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SHIBANI BASU

v.

SANDIP RAY

(Civil Appeal No. 10053 of 2010)

NOVEMBER 26, 2010

B

[MARKANDEY KATJU AND T.S. THAKUR, JJ.]

West Bengal Premises Tenancy Act – s.13(6) – Notice for termination of tenancy – Validity of – Eviction suit – Decreed by trial court – First appellate court, however, set aside the decree holding that the notice of termination of tenancy was not valid as it did not end with the month of tenancy – High Court affirmed the decree of trial court – Respondent-tenant filed SLP – Matter remitted back to High Court to consider the validity of the notice of termination of tenancy having regard to the fact that the rent note / agreement of tenancy was unregistered – High Court affirmed the order of first appellate court holding that the notice of termination of tenancy fell short of the requirement stipulated by s.13(6) of the Tenancy Act – On appeal, held: Non-registration of the rent note /agreement of tenancy was rendered insignificant in view of the pleadings of the parties on the question of month of tenancy – The defendant did not question the facts material to the creation of the tenancy – Specific averment in the plaint to the effect that the rent for the premises was payable monthly according to the English Calendar was overlooked by the first appellate court – The ejectment notice having been served on 15th January, 2000, the defendant-tenant had one month's clear time till the end of February, 2000 to vacate the premises and to deliver the possession thereof to the plaintiff – The first appellate court wrongfully held that since the tenancy in the instant case had started on the 11th day of the English Calendar month, in order to be legally valid, the notice of termination ought to

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have demanded delivery of possession by the 11th and not the end of February, 2000 – Even if the unregistered rent note / agreement of tenancy was executed on a date other than the first of English or any other calendar month, the parties were always free to agree that the month of tenancy would commence from any other date including the 1st day of the succeeding month – Decree passed by trial court restored – Transfer of Property Act, 1882 – s.106.

The plaintiff-appellant filed a suit for eviction and recovery of possession and *mesne profits* against the respondent. The plaintiff claimed that the suit property was let out to the respondent on month to month basis. The tenancy was, according to the plaintiff, for a period of five years only and was determined in terms of a notice issued under Section 13(6) of the West Bengal Premises Tenancy Act and Section 106 of the Transfer of Property Act. The trial court decreed the suit.

Aggrieved, the tenant appealed to the first appellate court, which set aside decree passed by the trial court. On second appeal, the High Court set aside the order passed by the first appellate court and affirmed the judgment and decree passed by the trial court. The respondent-tenant preferred civil appeal by way of special leave petition which was allowed by this Court and the matter remitted back to the High Court to consider the validity of the notice of termination having regard to the fact that the agreement of tenancy executed between the parties was an unregistered document. The High Court, pursuant to the said order, examined the effect of the unregistered document and held that the same could be used in evidence for a collateral purpose and, when so used, the notice of termination of tenancy issued on behalf of the landlady fell short of the requirement stipulated by Section 13(6) of the West Bengal Premises Tenancy Act. The High Court accordingly dismissed the

A appeal and affirmed the dismissal of the suit by the First Appellate Court. The appellant filed the instant appeal assailing the correctness of the said judgment and order of the High Court.

B Allowing the appeal, the Court

HELD:1. The question regarding validity of the notice of termination can be examined by reference to the averments made in the pleadings of the parties. It is evident from a plain reading of the assertions in the plaint and the written statement that the defendant did not question the facts material to the creation of the tenancy nor was it disputed that the tenancy was a month to month tenancy on payment of a rent of Rs.500/- for every English Calendar month. It is true that the defendant-respondent had disputed the service of the notice terminating the tenancy of the defendant as also its validity and sufficiency but it is equally true that the legality of the notice was not assailed on the ground that the notice did not conform to the month of tenancy. As a matter of fact the assertion made by the appellant that the monthly rental of Rs.500/- was payable according to the "English Calendar Month" was not denied by the defendant in the written statement nor was any suggestion to the contrary made as was sought to be done at a later stage of the litigation between the parties. Such being the position, it was for all intents and purposes agreed and accepted between the parties that the rent settled for the demised premises was payable according to the English Calendar month. The issue related to the validity of the notice of termination, which had to be answered on the admitted premise that the tenancy was on a month to month basis and the rent of Rs.500/- p.m. was payable according to the English Calendar month. [Paras 7, 10] [939-D; 942-A-D; 941-G-H]

