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

**SECOND APPEAL NO.489 OF 2021
WITH
INTERIM APPLICATION NO.4367 OF 2021**

Late Pandurang Kondiba Khandare
deceased through legal heirs
Hausabai Pandurang Khandare & Ors. ...Appellants
Versus
Smt. Sudha Shankar Devare
name is deleted
Deepak Shankar Devare & Ors. ...Respondents

Mr. Rushikesh C. Barge, for the Appellants.

Mr. Ashwin Kumar Deore, for the Respondents.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 7th JANUARY 2023**

P.C. :

1. Heard Mr. Barge, learned counsel appearing for the Appellants and Mr. Deore, learned counsel appearing for the Respondents.

2. Mr. Barge submitted that the following two substantial questions of law are involved in this Second Appeal :-

- i. Whether in light of express provision of Section 106 of the Transfer of Property Act, 1882 and in

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absence of the written contract between parties can lease be terminable by 15 days prior notice, when admitted lease is for manufacturing purpose?

ii. Whether finding of the Appellate Court in deciding the issue No.2 and 3 that lease is from 1997 is perverse, in the light of admission given by the Plaintiff in cross examination that lease is from 1957?

3. As far as the first substantial question of law is concerned, regarding 15 days of notice, it is relevant to note Sections 106 (before substitution) and 107 of the Transfer of Property Act, 1882. The suit notice is dated 14th August **2000**. Section 106 is substituted w.e.f. 31st December 2002. Therefore, Section 106 (before substitution) is relevant. The said Sections read as follows:-

*“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 expiring with the end of a year of the tenancy; 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 expiring with the end of a month of the tenancy.

Every notice under this section 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”.

107. Leases how made.— A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

[All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

[Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:]

Provided that the State Government may, 4
*** from time to time, by notification in the Official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.]”

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4. In this case, undisputedly the lease is not registered lease. It is the contention of the Appellants that lease is the oral lease from the year 1957 whereas, it is the contention of the Respondents that the lease is from 1st October 1997. It is the Respondents' contention that the earlier lease was terminated by notice dated 23rd October 1998 and as the Appellants agreed to pay Rs.2,000/- p.m. w.e.f. 1st October 1997 therefore, again lease was created w.e.f. 1st October 1997. The same can be seen from the suit notice dated 14th August 2000, by which lease was terminated with effect from 1st September 2000. Thus, it is clear that the notice of 15 days is given. The suit has been filed on 27th November 2000. It is undisputed that either the said lease of 1957 or 1997 is not written and registered lease and it is the oral lease. Section 107 of the Transfer of Property Act mandates that lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. The Supreme Court in the decision reported in **Samir Mukherjee vs Davinder K. Bajaj & Ors.**¹ by taking into consideration in that case that although the lease claimed was for manufacturing purpose, as

1 AIR 2001 SC 1696

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the same was not a registered lease, held that rule of construction of lease as envisaged under Section 106 would not be applicable as statutory requirement of Section 107 of the Act has not been satisfied. It has been held that oral lease is hit by first paragraph of Section 107 of the Transfer of Property Act.

It has been held in paragraph 7 as follows:-

“7. In the case in hand we are concerned with an oral lease which is hit by the first paragraph of Section 107 of the Transfer of Property Act. Under Section 107 parties have an option to enter into a lease in respect of an immovable property either for a term less than a year or from year to year, for any term exceeding one year or reserving a yearly rent. If they decide upon having a lease in respect of any immovable property from year to year or for any term exceeding one year, or reserving yearly rent, such a lease has to be only by a registered instrument. In absence of a registered instrument no valid lease from year to year or for a term exceeding one year or reserving a yearly rent can be created. If the lease is not a valid lease within the meaning of the opening words of Section 106 the rule of construction embodied therein would not be attracted. The above is the legal position on a harmonious reading of both the sections.”

5. The observations of the Supreme Court in above decision is squarely applicable to the present case.

6. Mr. Barge has relied on the decision of Supreme Court in

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Ram Kumar Das vs. Jagadish Chandra Deb Dhabal Deband

Anr.² He submitted that irrespective whether the lease is registered or not if it is proved, that the same is for manufacturing purpose then, same will be deemed to be from year to year and can be terminated only by six months notice. However, in the aforesaid decision of **Samir Mukherjee** (supra), the Supreme Court considered the said decision in case of **Ram Kumar Das** (supra). By considering the said decision and by relying on the decision of the Supreme Court in **Shri Janki Devi Bhagat Trust, Agra vs Ram Swarup Jain (Dead) By Lrs.**³, it has been held that for application of rule of construction as envisaged under Section 106, statutory requirement of Section 107 of the said Act has to be satisfied. Therefore, there is no substance in the first substantial question of law as submitted by Mr. Barge.

7. As far as the second substantial question of law is concerned, this is a lease to which the provisions of Transfer of Property Act are applicable. Therefore, whether the lease is of the year 1997 or 1957 is not of much significance.

2 AIR 1952 23

3 AIR 1995 2482

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8. Admitted position is lease whether of the years 1957 or 1997 is oral lease and not written and registered lease. Therefore, in the light of Sections 106 and 107 of the Transfer of Property Act as well as law laid down by the Supreme Court in **Samir Mukherjee** (supra), it has to be held that as the lease in question is not registered lease the same is not for agricultural or manufacturing purposes but the same is for any other purposes and therefore, lease is deemed to be from month to month terminable on the part of lessor or lessee with 15 days notice. As neither lease of 1997 or 1957 is registered lease, it has to be held that the lease is for other purposes that manufacturing and agricultural and therefore, terminable by 15 days notice. The said requirement is complied with in the present case. Therefore, there is no substance in the second substantial question of law as argued by Mr. Barge.

9. For the above reasons, the Second Appeal is dismissed with no order as to costs.

10. In view of the dismissal of the Second Appeal, nothing survives in the Interim Application and the same is disposed of as such.

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11. At this stage, Mr. Barge, learned counsel appearing for the Appellants states that this Court has granted stay and the same be continued for a period of twelve weeks. The ad-interim order granted by this Court on 1st February 2022 to continue for a period of twelve weeks from today.

[MADHAV J. JAMDAR, J.]

Note: This order is modified by order dated 11th January 2023. The correction is shown in paragraph No.3 in line No.4 in bold and italic.