

CASE NO.:
Appeal (civil) 7116 of 2004

PETITIONER:
Ranju @ Gautam Ghosh

RESPONDENT:
Rekha Ghosh & Ors.

DATE OF JUDGMENT: 14/12/2007

BENCH:
R.V. Raveendran & P. Sathasivam

JUDGMENT:
JUDGMENT

P. Sathasivam, J.

1) Challenge in this appeal is to the judgment and final Order dated 30.1.2004 passed by the High Court at Calcutta in S.A. No. 212 of 1992 whereby the High Court dismissed the second appeal filed by the appellant herein.

2) Brief facts in nutshell are as follows:

Originally one Anil Kumar Ghosh was a tenant in respect of the shop situated at 50-C Richi Road, Kolkata and respondent Nos. 1-6/plaintiffs are the landlords of the premises in dispute. The predecessor-in-interest of respondent Nos. 1-6 purchased the said property from one Smt. Manjusree Shyam Chowdhury. The predecessor-in-interest of the appellant was paying a rent of Rs. 20/- per month. The predecessor-in-interest of respondent Nos. 1-6 instituted a suit against the predecessor-in-interest of the appellant for recovery of possession and mesne profit in respect of the premises in question which was dismissed by the learned Munsif, Ist Additional Court, Alipore, District 24 Parganas on 29.9.1986. Aggrieved by the said order, the predecessor-in-interest of the respondents filed an appeal before the Court of Assistant District Judge, 4th Court Alipore, 24 Parganas. During the pendency of the appeal the original tenant Anil Kumar Ghosh passed away and his L.Rs were brought on record. The said appeal was allowed with cost and the respondents therein were directed to give the vacant possession of the suit premises and also granted a decree for mesne profit @ Rs.1/- per diem till the recovery of the possession. Being aggrieved by the said order, the tenants preferred a second appeal being S.A. No. 212 of 1992 before the High Court of Calcutta. On 30.1.2004, the High Court dismissed the appeal and confirmed the order of the first appellate Court and directed to vacate the premises within 90 days from the date of the delivery of judgment. Challenging the said order, Ranju @ Gautam Ghosh filed this appeal before this Court by way of special leave petition.

3) Heard Mr. Ranjan Mukherjee, learned counsel appearing for the appellant and Mr. Jaideep Gupta, learned senior counsel appearing for the respondents.

4) The following points arise for consideration in this appeal:-

- 1) Whether notice to quit was legal, valid and sufficient;
- 2) Whether the tenant did any act which violated clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act, 1882;
- 3) Is the tenant guilty of causing act of nuisance and annoyance?

5) Let us consider the first issue which relates to notice. It is not in dispute that the respondent-landlord filed a suit for eviction and mesne profits in title suit No. 78 of 1976 under Section 13 of the West Bengal Premises Tenancy Act, 1956 (in short the \021Tenancy Act\022). The trial Court on the issue of notice disbelieved the service under certificate of posting and failed to accept the tender of the ejectment notice to the defendant by peon on 27.06.1973 and thereby concluded that there was no valid notice to quit. In respect of other two issues, the trial Court concluded that the plaintiff failed to prove any damage to the suit premises. Based on the said finding it arrived at a conclusion that the defendant did not violate the provisions of sub-section (m), (o) and (p) of Section 108 of the Transfer of Property Act, 1882 (in short \023T.P Act\024). In the last issue the trial Court came to the conclusion that the plaintiff has failed to prove that the defendant is guilty of causing nuisance or annoyance. With the said findings, the trial Court dismissed the suit.

6) The appellate Court on appreciation of oral and documentary evidence came to the conclusion that notice to quit was duly served on the defendant and he was well aware of the contents of the same. In respect of other two issues, the learned Assistant District Judge found that the defendant/tenant caused damage to his collapsible gate and also caused nuisance and created annoyance. After arriving such conclusion set aside the judgment and decree of the trial Court and ordered eviction. In the second appeal filed by the defendant/tenant, the High Court accepted those factual findings, confirmed the same and dismissed the second appeal. Aggrieved by the judgment, the tenant has filed this appeal.

