

THE HON'BLE SRI JUSTICE M. LAXMAN

SECOND APPEAL No.276 OF 2022

JUDGMENT:

1. The present appeal has been directed against judgment and decree dated 06.06.2022 passed in A.S.No.31 of 2019 by the XII Additional Chief Judge, City Civil Court, Secunderabad, wherein and whereby the judgment and decree dt.22.02.2019 passed in O.S.No.12 of 2016 by the I Junior Civil Judge, City Civil Court, Secunderabad, was confirmed. The said suit was filed for eviction.

2. The present appeal is at the instance of the defendants/tenants. The respondent herein is the plaintiff. For brevity, the ranks of the parties as they were referred in the suit, is maintained.

3. The sum and substance of the case of the plaintiff is that originally, Sk. Mahaboob was the tenant on a monthly rent. The rent was increased to Rs.6,500/- per month. After increase, legal notice dt.19.11.2015 was issued seeking eviction of the tenant and for recovery of arrears of rent. When the tenant has not vacated the premises, the present suit was filed.

4. The case of the defendant is that he admits the tenancy and increase of monthly rent. He also admits receipt of notice dt.19.11.2015

in his reply under para No.7 of his written statement. However, he is claiming notice is bad in law and it is not fulfilled the requirements of law.

5. Basing on the above pleadings, the Primary Court framed the following issues:

1. Whether the plaintiff is entitled for eviction of the defendants from the suit schedule property?

2. To what relief?

6. The plaintiff in order to prove his case, he was examined as PW.1 and relied upon Ex.A1 to A3. On behalf of defendants, 2nd defendant was examined as DW.1 and got marked Ex.B1 to B9.

7. The primary Court as well as First Appellate Court after appreciating the evidence on record concurrently held that the notice is not defective and consequently, eviction was ordered. Aggrieved by the same, the present 2nd appeal is filed.

8. Learned Counsel for the appellant stated that notice issued does not reflect 15 days time specifically and the same was defective. It is also his contention that notice is of 19.11.2012 and not 19.11.2015. Therefore, according to him, both the Court have failed to take note of said defects in the notice before ordering for eviction and such findings of Courts below suffers from perversity.

9. This Court has already taken a view that the amendment to Section 106 of Transfer of Property Act was retrospective in operation since it is a procedural amendment. Therefore, the benefit of amendment has to be given to the plaintiff. As per the amended provisions of Section 106 of Transfer of Property Act, if there is any shortfall or defect in the notice, such notice is valid if the suit is filed after 15 days, which is prescribed under Sub-section 2(2) of Section 106. In the light of the same, it is not in dispute that the suit is filed after 15 days time given to vacate the premises. Therefore, the contention of learned Counsel for the appellants has no legs to stand and there is no substantial question of law involved on this aspect since the findings are not perverse.

10. The 2nd contention of the learned Counsel for the appellants is that, the reply at para No.7 of the written statement of the defendants clearly shows that they admit the date of issuance of legal notice i.e. on 19.11.2015. However, it appears some error is occurred in mentioning the year in the notice issued by the plaintiff such error cannot be allowed to take as advantage. When there is categorical admission by the defendants that notice dt.19.11.2015 was received on 19.11.2015. If that is so, it clearly indicates that the year of notice mentioned in the legal notice is human error and the same cannot be taken advantage by the defendants since they have not denied in the written statement. In fact,

there is categorical admission. In such circumstances, this contention of learned Counsel for the appellants does not hold water and the same is rejected. The appellants/defendants failed to establish that there is substantial question of law to be framed. Therefore, the appeal is liable to be dismissed.

11. Learned Counsel for the appellants submitted that the defendants are conducting business for the last 30 years and they are having dependents and sudden eviction cause irreparable loss and injury and seeks time of six months for vacating the premises.

12. In the result, the appeal is dismissed confirming the judgment and decree of both the Courts below. However, the appellants/defendants are given time of four months to vacate the premises from the date of this judgment and such extension is subject to appellants filing an undertaking before the trial Court to vacate the premises within four months. Such undertaking shall be filed within 15 days from the date of this judgment. There shall be no order as to costs.

13. As a sequel, pending miscellaneous applications, if any, shall stand closed.

M. LAXMAN, J

DATE:20.07.2022
BDR