

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
(Via Video Conference)

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

And

The Hon'ble Justice Md. Shabbar Rashidi

FAT/18/2019

RUKMANI DEVI AGARWAL & ORS.

VS.

RAHUL GUPTA & ORS.

For the appellants : Mr. Rajat Das,
Ms. Srijana Thapa

For the defendants : Mr. Debayan Das,
Mr. Vatsal Verma

Reserved on : 10.07.2025

Judgment on : 04.09.2025

Ravi Krishan Kapur, J.:

1. This is an appeal against a judgement and decree dated 31 August, 2019 passed by the Civil Judge (Senior Division), Darjeeling dismissing O.C. Eviction Suit No. 23 of 2015.
2. The original plaintiff Khubram Agarwal (since deceased) being the predecessor-in-interest of the appellant was the owner of a shoproom measuring approximately 600 sq.ft. situated on the ground floor of a three-storied building being part of Holding No. 3 in Ward No. 15 of Darjeeling Municipality morefully described in the schedule to the plaint. During his lifetime, Late Khubram Agarwal had inducted one Ram Chand Gupta (since deceased) as a tenant of the suit premises who began running a cafeteria under the name and style of Beni's Cafe.

3. Originally, the predecessor-in-interest of both the plaintiff/appellant and the defendant entered into an agreement dated 1st July, 2006. Under the terms of the agreement as on 1 July, 2006, the last paid rent was Rs.5,170/- per month.
4. Despite expiry of the agreement dated 1st July, 2006, the original defendant continued to unlawfully and illegally retain the suit premises. In such circumstances, the original plaintiff issued a legal notice dated 1 June 2015, under section 6(4) of the West Bengal Premises Tenancy Act, 1997 seeking eviction of the original defendant *inter-alia* on the grounds of default in payment of rent, reasonable requirement and nuisance caused at the suit premises.
5. On behalf of the defendants, it is contended that the suit is not maintainable since the provisions of the West Bengal Premises Tenancy Act, 1997 are inapplicable. The admitted rent in respect of the suit premises was in excess of the ceiling limit i.e. Rs.5,000/- in respect of premises situated outside the limits of the Kolkata Municipal Corporation. The defendant further disputed the grounds of reasonable requirement, negligence, nuisance or any other ground for eviction.
6. Upon filing of the suit, the following issues were framed by the Trial Court:
 - i. Whether the suit is maintainable in its present form and law?
 - ii. Whether the plaintiff has any cause of action to initiate the instant suit?
 - iii. Whether the defendant has defaulted in the payment of rent?

- iv. Whether the plaintiff reasonably required the suit premises?
 - v. Whether the defendant has committed any nuisance in the suit premises?
 - vi. Whether the plaintiff is entitled to get the relief he has sought for?
 - vii. Whether the plaintiff is entitled to get any other relief/reliefs under the law?
7. The original plaintiff no. 1 was the sole witness on his behalf. On behalf of the defendant, Siddharth Gupta, son of the original defendant had deposed. The defendant admitted in its examination-in-chief that he had received two notices on 10 March 2014 and 1 June 2015 respectively. However, both notices were bad. The plaintiff *inter alia* relied on the tenancy agreement dated 1st July, 2006, rent receipts, notice dated 1 June, 2015 to prove its case for eviction.
8. By the impugned judgment and decree, the Learned Trial Court dismissed the suit on the ground of maintainability and held that in view of the exemption under Section 3(f)(ii) of the West Bengal Premises Tenancy Act, 1997, the suit was not maintainable. As a consequence, all other issues were held against the appellant.
9. On behalf of the appellant it is contended that, the impugned judgment and decree is liable to be set aside and a decree for eviction be passed against the defendants. It is contended that, there is no dispute that the defendants had received the notice dated 1 June, 2015 directing them to vacate the suit premises. The period of 15 days having long expired, the defendants had sufficient knowledge of the termination. In any event, filing of the suit is equivalent, to a notice

under section 106 of the Act. As such, it would be technical and unreasonable to direct the plaintiff to institute a fresh suit after serving a notice under section 106 of the Transfer of Property Act, 1882.

