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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 261 OF 2015

Mahiboob Nabilal Tamboli ...Appellant

Versus

Mahiboobali Pirahmed Mujawar ...Respondent

Mr. Shrisail Sakhare, Advocate for the Appellant

CORAM : GAURI GODSE, J.

DATE : 4th DECEMBER 2023

P.C. :

1. This appeal is preferred against the concurrent judgment and decree directing the appellant to hand over possession of the suit property on the ground of default. It is not in dispute that the suit property is situated at Mouje Haidra, Taluka Akkalkot, where the provisions of the Maharashtra Rent Control Act, 1999 are not applicable; hence, the suit property is governed under the provisions of the Transfer of Property Act, 1882.

2. Respondent-Plaintiff has relied upon the tenancy agreement produced at Exhibit-21 in support of his contention that the

appellant-defendant had agreed to be a tenant for a period of 14 months at the rent of Rs. 150/- per month, in respect of the suit shop. The respondent-plaintiff had issued a notice calling upon the appellant to pay the arrears of rent and hand over the possession of the suit shop, which was replied to by the appellant. In the reply, the appellant contended that he had paid rent to the plaintiff; however, receipts were not issued.

3. Though it is sought to be contended on behalf of the appellant that there was only a money lending transaction between the parties, and the respondent falsely got the tenancy agreement executed, there is nothing brought on record in support of the said contention. Both the courts have recorded the concurrent finding that the tenancy agreement relied upon by the respondent at Exhibit-21, clearly establishes that the appellant-defendant was occupying the suit shop as a tenant. The reply of the appellant produced on record also shows that he contended that he had paid rent to the plaintiff; however, receipts were not issued.

4. The First Appellate Court has specifically recorded that it is not

in dispute that initially, the defendant was the owner of CTS Survey No. 115. However, on 19th October 2021, the suit property was sold to the plaintiff vide registered sale deed and accordingly, in the City Survey Record, the plaintiff's name was also entered as owner. A certified copy of the CTS record in the plaintiff's name is produced on record at Exhibit-22. The First Appellate Court has further recorded that the appellant has not produced any evidence on record in support of his contention that the transaction between the parties was a money-lending transaction. After considering the documentary and oral evidence both the courts recorded the findings of facts and accepted the ownership of the respondent on the suit property and that the appellant was occupying the suit property as a tenant, in view of the tenancy agreement at Exhibit-21. The appellant has failed to produce any evidence on record to show that the rent amount as per the tenancy agreement is paid to the respondent as contended by him in reply to the suit notice. Both the Courts have concurrently held that the appellant was in arrears of rent and the tenancy of the appellant stood validly terminated.

5. The submissions made on behalf of the appellant are inconsistent. It is submitted that there was no tenancy agreement and that it was a money-lending transaction, however, it is also the case of the appellant that he had paid the rent amount, but the respondent did not issue any receipts. Thus, the submissions on behalf of the appellant would require re-appreciation of the facts and evidence which is not permissible under section 100 of the Civil Procedure Code, 1908.

6. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

GAURI GODSE, J.