

13.05.2024

FRIDAY

Court : 04
Item : 01
Matter : SAT
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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

APPELLATE SIDE

SAT 208 of 2023

with

CAN 1 of 2023

Srimatya Renuka Pal & Ors.

Vs.

Srimatya Tararani Basak & Ors.

Mr. Tanmoy Mukherjee, Advocate

Mr. Souvik Das, Advocate

Mr. Rudranil Das, Advocate

.....for the Appellants

1. Initially the suit was filed by the plaintiffs/respondents seeking recovery of possession on the premise that by virtue of a registered agreement dated 02.12.1989 specifying the period, the defendants/appellants are liable to vacate the premises on the expiry thereof. We can reasonably infer from the aforesaid facts that the the operation of the West Bengal Premises Tenancy Act, 1956 was not extended to the area where the suit premises is situated. It further appears that a notice dated 14.10.1992 was issued by a practicing Advocate for and on behalf of the plaintiffs/respondents indicating that the period enshrined in the said agreement is going to expire by the end of the month of Kartick 1399 B.S..
2. The suit was instituted on 24.11.1992 as the defendants/appellants failed and neglected to vacate the suit premises unto and in favour of the plaintiffs/respondents on the expiry of the period provided under the said agreement. During the pendency of the suit, the operation of the West Bengal Premises Tenancy Act, 1956 was extended to

the area where the premises was situated which led the plaintiffs/respondents to amend the plaint incorporating the ground of reasonable requirement which was eventually allowed by the Court.

3. Both the Courts found that the plaintiffs/respondents reasonably required the suit premises for their own use and occupation and have no reasonable suitable accommodation at their disposal. The Trial Court further found that the plaintiffs/respondents are the owners of the property and, therefore, satisfies the ingredients incorporated in Section 13(1)(ff) of the West Bengal Premises Tenancy Act, 1956. The Appellate Court also affirmed the judgment and decree of the Trial Court which is sought to be assailed before us under Section 100 of the Code of Civil Procedure.
4. The Counsel for the appellants squeezed his argument on the service and the validity of the notice sought to be allegedly served upon the defendants/appellants by contending that in absence of any proof of dispatch to the postal authority for its onward service upon the addressee, the Trial Court erred in law in arriving at the conclusion that the service of the notice was duly effected and despite the requisition having made to vacate the premises by the end of month of tenancy, the suit cannot fail on such count. The Counsel for the appellants vociferously submits that the exhibit 5 does not indicate the proof of dispatch with the postal authority nor it contains any signature of the defendants/respondents and, therefore, the findings of the Trial Court in this regard is perverse and based on no material. He placed reliance upon the exhibit 5

to contend that it does not bear the signature of the defendants and, therefore, the instant appeal involves a substantial question of law to be decided under Section 100 of the Code of Civil Procedure.

5. At the first blush the said argument appears to be attractive and to some extent swayed our mind that in absence of any such material, the findings of both the Courts below may be perverse but after perusing the materials as well as the evidence of the plaintiffs, we do not find any ambiguity and/or incongruity in the findings returned by the Trial Court and the First Appellate Court.
6. We are conscious of the proposition of law that if the premises is not covered under the West Bengal Premises Tenancy Act, 1956, the suit for recovery of possession may be filed under the general law i.e. the Transfer of Property Act (hereinafter referred to as 'the said Act') upon giving a notice under Section 106 of the said Act. Section 111 of the said Act postulates various incidents of the determination of the lease and it is no gainsaying that on expiration of the period by efflux of time, the lease determines. It appears from the record that the notice was allegedly sent and served upon the defendants/ appellants through the learned Counsel acting for and on behalf of the plaintiffs/ respondents and the postal document was marked exhibit – 5.
7. The copy of the said notice was handed over by the Counsel for the appellants in support of his contention that it does not bear any proof of dispatch nor a proof of service and, therefore, the Court would not have arrived at the conclusion that there is a valid service of notice. The notice assumes significance for

the simple reason that operation of the West Bengal Premises Tenancy Act, 1956 was extended to the area where the premises is situated which provides that no tenant shall be evicted from the premises except on the grounds enumerated under Section 13(1) of the said Act and in the event, the landlord intend to approach the Court, the notice under Section 13(6) of the said Act is mandatory. Obviously, in absence of any statutory notice having issued and served upon the tenant, the decree for eviction cannot be passed by the Court against the tenant by virtue of a protective umbrella having extended under Section 13 of the said Act.

8. We are also not unmindful of the proposition of law that the said statute does not contain the prescribed mode of notice nor the prescribed mode of service for such notice. Section 13 (6) of the said Act relates to a notice to suit and not a notice determining the tenancy which would further be evident from the language used therein read in conjunction with the definition of a 'tenant' given under Section 2(h) of the said Act. The 'tenant' who have been served with a notice is regarded as a statutory tenant having all protections available to a contractual tenant unless the decree for eviction is passed against him. The notice is thus *sine qua non* to institute a suit for eviction on the grounds enumerated under Section 13(1) of the said Act and it would not be wrong to say that in the event the notice is found invalid and having not served on the tenant, the suit is liable to fail.
9. On the proposition of law, as indicated above, let us see whether the stand of the defendants/appellants is

sustainable and the notice is bad in all respect. The Trial Court has vividly recorded that the photocopy of the notice issued by the learned Advocate for and on behalf of the plaintiffs/ respondents is marked as exhibit – 5. It is further recorded that the said notice was issued on 14.10.1992 corresponding to 29 Ashwin, 1399 B.S., and appears to have been served on 17.10.1992 corresponding to 30 Ashwin 1399. The provisions contained under Section 13(6) of the said Act provides “one clear month’s notice” before the landlord ventured to institute a suit for eviction on the grounds incorporated under Section 13(1) of the said Act. The expression “one month’s notice expiring with the month of tenancy” has to be understood in such perspective and in the event, the suit is filed within the period provided under the said provision, the said suit is liable to fail.

10. In the instant case, the defendants/appellants were given a clear month’s notice i.e. the entire month of Kartick 1399 B.S, which ends on 17.11.1992 and the suit was instituted on 24.11.1992 and, therefore we do not find any mischief with regard to the period of notice.
11. For clarity, we hasten to add that Section 13(6) does not contemplate any ground to be incorporated in the notice nor the determination or termination of the tenancy but a period provided to the tenant to vacate the premises and in default thereof, the suit for recovery of possession on any or more grounds enumerated under Section 13(1) of the Act shall be filed.
12. In absence of any prescribed mode of notice, we do not find there is any infirmity in the said notice which

clearly conveys an intention that the defendants/appellants are liable to vacate the premises on the expiry of the month of Kartick 1399, which is in conformity with the provisions under Section 13(6) of the said Act. Furthermore, we find from the examination-in-chief of the PW-1 that he has tendered photocopy of the notice, the registration receipt and the acknowledgement due card return. The moment the document is marked as exhibit without objection, the defendants/ appellants cannot turn around and contend that in absence of any proof of dispatch of the said notice, the Trial Court should not have arrived at the conclusion that the notice was served upon the defendants/appellants.

13. In such view of the matter, we do not find the contention raised by the defendants/appellants before us, involves a substantial question of law.
14. Therefore, the appeal being **SAT 208 of 2023** is **dismissed** under Order XLI Rule 11 of the Code of Civil Procedure. The connected application being **CAN 1 of 2023** also stands **dismissed**.

(Harish Tandon, J.)

(Maduresh Prasad, J.)

