IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

S.A. 15 of 2024

Jagannath Hazra & Ors.

VERSUS

Monoranjan Santra & Ors.

For the appellants:	Mr. Rahul Karmakar, Adv. Mr. Navneet Mishra, Adv.
For the respondent No. 1:	Mr. Partha Pratim Roy, Adv. Mr. Sayantan Hazra, Adv.

Last Heard on: February 03, 2026

Judgment on: May 15, 2026

Biswaroop Chowdhury, J:

The Appellant before this Court was a respondent in a Title Appeal before the First Appellate Court and is aggrieved by the Judgment dated 29th January 2021 passed by Learned Civil Judge Senior Division Ghatal Paschim Medinipur in Title Appeal No-02 of 2019 where the Learned Judge affirmed the Judgment and Decree passed in Title Suit No-61 of 2005 by Learned Civil Judge Junior Division Ghatal.

The case of the respondent/plaintiff before the Learned Trial Court may be summed up thus;

The Suit Land being plot No. 185 measuring 22 decimals of Land belonged to Panchkari Dutta, Anil Mitra, Sunil Mitra, and Sudhir Mitra in equal shares. After the demise of Panchkari Dutta his 4 annas share was inherited by his wife two sons, namely Balai Dutta Samarendu Dutta and three daughters namely Gita Rani Dutta, Sabita Ray and Anita Rani Sarkar, and after the demise of his sons and daughters inherited his 4 annas share equally. During life time of Panchkari Dutta, he constructed 7 'Chittabera' houses with common shed and common wall upto his 5 1/2 decimals of land and he used to possess the above said houses by inducting monthly tenants. After his demise his two sons and three daughters namely Balai Dutta, Sabita Ray and Anita Rani Sarkar used to possess the said 'chittebera' houses conveyed to the plaintiff by a registered sale deed dated 02.08.02. Subsequently, the plaintiff also purchased another 9 5/6 decimals of land in plot No. 185 from different persons through sale deeds. As such the plaintiff became the owner of 15 1/3 decimals of land in Plot No. 185. After purchasing, he also became the owner and occupier of 5 ½ decimals of Land in Plot No-185 along with 7 'chittebera' houses. It is further contended by the plaintiff that the original defendant, Haradhan @ Haze Hazra was inducted as a tenant in respect of the 'Ka' schedule premises at a monthly rental of Rs. 50/- by the previous owners Balai Dutta Arendu Dutta, Gita Rani Dutta, Sabita Roy and Anita Rani Sarkar. After purchasing the original defendant became the monthly tenant under the plaintiff in respect of 'Ka' schedule premises.

It is also contended by the plaintiff/respondent that the defendant is a habitual defaulter in making payment of rents and has defaulted paying rents to the plaintiff since 'Aswin' 1412 B.S. The defendant used to run a sweet shop in the suit premises and due to smoke the suit premises got damaged. Now the suit premises is reasonably required by the plaintiff for his personal use. Hence the plaintiff/respondent requested the defendant/appellant to quit and vacate the suit premises but the defendant refused to do the same. The plaintiff thereafter sent a notice of eviction through his Learned Advocate asking the defendant to quit and vacate the suit premises Defendant refused to accept the said notice and the same was returned with endorsement 'refused' on the registered envelope. As the defendant failed to vacate the suit premises, the instant suit was filed.

The defendants/appellants contested the suit by filing written statement denying the allegations made therein.

It is contended by the defendants that the suit is vague and the plaintiff has no cause of action.

It is further contended that the original defendant requested the previous owners, Balai Dutta Samarendu Dutta, Gita Rani Dutta, Sabita Ray and Anita Rani Sarkar for permitting him to construct a house upon the vacant portion of their properties to run a sweet shop. They permitted him to construct a house on condition that he would possess the 'Ka' schedule premises as a monthly tenant under them at a monthly rent of Rs. 50/-.

It is also contended that the defendants are not a habitual defaulter in payment of rent in respect of the suit premises. The defendants contend that their father, Haradhan @ Haru Hazra did not refuse to accept the notice of eviction on 25-07-06 as the same was not rendered to him by the postal peon as their father Haradhan @ Haru Hazra, was not present in the suit premises but he has gone to his father in law's house and he was there till Srabon, 1413 B.S. The defendants prayed for dismissal of the suit.

