

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-1811-1991 (O&M)
Reserved on : 21.03.2024
Pronounced on: 02.04.2024
2024:PHHC: 044219

BABU LAL THROUGH HIS LR.s.

. . . . APPELLANT

Vs.

RAM LAL

. . . . RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued By:- Mr. Ajay Jain, Advocate
for the appellant.

Mr. J.S. Yadav, Advocate,
for the respondent.

DEEPAK GUPTA, J.

This Regular Second Appeal is directed against the concurrent finding of the Courts below, whereby suit filed by the plaintiff - Babu Lal (*now appellant through his LR.s*) seeking ejectment of the defendant - Ram Lal (*now respondent*) from the demised shop, was dismissed. To avoid confusion, parties shall be referred as per their status before the trial Court.

2.1 Admittedly, plaintiff-Babu Lal (now represented through his LR.s) is the owner of a shop detailed and described in the head note of the plaint, situated at Rewari Road, Narnaul, in which defendant-Ram Lal was inducted as a tenant vide a rent note dated 09.03.1978.

2.2 Suit for ejectment and recovery of arrears of rent was filed by plaintiff, pleading that construction of the shop was completed on 09.01.1978 after taking necessary permission from the Municipal Committee and so, the provisions of Rent Act were not applicable. Still further, it was pleaded that tenancy of defendant was terminated by serving a notice dated 03.10.1983

under Section 106 of the Transfer of Property Act, 1882 [hereinafter referred to as 'the Act'] w.e.f. 08.11.1983, but defendant failed to vacate the shop and thus, he was in unauthorized possession.

2.3 Defendant in his written statement did not dispute the rent note. However, as per him, shop in question was constructed in 1974-75 and so, pleaded that provisions of Rent Act were applicable. He also pleaded that legal notice under Section 106 of the Act was defective and prayed for dismissal of the suit.

2.4 Necessary issues were framed. Evidence produced by the parties were taken on record. Trial Court came to the conclusion that shop in question was constructed within 10 years prior to the date of letting of the same to the defendant vide rent note dated 09.03.1978 and therefore, provisions of Rent Act were not applicable. It was further found that legal notice dated 03.10.1983 was defective and thus, tenancy of the defendant had not been legally terminated. With these findings, suit for ejectment was dismissed, although the relief for recovery of the arrears was granted. Judgment dated 04.05.1989 to this effect was followed by decree of the even date. These findings as returned by the trial Court were upheld by the Appellate Court vide judgment dated 18.07.1991 and as such, the appeal filed by the plaintiff was dismissed.

3.1 The short and precise question as raised before this Court is regarding the legality of the legal notice. It is contended by ld. counsel for the appellant that strict compliance of Section 106 of Transfer of Property Act, are not applicable in the State of Haryana and that it is only the principle, which is applicable. The Courts below while giving finding regarding the legality of notice Ex.P5/1 has not taken into consideration this aspect and that

the appellant was required to serve a 15 days clear notice to the respondent, which was duly complied with in the present case.

3.2 Ld. counsel has referred to decisions of this Court rendered in ***“State Bank of Patiala Vs. Joint Hindu Family Firm Inder Sain Nanak Chand”*** [Civil Misc. 3081-C of 1991, decided on 10.12.1993], ***“Harikesh Vs. Smt. Narain Devi (Widow) and others”*** [RSA No.3494 of 2007, decided on 10.12.2009] and ***“Smt. Gurkanwal Virk Vs. M/s Anand Sweets and Restaurant and another”*** [RSA No.910 of 2013, decided on 20.10.2015].

4. On the other hand, ld. counsel for the respondent argued that Courts below have rightly held the notice under Section 106 of the Act to be invalid.

5. Submissions considered. Record perused.

6. Ld. trial Court by placing reliance on ***“Durga Parshad Vs. Bhagwan Devi”***, AIR 1967 Punjab 404 held that notice of termination of tenancy must be served by the landlord to the tenant requiring the tenant to vacate the premises under his tenancy before the commencement of a fresh month. By holding that in the present case, no period was fixed for tenancy of the defendant and thus, there was no date of commencement of the tenancy and so, it was to be presumed that the tenancy commenced from the first date of the month and ended on the last date of the subsequent month and looking to the said facts, notice Ex.PW5/A dated 03.10.1983 was defective, as the plaintiff should have terminated the tenancy w.e.f. mid-night of 31.10.1983 i.e. before the commencement of the fresh month and as the tenancy was directed to be terminated on 08.11.1983, notice was not valid. The said finding was upheld by the First Appellate Court by holding that tenancy was a monthly tenancy and 15 days clear notice was not given from the date of

expiry of the month in which the notice was given.

7. Both the Courts below have clearly fallen in error. It has been held by this Court in the case of *State Bank of Patiala (supra)* that it is only the general principles of the Transfer of Property Act, which are applicable in the State of Haryana and once a period of more than 15 days have been provided to the tenant in the notice, the same was reasonable because in the State of Haryana, a notice under Section 106 of the Act need not necessarily terminate strictly with the end of the month of the tenancy. Similar view had been earlier taken by this Court in “*Charanjit Lal Vs. Narain Singh*”, 1972 *Current Law Journal* 511 by holding that it was undisputed that the provisions of Section 106 of the Act are not applicable to Punjab (at the relevant time the area now in Haryana was included in the erstwhile State of Punjab), although the principles of said section have been generally applied.

