

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 433 OF 1997

Subhash Girdharilal Gangwal,
Age : 40 years, Occu. Business,
R/o. Samarth Nagar, Kannad,
Tal. Kannad, Dist. Aurangabad.

... **Appellant**
[Orig. Defendant]

Versus

The Municipal Council, Kannad,
Through its Chief Officer,
Kannad, Tal. Kannad, Dist. Aurangabad.

... **Respondent**
[Orig. Plaintiff]

...
Mr. B. A. Darak – Advocate for Appellant
None for the respondent – Municipal Council
....

CORAM : S. G. MEHARE, J.
DATE : 11th OCTOBER, 2023

ORAL JUDGMENT :

1. Heard the learned advocate for the appellant. None for the respondent. Parties are referred to as per their status before the lower Court. The appellant was the tenant, and the respondent was the landlord.

2. Facts leading to the dispute are summarized as under: -

. The appellant was the tenant of shop premises owned by respondent no. 2 - Municipal Council, Kannad. They had an agreement of lease. The lease was for three years from 03.12.1982. The present appellant (original defendant) had deposited a sum of

Rs.30,000/- with respondent no. 2/ landlord / original plaintiff i.e. Municipal Council, Kannad. The tenant failed to pay the rent; hence, the landlord issued a lease termination notice to him dated 15.05.1989. Even after serving the said notice, the tenant did not vacate the shop premises, so the eviction suit was filed. The suit was decreed, and the Appeal against the said Judgment and decree was also dismissed.

3. This Court, vide order dated 17.12.1997, admitted the Appeal. The Court passed the following order as regards the substantial question of law: -

“The substantial question of law is carved out in grounds no. 1 and 2”.

4. Grounds nos. 1 and 2 in the appeal memo were examined in the open Court. The Court considered it necessary, for convenience, to formulate the questions of law from those grounds of the appeal memo as follows:

- [i] Did the trial Court have jurisdiction to adjudicate the landlord and tenant dispute?
- [ii] Is the termination notice dated 15.05.1989 under Section 106 of the Transfer of Property Act legal and valid?

5. At the outset, the learned counsel for the appellant would submit that the first substantial question of law may not be considered as the Court of Civil Judge Junior Division at Kannad had jurisdiction to try such suits. He waived that question of law.

6. Regarding the second question of law, he submits that the first appellate Court considered the notice of termination dated 26.04.1988, which was not on the Record. The findings are illegal and perverse. He further argued that there was no 30-day notice of termination of tenancy as provided under Section 106 of the Transfer of Property Act.

7. The learned trial Court considered the notice of termination dated 15.05.1989. In the last paragraph of the said notice, it has been mentioned that the earlier notice dated 26.04.1988 has been withdrawn and, therefore, the only notice of termination before the Court was a notice dated 15.05.1989. In the said notice, the appellant has specifically contended that the tenancy would be determined soon after the tenancy month commences from 03.06.1989.

8. Section 106 of the Transfer of Property Act speaks of the duration of certain leases in the absence of a written contract

or local usage and the termination of tenancy by written notice. Admittedly, the suit premises was not rented for agricultural or manufacturing purpose; hence, the lease of such property was terminable by a written notice of 15 days. On reading the termination notice dated 15.05.1989, it is seen that the legal notice of termination of tenancy was correctly issued, informing the tenant that the tenancy is determined by the end of the next commencing month. The said notice was also duly served upon the tenant. Hence, the substantial question of law about the legality and validity of the termination of the lease is answered that the notice dated 15.5.1989 was legal and valid.

9. In view of the above discussion, the Court concludes that the Appeal deserves to be dismissed. Hence, the following order.

ORDER

- [i] Appeal stands dismissed.
- [ii] The appellant/tenant shall deliver the vacant and peaceful possession of the suit premises to the respondent/landlord in the condition as was handed over to him as a tenant within Sixty (60) days from today.
- [iii] Record and proceedings of the trial court be sent back.

- [iv] No order as to costs.
- [v] Rule stands discharged.

[S. G. MEHARE]
JUDGE

SG Punde