Upon considering the pleadings of the parties the following issues were framed.

1) Whether the suit is maintainable as per law and as per Section 106 of T.P. Act?
2) Is the plaintiff owner of the suit premises?
3) Has the defendant defaulted in making payment of rent since 'Aswin' 1412 B.S.?
4) Whether a notice of eviction is served upon the defendant? If so was it valid legal and sufficient?
5) Is the plaintiff entitled to get the decree as prayed for?
6) To what other relief the plaintiff is entitled to get?

Upon considering the evidence and upon hearing the parties the Learned Trial Judge was pleased to decide all the issues in favour of the plaintiffs/respondents and pass a decree of eviction in favour of the plaintiffs by observing and directing as follows:

'In view of above mentioned discussions I think plaintiff is entitled to get a decree of eviction of the defendants from the suit premises. But when notice to quit is served upon a tenant and he continues in possession then I think he is not a person in wrongful possession of the suit premises, unless a decree of eviction is passed against him and he remains in possession in spite of such decree. In my opinion plaintiff is not entitled to get any decree of mesne profit at this stage.

The Suit succeeds in part.

Court fees paid are found to be correct.

Hence it is ORDERED.

That the suit be and the same is decreed on contest in part against the defendants without any cost.

Plaintiff do hereby get a decree of ejectment of the defendants from the suit premises.

Defendants are directed to quit and vacate the suit premises as described in the schedule of the, plaint within 90 days from passing of this order failing which plaintiff will be at liberty to execute the same as per law.'

The defendants/appellants being aggrieved by the Judgment passed by the Learned Trial Court preferred an appeal. By Judgment dated 29/01/2021 Learned Civil Judge (Senior Division) Ghatal Paschim Medinipur was pleased to dispose the appeal being Title Appeal No-2 of 2019 by observing and directing as follows:

'Hence it is 'ORDERED' that the appeal be and the same is dismissed on contest against the respondent no. 1 and ex parte against the rest proforma respondents without cost. The judgment and decree passed by the Court of Ld. Sub-Divisional Civil Judge (Jr. Divine) Ghatal in T.S. no. 61 of 2006. is hereby upheld and affirmed.'

The appellants are directed to abide by such decree within a period of 60 days from this date Id. The security deposit be forfeited and paid to the principal respondent no. 1 herein and the respondent no. 1 shall also be at liberty to enforce execution through process of Law.'

The appellants/defendants being aggrieved by the Judgment passed by the first appellate Court has come up with the instant 2nd Appeal.

By Order dated 22-06-2022 the Hon'ble Division Bench admitted this appeal and framed the following question of law:

'Whether the Learned Courts below applied the proper legal test in determining whether the notice under Section 106 of the Transfer of Property Act 1882 was properly served by the respondents upon the appellants?'

Upon hearing the Learned Advocates the following additional ground was also framed:

1(a) Whether notice issued by the plaintiff/respondent upon the defendant appellant to vacate is a bad notice considering the provisions of Section 106 of the Transfer of Property Act?

Heard Learned Advocates for the parties perused the materials on record.

Learned Advocate for the appellant submits that it is the plaint case that the appellant is operating a sweet meet shop from the premises. It is also the case in the plaint that the plaintiffs had purchased the suit property along with the 7 existing shop rooms. Further the entire plaint case is based on presumption that the notice under Section 106 of the Transfer of property Act 1882 was deemed to be served as the same was posted to a known and valid address of the respondent which returned with an endorsement refused.

Learned Advocate further submits that in paragraph 15 and 21 of the written statement it had been categorically stated that the notice under Section 106 of the Transfer of Property Act 1882 was never tendered to the appellant and that the entire endorsement of refusal was caused to be done by the postal peon with the plaintiff in connivance with each other. It is further case in paragraph No. 18 that about 40 years prior to the filing of the written statement, the vacant land was taken on lease by the appellant from the predecessor in interest of the plaintiffs for operating a sweet meat shop. Since such demise of the suit property the shops were constructed at the cost of the appellant for operating the sweet meat shop. Till date the same is operational.

Learned Advocate also submits that the plaintiff in his affidavit in chief paragraph 30 and 34 has categorically said that the defendant operates a sweet meat shop and sweet is manufactured therefrom. On the contrary one of the ground in the plaint is the nuisance created by smoke from the said sweet meat shop.

