occupation from the date of termination of tenancy till the applicant vacates the suit premises. The applicant was called upon to vacate the suit premises and hand over the vacant and peaceful possession within seven days of the receipt of the notice failing which the respondent would be constrained to initiate legal action.

7. As the applicant did not vacate the suit premises, after about eleven months of the notice dated 9 January 2007 i.e. on 28 November 2007 the respondent filed the ejectment suit in question (T.E.Suit No.11/12 of 2008). The applicant appeared and contested the suit. In the context as to how the applicant understood the averments as made by the respondent in the plaint, it would be appropriate to refer to the relevant paragraphs of the plaint. In paragraph 5 of the plaint, the respondent averred that by the respondent's advocate's notice dated 15 February 2006 the respondent terminated tenancy of the defendant and in reply thereto, the applicant

by its letter dated 7 April 2006 had falsely contended that the applicant was protected under the 1999 Act, thereafter by a further letter dated 1 November 2006, the respondent finally called upon the defendant to vacate the suit premises. Paragraph 5 of the plaint reads thus:-

“5. Plaintiff, therefore, by its Advocate's Notice dated 15th February, 2006 terminated the tenancy of the Defendant. The Defendant by its letter dated 7th April, 2006 falsely contended that they are protected under the Maharashtra Rent Control Act, 1999. Plaintiff by its own rejoinder dated 01.11.2006 finally called upon the Defendant to vacate the suit premises. Despite all these correspondences, the Defendant failed and neglected to vacate the suit premises and continue to use and occupy the suit premises. Hereto annexed and marked Exhibit “B (colly)” are the copies of the said correspondence.”

8. On the above clear averments of the respondent/ plaintiff in the plaint, in regard to notice dated 15 February 2006 terminating the tenancy, the applicant in dealing with the said averments in paragraph 1 of the written statement, admitted to the fact that the respondent by its Advocate's letter dated 15 February 2006 terminated the applicant's tenancy of the suit premises and had called upon the applicant to quit and vacate the suit premises. Further in paragraph 6 of the written statement the applicant has dealt with the averments as made by the respondent in paragraph 5 of the plaint (supra) to contend that the averments in paragraph 5 are the contentions as referred in the correspondence prior to the suit. It would be necessary to note the case

of the applicant in some of the relevant paragraphs of the written statement, which read as under:-

“1. Further, from the annexure to the Plaints, it is clear that the Plaintiffs by their Advocate's letter dated 15th February 2006 terminated the tenancy of these Defendants in respect of the suit premises without any cause and called upon these Defendants to quit and vacate the suit premises as set out therein. The said letter dated 15th February 2006 was replied by these Defendants' Advocate's letter dated 7th April 2006. Therefore, by sending other letters dated 1st November 2006 and 9th January, 2007 the Plaintiffs waived the earlier notice dated 15th February, 2006 as these Defendants were again called upon to quit and vacate the suit premises by subsequent notice dated 1st November, 2006 and 9th January 2007 which conduct clearly indicates that the Plaintiffs have themselves waived the earlier notice dated 15th February 2006 in respect of the suit premises. ...

6. With reference to Para 5 of the Plaint, these defendants state that the contentions made therein are referred to the correspondence prior to the suit. These Defendants are the Plaintiffs' lessees and their lease being subsisted on payment of agreed monthly rent and therefore, the question of these defendants failing and neglecting to vacate the suit premises does not arise.

... ..

9. With reference to Para 8 of the Plaint, these Defendants deny that the lease in respect of the suit premises is ever terminated but, even if it is assumed for the sake of argument only that it was terminated upon service of the notice dated 15th February 2006, the alleged termination is waived by the Plaintiffs by sending subsequent letters and therefore these Defendants deny that the Plaintiffs have neither waived the said notice of termination nor granted any fresh lease to these Defendants. The allegations made in the said Para are completely vague in nature as there are three letters served upon these Defendants by the Plaintiffs.

(emphasis supplied)

From the aforesaid stand of the applicant as taken in the written statement, it is apparent that the applicant did not dispute that the respondent by the notice dated 15 February 2006 terminated the tenancy of the applicant. The applicant did not raise a plea of the said notice of the respondent dated 15 February 2006, to be bad or illegal qua “the period” of termination as mentioned in the said notice.

