A MRITUNJOY SETT (D) BY LRS.

*v.*

JADUNATH BASAK (D) BY LRS.

(Civil Appeal No. 3617 of 2011)

B APRIL 26, 2011

**[DALVEER BHANDARI AND DEEPAK VERMA, JJ.]**

*WEST BENGAL PREMISES TENANCY ACT 1956:*

C *s. 13(6) – Suit for eviction on ground of bona fide requirement – Notice – Tenant resisting the suit as not maintainable, as one month's clear notice according to Bengali Calendar was not given – Landlord claiming tenancy as per English Calendar – Trial court dismissed the suit* D *holding that one month's clear time was not given to the tenant – First appellate court decreed the suit – High Court allowed the second appeal of the tenant – Held: There has been compliance of s. 13(6) and once tenant's tenancy was determined, on his failure in compliance thereof, suit was* E *maintainable and rightly decreed by first appellate court – Ground of bona fide requirement had already been held by trial court in favour of landlord – Judgment of High Court cannot be sustained and is set aside – Evidence Act, 1872 – ss. 17,21 and 32 (2) – Code of Civil Procedure, 1908 – s. 100.*

F *EVIDENCE ACT, 1872:*

*ss. 17,21 and 32(2) – 'Admission' – Suit for eviction of tenant – Tenant, on the basis of rent receipts claiming that notice for ejectment was bad as one month's clear notice* G *according to Bengali Calendar was not given – Landlord on basis of lease deed claiming tenancy according to English Calendar – Neither of the two examining the predecessor-in-interest of landlord either to prove the rent receipts or the*

*lease deed – Tenant admitting in another suit the tenancy as per English Calendar – Held: In the circumstances, the 'admission' of tenant is the best possible form of evidence – West Bengal Premises Tenancy Act, 1956 – s.13(6).* A

*CODE OF CIVIL PROCEDURE, 1908* B

*s.100 – Second appeal – Scope of – Single Judge of High Court setting aside judgment of lower appellate court – Held: Single Judge failed to point out any perversity in the judgment of lower appellate court – In the light of the categorical finding that no substantial question was involved having been recorded by the Single Judge, the necessary consequence would have been to dismiss the tenant's second appeal – West Bengal Premises Tenancy Act, 1956 – s.13(6).* C

**The appellant-landlord sent a notice to the respondent-tenant as contemplated u/s 13(6) of the West Bengal Premises Tenancy Act, 1956, on 28.8.1991 by registered post A/D, determining his tenancy and asking him to vacate the premises on or before the expiry of the last day of October, 1991. Though the notice was served on the tenant, he did not vacate the premises and the landlord filed a suit for eviction on the ground of personal use and occupation. The tenant besides resisting the ground of reasonable requirement of the premises by the landlord, took the specific plea that the tenancy being in accordance with Bengali Calendar month, the notice was in contravention of s. 13(6) of the Act, which provided a clear one month's notice for determining the tenancy. The trial court though found the ground of ejectment for bona fide need of the landlord in his favour, but dismissed the suit holding that the notice was not served in accordance with the provisions of s. 13(6) of the Act. On appeal by the landlord, the first appellate court decreed the suit holding that the tenancy was regulated according to English Calendar and there was full compliance of the provisions of s. 13(6) of the Act. However, the High Court** D E F G H

A in second appeal, set aside the judgment of the first appellate court.