Learned Advocate submits that the word manufacture means a process of making any material with hand or otherwise from raw materials giving it a new form and properties distinct from that of the raw materials. Learned Advocate refers to Blacks Law Dictionary 6th Edition. It is further submitted that in the present case raw materials are costly milk sugar, refined flower as white flour etc. whereas the final products are colloquially known as sandesh, rasogalla etc. admittedly different from its raw materials. Thus operating a sweat meat shop can be said to be operating a manufacturing unit. It is also submitted that Schedule V Serial number 23 of the Kolkata Municipal Corporation Act 1980 also recognise sweetmeat to a manufactured product.

It is submitted that Section 106(1) of the Transfer of property Act 1882 requires the plaintiff to issue a notice of 6 months for agricultural and manufacturing tenancies. In the present case notice was dated July 24, 2006 and the suit was filed on August 28,2006. Thus the eviction suit must fail on this score.

Learned Advocate relies upon the following Judicial decisions.

Adamdas VS Anant Ramchandra Phadke.

Reported in 1982(1) SCC. P.27.

Jayanti Hosiery Mills and anr.

Reported in 1946 SCC Online. Cal-28.

Learned Advocate for the respondents/plaintiffs submits that appellants/defendant's plea that no notice determining his tenancies were issued by the plaintiff and that the endorsement of refusal is made in collusion with the postal peon cannot be sustained. Learned Advocate further submits that the plaintiff has discharged his said obligation by proving the postal receipts under which the said notices were sent to the appellant/defendant by registered post which is sufficient to draw the presumption of due service under Section 28 of the Bengal General Clauses Act 1899. Under the said circumstances, the nature of postal endorsement on the returned envelope containing the said notice has little relevance to decide the issue of valid service of the said notices upon the appellant/defendant. Learned Advocate also submits that the plaintiff examined the postal peon who went to deliver the envelop containing eviction notice as P.W. 2 peon and the post Master of the concerned post office P.W. 3 and P.W. 2 deposed that letter to the defendant was tendered and refused. There is no question in cross examination put with regard to tendering of such letter.

It is submitted that the plaintiff discharged his onus by proving that the said notices were sent to the appellant by Registered Post But the defendant/appellant failed to prove the specific case of defence by adducing cogent evidence that the notice was never tendered to the defendant and not putting material question at the time of cross examination regarding the tender of notice which amounts to admission.

Learned Advocate with regard to the issue that the suit property is used for manufacturing purpose submits that from the pleadings in the written statement nowhere it appears that the tenancy was for manufacturing purpose.

Learned Advocate further submits that there can be no doubt that the tenancy was for selling of sweets from the suit property and that being so, it was not solely for manufacturing purpose but as much for other purposes as well and the defendant has failed to prove that the tenancy of the defendant is exclusively for manufacturing purpose specifically when the defendant in his written statement admitted that the suit property is used for selling 'Sweet meat'.

Learned Advocate also submits that whatever the meaning of the word 'manufacture' may be the lease in question was at least as much for sale of sweets as for preparing the same in the disputed premises. That being so it was not solely for manufacturing purposes but was as much for other purposes as well. It was therefore a lease for 'any other purpose' within the meaning of Section 106 of the Transfer of Property Act 1822.

Learned Advocate relies upon the following Judicial decisions:

Madhavan Nair VS Bhaskar Pillai (Dead).

Reported in 2003 (SC) 1413.

Employers in Relation to Management of Calcutta Telephones VS Presiding Officer Central Government Industrial Tribunal.

Reported in 2018. 4LCJ-418.

Brahmananda Das VS Nagendra Chandra Sarkar

Reported in AIR-1954 Cal. 224.

Stecart and Co. Ltd. VS C. Mackertch.

Reported in AIR-1963 Cal-198.

Union of India VS Ibrahim Uddin and Anr.

Reported in Supreme Today AI. P-35.

Now with regard to the first question of Law framed whether the Learned Courts below applied the proper legal test in determining whether the notice under Section 106 of the Transfer of Property Act 1882 was properly served by the respondents upon the appellants it is necessary to consider the concurrent findings of both the Learned Trial Court and Learned Appellate Court.