9. It is on the above premise the learned trial Judge adjudicated the suit interalia framing the Issue No.1 namely “*Whether the plaintiff proves that it has legally and validly terminated the tenancy of the defendant in respect of the suit premises ?*”

10. The parties led their evidence. In the judgment of the learned trial judge, in answering the said issue in favour of the respondent, the learned trial Judge held that admittedly there wasn't any registered lease between the parties or any written agreement letting the suit premises, and thus the tenancy was a month to month tenancy, which could be terminated by a simple notice expressing unequivocal intention to terminate the tenancy. The learned trial Judge

considering the provisions of section 106 of the Transfer of Property Act, 1882 observed that there was every desire and intention of the respondent, to terminate the tenancy and the clear desire that the applicant should quit and vacate the suit premises. It was observed that there was no ambiguity in this regard when the lease in the case was admittedly a monthly lease. The applicant's contention that by subsequent notices of the respondent dated 1 November 2006 and 9 January 2006 the respondent had waived the suit notice dated 15 February 2006, was also not accepted. It was held that mere assertion of the applicant, that the applicant was regularly paying the rent, would not be of assistance to the applicant, to contend that there is no termination of tenancy. It was thus, held that the notice of the respondent terminating the tenancy was legal and valid under section 106 of the Transfer of Property Act, 1882.

11. Being aggrieved by the judgment and order passed by the learned trial Judge, the applicant approached the appellate bench of the Small Causes Court in Appeal No.25 of 2012. By the impugned judgment dated 15.12.2017 the appellate bench while dismissing the appeal confirmed the findings of the learned trial Judge. In so doing,

the appellate bench held that the respondent had legally and validly terminated the tenancy of the applicant of the suit premises. It was observed that by its notice dated 15 February 2006 the respondent had terminated the tenancy. The appellate bench observed that referring 31 December 2005 as the date of termination of tenancy did not mean that the applicant was called upon to vacate the suit premises on 31 December 2005. It was held that in view of sub-section (3) of section 106 of the Transfer of Property Act 1882 the said notice was not invalid, for the reason of the period of termination of tenancy falling short. It was observed that the suit was filed after a long lapse of the period of 15 days as contemplated under Section 106(3) of the Transfer of Property Act, which was in fact filed by the respondent after 18 months from the receipt of the notice dated 15 February 2006, and thus it cannot be said that the tenancy was not terminated or that the said notice can be called as an invalid notice. It was observed that after the amendment to section 106 of the Transfer of Property Act, 1882 by incorporation of sub-section (3) by the Amending Act 3 of 2003 was clearly attracted. Accordingly, the applicant's appeal was dismissed by the appellate bench. In these circumstances, the applicant is before this Court.

12. As the issue revolves around the respondent's notice dated 15 February 2006 terminating the tenancy as addressed to the applicant and as to whether the said notice would be valid under the provisions of section 106 of the Transfer of Property Act, 1882 as amended by Act 3 of 2003 w.e.f. 31 December 2002, it would be desirable to note the said provision which reads thus:

106: Duration of certain leases in absence of written contract or local usage:

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease for year to year terminable on the part of either lessor or lessee by six months notice and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month terminable on the part of either lessor or lessee by fifteen days' notice,

(2) Notwithstanding anything contained in any other law for the time being in force the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it and either be sent by post to 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 (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

(Emphasis supplied)

13. In its 181st report, the Law Commission observed that section 106 of the Transfer of Property Act, 1882 as it stood on the statute book ever since 1882, had given rise to large litigation. The Law Commission observed that it was desirable that the issue of computation of period of notice and to relax some of the rigid principles as laid down in some judgments which have led to serious injustice and multiplicity of litigation thereby often causing hardship to litigants needed a consideration. The Law Commission recommended amendment to the said provision by virtue of which the notice issued by the plaintiff would not be invalidated even if the time falls short of the prescribed period provided the suit is filed by the plaintiff after expiry of the period prescribed in section 106(1).

14. Considering the said recommendations of the Law Commission, the Legislature by Act No.3 of 2003 amended section 106 of the Transfer of Property Act. To note the intention of the legislature, it would be desirable to refer to the “Statement of Object and Reasons” of the amendment Act 3 of 2003 which reads thus:

STATEMENT OF OBJECTS AND REASONS:

Section 106 of the Transfer of Property Act, 1882 inter alia provides that the leased of immovable property for agricultural or manufacturing purposes shall be deemed to be

a lease from year to year which may be terminated either by the lessor or the lessee by six months notice expiring with the end of the year of the tenancy and a lease of the immovable property for any other purpose shall be deemed to be a lease from month to month which may be terminated either by the lessor or lessee by fifteen days notice expiring by the end of the month of the tenancy. The legal position which has also been reiterated by the Supreme Court in the Mangilal vs Sujan Chand AIR 1965 SC 101, is that while computing the period notice the day on which the notice is served is required to be excluded. The Law Commission of India in its 181st Report on Amendment to section 106 of the Transfer of Property Act, 1882 has examined the working of this section and found that a number of suits have been filed in ignorance of this legal position and these suits have been dismissed on this lone technicality. Such a position leads to serving of a fresh notice and filing of a fresh suit which amounts not only to serious injustice but also to multiplicity of litigations despite the fact that the defendant had more time available to him than the prescribed period of notice by the date when the suit is filed to evict him or even by the date of judgment dismissing the suit.