10. On behalf of the defendants, it is contended that the suit as framed was misconceived and not maintainable. There was no question of the Trial Court having any power to direct eviction under the Transfer of Property Act, 1882. The pre-conditions not having been complied with, the suit was justifiably dismissed and there are no grounds to interfere with the impugned decree.
11. By the impugned judgment and decree, the Trial Court held that the provisions of the West Bengal Premises Tenancy Act, 1997 were inapplicable and the suit premises fell outside the scope and ambit of the West Bengal Premises Tenancy Act 1997. Thus, the requirement for determination of the lease under the Transfer of Property Act, 1882 requiring service of a notice of 15 days inter alia terminating the relationship of landlord and tenant had not been complied with. In such circumstances, the suit was not maintainable.
12. For convenience, section 3(f)(ii) of the West Bengal Premises Tenancy Act, 1997 is as follows:

3. Nothing contained in this Act shall apply to—

(f) any premises let out for non-residential purpose, which carries more than—

(i) [ten thousand rupees] [Words substituted for the words ‘three thousand rupees’ by West Bengal Act 14 of 2002, w.e.f. 10.07.2001] as monthly rent in the areas included within the limits of the Calcutta Municipal Corporation or the Howrah Municipal Corporation, or

(ii) [five thousand rupees] words substituted for the words 'one thousand and five hundred rupees' by West Bengal Act 14 of 2002, w.e.f. 10.07.2001] as monthly rent in other areas to which this Act extends.

(Explanation.—Where any premises is let out partly for residential purpose and partly for non-residential purpose, the provisions of clause (f) shall apply to such premises in proportion to respective areas.

13. In this context, section 106 of the Transfer of Property Act 1882 provides 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; 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. (2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice. (3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section. (4) Every notice under sub-section (1) 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.

14. A notice to quit under section 106 of the Transfer of Property Act, 1882 is a technical requirement. It only provides a mode of procedure for getting relief in respect of a cause of action and does not constitute the relief itself. The purpose behind a notice under section 106 being that (i) it must give clear 15 days of time for the tenant to vacate and (ii) the notice must expire with the end of the month of the tenancy. The object of such a notice is also fulfilled in the form of a suit for

possession so long as eviction is followed beyond a period of 15 days. In such event, the requirements of section 106 of the Act stand satisfied. The rationale of the section being to convey an unequivocal intention of the landlord that the landlord intends to terminate the lease or tenancy and demands the tenant to quit the same. [*Dharam Pal v. Harbans Singh*, (2006) 9 SCC 216 @ para 6 and *Sevoke Properties Ltd. v. W.B. State Electricity Distribution Co. Ltd.* (2020) 11 SCC 782].

15. Incidentally, the Law Commission of India in its 181st Report on “Amendment to section 106 of the Transfer of Property Act, 1882” had observed “*that the purpose of the provision in section 106 is to terminate the relationship of lessor and lessee before the lessor sues for possession. He has no right of entry till the tenancy is disrupted. Further, the idea is that every lessee must have some reasonable notice before he is asked to vacate the premises. If this was the purpose behind section 106, but in fact, the lessee had notice, by the date of suit or the date of dismissal of suit years later, more than the period specified, in the statute, it is nothing but injustice to the lessor if he is compelled to file a fresh suit. Any procedure that leads to multiplicity of Court cases ought to be avoided*”. In this background, serving a fresh notice and filing of a fresh suit not only amounts to serious injustice, but also to multiplicity of litigation notwithstanding the fact that the defendant has had more time available to him than the prescribed period of notice by the time the decree is passed.

16. In addition, it is well settled that filing an eviction suit under the general law itself is a notice to quit on the tenant and satisfies the requirements under section 106 of the Transfer of Property Act, 1882. [*V. Dhanapal Chettiar vs. Yesodai Ammal* (1979) 4 SCC 214 @ paras 18 and 19, *Nopany Investments (P) Ltd. v. Santokh Singh (HUF)* (2008) 2 SCC 728 @ para 22, *Pal Singh v. Sunder Singh* (1989) 1 SCC 444 and *Krishnadeo Narayan Aggarwal v. Ram Krishan Rai* (1982) 3 SCC 230].
17. This suit was filed in 2015 and ultimately dismissed in 2025. During the pendency of the suit the original plaintiff had expired. Admittedly, a notice of eviction albeit under the West Bengal Premises Tenancy Act, 1997 had been duly served on the defendants. The defendants had filed their written statement admitting receipt of the said notice. The defendants have had ample notice of termination of the relationship between the landlord and tenant. The defendants were examined and cross-examined on this aspect of the matter. A specific suggestion was also made during the cross-examination of the defendant no.1 to the effect that the tenancy was not governed by the West Bengal Premises Tenancy Act and the same was inapplicable. In passing, the impugned judgment, the Learned Judge has not even dealt with this aspect of the matter.
18. Significantly, insofar as payment of outstanding rental arrears or occupational charges are concerned, it is alleged on behalf of the appellant that a sum of in excess of Rs.17,25,277 remains due and payable by the defendants. It was further alleged by the appellant that dues have not been paid from April 2016 to July 2025. On the other