Allowing the appeal of the landlord, the Court

HELD: 1.1 In the light of the categorical finding – that B no substantial question of law was involved – having been recorded by the Single Judge of the High Court, the necessary consequence would have been to dismiss the respondent's second appeal. [para 10] [892-A]

C 1.2 Even though in the impugned judgment and order, the Single Judge failed to point out any perversity in the judgment and decree of the lower appellate court, yet wrongly placed reliance on the judgment of this Court in Ramlal's case* and committed a grave error of law in D allowing the respondent's second appeal on absolutely flimsy and cursory ground. [para 13] [892-E]

**Ramlal & Anr. Vs. Phagua & Anr.* (2006) 1 SCC 163 – held inapplicable.

E 2.1 The Single Judge was also wrong in his approach in giving undue weightage to the rent receipts issued as compared to the categorical and unequivocal admission made by the same respondent in his written statement filed in title Suit No. 203/88, that the rent was being paid F per English Calendar month. Since an admission originates (either orally or in written form) from the person against whom it is sought to be produced, it is the best possible form of evidence. In the factual context of the case, it may also be noted that the 'rent receipts' issued G by the predecessor-in-interest of the appellant, being the documentary evidence adduced by the respondent to prove his case that the tenancy was as per the Bengali Calendar, was never substantiated by the witness' testimony. [para 15-16] [893-B-C, F-H]

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**2.2 There is no particular reason given by either party as to why the predecessor-in-interest of the appellant-landlord was not produced as a witness before the trial court or the lower appellate court, either to prove the tenancy as per Bengali Calendar through rent receipts, as claimed by the tenant, or that the tenancy was based on English Calendar as claimed by the landlord as per lease deed. Ordinarily, therefore, without her testimony, both, the copies of the rent receipts produced by the respondent and the lease deed produced by the appellant, have little evidentiary value vis-a-vis the factual question of whether the tenancy was as per the Bengali or the English Calendar. [para 18] [894-D-E]**

**2.3 Even otherwise, assuming that legitimate circumstances existed for non-appearance of the predecessor-in-interest of the appellant-landlord as a witness, in which case her alleged affirmations in the rent receipts and the lease would be governed under the special provision contained in s. 32 (2) of the Evidence Act, by no stretch can any of these affirmations be said to carry greater weight than the admission in the written statement made by the respondent himself in the earlier suit. This is what has been contemplated u/s 17 of the Evidence Act which defines "admission" of a party and s.21 thereof prescribes the procedure of proving such an admission. [para 18] [894-E-H]**

**2.4 Section 13(6) of the West-Bengal Premises Control Act, 1956 requires giving of one month's notice to the tenant. From perusal of the Notice, dated 27.8.1991 sent by appellant on 28.8.1991, it is clear that one month's clear notice was given to the respondent seeking upon him to vacate the premises. Thus, there has been compliance of s. 13(6) of the Act and once the respondent's tenancy was determined, on his failure in compliance thereof, the suit was maintainable. The**

A **ground of bona fide requirement was already held in favour of the appellant. The appellant's suit was rightly decreed by the lower appellate court and the decree could not have been set aside by the Single Judge, moreso when he had noticed that there was no**
B **substantial question of law involved in the second appeal. The impugned judgment and decree of the Single Judge cannot be sustained in law and are set aside. The judgment and decree of the lower appellate court are restored and appellant's suit for eviction is decreed.**
C **[paras 20,22 and 23] [895-D-F; 896-A-C]**

**Case Law Reference:**

**(2006) 1 SCC 163 held inapplicable Para 13**

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3617 of 2011.

From the Judgment & Order dated 07.02.2006 of the High Court at Calcutta in S.A. No. 110 of 2005.

E Dhruv Mehta, Sriram Krishna, Malashree Ghosh, B.P. Yadav (for Sarla Chandra) for the Appellant.

The Judgment of the Court was delivered by

**DEEPAK VERMA, J.** 1. Leave granted.

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2. In this appeal, the question that arises for our consideration is whether the Notice of eviction served by the appellant-landlord upon the respondent-tenant under Section 13 (6) of the West Bengal Premises Tenancy Act, 1956
G (hereinafter shall be referred to as the "Act"), thereby determining his tenancy, was valid, legal and in accordance with law or not?

