

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 408 OF 2021

Devji s/o Khemji Patel,
Age 60 years, Occ. Business,
R/o. Chikalthana, Tq. & Dist.
Aurangabad.

... **Appellant**
(Orig. Defendant No. 1.)

VERSUS.

1) Shree Vardhman Sthanakwasi Jain
Shravak Sangh, Aurangabad,
a registered trust through :

(i) Zumbarlal s/o Kanhyalal Pagariya,
Age 57 years, Occ. Business,
R/o. 20, Vedant Nagar, Railway
Station Road, Aurangabad.

(ii) Tarachand s/o Jagraj Bafna,
Age 69 years, Occ. Business,
R/o. Lila Sadan, Samarth Nagar,
Aurangabad.

(iii) Subhash s/o Motilal Desarda,
Age 68 years, Occ. Agriculture,
R/o. Surna Nagar, Aurangabad.

... Original Plaintiffs.

2) Govindji s/o Lalji Patel,
Age Years, Occ. Business,
R/o. Dhanwantri Hospital,
Beside Krishna Hospital,
Shreeniketan Colony,
Aurangabad.

... Proforma Defendant.

... **Respondents.**

...

Advocate for the Appellant : Mr. Vaidya Ameet R.
Advocate for the Respondent Nos. 1(i) to 1(iii) : Mr. A.S. Bajaj

CORAM : MANGESH S. PATIL, J.
DATE : 04.01.2022.

ORAL JUDGMENT :

Heard both the sides on the point of admission.

2. The appellant is the original defendant impugning the concurrent findings of the two Courts below whereby a landlord's suit for possession on termination of lease has been decreed and the decree has been confirmed.

3. The learned advocate Mr. Vaidya for the appellant vehemently submits that there is no legal termination of the tenancy within the four corners of the provisions of Section 106 of the Transfer of Property Act. Since admittedly the premises was leased out for carrying out business of a saw mill, it was implied and therefore imperative for the Courts below to draw an inference that the lease was for a manufacturing purpose. Had such conclusion be drawn, certainly, in the absence of any written document of lease, by virtue of the sub Section (1) of Section 106, the lease ought to have been determinable by a statutory notice of six months, whereas, the notice in the matter in hand determining the lease only gives a 15 days time and therefore the lease has not been legally and validly terminated.

4. The learned advocate Mr. Vaidya referring to the unreported judgment of the Karnataka High Court in the matter of **Mr. T.R. Krishna Gowda s/o Late Range Gowda since deceased by his L.Rs. Vs. Smt. Shashi Singh Dabi in Regular First Appeal No. 581/2009 dated 26.03.2013**, submits that in similar set of facts that Court had taken a view that the lease was not validly terminated. By referring to the decisions of the Supreme Court in the matter of **Idandas Vs. Anant Ramchandra Phadke (died) by L.Rs.; (1982) 1 Supreme Court Cases 27** and **Tata Engineering & Locomotive Co. Ltd. Vs. State of Bihar and another; (2000) 5 Supreme Court Cases 346** he would further submit that running a saw mill ought to have been treated as a manufacturing process. Both the Courts below have not specifically addressed all these vital points and have decreed the suit. A substantial question of law, as to whether the lease has been validly terminated in the

facts and circumstances of the case arises for determination at the hands of this Court.

5. Learned advocate Mr. Bajaj for the respondent No. 1 would submit that admittedly there was no written lease. The fact that the lease was on monthly basis that was asserted in the notice under Section 106 was neither controverted in the reply to that notice, which was, even otherwise, not exhibited in the trial court, nor was any such plea raised in the written statement. He would submit that same is the case with the purpose for which the suit premises was leased out. Though it is the stand of the respondent No. 1 that it was leased out for business of running a saw mill, the fact that the business that was contemplated between the parties involved a manufacturing process was also not specifically asserted either in the reply to the notice or in the written statement. In the absence of such specific and precise pleadings even the trial court had not framed any such issue touching these aspects. He would further point out that though some arguments were advanced on these lines before the trial court, at no point of time any specific issue in that respect was sought to be framed and decided.

6. Lastly, Mr. Bajaj would submit that the decisions cited on behalf of the appellant particularly that of the Karnataka High Court is clearly distinguishable on facts in as much as a specific pleading to that effect denying the validity of the notice under Section 106 was raised in that matter which is conspicuously absent in the matter in hand. He would, therefore, submit that since there are concurrent findings of facts of the two Courts below, this Court should not cause any interference in exercise of the powers under Section 100 of the Code of Civil Procedure.

7. There is no dispute about the facts that the suit premises was leased out for the business purpose of running a saw mill. Admittedly, there was no document creating the lease. By the notice under Section 106, it was

asserted by the respondent-Trust that period of lease was on monthly basis. Admittedly, though some reply to that notice was given by the appellant that reply was not exhibited before the trial court, having not been duly proved. A copy of it is available in the paper-book of the appellate Court. Even if it is read it clearly omits to raise any objection as to the period of tenancy, which is so vital for determination as to whether it was a lease from month to month or yearly basis in the light of specific wording of Sub Section 1 of Section 106. For that matter, even the written statement is conspicuously silent in this regard. For the sake of ready reference I may reproduce it and reads as under :

“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 from 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.]”

8. So far as the purpose for which the lease was created, the appellant now seeks to draw an inference that since the respondent No. 1 admitted that it was for carrying on business of saw mill it should be treated as a manufacturing process, I am afraid, for want of specific stand in the written statement or even in the reply to the notice, no such leeway is available for this Court to raise that issue and rule on it. If really the appellant wanted to draw such inference relying upon sub Section 1 of Section 106, there ought to have been specific pleadings in the written statement. In the absence of which, no such issue can be permitted to be raised for the first time before this Court in a second appeal, under Section 100 of the Code of Civil Procedure.

9. Apart from the above state of affairs, admittedly, the appellant has not graced the witness box. His conspicuous absence from the box is also sufficient to draw an inference that he never intended to raise any dispute as regards validity of the notice.

10. To sum up, neither in reply to the notice under Section 106 nor in the written statement or by making any independent attempt before the trial court or the appellate court, any such enquiry was sought to be made touching validity of notice under Section 106. Pertinently, before the Trial Court, even in spite of absence of specific pleadings arguments were advanced touching all these aspects but still no amends were made to rectify it even at the first appellate Court. Resultantly, as the evidence now

stands, I find no perversity or arbitrariness in the concurrent findings of facts by the two Courts below holding that lease was validly terminated and the respondent-Trust was entitled to a decree.

11. The decision of the Karnataka High Court in the matter of **Mr. T.R. Krishna Gowda s/o Late Range Gowda since deceased by his L.Rs. Vs. Smt. Shashi Singh Dabi (supra)** is clearly distinguishable on facts.

12. In the result, no substantial question of law arises for the determination of this Court. The Second Appeal is dismissed.

13. After dictation the learned advocate Mr. Vaidya for the appellant seeks stay to the operation of this Judgment.

14. Learned advocate Mr. Bajaj for the respondents strongly opposes the request.

15. The record shows that though for some time some interim relief was in operation before the District Court, it was not subsequently extended. In view of the above, the request is rejected

(MANGESH S. PATIL, J.)

mkd/-