

28.11.2022
SL No.62
Court No.8
(gc)

SAT 63 of 2016
CAN 1 of 2016 (Old No: CAN 12293 of 2016)

Dibakar Pramanick
Vs.
Jagabandhu Halder & Anr.

This matter appeared in the warning list on 16th November, 2022 with a clear indication that the appeal shall be transferred to the daily list on 21st November, 2022.

The appellant is not represented nor any accommodation is prayed for on behalf of the appellant, although, the appellant has sufficient knowledge and notice of the listing of this matter. This appeal was filed in the year 2016 but since then no attempt has been made to move this appeal. The defects have also not been removed.

The appellate decree dated 14.07.2015 affirming the judgment and decree passed by the Trial Court on 23.12.2011 is a subject matter of this second appeal. The Trial Court decreed the suit for eviction. The suit for eviction was filed on the ground of default. The tenancy was determined by serving a notice under Section 106 of the Transfer of Property Act. In the written statement, it was stated that the premises in dispute had been let out for manufacturing purposes and in view of Section 106 of the Transfer of Property Act, the lease could be

determined by the landlord only by six months' notice expiring with the end of the month of tenancy and since the plaintiff had served a notice of 15 days', the same was invalid and ineffective to terminate the tenancy. The Trial Court decreed the suit on the ground that the document on which reliance has been placed and termed as lease for manufacturing purposes is not a registered document and in absence of any registered instrument, the status of the appellant/respondent is of a monthly tenant. The appeal was confined to the question whether the tenancy in favour of the appellant was one for manufacturing purpose within the contemplation of Section 106 of the Transfer of Property Act and if it is so, whether the notice terminating tenancy was inadequate. The First Appellate Court, in our view, has rightly dismissed the appeal by relying upon the judgment of the Hon'ble Supreme Court in **Shri Janki Devi Bhagat Trust, Agra Vs. Ram Swarup Jain** reported at **AIR 1995 SC 2482** while dealing with similar set of facts observed that:

“Even though the lease may be for manufacturing purpose, since the lease was not from year to year, six months' notice was not required. A manufacturing lease which is not from year to year does not require six months' notice for termination. It will fall in the second half of Section 106, requiring fifteen days' notice of termination. A lease from month to month or lease other than from year to year is terminable by fifteen day's notice.”

Similar observation is made by the Apex Court in case of ***Samir Mukherjee Vs. Davinder K. Bajaj & Ors.*** reported at ***2001 WBLR (SC) 460.***

Similar view also has been taken by us in ***M/s Paul Rubber Industries Pvt. Ltd. Vs. Sri Amit Chand Mitra & Anr. being FA 36 of 2021 dated 20th July, 2022.***

Since no substantial question of law is involved and the law is well-settled, the second appeal being SAT 63 of 2016 stands dismissed at the admission stage.

In view of dismissal of the second appeal, the application being CAN 1 of 2016 (Old No: CAN 12293 of 2016) also stands dismissed.

However, there shall be no order as to costs.

This order shall be immediately communicated to the learned Trial Court by the Registrar Administration (L&OM) for information and doing the needful.

(Uday Kumar, J.)

(Soumen Sen, J.)