3. Factual matrix giving rise to the present appeal, bereft of unnecessary details are mentioned hereinbelow:-

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A Original Appellant was the owner and landlord of the premises bearing Municipal Corporation No. 43F Nilmoni Mitra Street, Kolkata – 700 006. The original Respondent was tenant in respect of two rooms on the ground floor at a monthly rent of Rs. 75/-. Before filing the present Ejectment suit, the Appellant had served a notice upon the Respondent determining his B tenancy, as contemplated under Section 13 (6) of the Act. The said Notice was sent to the Respondent on 28.8.1991 by registered Post with A/D, directing him to vacate the premises on or before the expiry of the last day of October, 1991. The said Notice was duly served on the Respondent. In the said C Notice, it was further averred by the Appellant that he reasonably required the said two rooms under occupation of the Respondent, for his own use and occupation. It is to be noted that the said Notice categorically mentioned that the respondent's tenancy was in accordance with English Calendar. D The said Notice also mentioned that for all purposes, apart from being a notice under the provisions of the Act, it would also be deemed to be one given under Section 106 of the Transfer of Property Act. It is not clear from the record, if any reply was sent to the said notice by the Respondent but obviously as he failed E to comply with the said Notice, the Appellant was constrained to file Ejectment Suit No. 124 of 1992 (later renumbered as 1612 of 2000) before the 6th Bench, Court of Small Causes, Calcutta for his ejectment on the ground mentioned in the aforementioned Notice.

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4. On service of the summons from Court on the Respondent, he appeared and denied the averments as made by the Appellant. Respondent herein contended that there was absolutely no reasonable requirement of the premises by the Appellant and furthermore, he took a specific plea that the suit G was not maintainable inasmuch as it was in contravention of Section 13 (6) of the Act, which provides a clear one month's Notice for determining the tenancy, as the tenancy was in accordance with Bengali Calendar month and not as per the English Calendar month as averred and pleaded by the H

A Appellant. To buttress this contention further, Respondent placed heavy reliance on the rent receipts issued by Smt. Kamala Bala Sett, the erstwhile owner of the property in question, who was accepting rent earlier for and on behalf of the Appellant, wherein a categorical endorsement was made B that tenancy was according to Bengali calendar month.

5. On the averments of the respective parties, the Trial Court was pleased to frame issues. Issue No. 1 and 2 dealt with the question of maintainability of the suit by the Appellant and whether the Notice of ejectment served by Appellant on the C Respondent was valid, legal and in accordance with law.

6. However, learned Trial Court after recording the evidence and after perusal of the records available, came to the conclusion that the Notice was not served in accordance D with the provisions of section 13 (6) of the Act as one month's clear time was not given to the Respondent for vacating the premises. Thus, it was found that the very genesis of the suit was defective, and hence the suit was dismissed on this ground alone, even though the ground of ejectment with regard to bona E fide need of the Appellant was found to be in his favour.

7. Feeling aggrieved by the judgment and decree of the trial court, Appellant was constrained to file an appeal before the appellate court. The appellate court considered the matter in full detail, and in particular, the single point therein, namely, F with regard to satisfaction of Section 13 (6) of the Act. On consideration of the material on record, as also the certified copy of the written statement filed by Respondent herein in Title Suit No. 203/88, the Appellate Court came to the conclusion that tenancy right in favour of the Respondent was regulated G according to English Calendar. Accordingly, there was full and complete compliance of the provisions of Section 13 (6) of the Act. In this view of the matter, judgment and decree of the Trial Court was set aside and the Appellant's Suit for Respondent's ejection from the Suit premises was decreed in his favour.

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8. Then came the turn of the Respondent-defendant to challenge the same in the High Court by filing a Second Appeal No. 110 of 2005 under Section 100 of the Code of Civil Procedure, 1908 (referred to as "CPC" hereinafter). From the impugned judgment, it appears that in the Appeal Memo even though several questions of law were formulated but additional substantial questions of law Nos. XIII and XVII were later formulated for consideration, reproduced hereinbelow:

> "XIII. For that the learned Judge of the First Appellate Court ought to have held that the Notice of Ejectment (Exh-4) is bad in law and no decree can be passed thereon in as much as the said Notice was served on the basis that tenancy month is according to English Calendar while the Rent Receipts (Exhibit B Series and C) clearly indicates that the tenancy month is according to Bengali Calendar month.
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> XVII. For that the appellate court on the materials before it should have considered that partial eviction of the premises would meet plaintiff's reasonable requirement."

