

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

SECOND APPEAL NO. 4 OF 2017

Nandkumar Genba Girme	...	Appellant
V/s.		
Mohan Harishchandra Jagtap & Anr.	...	Respondents

- Mr.Sanjay Salvi for the Appellant.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th JUNE, 2018.

P.C. :

- 1] Heard learned counsel for the Appellant.
- 2] By this Second Appeal, the Appellant is challenging the judgment and decree passed by the District Judge-18, Pune, on 6th April, 2016 in Civil Appeal No.504 of 2010 thereby dismissing the said appeal, which was preferred against the judgment and decree dated 23rd April, 2010 passed by the Court of Civil Judge, Junior Division, Saswad, in Regular Civil Suit No.101 of 2005.
- 3] The said suit was filed by the Respondents for possession of the suit premises from the present Appellant. The Appellant is in possession of the suit premises as a tenant and after issuing the notice of terminating the tenancy on 3rd May, 2005, under Section 106 of the

Transfer of Property Act, the suit was filed for eviction.

4] Both the trial Court and the Appellate Court had come to the conclusion that there is relationship as landlord and tenant between the parties. Further the Appellant is in arrears of rent since the year 1992 and his tenancy stands legally terminated by virtue of notice dated 3rd May, 2005.

5] The only ground on which the judgment and decree of the trial Court and the Appellate Court is challenged is that the rent of the suit premises was Rs.50/- per month, however the Respondent has claimed the rent of the suit premises of Rs.60/- per month and hence, the notice of termination of the tenancy is not proper and correct. However, this issue is not at all raised before the trial Court. The only issue raised before the trial Court and the Appellate Court was that the notice was not complied with 15 days requirement, that issue is properly dealt with by both the Courts below. Therefore, the contention which is taken for the first time in Second Appeal cannot be entertained.

6] Both the Courts have rightly directed to pay Rs.50/- per month and not at the rate of Rs.60/- per month and therefore, on that count also no interference is warranted in the impugned judgment and decree.

7] The second contention raised is that the tenancy of the Appellant was already terminated by notice issued in the year 1985. Both the Courts have held that no evidence is produced on record to that effect. The alleged notice issued in the year 1985 is not produced nor the notice issued in the year 1995 is also produced. In such situation, no question arises of suit being barred by limitation also. Therefore, Second Appeal holds no merits. Hence, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]