7) Before going into the merits of the claim on the above issues, it is useful to refer to the relevant provisions:-

Section 13 (1) (b) and (6) of the West Bengal Premises Tenancy Act, 1956 reads thus:

\023S. 13. Protection of tenant against eviction.-(1) Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the following grounds, namely:-

(a) xxx xxxx

(b) where the tenant or any person residing in the premises let to the tenant has done any act contrary to the provisions of clause (m), clause (o) or clause (p) of section 108 of the Transfer of Property Act, 1882 (IV of 1882);

(c) xxx xxxx
xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) Notwithstanding anything in any other law for the time being in force, no suit or proceeding for the recovery of possession of any premises on any of the grounds mentioned in sub-section (1) except the grounds mentioned in clauses (j) and (k) of that sub-section shall be filed by the landlord unless he has given to the tenant one month\022s notice expiring with a month of the tenancy.\024

Sub-sections (m) (o) and (p) of Section 108 of the Transfer

of Property Act, 1882 reads thus:

\023108. Rights and liabilities of lessor and lessee.- In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next followed, or such of them as are applicable to the property leased:-

(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;

(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;\024

8) Under Section 13, a tenant is protected from eviction and in sub-section (1) of Section 13 certain grounds have been specified which would made the tenant liable to be evicted. Such grounds have to be proved by the landlord and on the proof of any such ground, the tenant will loose protection against eviction. In such circumstances, the suit by the landlord against the tenant governed by the Act will be maintainable only when any of these grounds are proved. To put it clear insistence of one or more grounds as stated in Section 13(1) is mandatory for a decree for eviction.

9) As mentioned above, first we have to determine whether there was valid notice to quit. We have already referred to sub-section (6) of Section 13 of the Tenancy Act which makes it clear that unless the landlord has given to the tenant one month's notice expiring with a month of the tenancy he cannot avail any of the provisions either under the Tenancy Act or the T.P Act for eviction. The language used in sub-section 6 makes it clear that it is obligation on the part of the landlord to issue one month's notice expiring with the month of the tenancy to the tenant. Learned counsel appearing for the appellant placing reliance on Section 28 of the Bengal General Clauses Act, 1899 (Bengal Act 1 of 1899) submitted that the notice shall be by registered post. He further contended that in view of the fact that notice to quit was sent only under certificate of posting, the same is not valid in terms of Section 28 of the Bengal General Clauses Act, 1899, hence the eviction order cannot be sustained. On going through the relevant provisions, we are unable to accept the said contention. First of all, the language used in sub-section (6) of Section 13 is \023one month's notice expiring with a month of the tenancy to the tenant\024. Neither in sub-section 6 nor in any other provision mandates that notice \023to be served by registered

post\024. (emphasis supplied) It is useful to refer to Section 28 of the Bengal General Clauses Act, 1899 which reads as under:- \02328. Meaning of service by post.- Where any Bengal Act or West Bengal Act, made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression \023serve\024 or either of the expressions \023give\024 or \023send\024 or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.\024

10) The above provision makes it clear that after the commencement of the said Act any document to be served (emphasis supplied) by post, the service shall be by mentioning proper address, prepaying and posting by registered post a letter containing the document. In our case, as stated earlier, clause 6 provides mere \023one month notice\024, in such event, the said notice can be served in any manner and it cannot be claimed that the same should be served only by registered post with acknowledgement due. The plaintiff as PW 1 has stated that the defendant Anil Kumar Ghosh was not present in his shop and the notice of eviction was handed over to his son Ranju who accepted it but refused to put his signature as a token of acceptance. In his evidence, PW 1 further asserted that Chittaranjan Ghosh was present at the time and after a short while he affixed another copy of the notice in the collapsible gate and that too was endorsed by Chittaranjan Ghosh. Both PW 1 and Chittaranjan Ghosh made an endorsement in Ex. 9. Chittaranjan Ghosh was examined as PW 6 and he is a family physician of the plaintiffs. According to PW 1, PW 6 holds good reputation. Considering the above materials, the lower appellate Court found that notice was duly served on the defendant and the defendant was very well aware about the contents of the said notice. On going through the evidence placed before us and the relevant provisions, we agree with the conclusion of the Assistant District Judge affirmed by the High Court and hold that there was valid notice to quit.