8. Reiterating the aforesaid view, it was held by this Court in the case of *Harikesh (Supra)* that once the building was exempted from provisions of the Rent Act being a newly constructed building and the civil suit for eviction of the tenant was filed, notice to quit under Section 106 of the Transfer of Property Act was not even required to be given and that filing of an eviction suit under general law in itself is a notice to quit on the tenant. This Court relied upon a decision rendered in “*Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF)*”, 2008(1) RCR (Civil) 270, wherein Hon’ble Supreme Court held as under: -

“In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act, in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision

of this Court in **V. Dhanapal Chettiar v. Yesodai Ammal, 1979(2) RCR (Rent) 352: AIR 1979 Supreme Court 1745.**”

9. In another case titled ***Bhagabandas Agarwalla v. Bhagwandas Kanu and others***, AIR 1977 Supreme Court 1120, it has been held as under:-

“Now it is settled law that a notice of quit must be construed not with a desire to find faults in it, which would render it defective, but it must be construed but *resmagis valeat quam pereat*. The validity of a notice to quit, as pointed out by the Lord Justice Lindley, L.J in **Side botham v. Holland, (1895) 1 QB 378** “ought not to turn on the splitting of a straw”. It must not be read in a hyper-critical manner, nor must its interpretation be affected by pedagogic pendantism or over refined subtlety, but it must be construed in a common sense way. See **Hariahar Banerji v. Ramsashi Roy, (1918) 45. Ind App 222: (AIR 1918 Privy Council 102)**. The notice to quit in the present case must be judged for its validity in the light of this well recognised principle of interpretation”.

10. This Court reiterated same legal position in the case of ***Smt. Gurkanwal Virk (Supra)***, in which it was held as under: -

“In view of aforesaid, the legal propositions as formulated in the appeal have to hold that provisions of Section 106 of the Act is only meant to show intention of the landlord to evict the tenant during currency of period of 10 years of construction. Secondly, issuance of notice under Section 106 of the Act is not sine qua non for filing such a suit. Filing of suit itself is a notice to quit to the tenant. Thirdly, the terms and conditions of the lease agreement have nothing to say once remedy of public law is being resorted to. Special Act could have precedence over general law, in the event of expiry of period of 10 years, but once remedy of general law is resorted to, protection to the tenant in terms of Rent Act is not applicable. Fourthly, even in the notice under Section 106 of the Act, the same cannot be assailed on fact finding mechanism, therefore, issuance of 15 days notice and not in terms of recital of the lease deed for giving three months notice become totally redundant in general law.”

11. In view of the settled legal position as above, it is held that as and when, eviction suit is filed under the general law in the State of Haryana, this in itself is a notice to quit. No prior notice under Section 106 of the Act to

quit is required to be given in order to get a decree of eviction against the tenant.

12. It will also not be out of place to mention that in the present case, though the notice was served on 03.10.1983 terminating the tenancy w.e.f. 08.11.1983, the suit was filed almost after another two years i.e. on 01.10.1985 and thus, more than sufficient time had been given to the defendant-respondent so as to vacate the premises. As such, the finding of the Courts below on the issue relating to the validity of the notice regarding termination of tenancy, is hereby set aside. It is held that filing of the suit in itself was a notice to quit to the defendant-tenant.

13. Consequently, the present appeal is hereby allowed. The judgments of the Courts below are hereby set aside. Suit filed by the appellant-plaintiff is hereby decreed. Decree for possession of the shop in question is hereby passed in favour of the appellant-plaintiff and against the defendant-respondent.

14. This Court also notices that the suit was filed way back in October 1985. Tenancy had already been terminated in October, 1983. We are presently in 2024. Thus, despite being the owner, the plaintiff has not been able to reap the fruits of his shop. Unfortunately, during the pendency of this appeal, he has already expired and as such, his LRs should not be now deprived further to reap the fruits of the decree without any further delay.

15. Accordingly, respondent-defendant, who has already enjoyed the unauthorized possession of the demised shop for more than 40 years, is hereby directed to vacate the shop in question forthwith or at the most by 30.04.2024. In case, the appellant/plaintiff is compelled to file application for

execution of this decree, so as to seek possession of the shop through the process of the Court due to non-vacation of same by the defendant/respondent up to 30.04.2024, then defendant-respondent will be liable to pay an amount of ₹5000/- per day w.e.f. 01.05.2024 onwards, till the possession is actually delivered to the appellant-plaintiff through his LRs. Decree Sheet be prepared accordingly.

Pending application(s), if any, also stand disposed of.

02.04.2024
Vivek

Whether speaking/reasoned?
Whether reportable?

Yes
Yes

(DEEPAK GUPTA)
JUDGE