9. It is pertinent to mention herein that while considering the appeal, the learned Single Judge found that no substantial question of law was involved in the appeal, yet proceeded to decide the same and that too against the Appellant. The following observations made by Learned Single Judge in this regard, are necessary to be mentioned :

> "On the reflection as aforesaid, this Court is of the view that there is no substantial question of law involved in this case as it is simply a legal question involved, namely, giving weightage to the evidentiary value of the rent receipts vis-a-vis written statement of another Suit wherein it was alleged that the defendant admitted the mode of tenancy. That cannot be a substantial question of law involved."

A 10. In fact, in the light of the said categorical finding having been recorded by the learned Single Judge, the necessary consequence would have been to dismiss the Respondent's Second Appeal but instead, the same has been allowed answering the aforesaid questions of law in favour of the B Respondent. Hence this appeal, at the instance of landlord.

11. We have accordingly heard Mr. Dhruv Mehta, learned Senior Advocate ably assisted by Mr. Sriram Krishna, for the Appellant. Despite service of notice on the Respondent by C various modes, including publication in the newspaper, he failed to appear.

12. It may be mentioned that during the pendency of Appeal in this Court, both original Appellant and Respondent have died and are being represented through their legal representatives D but for the sake of convenience the parties shall still be referred to as Appellant and Respondent.

13. Even though in the impugned judgment and order, learned Single Judge failed to point out any perversity in the E judgment and decree of the lower appellate court, yet wrongly placed reliance on a judgment of this Court reported in (2006) 1 SCC 163 titled *Ramlal & Anr. Vs. Phagua & Anr.* and proceeded to allow the same.

14. We have carefully gone through the said judgment and F find that in any case, it does not favour the Respondent nor its ratio could be taken advantage of by the Respondent. Basically, and mainly it dealt with the proposition as to how and when concurrent findings of fact recorded by two courts can be interfered with by the High Court in a Second Appeal filed under G Section 100 of the CPC. It was held in the said judgment that if any material piece of evidence that goes to the root of the matter, has not been appropriately considered by both the subordinate courts then and only then High Court would be justified in upsetting the judgment and decree of the two courts H and not otherwise. In the aforesaid judgment, the question was

with regard to a disputed sale deed as is manifest from reading of paras 12 and 14 thereof. Thus, in our considered opinion, reliance on the aforesaid judgment was highly misplaced by the learned Single Judge.

15. Even though, it is not necessary to explore the matter on merits at this stage, nevertheless we find that the Learned Single Judge was also wrong in his approach in giving undue weightage to the rent receipts issued by Smt. Kamla Bala Sett to the Respondent, as compared to categorical and unequivocal admission made by the same Respondent in his Written statement filed in title Suit No. 203/88. His unequivocal admission relevant to this case in para 6 of the said written statement is reproduced herein below:

> "This defendant has been paying rent at the rate of Rs.6/- to the landlady Smt. Kamala Sett for occupying and using the northern outer wall of the tenancy of the defendant situated at 43/F, Nilmoni Mitra Street, Calcutta-6. This defendant also is a tenant comprising of two rooms at 43/F, Nilmoni Mitra Street, Calcutta – 6 *under Smt. Kamala Sett and the rent is Rs. 75/- per English Calendar month.*"

(Underlining supplied by us)

16. In the light of Respondent's own admission, it leaves no doubt in our mind that it will hold good as long as it was not withdrawn or clarified by him. It is too well settled that an admission made in a court of law is a valid and relevant piece of evidence to be used in other legal proceedings. Since an admission originates (either orally or in written form) from the person against whom it is sought to be produced, it is the best possible form of evidence. In the factual context of this case, it may also be noted here that the 'rent receipts' issued by Smt. Kamala Sett, the predecessor-in-interest of the Appellant herein, being the documentary evidence adduced by the Respondent to prove his contention that the tenancy was as per the Bengali Calendar, was never substantiated by the witness'

A testimony of the abovenamed Smt. Sett in the course of hearings.