11) Coming to clauses (m) (o) and (p), the appellate Court as well as the High Court accepted the evidence of PW 1-plaintiff No.1, PW 6 his neighbour and physician and other documentary evidence such as complaint to the police, entry in general diary, Ex. 17 and accepted the case of the plaintiff. Learned counsel appearing for the appellant submitted that in the light of the report of the Advocate Commissioner which has been marked as Ex. 13 the defendant neither caused any damage to collapsible gate nor put up any additional construction as claimed by the plaintiff. We also perused the evidence of PW 1, PW 6 Ex. 13 and 17 and accept the factual finding of the appellate Court affirmed by the High Court. As rightly pointed out by the Assistant District Judge, the suit premises was inspected by an Advocate Commissioner only on 12.03.1971 i.e. about 1= years after the alleged occurrence, hence no credence be attached to the Commissioner\022s report. The appellate Court based on the evidence of PW 1, PW 6 complaint, entry in General Diary, Ex 17 came to the conclusion that the collapsible gate had been cut by 5/6\024 and again it was replaced without the consent and permission of the plaintiffs/landlords. In the light of the abundant material, factual conclusion arrived by the appellate Court confirmed by the High Court the same cannot be ignored lightly in the absence of any contra evidence. On the other hand, we agree

with the said conclusion.

12) Coming to the last issue, namely, nuisance and annoyance, PW 1 Dr. Bhabani Charan Ghosh, in his evidence, has categorically stated that on 16.09.1975 at about 6.30 p.m. the tenants dismantled the collapsible gate of southern garage. He further deposed that when they were cutting the same he protested for which they threatened to kill him. He made a complaint to the police. According to him, this was witnessed by Chittaranjan and Sangana. As observed earlier, PW 1 is none else than a Surgical Specialist (MS) of Government of West Bengal. He also specifically referred to the threat made by Ranju and Sailen. According to him, both of them threatened him with dire consequences. It is further seen from his evidence that at the time of cutting the collapsible gate, the same was photographed and produced before the Court in support of his claim. It also revealed that pursuant to his complaint, criminal proceedings under Section 144 Cr.P.C. was initiated. PW 5 - Mahim Biswas resident of No. 65 Motilal Nehru Road, Calcutta \026 29, in his evidence, has stated that while he was returning to his house, he noticed group of persons in front of the house of the appellant. He also referred to the damage caused to the collapsible gate by the tenants. PW 9-second plaintiff has stated that on 06.02.1973 Ranju Ghosh-defendant in the said suit attacked their house. According to him, at the time he was in his house and studying in their verandah. He further deposed that when the police came Ranju Ghosh and other miscreants set up by them ran away. In addition to the above oral evidence, as stated in the earlier paragraphs, the lower appellate Court and the High Court adverted to complaint given to the police, the subsequent criminal proceedings and other relevant materials and came to the conclusion that the respondents-landlords made out a case for eviction on the ground of nuisance and annoyance which we concur with the said factual finding.

13) In view of the above, we agree with the following conclusions of the First Appellate Court as affirmed by the High Court in Second Appeal:

(a) that the activities of threatening to kill the plaintiff, beating the son of the plaintiff and abusing him with filthy language would amount to nuisance and annoyance, furnishing a ground of eviction under clause (e) of section 13 (1) of the West Bengal Premises Tenancy Act, 1956;

(b) that causing damage to the collapsible gate of the tenanted portion and putting up a concrete elevation of the floor, would amount to doing acts contrary to the provisions of clauses (m), (o) and (p) of section 108 of the Transfer of Property Act, 1882, thereby furnishing a ground of eviction under clause (b) of section 13(1) of the West Bengal Premises Tenancy Act, 1956.

14) Consequently, we find no merit in this appeal and it is dismissed accordingly. However, the appellant is granted two months\022 time to deliver vacant possession of the suit premises to the respondents. No costs.