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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Ashok Kumar Vs. Bhagwati Lal
S.B. CIVIL FIRST APPEAL NO.238/04

Against judgment and decree dated
10.12.2003 passed by Addl. District
Judge (Fast Track), Merta in Civil
Original Suit No. 118/2003(11/2002)
- Bhagwati Lal Vs. Ashok Kumar.

DATE OF PRONOUNCEMENT OF JUDGMENT ::
29th November, 2005.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Vinay Jain for appellant.
Mr. Vikram Singh for Mr. I.R. Choudhary for
respondent.

BY THE COURT:

This is an appeal by defendant Ashok
Kumar in Civil Suit No.118 of 2003 (11/2002)
challenging the judgment and decree dated
10.12.2003 passed by Addl. District Judge (Fast
Track), Merta, decreeing the suit filed by
the respondent-plaintiff Bhagwati Lal and

directing the appellant-defendant to deliver vacant possession of the disputed premises and pay due rent Rs.37,400/- alongwith interest Rs.9,817.50 so also the expenses of notice Rs.50/-, in total Rs.47,267.50 to the respondent-plaintiff.

The respondent-plaintiff, filed the aforesaid civil suit for eviction and recovery of rent stating, inter-alia, in the plaint that the disputed premises were rented to the appellant-defendant on 01.05.1994 @ Rs.900 per month, the rent of which was raised to Rs.1100/- from 01.12.1995. It was also averred that in respect of tenancy a rent deed was also executed by the defendant on 07th October, 1995 (Exh.1A) and it was agreed by the defendant that he would pay rent regularly month by month and in default would pay interest @ 1.5% per month on the rent due. The averments in the suit are also to the effect that the defendant agreed that he would vacate and handover the vacant possession of the premises on one

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month's notice and would pay the electricity and water bills so also any tax levied from time to time. The plaint further states that the defendant for the last time paid rent for the period upto 20.04.1999 and thereafter despite demands being made the due rent was not paid and he defaulted in making payment of rent for a period of 34 months. It is said that the plaintiff sent a notice on 13.03.2002 through his Advocate but the defendant refused to accept the same. The plaintiff prayed for a decree of eviction and for payment of arrears of rent, interest etc. amounting to Rs.51,372 and mesne profits @Rs.1100/- for use and occupation of the premises from the date of the suit.

The appellant-defendant resisted the claim of the respondent-plaintiff and filed written statement contending that the suit premises were initially taken on rent by his uncle Shri Bhanwarlal and thereafter by his father Shri Premraj in the year 1988, who

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started the business of lodging and boarding in the name of Pareek Vishram Grah Evam Bhojnalaya and as the appellant-defendant belongs to Hindu Musterka Family, he started kept on running the business of his father. It was contended with vehemence that the suit premises were not taken on rent in the year 1994 but earlier to that @ Rs.130/- per month and thereafter from time to time the rent was increased and lastly it was increased to Rs.1100/- per month. He accepted the conditions of the rent deed but stated that as the plaintiff had served notice on wrong facts he did not accept it. In additional pleas, it was stated that in case of eviction he would face great difficulty. His contention was to the effect that the plaintiff had sold the property to someone else despite the fact that he had agreed to sell the property to him.

The learned trial Court on the basis of pleadings of parties framed 7 issues including the issue of relief. The issues framed by the learned trial Court read as

under:

- (i) Whether the defendant is entitled to receive due rent Rs. 34,000/- for 34 months from 01.05.1999 to 01.03.2002?
- (ii) Whether the defendant is entitled to interest Rs.11,772 on the due rent?
- (iii) Whether the plaintiff is entitled for payment of Rs.1650/- as rent for the period up to 15.04.2002, the date of termination of tenancy?
- (iv) Whether the plaintiff is entitled to receive Rs.550/- as expenses of notice from defendant?
- (v) Whether the plaintiff has terminated the tenancy through notice from the mid night of 15.04.2002?
- (vi) Whether the plaintiff is estopped from filing the suit as per the additional objections?
- (vii) Relief?

The burden to prove issue No.1 to 4 was on the plaintiff whereas the burden to prove issue No.6 was on defendant. The plaintiff, in support of his case, examined himself as PW1 and got examined PW2 Durga Prasad. In documentary evidence he filed documents Ex.1

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Rent Note, Ex.2 notice, Ex.3 Postal Receipt and Ex.4 notice with endorsement of refusal. The defendant, in his turn, examined himself as DW1 and also examined DW2 Babulal and DW3 Hanuman. He produced the rent receipts Ex.A-1 to A13.

The learned trial Court, after hearing the parties, on the basis of the evidence led and the arguments advanced before it, decreed the suit against defendant as stated above. Aggrieved, the appellant-defendant has approached this Court by filing the present appeal under Sec.96, CPC.