2. Hence, it is proposed that the period of notice shall commence from the date of its receipt and the amendment shall apply to the pending suit or proceedings and notices issued before the commencement of the proposed amendment.

3. The Bill seeks to achieve the aforesaid object.

New Delhi
the 15th November 2002

”

15. As regards the principles to interpret a quit notice issued to a tenant referring to the principle of “*Ut Res Magis Valeat Quam Pereat*” in ***Harihar Banerjee and others vs Ramshashi Roy and others***¹ the Privy Council held that notices to quit though not strictly accurate or consistent in the statement embodied in them, may still be good and

¹AIR 1981 Privy Council (from Calcutta)

effective in law and the test of their sufficiency is not what they would mean to a stranger but, what they would mean to a tenant who is conversant with all the facts and circumstances. Lord Atkinson, speaking for the Committee observed thus :

“If this were a case arising in England the authorities would therefore, be applicable. It has not been suggested and could not their Lordships think be successful contended that the principles they lay down are not equally applicable to cases arising in India They establish that notices to quit, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law that the test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to refer but what they would mean to tenants presumably conversant with all those facts and circumstances and further that they are to be construed not with a desire to find faults in them which would render them defective but to be construed utres magis caleat quam pereat.”

16. Justice P.N.Bhagwati, speaking for the bench and referring to the observations of Lord Justice Lindley in *Sidabotham v Holland (1895) 1 SC 376* in *Bhagabandas Agarwala vs Bhagwandas Kanu & ors*² observed that notice to quit must not be read in a hyper-critical manner nor must its interpretation be affected by pedagogic pendantism or over refined subtlety but it must be construed in a common sense way. In paragraph 3 the Supreme Court observed thus:

Now, it is settled law that a notice to quit must be
2AIR 1977 SUPREME COURT 1120

construed not with a desire to find faults in it which would render it defective but it must be construed *ul resmedia coolest quam pereat*. The validity of a notice to quit” as pointed out by Lords Justice Lindley L.J. in *Sidabotham vs Holland* (1895) 1 SC 376 “ought not to turn on the splitting of a straw”. It must not be read in hyper-critical manner nor must its interpretation be affected by pedagogic pendantism or over refined subtlety but it must be construed in a common sense way. See *Hariher Bannerjee vs Ramashi Roy* 45 I.A. 222. The notice to quit in the present case must be judged for its validity in the light of this well recognized principle of interpretation.”

17. It is thus, well-settled that notice to quit need not be worded with accuracy. It would not be in-valid merely because the period mentioned therein falls short of the period specified under subsection (1) of section 108 of the Transfer of Property Act, 1882 namely of 15 days notice in case of month-to-month tenancy when a suit or proceeding is filed after expiry of the period so specified under subsection (1) of section 108. The object and purpose being, that the leasee should have a reasonable notice before he is asked to vacate the premises. Thus, the law is not that, the notice to quit issued by the landlord must be strictly construed in favour of the tenant, but the notice is required to be construed in a common sense way. It is well settled that the notice would be required to be construed broadly and it should not be defeated by inaccuracies even in regard to the date of expiry of the notice. Even the amended section 106(3) of the Transfer

of Property Act reflects this position. When the language used in the notice is clearly to convey the intention of the lessor namely that the tenant should quit and vacate the suit premises, surely, a honest and inadvertent error would not invalidate the notice. The surrounding circumstances are also of relevance while considering any issue on the landlord's notice to the tenant, terminating the tenancy.

18. Adverting to the above principles, if the quit notice of the respondent dated 15 February 2006 is considered, it can be clearly seen from paragraph four of the said notice that the respondent clearly stated that irrespective of the earlier notices, issued to the applicant, by the said notice the respondent terminated the tenancy and had called upon the applicant to quit, vacate and deliver to the respondent the vacant and peaceful possession of the premises. The following words as used in the said notice show a clear intention of the respondent of termination of the applicant's tenancy:-

“ We have been instructed by my client to give you this notice and terminate your tenancy which we hereby do and call upon you to quit, vacate and deliver to our client the vacant and peaceful possession of the aforesaid premises namely the servant's quarter served upon you.”