Upon perusal of the findings of Learned Trial Court it appears that the Learned Court upon considering the evidence adduced and the documents

Exhibit 11, and 14 and considering the decision of Hon'ble Supreme Court in the case of M/S. Madan and Co. VS Warir Javir Chand reported in AIR-1989 SC. Came to the conclusion that notice was duly served upon the defendant/lessee. Although Learned Courts did not address themselves to the evidence of P.W. 2 postal peon and P.W. 3 postmaster to discard the plea of collusion but that does not change the legal position. In most of the cases where question arises with regard to service of termination notice of lease upon the lessee, and the registered envelop returns with the remark refused on the envelop a plea is taken by the lessee that there is collusion between the lessor and the postal peon. Although non-examination of postal peon may not be fatal in all cases but where the lessor examines the postal peon and nothing comes out from the evidence about collusion the plea of collusion raised by the lessee may be safely discarded by the Court and refusal may be accepted as good service.

In the instant case the plaintiff/Lessor has examined the postal peon and post master and no evidence has come that there was collusion between plaintiff Lessor and the postal peon. Thus the plea of collusion raised by the Defendant/Lessee goes. Both the Learned Courts upon considering the facts and relevant provisions of law came to concurrent findings that the notice of termination of lease is duly served upon the Lessee/defendant. Such concurrent findings cannot be disturbed.

Now with regard to the plea that the Lease-hold property was used for manufacturing purpose it is necessary to consider the provision contained in Section 106 of the Transfer of Property Act 1882.

Section 106 of Transfer of Property Act provides as follows:

106. Duration of certain lease 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 immoveable 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 immoveable 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 be 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.

Transitory provisions- The provisions of Section 106 of the principal Act as amended by Section 2 shall apply to-

a) All notices in pursuance of which any suit or proceeding is pending at the commencement of this Act; and
b) All notices which have been issued before the commencement of this Act but where no suit or proceeding has been filed before such commencement.

Thus it is clear that where the lease is for agricultural or manufacturing purpose it can be terminated by six months notice on part of either lessor or lessee.

It is the argument of the defendants/appellants who are the lessees of suit property that the lease was for manufacturing purpose thus notice issued by the plaintiff/Lessor giving less than six months notice is bad in law.

Now from the written statement no where it appears that the defendant stated specifically that the lease was for manufacturing purpose, and the notice of termination of lease is bad in law as the period mentioned in the notice was less than six months. Hence no issue was framed in this regard and consequently no evidence was adduced.

In the case of Idandas VS Anant Ramchandra Phadke (supra) relied upon by the defendants/appellants the Hon'ble Supreme Court observed as follows:

11. 'In the instant case what happened was that wheat was transformed by the manufacturing process which involved both labour and machinery into flour. The commodity before manufacture was wheat which could not be consumed by any human being but would be used only for cattles or medicines or other similar purposes. The end product would be flour which was fit for human consumption and is used by all persons and its complexion has been completely changed. The name of the commodity after the product came into existence is atta and, not gehum (wheat). Thus in the instant case all three tests have been fully satisfied. This being the position the irresistible inference and the inescapable conclusion would be that the present lease was for manufacturing purposes. In this view of the matter the notice of one month must be held to be invalid and suit of ejectment should have failed on that ground.'

In the case of Joyanti Hosiery Mills and anr VS Upendra Chandra Das and anr (supra) Hon'ble Division Bench of this Court observed as follows:

'5. So far as the hosiery manufacture is concerned, undoubtedly activities have got to be made from raw cotton as it is picked up from the bush. From the cotton certain yarn or sheets are prepared and they are Knitted into hosiery goods. It is immaterial that the yarn is not produced in the premises in suit. It is enough to make the house a manufacturing house if knitting and cutting operations are done through in this premises and that is an essential part of the manufacturing business. We are therefore of the opinion that the lease was really taken for manufacturing purposes and consequently it must be deemed to be a lease from year to year terminable by six months notice expiring with the end of the year of the tenancy. As the ground that the suit premises was used for manufacturing purpose was not pleaded in the written statement how far such plea can be considered at the second appeal stage can be gathered from the observation of the Hon'ble Supreme Court in the case of Madharin Nair VS Bhaskar Pillai (Dead) by LRS reported in 2005 10 SCC-P553. The Hon'ble Court in the said case observed as follows:

'32. The law on the point is very well settled that without pleading a party cannot be allowed to agitate any point as the same would amount to springing a surprise to the other party particularly when by the petitioner in the Tribunal.'