I have heard learned counsel for the parties and considered the submissions made before me.

The point which requires consideration in this appeal is as to whether the learned trial Court has correctly decreed the suit against appellant-defendant or not?

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Ex.1A is the rent deed executed by appellant-defendant, which clearly establishes that the disputed premises, which is subject matter of the present appeal, was taken on rent by him on 01.05.1994 on a monthly rent of Rs.900/- on the terms and conditions enumerated in it including Condition No.1 that he would regularly pay the rent month by month and on due rent would pay interest @ Rs.1.5% per month. Condition No.2 of the deed says that he would neither make any alteration in the rented premises nor would rent out it to anybody else. Condition No.3 gives right to the landlord to get the premises vacated by giving one month's notice and to get the rent for the notice period. Condition No.4 makes the defendant tenant responsible to pay tax, if any, levied on the premises. In condition No.6 the appellant has undertaken to pay the expenses for electricity and water charges. Condition No.6 is to the effect that tenant will get receipt of the rent paid else the rent deposited would not be accepted. Condition No.7

shows the willingness of appellant-defendant tenant to pay the rent increased from time to time as per market practice. The rent, it appears, was subsequently increased to Rs.1100/- per month, which has been admitted by the defendant in his statement. Thus, now it is to be seen as to whether rent of 34 months claimed by plaintiff was due to the plaintiff or not. An argument has been tried to be built on behalf of appellant-defendant before the learned trial Court that upto 30.04.2002 the rent was paid of the entire 34 months but the learned trial Court while deciding Issue No.1 came to the conclusion that that was only an error and the amount paid was only for a period of three months' rent i.e. from 01.02.1999 to 30.4.1999. The trial Court found that since the rent agreed was Rs.1100/- per month therefore Rs. 3300/- could not be the amount of rent for 34 months. Before this Court, no argument is put on behalf of appellant-defendant challenging the finding arrived at by learned trial Court on Issue No.1 nor any

material is there on record to take a view different than the one taken by the learned trial Court. The trial Court, in coming to its conclusion relied on the evidence led by the defendant especially during his cross examination wherein he himself admitted that he paid rent only for a period of three months and stated that about 6-7 years back he had gone to the house of the landlord to make the payment of three months' rent. If that is so, then in light of this aspect of the matter, the tenancy is admitted by the appellant-defendant and the finding given by the learned trial Court on issue No.1 does not call for any interference.

It is also an admitted position by the appellant-defendant that he agreed to pay interest on the due rent @ 1.5% per month and hence the finding of the learned trial Court on Issue No.2 is legal, just and proper and it cannot be said that the finding arrived at is unjust, improper or based on misreading of the evidence as has been contended by the learned

counsel for the appellant-defendant and as such the finding arrived at by the learned trial Court on Issue No.2 also is not liable to be disturbed.

A faint attempt has been made by the learned counsel appearing for appellant-defendant by contending that the notice sent by landlord respondent-plaintiff was defective in view of the provisions contained in Sec.106 of the Transfer of Property Act. I do not find any weight in the contention of the learned counsel for the simple reason that Sec.106 of the said Act was amended in the year 2002. However, in order to appreciate the contention, it is necessary to reproduce Sec.106 as it stands amended by the Transfer of Property (Amendment) Act, 2002, which reads as under:

"106. Duration of certain leases in absence of written contract or local usage.- (1) In the absence of a contract or local law or usage to the contrary, a lease of 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-sec. (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."

By Sec.3 of the amended Act, it has been provided that the amendment so made in Sec.106 shall be made applicable to all the notices issued in pursuance of which any suit or proceeding is pending at the commencement of the Act and in respect of all the notices which have been issued before the commencement of this amended Act but where no suit or proceeding has been filed before such commencement. Thus, the amendment so made under Sec.106 of the said Act is applicable to all the pending matters and if that is so then the argument of the learned counsel for appellant-defendant that the notice was defective and as such the suit was not liable to be decreed, falls flat.

The trial Court has also considered the matter in relation to the additional pleas raised in the written statement and found that no evidence was led by the defendant to prove that the suit was not maintainable and in absence of any material the Issue No.6 was not

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held to be proved by appellant-defendant. The trial Court, consequently, decreed the suit in favour of respondent-plaintiff.

In view of what has been discussed hereinabove, I do not find any substance in the arguments of learned counsel for appellant-defendant that the trial Court has not correctly appreciated the matter and the suit has wrongly been decreed. The contentions made by the learned counsel are hereby repelled. The trial Court, in my humble opinion, has correctly decreed the suit which requires confirmation by this Court.

In the result, the appeal, being devoid of any merit, is dismissed with costs.

(SATYA PRAKASH PATHAK) J.

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