19. The objection of the applicant to the validity of the respondent's notice dated 15 February 2006 is on the basis of the words as used in the notice namely "*which has expired on 31 December 2005 for which this notice is served upon you,*" to contend that the reference to the said date of termination could not have been retrospective and therefore the notice is invalid. In my opinion, this argument overlooks some basic facets. Firstly, the intention of the respondent to terminate the tenancy was clearly reflected in paragraph 4 read with paragraph 6 of the said notice by which the respondent not only terminated the tenancy but, has called upon the applicant to quit and vacate and hand over peaceful possession of the premises. Thus a mere reference to the words that "*tenancy has expired on 31 December 2005*", in my opinion, cannot be read in isolation and dehors the surrounding facts and as clearly conveyed by the respondent as reflected in paragraph 4 and paragraph 6 of the said notice dated 15 February 2006. The second and the crucial aspect being that, it is not a case that the respondents instituted the ejectment suit against the applicant before expiry of 15 days from receipt of the said notice dated 15 February 2006. In fact there was a further notice dated 1 November

2006 issued by the respondents calling upon the applicants to quit and vacate within 15 days of the receipt of the said notice. Again a notice was issued by the advocate for the respondents on 9 January 2007, calling upon the applicant to quit and vacate the suit premises. This was followed by institution of the suit on 28 November 2007 which after about 11 months of the last notice dated 9 January 2007 and about eighteen months after the notice dated 15 February 2006.

20. Thus, in the above circumstances and more particularly taking into consideration sub-section (3) of section 106 of the Transfer of Property Act, 1882 the respondent cannot be penalized for an inadvertent mistake in the said notice dated 15 February 2006 issued by the respondent's advocate, in stating that the tenancy has expired on 31 December 2005, when the intention of the respondents was otherwise clear, that is to terminate the tenancy. The applicant was called upon to hand over vacant and peaceful possession of the suit premises by the notice dated 15 February 2006 which was followed by the subsequent two notices dated 1 November 2006 and 9 January 2007. Notably on the persistent refusal of the applicant to quit the vacant suit premises, the suit in question was filed after eighteen months after the notice

dated 15 February 2006. The applicant thus, would not be correct in contending that the notice of the respondents dated 15 February 2006 retrospectively terminated tenancy from 31 December 2005 and thus it was not in accordance with the requirements of section 106 of the Transfer of Property Act, 1882. This argument on behalf of the applicant would also be required to be considered as hyper-technical and also an argument which would defeat the requirement and intention of the legislature as contained in sub-section (3) of section 106 of the Transfer of Property Act, 1882, for the simple reason that by the notice dated 15 February 2006 the respondents had unequivocally terminated the tenancy of the applicant in respect of the suit premises and secondly the suit was filed much later to the period of fifteen days (filed after 18 months) after the notice dated 15 February 2006 was received by the applicant.

21. There is a second issue which in my opinion, goes to the root of the matter and which would defeat the assertion of the applicant on the validity of the notice dated 15 February 2006 and/or the assertion that notice is bad as it retrospectively terminates the tenancy operation. It is well-settled that the Court would be under obligation to

consider as to how the parties to the litigation have understood the issue of termination of tenancy. It needs to be noted that when the applicant replied to the respondent's notice dated 15 February 2006 terminating the tenancy, the applicant did not assert that the said notice did not terminate the tenancy and/or did not assert that the suit notice was bad and illegal for not complying the requirement of section 106 of the Transfer of Property Act, 1882. This is clear from the following contents to the applicant's reply to the respondent's notice dated 15 February 2006 in the applicant's advocate's letter dated 7 April 2006:-

“5. My clients state that the lease for these said premises is still subsisting. My client has not done anything which gives your client any reason for terminating the lease. Therefore, the purported notice to terminate the purported tenancy through your letter dated 15.02.2006 is not only unjustified but also illegal and untenable.”

7. With reference to para 4 of the said letter dated 15.2.2006 my clients adopts the statements/averments made in para 5 above and denies everything which is contrary to and/or inconsistent therewith. My client also fails to understand as to how the lease came to be expired on 31st December 2005. In any event your client has been regularly accepting money towards the contractual rent even for a period subsequent to 31st December 2005 and issuing receipts for the same i.e. for the period after 31st December 2005. Therefore, there is no question of expiry of lease.”