In the case of Shankar Chakravorti VS Britannia Biscuit Company and Another (1979) 2LLJ. 194, the Supreme Court observed that it is well settled that an allegation which is not pleaded even if there is evidence in support of it cannot be examined because the other side has no notice of it and if entertained it would tantamount to grant an unfair advantage to the first mentioned part. The Supreme Court further observed that the rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny the relief to the opposite side has to be specifically pleaded and then proved, but there is no question of proving something which is not pleaded.'

In the case of Union of India VS Ibrahim Uddin and Anr reported in 2012 (8) SCC-148. The Hon'ble Supreme Court observed as follows:

'62. This Court while dealing with an issue in Kalyan Singh Chauhan V CP Joshi. AIR-2011 SC. 1127, after placing reliance on a very large number of its earlier judgments including Messrs. Trajan and Co. V RM. N.N. Nagappa Chettiar AIR. 1953 S.C. 235; Om Prakash Gupta V Ranbir B. Goyal AIR-2002 S.C. 665; Ishwar Dutt V Land Acquisition Collector and Anr AIR-2005 S.C. 3165 and state of Maharashtra VS M/S Hindustan Construction Company Ltd. AIR-2010 SC. 1299, held that relief not founded on the pleadings cannot be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in absence of the pleadings in that respect. No party can be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. It was further held that where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon.'

In the case of Ram Kumar Das VS Jagasish Chandra Deo reported in AIR 1952 S.C. the Hon'ble Supreme Court observed as follows:-

'12. So far as the first point is concerned the Courts below have proceeded on the view that a registered instrument signed by the landlord was necessary to create a valid lease for ten years. That view was not questioned

before us and we express no opinion on this point. Proceeding, therefore, on the assumption that even though the parties might have intended to create a lease for 10 years, no operative lease came into existence, the only facts admitted are that the defendant remained in possession of the land belonging to the plaintiff with the permission of the Receiver who represented the plaintiff's estate, and paid rent to the latter. From these facts a tenancy could be fairly presumed and the point for determination is, what was the duration of the tenancy that was created in the present case? Section 106, T.P. Act lays down:

"In the absence of a contract or local law or usage to the contrary, a lease of immovable properly 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 month's notice expiring with the end of year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month terminable, by fifteen day's notice expiring with the end of a month of tenancy."

13. The Section lays down a rule of construction which is to be applied when there is no period agreed upon between the parties. In such cases the duration has to be determined by reference to the object or purpose for which the tenancy is created. The rule of construction embodied in this Section applies not only to express lease of uncertain duration but also to leases implied by law which may be inferred from possession and acceptance of rent and other circumstances. It is conceded that in the case before us the tenancy was not for manufacturing or agricultural purposes. The object was to enable the lessee to *build structures upon the land. In these circumstances, it could be regarded as a tenancy from month to month, unless there was a contract to the contrary. The question now is, whether there was a contract to the contrary in the. Present case? Mr. Setalvad relies very strongly upon the fact that the rent paid here was an annual rent and he argues that from this fact it can fairly be inferred that the agreement between the parties was certainly not to create a monthly tenancy. It is not disputed that the contract to the contrary, as contemplated by S. 106, T. P. Act, need not be an express contract; it may be implied, but it certainly should be a valid contract. If it is no contract in law, the Section will be operative and regulate the duration of the lease. It has no doubt been recognised in several cases that the mode in which a rent is expressed to be payable affords a presumption that the tenancy is of a character corresponding thereto. Consequently, when the rent reserved is an annual rent, the presumption would arise that the tenancy was an annual tenancy unless there is something to rebut the presumption. But the difficulty in applying this rule to the present case arises from the fact that a tenancy from year to year or reserving a yearly rent can be made only by registered instrument, as laid down in S. 107, T. P. Act*. The Kabuliyat in the case before us is undoubtedly a registered instrument, but ex concesis it is not an operative document at all and cannot consequently fulfil the requirements of S. 107, T. P. Act.'*

Thus from the decision of the Hon'ble Supreme Court it is clear that a lease for manufacturing purpose has to be registered and in the instant case the same is not registered. Hence for the purpose of notice under Section 106 of the Transfer of Property Act it cannot be presumed that the Lease was for manufacturing purpose:-