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2. The trial court rightly examined the question of legality of the service of the notice on the basis of the available material and the pleadings on the subject and came to the conclusion that the notice in question received by the wife of defendant-tenant was duly served upon the defendant on the 15th January, 2000. The trial court further held that the ejectment notice having been served on 15th January, 2000, the defendant had one month's clear time till the end of February, 2000 to vacate the premises and to deliver the possession thereof to the plaintiff. The issue was accordingly answered in favour of the plaintiff and against the defendant-respondent. The first appellate court, however, took a contrary view. It held that the notice of termination of tenancy was not valid as it did not end with the month of tenancy of the defendant. Relying upon the stipulation contained in the tenancy agreement, the first appellate court held that the tenancy in the instant case had started on the 11th day of the English Calendar month and that in order to be legally valid, the notice of termination ought to have demanded delivery of possession by the 11th and not the 29th February, 2000. The notice was accordingly held to be invalid and the suit filed by the appellant liable to be dismissed. In taking that view, the appellate court failed to appreciate that even when the unregistered agreement of tenancy had been executed on 11th of September, 1993, the same did not mean that the month of tenancy would commence from the 11th of every succeeding month, over the period for which the same was created. The first appellate court also failed to appreciate that even when the rent note/agreement of tenancy was executed on a date other than the first of English or any other calendar month the parties were always free to agree that the month of tenancy would commence from any other date including the 1st day of the succeeding month. That there was a specific averment made in the plaint to the effect that the rent for the premises was payable monthly

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A according to the English Calendar was also overlooked
by the First Appellate Court. That the said averment had
not been disputed by the tenant was also not noticed by
the first appellate court and even by the High Court.
B These facts were important and held the key to the
determination of the question whether the notice had
validly terminated the tenancy. The High Court had in the
first order passed by it correctly held the notice of
C termination of tenancy to be legally valid. After the matter
was remanded back to it to consider the effect of non-
registration of the rent note/agreement of tenancy it has
taken a view that is not appealing. It is true that the non-
D registration of the rent note does not debar the use of a
document that is compulsorily registerable for collateral
purposes but that aspect would in the instant case pale
into insignificance keeping in view the state of pleadings
on the question of month of tenancy and the legal
implications thereof. [Para 11] [942-E-H; 943-A-G]

1.3. The impugned order passed by the High Court
and that passed by the first appellate court are hereby set
E aside. Consequently, the judgment and decree passed by
the trial court shall stand restored. [Paras 12] [943-H; 944-
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F CIVIL APPELLATE JURISDICTION : Civil Appeal No.
10053 of 2010.

From the Judgment & Order dated 16.09.2009 of the High
Court at Calcutta in Second Appeal No. 29 of 2006.

G S.B. Upadhyay, Dharmendra Kumar Sinha, Santosh
Mishra for the Appellant.

Pijush K. Roy, Mithilesh Kumar Singh for the Respondent.

The Judgment of the Court was delivered by

H T.S. THAKUR, J. 1. Leave granted.

2. This appeal by special leave is directed against a judgment and order dated 16th September, 2009 passed by a Single Judge of the High Court of Calcutta whereby Second Appeal No.29 of 2006 filed by the appellant herein has been dismissed and the judgment and order passed by the First Appellate Court dismissing the suit for eviction filed by the appellant affirmed.

3. The plaintiff-appellant herein filed a suit for eviction and recovery of possession and mesne profits against the respondent. The plaintiff alleged that the suit property comprising two rooms with an attached verandah consisting of kitchen space situate on the ground floor of No.6-A Chandibari Street, Calcutta was let out to the respondent on month to month basis. The tenancy was, according to the plaintiff, for a period of five years only and was determined in terms of a notice dated 14th January, 2000 issued under Section 13(6) of the West Bengal Premises Tenancy Act and Section 106 of the Transfer of Property Act. The plaintiff further alleged that the defendant-respondent was in default of the payment of rent since the month of November 1995. The respondent was also accused of committing nuisance and constructing a pucca wall of permanent nature without her consent. The plaintiff claimed eviction of the respondent-tenant on the above grounds and on the ground of reasonable personal requirement of the plaintiff and her family members who did not have any alternative accommodation for them. The eviction of the respondent was also sought on the ground that the suit premises was required for rebuilding.

4. The suit was contested by the defendant-respondent who filed a written statement in which the material averments made by the plaintiff were dealt with. What is significant is that the defendant-respondent admitted that he was inducted by the plaintiff in the suit premises in terms of an agreement of tenancy and that he was holding the premises as a month to month tenant not only in respect of the attached verandah comprising

- A kitchen space but the bath room privy for his exclusive use. The allegation that the tenant had created nuisance or caused annoyance to the landlady or made any illegal construction in the suit premises or that the property was required by the plaintiff for her own use and occupation or re-construction were also denied.