17. Curiously enough, it was a fit case where both parties would have been greatly benefited if they had examined Smt. B Kamala Sett as a witness. If she had deposed in favour of the Respondent then his contention that his tenancy was as per Bengali Calendar, would have been greatly strengthened. On the other hand, a Clause in the Deed of Conveyance executed between the Appellant and Smt. Kamala Sett, reveals that the C tenanacy in favour of the Respondent was based upon the English Calendar – so if she had affirmed this fact during her examination, then the Appellant would have had an upper hand.

18. There is no particular reason given by either party as to why Smt. Kamala Sett was not produced as a witness before D the Trial Court or the lower Appellate Court. Ordinarily therefore, without her testimony, both the copies of the rent receipts produced by the Respondent and the Lease Deed produced by the Appellant, have little evidentiary value vis-a-vis the factual question of whether the tenancy was as per the Bengali E or the English Calendar. Even otherwise, assuming that legitimate circumstances existed for non-appearance of Smt. Kamala Sett as a witness in this case, in which case her alleged affirmations in the Rent Receipt (that the tenancy was as per the Bengali Calendar) and the Lease Deed (that the F tenancy was as per the English Calendar) would be governed under the special provision contained in S. 32 (2) of the Indian Evidence Act, by no stretch can any of these affirmations be said to carry greater weight than the admission in the written stat ement made by the Respondent himself in the earlier suit. G Thus, clearly, the admission of the Respondent would carry greater weight than the uncorroborated documentary evidence by way of rent receipts. This is what has been contemplated under Sections 17 which defines "admission" of a party and 21 prescribes the procedure of proving such an admission in the Indian Evidence Act, 1872.

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19. Now, to understand whether the Notice purported to have been served under Section 13 (6) of the Act was in conformity with the aforesaid provision or not, we reproduce hereinbelow the relevant portion of Section 13 (6) :

> "S.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.....
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> (6) Notwithstanding anything in any other law for the time being in force, no suit of 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's notice expiring with a month of the tenancy."

20. The aforesaid provision requires giving of one month's notice to the tenant. From perusal of the Notice, dated 27.8.1991 sent by Appellant on 28.8.1991, it is clear that one month's clear Notice was given to the Respondent seeking upon him to vacate the premises. Thus, there has been compliance of Section 13(6) of the Act and once the Respondent's tenancy was determined on his failure in compliance thereof, suit was maintainable.

21. Learned Single Judge of the High Court had not been able to point out any perversity in the Judgment and decree of the appellate Court, yet, committed a grave error of law in allowing the Respondent's Second Appeal on absolutely flimsy and cursory ground. The same cannot be sustained in law and in our opinion is against the well settled principles of law.

22. In this view of the matter, judgment and decree of the learned Single Judge do not appear to be in conformity with

A law. Other ground of bona fide requirement was already held in favour of the Appellant. In our considered opinion appellant's suit was rightly decreed by the lower Appellate Court and the same could not have been set aside by the learned Single Judge, moreso when he had noticed that there was no B substantial question of law involved in the second Appeal.

23. Thus, looking to the matter from all angles, we are of the considered opinion that the impugned judgment and decree of the learned Single Judge cannot be sustained in law. The C same are hereby set aside and quashed. The judgment and decree of the lower appellate Court are hereby restored and Appellant's suit for eviction is decreed. Appeal is thus allowed.

24. In the facts and circumstances of the case, parties to bear their respective costs.

D

R.P. Appeal allowed.