hand, the chart submitted by the defendants disclosed that even the admitted monthly rental amount of Rs.5170/- had not been deposited since October 2019. There are a catena of decisions in support of the contention that upon expiry or termination of a tenancy a landlord is entitled to compensation and mesne profits at the prevalent market rate. In such circumstances, the defendants continue to exploit the suit premises for non-residential purposes which is located in the heart of Darjeeling whereas the plaintiff landlord receives no rent. [*Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. (2005) 1 SCC 705* and *Bijay Kumar Manish Kumar (HUF) v. Ashwin Bhanulal Desai (2024) 8 SCC 668*].

19. It has been repeatedly reiterated that false claims and defences are in serious problems with real estate litigation. This primarily has to do with the ever escalating prices of real estate. Litigation pertaining to valuable property is deliberately dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately settle the dispute after paying a huge amount. [*Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira (2012) 5 SCC 370*].
20. Even on the touchstone of common sense, there is nothing which the defendants have been able to demonstrate justifying not granting a decree for eviction. The pre-requirements for a decree of eviction are admitted and satisfied. The defendants have been unable to demonstrate or semblance of a legal right to remain in possession. There are huge outstanding arrears in respect of the said premises,

and the defendants seek an unnecessary and prolonged trial which would conservatively take at least another decade if not more.

21. In *E.D. Enterprises Private Ltd. vs. Kaiser Begum and Another* 2022 SCC OnLine 4428 approved by the Hon'ble Division Bench, this Court *inter-alia* held as follows:

20. *In my view notions of social welfare, public good, rack-renting, public interest and shortage of accommodation can no longer be the yardstick on which such matters ought to be decided. Time plays an important role in reading any judgment. Land is no longer scarce. The prices have also escalated. The modern day tenant or at least a section of them appreciates the value of possession. The systemic delays in the final disposal of such suits adds to the woes of the owner landlord and is a reality. Security guards, caretakers and corner shops have thrived and continue to make a mockery of justice. The extortionate and unreasonable demand made by tenants or at least a section of them to be compensated in terms of the market value prior to vacating the suit premises is a notorious fact. The more benevolent tenant ask for a right to joint development of the suit premises with an indefeasible right to own the penthouse in the proposed development. No sensible law can encourage or contribute to such conduct.*

22. In such circumstances, directing the appellant to file a fresh suit after issuing a notice under section 106 of the Transfer of Property Act, 1882 would amount to a travesty of justice. The parties have been litigating for more than 10 years. On a perusal of the materials on record, it is an incontrovertible fact that the defendants had sufficient notice of terminating the relationship between landlord and tenant as on July 2015 and for the defendants to quit and vacate the suit premises. The relationship between the plaintiff landlord and the tenant defendants is admitted. All the ingredients for granting a decree in a suit for eviction filed under the Transfer of Property Act, 1882 are admitted and uncontroverted. There is neither any statutory

nor contractual protection which the defendants can possibly claim. This aspect of the matter had not even been adverted to in the impugned judgment and decree and this is a serious infirmity.

23. In view of the above, the impugned judgment and decree is unsustainable and is set aside. FAT/18/2019 stands allowed. To this extent, the suit stands decreed. There shall be a decree in terms of prayer (a) of the plaint. The defendants are directed to vacate the suit premises within a month from the date of this order. Liberty is granted to the appellant to take necessary steps for recovery of the outstanding occupational charges after giving due credit for any payments made by the defendants including payments made in terms of the order dated 10 July 2025, if any.

I agree,

(Md. Shabbar Rashidi, J.)

(Ravi Krishan Kapur, J.)