5. On the pleading of the parties the Trial Court framed as many as 13 issues besides three additional issues and decreed the suit with cost by its order dated 22nd February, 2005. The defendant was given three months time to vacate the premises in question. Aggrieved by the said order, the tenant appealed to the First Appellate Court who allowed the same and set aside the judgment and decree passed by the Trial Court. A second appeal was then filed by the appellant-herein before the High Court of Calcutta which appeal eventually succeeded and was allowed by the High Court by its order dated 16th May, 2008 whereby the judgment and decree passed by the Trial Court was affirmed and that passed by the First Appellate Court set aside. Aggrieved by the said judgment the respondent-tenant preferred Civil Appeal by way of special leave petition (No.2637 of 2009) before this Court which was allowed by this Court by an order dated 17th April, 2009 and the matter remitted back to the High Court to consider the validity of the notice of termination having regard to the fact that the agreement of tenancy executed between the parties was an unregistered document. The High Court has pursuant to the said order examined the effect of the unregistered document and come to the conclusion that the same could be used in evidence for a collateral purpose and when so used the notice of termination of tenancy issued on behalf of the landlady fell short of the requirement stipulated by Section 13(6) of the West Bengal Premises Tenancy Act. The High Court has accordingly dismissed the appeal and affirmed the dismissal of the suit by the First Appellate Court. The present appeal assails the correctness of the said judgment and order of the High Court.

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6. We have heard learned counsel for the parties. In paras 1 and 2 of the plaint, the plaintiff-appellant had asserted her being the landlady and the suit premises having been let out to the defendant-tenant on a month to month tenancy on a rental of Rs.500/- p.m. payable according to the English Calendar month without any electricity for a period of five years only. That assertion was made ostensibly because of Clause 3 of the Agreement of Tenancy which is in the following terms:

“3. That the monthly rent in respect of the aforesaid tenancy has been fixed at Rs.500/- (Rupees five hundred) payable by the Second Party to the Landlady/First Party within the 15th day of next month according to the English Calendar.”

7. Since, however, the Agreement of Tenancy was unregistered though the same was compulsorily registerable we cannot make much use of the above stipulation. The question regarding validity of the notice of termination can nevertheless be examined by reference to the averments made in the pleadings of the parties. Paras 1 and 2 of the plaint are in this regard relevant and may be extracted:

“1. That the Plaintiff is the owner and Land-Lady of the premises No.6A, Chandi Bari Street, Police Station Burtolla, Calcutta 700006.

2. That the Defendant is a monthly tenant under the Plaintiff in respect of two rooms, with attached verandah consisting of kitchen space along with common user of bath room and privy on the Ground Floor at premises No.6-A Chandi Bari Street, Police Station Burtolla, Calcutta 700 006 on monthly rental of Rs.500/- payable according to English Calendar month without any Electricity, only for 5 years.”

8. What is noteworthy in the averments made in para 2 above is that the respondent is a month to month tenant and the rental of Rs.500/- p.m. is payable according to the English Calendar month. In reply to para 2 the defendant, *inter alia*,

A admitted that he was inducted as a month to month tenant by
the plaintiff. The defendant gave an explanation as regards the
description of the premises let out to him which is not material
for the purpose of the present appeal. Para 5 of the written
statement in which the defendant-respondent answered the
B averments made in paras 1 and 2 of the plaint extracted above
is as under:

C "5. That with reference to the statements made in
paragraphs 1 and 2 of the plaint are the matters of record
and as such the plaintiff is to prove the same. The
defendant states that he never inspected the title deed in
respect of the suit building but several suits and
proceedings were/are pending between the plaintiff and
her daughter Purnima Roy in different courts. It is a fact
D that the defendant was inducted by the plaintiff on 11.9.93
at the suit premises by executing an Agreement of tenancy
on the terms and conditions are mentioned therein and the
said tenancy agreement be treated as a part of the written
statement. It is true that at the time of the filing of the suit
E the defendant is a monthly tenant under the plaintiff but not
in respect of the suit premises only. The defendant states
that the defendant is a tenant in respect of two rooms with
attached verandah consisting of kitchen space along with
bath and privy for exclusive use of the defendant but not
F common. The plaintiff in pursuance of clause 5 of the said
agreement of Tenancy could not provide separate bath
and privy according to the plaintiff, due to the resistance
occasioned by her daughter Purnima Roy and her family
members within one year, as a result the plaintiff granted
G the existing bath and privy to the defendant for his
exclusive use and enjoyment but the defendant could not
use and enjoy the same exclusively for the said Purnima
Roy and her family members who are also using the same
bath room and as the Plaintiff is not residing at the suit
H building and there is a strange relation between the Plaintiff
and the said Purnima Roy, the Plaintiff has been residing

at 3, Parry Mohan Sur Lane, Calcutta, which is situated near the suit building, she has no personal need of the aid bath and privy.” A

9. Then comes the averment made by the plaintiff-appellant in para 3 of the plaint in which the plaintiff asserted that the tenancy of the defendant had been duly determined by service of a composite notice issued under Section 13(6) of the West Bengal Premises Tenancy Act and Section 106 of the Transfer of Property Act asking the defendant to vacate and deliver the possession of the suit premises before the expiry of the month of February 2000. The reply to the said averment is found in para 6 of the written statement where the defendant has dealt with paras 3, 4 and 5 of the plaint together in the following words: B C

