

23.08.2023

Court : 04
Item : 24
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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**SAT 4 of 2023
CAN 1 of 2023**

Tulsi Pramanik & Ors.
Vs.
Khurshid Jahan Begum & Ors.

**Mr. Indranath Mukherjee, Advocate
Mr. Manawar Ali, Advocate
Ms. Moumita Karmakar, Advocate**

.....for the Appellants

**Mr. Rwitendra Banerjee, Advocate
Mr. Pappu Adhikari, Advocate**

.....for the Respondents

1. Admittedly the suit premises is situated beyond the operation of the West Bengal Premises Tenancy Act, 1997. A suit for recovery of possession was filed by the plaintiff/respondent against the appellant after giving a notice under Section 106 of the Transfer of Property Act (hereinafter referred to as 'the said Act'). Though the plaint discloses various incidences of the eviction permitted under the Rent Restrictions Act but basically the suit is based on a termination of tenancy and expiration of period provided therein, which is recognized under Section 111(h) of the said Act.
2. It is sought to be contended by the learned Advocate for the appellant that the Trial Court as well as the First Appellate Court has extensively dealt with the grounds taken in the plaint relating to default, reasonable requirement, sub-letting and, therefore, such finding is perverse and beyond the jurisdiction of the Court. The

second line of challenge to the concurrent findings of both the Courts below, is founded upon the legality, validity and sufficiency of the notice under Section 106 of the said Act as according to the learned Advocate for the appellant four successive notices under the aforesaid provisions were issued by the plaintiff/ respondent and the moment the tenancy is terminated upon issuance of the first notice, subsequent notices are bad, invalid and the suit based upon the aforesaid notices, is incompetent and liable to be dismissed. As a last gasping resort, it is sought to be contended that the moment the notice terminating the tenancy is issued on the score of default in payment of rent, it is imperative on the part of the Court to activate the provisions under Section 114 of the said Act which provides for a relief against forfeiture and having not done so, the impugned judgment cannot be sustained in law.

3. At the very outset, we must record that the suit premises is situated beyond the extent of operation of the Rent Restrictions Act which provides the grounds on which the landlord can evict the tenant from the suit premises. There is no quarrel to the proposition that had the suit premises situated within the extended operation of the Rent Restrictions Act, in view of the nature of the language employed under Section 6 of the West Bengal Premises Tenancy Act, 1997, the landlord cannot evict the tenant except on the grounds enumerated therein. The

position is different where the premises is situated beyond the operation of the said Act and it admits no ambiguity in our mind that such tenancy is governed by the Transfer of Property Act. The Transfer of Property Act does not contain any provision like the West Bengal Premises Tenancy Act nor put any restrictions in seeking a recovery of possession upon satisfaction of the grounds. Even if the landlord has averred several grounds in the suit but the moment the Court finds that those are not the incidences of seeking eviction, there is no fetter on the part of the Court to ignore the same and proceed to decide the rights of the parties on the basis of an applicable law provided the ingredients for applying such law is imminently evident and proved by the landlord.

4. We thus do not find any justification in the ground that pleading in the plaint by the plaintiff/respondent relateable to the default in payment of rent and reasonable requirement can defeat the very suit based on Section 111(h) of the Transfer of Property Act.
5. The plea of forfeiture as raised is also not tenable. Though the forfeiture has not been defined in the Transfer of Property Act but sufficient lead can be taken from Section 111(g) of the said Act which provides:-

Section 111(g) in The Transfer of Property Act, 1882

"111(g) - A lease of immovable property determines by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re- enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of

such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease.”

6. It is manifest therefrom that the forfeiture would mean in case the lessee breaks an express condition which provides that on breach thereof, the lessor may re-enter. Admittedly there is no lease or agreement entered into between the parties nor contains any such terms and conditions that on breach of the same, the right is reserved with the lessor to re-enter.
7. There is no quarrel to the proposition that the forfeiture can only be activated in the event the right to re-enter is expressly provided in terms and conditions of the creation of such tenancy as in absence thereof such right cannot be exercised by the lessor. In absence of any express or implied agreement relating to a tenancy, the same is regarded as a monthly tenancy/lease renewable upon payment and acceptance of rent.
8. In the event, the notice under Section 106 of the said Act is issued, it terminates the relationship and, therefore, the question of forfeiture does not arise. Originally the concept of forfeiture is visualized in case of a tenancy or a lease having a definite duration and during the subsistence thereof any breach has been committed which confers right on the lessor to re-enter which cannot be extended to a case where such tenancy/lease is renewable on a monthly basis on payment and acceptance of the rent.
9. We thus do not find that the plea of forfeiture is

available to the appellant in this regard. The core issue, in our opinion, involved in the instant appeal relates to validity, sanctity, genuinity and legality of the notice under Section 106 of the Transfer of Property Act.

10. It is contended by the learned Advocate for the appellant that the moment the first notice under Section 106 of the said Act is issued, the subsequent notices are bad and, therefore, the suit based thereupon should also fail. Section 113 of the Transfer of Property Act deals with waiver of notice to quit which runs as under:-

Section 113 in The Transfer of Property Act, 1882

"Waiver of notice to quit - a notice given under section 111, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations

(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee; notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

11. Illustration (b) appended to the said Section shall throw light on the aforesaid issue where it has been expressly provided that in the event, a second notice to quit is given it would deem that the first notice is waived. There is no express provision which mandates an express waiver or recall of the notice as the intention of the parties is of paramount consideration. In the event, the lessor issues further notice, it would be presumed that the first notice was waived and, therefore, if the suit is filed on the basis of the last notice which was issued, cannot defeat the

suit solely on the ground that once the tenancy is terminated upon issuance of the first notice, the subsequent notice terminating the terminated tenancy is bad and it would not amount to waiver of the earlier notice and, therefore, we do not find any justification in the stand of the appellant that the suit would fail on such score. Furthermore, the intention of the parties has to be gathered from their conduct, both at the pre-suit and post-suit stage. The plaintiffs/appellants have waived the first notice upon issuance of the second notice and such intention is laudable and, therefore, it is not open to the lessee/tenant to raise such issue.

12. Since the legality of the notice not having issued in conformity with the provisions contained under Section 106 of the said Act has not been raised, this Court would proceed safely on the basis that the last notice was duly served upon the appellant and the same is in conformity with the provisions contained under Section 106 of the Transfer of Property Act.
13. Since section 111(h) of the said Act postulates the determination of a tenancy/lease on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the another and, therefore, the suit based thereupon cannot be said to be infirm, invalid and not legally tenable in the eye of law.
14. We thus do not find any substantial questions of law involved in the instant appeal.

15. The appeal being **SAT 4 of 2023** is thus **dismissed** at the admission stage. No order as to costs.
16. The connected application being **CAN 1 of 2023** also stands **dismissed**.

(Harish Tandon, J.)

(Ajay Kumar Gupta, J.)