

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

SA 125 of 2024

Smt. Nupur Khanra

-Versus-

Sri Sukumar Bhowmik

For the Appellant : **Mr. Malay Bhattacharya,
Ms. Sudipa Sengupta.**

For the Respondent : **Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Mr. Kaustav Bhattacharya,
Ms. Priyanka Jana.**

Delivered on : **19.12.2024**

Prasenjit Biswas, J:-

1. Both the Courts below have concurrently decided the case against this appellant/defendant.

2. A suit was instituted at the behest of the plaintiff for eviction against this appellant/defendant from the suit property under the Transfer of Property Act. It is averred by the plaintiff that this appellant/defendant was a monthly tenant in the suit premises since he purchased the same from the erstwhile owner. It is further averred by the plaintiff that the defendant became a habitual defaulter and willfully defaulted in paying rent since June, 2018 and also committed acts of waste and negligence which resulted in the material deterioration of the suit premises. It is the further case of the plaintiff that the suit premise is reasonably required by him for his own use and occupation. A notice of eviction was sent by the plaintiff upon the defendant to quit and vacate the suit premises within August, 2018 and the said notice was duly served and received by the defendant, despite receiving the notice this appellant/defendant failed to vacate the suit premises and, as such, the suit was instituted with a prayer for eviction of the defendant from the case premises.

3. The defendant entered appearance before the Trial Court and contested the suit by filing written statement denying all the material allegations made in the plaint against her. It is sought to be contended by the appellant/defendant that the suit property is situated within the area governed by the West Bengal Premises Tenancy Act and she was a tenant under the provisions of the said Act and as such, notice sent to him under the Transfer of Property Act is not valid.

4. The singular question to be examined in the present case, whether the tenancy was terminated in accordance with the provisions of Section 106 of the Transfer of Property Act.

5. At the time of hearing, learned Advocate for the appellant candidly submits that there is no document with him to show that the provision of West Bengal Premises Tenancy Act is extended to that area on which the suit premises is situated. It is further said by the learned Advocate that the notice of eviction was served and received by the defendant and virtually he submits that time may be granted to him so that he can make arrangement for alternative accommodation. It is admitted by the defendant/appellant that he received the eviction notice. The defendant has not raised any specific objection as to the validity of the notice. It cannot, therefore, be said that the notice in the present case suffered from any infirmity. The moment the existence of jural or contractual relationship of landlord and tenant between the parties and the service of notice under Section 106 of the Transfer of Property Act are admitted, it invites no other consequences but to pass a judgment on that ground.

6. At the time of hearing, learned Advocate for the respondent/plaintiff submits that the decree has already been executed and delivery of possession was given in favour of the plaintiff/decreed holder and the defendant handed over the possession of the suit premises in favour of this plaintiff. The said submission as contended by the respondent/plaintiff is conceded by the learned Advocate of the appellant/defendant.

7. It is further manifest from the instance case that the said tenancy is not protected under the West Bengal Premises Tenancy Act and admittedly governed by the provisions of the Transfer of Property Act. As such, in this case protection under the West Bengal Premises Tenancy Act is not available to this appellant. Section 111 of the Transfer of Property Act postulates that the lease depends on an expiry of the period given in a notice under Section 106 of the Transfer of Property Act and no protection in this regard has been given in any provision contained in the said Act. In a case instituted under the provisions of the Transfer of Property Act the only thing is required to be proved by the plaintiff that the notice in terms of Section 106 of the Transfer of Property Act has been duly served upon the tenant/defendant, which sought to be evicted from the case premises. In this case, eviction notice along with postal receipts and acknowledgment card were duly proved by the plaintiff, which indicates that the notice of eviction was duly served upon the appellant/ defendant. Once it is proved and established that a valid notice in terms of Section 106 of the Transfer of Property Act had been duly served, prior to the institution to the suit for eviction there is no embargo for granting relief prayed for by the plaintiff. When the suit is filed under the provisions of the Transfer of Property Act the only thing that the plaintiff has to prove that notice for eviction was valid and duly served upon the defendant, which in this case has already been proved by the plaintiff. So, we find there is nothing illegality or irregularity in the judgments passed by both the Courts below.

8. From whatever angle this Court looks we do not find any illegality and/or infirmity in the impugned judgments.

9. We, thus, do not find any merit in the instant appeal nor any involvement of substantial question of law. Accordingly, the appeal is dismissed.

10. There will be no order as to costs.

11. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)