(emphasis added)

22. As noted above, this understanding of the applicant is compounded by the averments of the applicant in paragraph 1, 6 and 9

of the written statement as noted above. In paragraph 1 of the written statement, the applicant has accepted and admitted that the respondent by its advocate's letter dated 15 February 2006 terminated the tenancy. In paragraph 6 of the written statement the applicant did not dispute the statements of the respondent as made in paragraph 5 of the plaint that by advocate's notice dated 15 February 2006 the respondent terminated the tenancy of the applicant. Further in paragraph 9 of the written statement again the applicant says that even if it is assumed that the tenancy was terminated by notice dated 15 February 2006, the alleged termination is waived by the respondent by sending subsequent letters.

23. Thus when in paragraphs 1, 6 and 9 of the written statement the applicant did not dispute that the suit notice terminated the tenancy of the applicant nor did the applicant contend that the notice was illegal in any manner being contrary to section 106 of the Transfer of Property Act, in such a situation, the consequence in law is that the applicant acquiesced in the suit notice and waived its right to contend that the suit notice is illegal. The applicant thus was not permitted to take a contrary position. The law in this regard is well

settled. In *Dharampal vs Harbansingh*³ the Supreme Court has held that objection to the invalidity or insufficiency of the notice should be specifically raised in the written statement failing which it will be deemed to have been waived. It was held that in the absence of a specific plea in the written statement in regard to the said objection, such a plea would be deemed to have been waived by the appellants-tenant therein. Their Lordships in paragraphs 7 and 8 of the decision observed thus:

“7. Learned counsel for the appellants submits that none of the two recitals contained in the notice can fulfill the requirement of section 106 of the Transfer of Property Act. One recital in the notice terminates the tenancy from the date of issue of notice. The other one requires the tenant to vacate the premises within 15 days from the date of receipt of the notice. Both are bad in the light of the requirements spelled out by section 106 of the Transfer of Property Act. The learned counsel seems to be right in urging the pleas. However, still we feel that the appellant cannot be allowed relief. Law is well settled that an objection as to the invalidity or insufficiency of notice under section 106 of the Transfer of Property Act should be specifically raised in the written statement failing which it will be deemed to have been waived. In the present case, the only objection taken in the written statement is that the notice issued by the plaintiff was “illegal, null and void and ineffective upon the right of the defendant.” The thrust of the plea raised by the defendant-appellant in his written statement was that the notice was issued by the person who did not have the authority from the landlord to give the notice. The plea so taken has been found devoid of merit by the High Court and the courts below. The plea that the notice was insufficient in the sense that did not give 15 clear days to the tenant to vacate or that the notice did not terminate the tenancy with the expiry of the month of the tenancy has not been taken in the written statement.

8. Obviously, for want of specific plea in the written statement, the trial court has not framed any issue reflecting an objection to the validity or sufficiency of notice, the plea in the manner in which it is sought to be urged before us. The plea as to insufficiency of notice should be deemed to have been waived by the appellant and cannot be allowed to be urged at this stage. No fault can be found with the judgment and decree of the High Court as also of the two courts below upholding the termination of tenancy and the plaintiff-respondent's entitlement to evict the tenant." (emphasis supplied)

24. In view of the above clear principles of law no fault can be found in the courts below having reached a conclusion that the tenancy of the applicant stood terminated by the respondent's notice dated 15 February 2006.

25. As a sequel to the above discussion and as a clear consequence of sub-section 3 of section 106 of the Transfer of Property Act, 1882 the notice dated 15 February 2006 of the respondent cannot be held to be invalid merely because it refers to 31 December 2005 as the date of termination of tenancy. The argument of the applicant referring to the said date to contend that the period mentioned therein falls short of the period specified of 15 days as prescribed in sub-section (1) of section 106 of the Transfer of Property Act, cannot be accepted, as admittedly the suit is filed after the 18 months which is much after a

period of 15 days after the receipt of the said notice date 15 February 2006. The argument on behalf of the applicant in referring to paragraph 4 of the decision in **Bhagwandas Agarwalla** (supra) that it would amount to termination of tenancy with effect from the earlier date cannot be accepted as the observations of the Supreme Court are considering the position of law as it stood prior to the amendment as brought about to section 106 of the Transfer of Property Act by Act 3 of 2003. The applicant's contention thus cannot be accepted.

26. In the light of above discussion, I find no merit in the civil revision application. It is accordingly rejected. No costs.

27. The applicant is directed to hand over the suit premises to the respondent within a period of six weeks from today.

(G.S.KULKARNI, J.)