“6. That with reference to the allegations made in paragraph 3, 4 and 5 of the plaint the defendant denies the same. The defendant specifically denies that the tenancy of the defendant has duly been determined by the ejection notice dated 14.1.2000 or any such notice. So far as knowledge and the memory of the defendant never received the ejection notice by putting his signature on the A/D card on 15.1.2000 or any date. The defendant states that the alleged ejection notice, if any, is not legal, valid and sufficient and the entire tenancy of the defendant never been determined by any such notice dated 14.1.2000 and the relationship of landlord and tenant in between the plaintiff and defendant is still in existence and as such the question of deliver up the vacant possession to the plaintiff does not or cannot arise at all, and the payment of any mesne profits does not arise.” D E F G

10. It is evident from a plain reading of the assertions in the plaint and the written statement extracted above that the defendant did not question the facts material to the creation of the tenancy nor was it disputed that the tenancy was a month to month tenancy on payment of a rent of Rs.500/- for every H

- A English Calendar month. It is true that the defendant-respondent had disputed the service of the notice terminating the tenancy of the defendant as also its validity and sufficiency but it is equally true that the legality of the notice was not assailed on the ground that the notice did not conform to the month of
- B tenancy. As a matter of fact the assertion made by the appellant that the monthly rental of Rs.500/- was payable according to the "English Calendar Month" was not denied by the defendant in the written statement nor was any suggestion to the contrary made as was sought to be done at a later stage of the litigation
- C between the parties. Such being the position it was for all intents and purposes agreed and accepted between the parties that the rent settled for the demised premises was payable according to the English Calendar month. That incidentally explains the reason why no issue was framed by the Trial Court as regards the month of tenancy. Issue no.6 only
- D related to the validity of the notice of termination, which had to be answered on the admitted premise that the tenancy was on a month to month basis and the rent of Rs.500/- p.m. was payable according to the English Calendar month.

- E 11. The Trial Court rightly examined the question of legality of the service of the notice on the basis of the available material and the pleadings on the subject and came to the conclusion that the notice in question received by Smt. Malti Roy wife of
- F defendant-tenant was duly served upon the defendant on the 15th January, 2000. The Trial Court further held that the ejection notice having been served on 15th January, 2000, the defendant had one month's clear time till the end of February, 2000 to vacate the premises and to deliver the possession thereof to the plaintiff. Issue no.6 was accordingly
- G answered in favour of the plaintiff and against the defendant-respondent. The First Appellate Court, however, took a contrary view. It held that the notice of termination of tenancy was not valid as it did not end with the month of tenancy of the defendant. Relying upon the stipulation contained in the tenancy agreement
- H the First Appellate Court held that the tenancy in the instant

case had started on the 11th day of the English Calendar month and that in order to be legally valid the notice of termination ought to have demanded delivery of possession by the 11th and not the 29th February, 2000. The notice was accordingly held to be invalid and the suit filed by the appellant liable to be dismissed. In taking that view Appellate Court failed to appreciate that even when the unregistered agreement of tenancy had been executed on 11th of September, 1993 the same did not mean that the month of tenancy would commence from the 11th of every succeeding month, over the period for which the same was created. The First Appellate Court also failed to appreciate that even when the rent note/agreement of tenancy was executed on a date other than the first of English or any other calendar month the parties were always free to agree that the month of tenancy would commence from any other date including the 1st day of the succeeding month. That there was a specific averment made in the plaint to the effect that the rent for the premises was payable monthly according to the English Calendar was also overlooked by the First Appellate Court. That the said averment had not been disputed by the tenant was also not noticed by the First Appellate Court and even by the High Court. These facts were important and held the key to the determination of the question whether the notice had validly terminated the tenancy. The High Court had in the first order passed by it correctly held the notice of termination of tenancy to be legally valid. After the matter was remanded back to it to consider the effect of non-registration of the rent note/agreement of tenancy it has taken a view that has not appealed to us. It is true that the non-registration of the rent note does not debar the use of a document that is compulsorily registerable for collateral purposes but that aspect would in the instant case pale into insignificance keeping in view the state of pleadings on the question of month of tenancy and the legal implications thereof.

12. In the result this appeal succeeds and is hereby allowed. The impugned order passed by the High Court of

A Calcutta dated 16th September, 2009 and that passed by the First Appellate Court dated 30th November, 2005 are hereby set aside. Consequently, the judgment and decree passed by the Trial Court shall stand restored. Parties shall bear their own costs.

B 13. We further direct that the respondent shall have time till 30th November, 2011 to vacate the premises in question and handover the possession of the same to the appellant subject to the respondent filing an undertaking on usual terms in this Court within two months from today.

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B.B.B.

Appeal allowed.