



Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.296 OF 2017

Shri. Kadir Hussain Mhaldar

...Appellant

Versus

Shri. Anant Bal Pilvalkar & Ors.

...Respondents

Mr. Mahendra M. Agarekar for the Appellant.

Ms. Devashri G. Karandikar i/b Mr. Saurabh M. Railkar for
Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : JANUARY 10, 2024

P. C. :

1. Being dissatisfied with the Judgment of the First Appellate Court dated 18th September, 2015 the present Appeal has been preferred by the Original Defendant. The First Appellate Court has confirmed the findings of the Trial Court directing the Appellant herein i.e. Defendant No. 1 to put the Plaintiff and Defendant Nos. 2 to 6 in possession of the suit property and to pay an amount of Rs. 6,000/- towards damages.

2. Regular Civil Suit No. 15 of 2001 was filed by the Plaintiff seeking recovery of the possession of the suit property which was a house being Grampanchayat House No. 1134. The case of the Plaintiff was that, the

father of the Plaintiff had given a suit property to the Defendant in the year 1988 on monthly rent of Rs. 200/- per day for purpose of business and the tenancy of the Defendant commences from the first day of each calendar month and expires on the last day of the respective month. It was further contended that the suit property was inherited by the Plaintiff and the Defendant Nos. 2 to 6 and as they did not intend to continue with the tenancy, notice of termination was issued on 22nd November, 2000 to take effect from 31st December, 2000 and for recovery of rent of Rs. 6,000/- for 12 months.

3. The Defendant No. 1-tenant resisted the plaint. In the written statement the Defendant No. 1 has admitted the monthly rent of Rs. 500/-, however he has denied that he was the monthly tenant of the Plaintiff. He has further pleaded that the tenancy of the Defendant commences from first day of the each calendar month and expires on the last day of the respective month. The Defendant No. 1 challenged the validity of the notice to quit on the ground of the period of the notice. He further contended that in the suit property, he was carrying out manufacturing business and as such notice of six months was necessary to terminate his tenancy.

4. The admitted position is that , the Defendant No. 1 did not lead any evidence and the matter proceeded on the basis of the evidence led by

the Plaintiff. The Trial Court examined the validity of the notice dated 22nd November, 2000 and after consideration of various decisions, held that the lease in respect manufacturing process which is not on year to year basis and does not require six month's notice for termination. The Trial Court considered the admissions of the Defendant no. 1 in the written statement that the Defendant No. 1 is paying the monthly rent to the Plaintiff and that lease commences from the first day of each English calendar month and expires on last date of the respective month. Based on the evidence of the Plaintiff as well as the admissions of the Defendant, the Trial Court has held that the lease between the parties was monthly and therefore there was no question of six months notice period being given to the Defendant.

5. Against the order of the Trial Court, appeal came to be preferred by the Defendant No. 1. The Appellate Court considered the admitted position as regards the relationship of landlord and tenant. The Appellate Court held that the receipt of notice has not been denied and the only issue raised by the Defendant was as regards the validity of six months period for determining the tenancy. On the basis of the material on record, the Appellate Court confirmed the findings of the Trial Court and partly allowed the Appeal by setting aside the direction of payment of damages.

6. Heard Mr. Agarekar, learned counsel for the Appellant and Ms. Karandikar, learned counsel for the Respondents.

7. Learned counsel for the Appellant submits that the question which is involved in the present case is whether on the basis of the evidence which has come on record, the Trial Court and the Appellate Court were justified in considering the lease as a monthly lease.

8. It is not disputed that in the written statement, the Defendant No. 1 has admitted the monthly payment of rent of Rs. 500/- to the Plaintiff. He has further admitted that the tenancy commences from first day of each calendar month and expires on the last day of the respective month. The only reason, why the notice was challenged was that there was manufacturing process which was carried out in the suit property and as per the provisions of Section 106 of the Transfer of Property Act, 1882 a notice of six months was mandatory. It needs to be noted that the burden was upon the Defendant to prove firstly that, the tenancy was not a monthly tenancy and secondly, that any manufacturing process was being carried out in the suit property. The Plaintiffs by leading evidence has discharged the burden cast upon them. As the dispute was raised by the Defendant in the written statement as regards the validity of the notice the burden was upon the Defendant No. 1 to prove that the lease was for manufacturing purpose, which the Defendant has failed to prove. On the

contrary, what can be found from the finding of the Trial Court and the Appellate Court is a specific admission of the Defendant as regards the monthly lease executed between the parties.

9. The evidence produced by the Plaintiff has gone unchallenged as the Defendant No. 1 has not stepped in the witness box. The Appellate Court on the basis of the evidence has confirmed the findings of the Trial Court. The concurrent findings of fact by the Trial Court and the Appellate Court based on the evidence as well as the admissions of the Defendant No. 1 in the written statement, do not disclose any perversity. The Trial Court and the Appellate Court has properly appreciated the evidence on record. As such, there is no substantial question of law arising in the Second Appeal. Appeal stands dismissed.

(SHARMILA U. DESHMUKH, J.)