In the case of Sri Iswar Sridhar Jiw VS Anup Lal Sharma reported in AIR 1975 Cal-174 this Hon'ble Court observed as follows:

2. 'In my opinion, the Learned Judges finding regarding the purpose of letting of the suit room in favour of the defendant-respondent cannot be sustained. The burden of proof was heavily upon the defendant-respondent to satisfactorily prove that the tenancy taken by him was exclusively for manufacturing purposes or at least the dominant purpose was for user for manufacturing purposes. Secondly the defendant was required to establish that the activities carried on by him in the suit premises constituted manyfacturing purposes within the meaning of Section 106 of the T.P. Act. In this connection Mr. Roy Learned Advocate for the appellant has rightly placed reliance upon the recent decision of the Supreme Court in Attenbury Engineers Pvt. Ltd. V Sri Ram Krishna Dalmia reported in AIR-1973 S.C. 425 Shelat J. delivering the judgment of the Court laid down that the burden of proving that the lease was for manufacturing purposes, must for the purposes of Section 106, lie on the party who claims it to be so. That burden is to establish that the exclusive or at least the dominant purpose of the lease was the manufacturing purpose. The expression 'manufacturing purposes' in Section 106 is used in its popular and dictionary meaning the Transfer of Property Act not having applied any dictionary of its own for that expression. The word 'manufacture' implies a change but a mere change in the material is not manufacture.

There must be such a transformation that a new and different article must emerge having a distinctive name character or use.'

Upon considering the decision of this Court in the case of Sri Iswar Sridhar Jaw (supra) it is clear that the burden of proving that the Lease was for manufacturing purpose is upon the defendant. In the instant case the defendants did not plead and prove that the Lease was for manufacturing purpose. Hence the plea of the defendant that the notice is defective under Section 106 of the Transfer of Property Act cannot be sustained.

Thus this Court does not find any error of the judgments passed by Learned Trial Court and Appellate Court. However with regard to the direction to forfeit security by Appellate Court upon perusal of order of Learned Appellate Court it appears that the appellants were directed to furnish security to obtain stay of the Execution of the decree. The observation of the Learned Appellate Court was that in order to prevent the appellant from causing delay in the proceeding by seeking adjournment, and to enforce compliance of the decree security is to be furnished. However the Learned Appellate Court while forfeiting the security of the appellants did not assign any reason as to the conduct of the appellants for forfeiting the security. Thus order forfeiting security cannot be sustained and the same should be set aside. Now the point for consideration is whether the defendants/appellants should be awarded some compensation and a reasonable period to vacate. Under the provisions of Transfer of property Act no such provision for compensation exists. Hence in order to award some compensation and reasonable time Courts have to consider the same under Equity.

It is well settled that equity may not depart from statute law nor does it refuse to follow common law rules save in exceptional circumstances. In enforcing the right of a litigant under contract protected by statute Courts in equitable jurisdiction where there is no male-fide conduct of the defendant may also simultaneously grant relief to the defendant in case where the enforcement of contract causes hardship, to the defendant and there is no default or mala-fide conduct of the defendant.

This hardship to the defendant is a relevant consideration in granting some relief apart from declaring and enforcing the right of plaintiff. Thus in case of a lease which is not for a specified period in writing but from month to month or year to year and the lessee is not having knowledge as to when he will be required to vacate the property or when his lease will be determined by lessor enjoys the lease for a considerable period and without any prior notice for discussion by Lessor regarding vacating of lease hold property and resolving the issue by discussion in one fine morning finds a notice of determination of lease should be awarded some reasonable compensation to mitigate the hardship and a reasonable period to vacate. Now what is considerable period and reasonable compensation and reasonable notice may vary from case to case.

In the instant case it is an admitted position that the original defendant was inducted as a monthly tenant prior to plaintiffs' purchasing suit property. It is the case of the defendants that the original defendant was inducted as a monthly tenant about 40 years prior to the institution of the suit. Thus when a lessee is enjoying the lease-hold property for about 40 years, and running a sweat meat shop, termination of lease in one fine morning and directing him to vacate the suit premises will undoubtedly cause hardship to him disrupt his business which in turn will affect his livelihood. Right to livelihood is a basic human right and any disruption of said right without any mala fide act of the defendant will cause extreme hardship. Thus to mitigate the hardship the defendants should be given a reasonable compensation and reasonable period to vacate the property taken under lease, when there is no findings by the Court of Lessee violating the terms. Where common law or statute law is silent regarding mitigation of the hardship of defendant/lessee enjoying lease for a long period and the period was not specific by agreement and there is no mala fide conduct, in absence of specific provision in the Transfer of Property Act Courts can apply principles of Justice Equity and Good Conscience to award reasonable compensation to the lessee and reasonable period to vacate.

In the case of Rattan Lal VS Vardesh Chander and others reported in AIR 1976 S.C. 588 the Hon'ble Supreme Court observed as follows:

'20. Once we assume the inapplicability of the TP Act to the lease in question-an assertion of the respondent which one do not feel compelled to consider in this appeal-we are confronted by the concept of justice equity and good conscience which admittedly comes into play in the absence of any specific legislature provision. In India and in other colonies during the Imperial era, a tacit assumption had persuaded the courts to embrace English Law (the civilizing mission of the masters) as justice equity and good conscience. Throughout the Empire, in Asia and Africa there was, an inarticulate premise that English Law was a blessing for the subject peoples. Robert M. Saidman writes about Sudan:

The Courts were simply directed to decide cases on the basis of justice, equity and good conscience' (Civil Justice Ordinance 1929. Ch q, 10 Laws of Sudan 13 (1955). However the judges were all English and with magnificent insularity it developed that justice, equity and good conscience meant not merely English common Law but English statutory law as well.

The author has been told by an English barrister who tried a case in the Sudan some, years ago that he was amazed to discover that 'justice equity and good conscience' meant in his case the English sale of Goods Act 1862" (Law and Economic Development in Independent, English sale Speaking, Sub-Sahazan Africa-Wisconsin Law Review Vol 1966 Number 4-Fall'

The Judicial Committee of the Privy Council struck a similar note in Maharaja of Jeypore V Rukmani Pattamahdevi AIR-1919 PC. 1 where Lord Phillimose Stated:

'They are directed by the several charters to proceed where the Law is silent in accordance with justice equity and good conscience and the rules of English Law as to the forfeiture of tenancy may be held and have been held to be consement with these principles and to be applicable to India.'

Thus from the Judicial decision it will appear that where a statute is silent on an issue Principles of Justice Equity and Good conscience may be applied.

Where a lessee continues in a lease-hold property for a considerable period, without any default and the lessor intends to determine the lease under Section 106 of the Transfer of Property Act, it would be just and reasonable for the lessor to issue notice upon the Lessee for the purpose of discussion regarding vacating of Lease hold property, about his reasonable requirement or if required by lessor for enhancement of rent and resolve the issue. In the event discussion fails the Lessor is at right to issue notice of determination of Lease. In the event no discussion is held prior to institution of suit or discussion held and failed Courts if think fit under equity jurisdiction may grant reasonable compensation to lesse and reasonable period to vacate the suit property.

In the instant case the Learned Trial Court did not come to any finding regarding default or breach of condition of lease as issue of default was not addressed and Learned Court simply proceeded on the communicated notice u/s 106 of Transfer of Property Act.

Considering the facts of the case and the period of pendency of litigation this Court is of the view that as the plaintiff/respondent due to pendency of case could not get vacant possession of suit property a token compensation of Rs. 10,000/- (Rupees ten thousand) should only be awarded.

Hence this Appeal SA-15 of 2024 stands dismissed. Judgment and Decree dated January 29, 2021, passed by Learned Civil Judge (Senior

Division) Ghatal Paschim Medinipur in Title Appeal No-2 of 2019 except the direction of 1st Appellate Court to forfeit the security furnished by the appellant is affirmed. The direction to forfeit the security is set aside. However the respondents are directed to pay the appellants Rs. 10,000/- as compensation and the appellants are granted 3 months time to vacate the suit premises. In the event the respondents fail to pay Rs. 10,000/- (Rupees ten thousand) the appellants will get 1 more month time to vacate the suit premises. In the event appellants fail to vacate within the period as observed above, the Learned Executing Court will be empowered to execute the decree. The appellants are permitted to withdraw the security amount from trial court.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)