

Gurbaksh Kaur Vs. Raj Kumar

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Court : Punjab and Haryana

Decided On : Mar-30-2005

Reported in : (2005)140PLR756

Judge : Ashutosh Mohunta, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 106

Appeal No. : Regular Second Appeal No. 1303 of 2000 (O and M)

Appellant : Gurbaksh Kaur

Respondent : Raj Kumar

Advocate for Def. : Arun Jain and; Ajay Kaushik, Advs.

Advocate for Pet/Ap. : P.C. Suman and; Deepak Mehmi, Advs.

Disposition : Petition allowed

Judgement :

Ashutosh Mohunta, J.

1. The plaintiff/appellant (hereinafter referred to as the plaintiff) has filed the present Regular Second Appeal against the judgment dated 11.10.1999 passed by the Civil Judge (Jr. Division), Hoshiarpur, as well as the judgment of the District Judge, Hoshiarpur, dated 13.1.2000 by which the suit for possession of the shop

in dispute filed by the plaintiff was dismissed.

2. Briefly the facts of the case are that the plaintiff was the owner of the shop in dispute which is situated in village Kot Fatuhi, District Hoshiarpur, and the same was given on monthly rent to the defendant/respondent (hereinafter referred to as the respondent) at the rate of Rs.200/- per month. The plaintiff issued a legal notice under Section 106 of the Transfer of Property Act (hereinafter referred to as the Act) through her counsel Shri Jawala Singh Dhammi to the respondent by which the lease of the shop in question was terminated. It is pertinent to mention here that the appellant was also the owner of two other shops in which similar notices had been issued to the tenants of those shops. Legal notice issued under Section 106 of the Act was duly received by the respondent and a reply to the same was also filed by the respondent. In the reply it was stated by the respondent that the plaintiff has no right to get the shop vacated and that he is not in arrears of rent.

3. Various issues as enumerated in paragraph 4 of the judgment of the trial Court were framed by the trial Court and the Civil Judge (Jr. Divn.), Hoshiarpur, vide his judgment dated 11.10.1999 held that the plaintiff has not been able to prove the notice under Section 106 of the Act as neither the attorney of the plaintiff has signed the notice nor the signatures of the Advocate have been identified. An appeal was filed against the judgment of the trial Court which was also dismissed by the District Judge, Hoshiarpur, vide judgment dated 13.1.2000. Hence, the present appeal.

4. Learned counsel for the plaintiff has argued before me that once a notice under Section 106 of the Act is issued to a lessee/tenant then the lessee has to vacate the premises in question. As per provisions of Section 106 of the Act, lease of immovable property for agricultural or manufacturing purposes is terminable on the part of either lessor or lessee by giving six months notice. It is contended that as a notice under Section 106 of the Act was duly served upon the respondent who had also received and replied to the same, therefore, the lease in favour of the respondent stood terminated and the respondent is liable to vacate the shop in question.

5. On the other hand, learned counsel appearing for the respondent-has argued that neither the attorney of the plaintiff has signed the notice under Section 106 of the Act nor the signatures of the counsel have been identified by any person and, therefore, the notice under Section 106 of the Act has not been proved in accordance with law and as such the plaintiff is not entitled to the possession of the shop in dispute.

6. On the basis of the above facts and arguments, the short question that arises for determination of this Court is - Whether the lease in favour of the respondent stood terminated on the issuance of notice under Section 106 of the Act to the respondent and if so, whether the respondent is liable to handover the possession of the shop in dispute to the plaintiff

7. A perusal of Exs.P2 and P6 clearly shows that a notice under Section 106 of the Act was duly sent to the respondent through Shri Jawala Singh Dhammi, who was the counsel for the plaintiff, on 5.9.1997. A notice was also sent on 3.9.1997 by the counsel for the plaintiff to the respondent but inadvertently the date was wrongly mentioned and, hence, the second notice was issued on 5.9.1997 with the correct date. The receipt of the notice has been duly acknowledged by the respondent.

8. The notice was not only received but also replied to by the respondent and, therefore, the argument of the learned counsel for the respondent that the notice issued under Section 106 of the Act was not valid as neither the attorney has signed the same nor the signatures of the counsel have been identified cannot be accepted. As there is due acknowledgement of the notice, therefore, the lease stood terminated on issuance of the notice and the respondent is liable to handover vacant possession of the shop in dispute to the plaintiff.

9. Thus, the answer to the substantial question of law formulated in the present case is that once a notice is issued under Section 106 of the Act by a lessor or lessee with regard to the lease of any property then lease stands terminated on the serving of the notice.

10. In the present case, there is no specific or implied denial on part of the respondent, not to have received the notice. In the absence of any specific or

implied denial of the allegations then the service of the notice has to be taken to be admitted. In *Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam v. Atmaram Kumar*, : (1993)4SCC6 it has been held that in the absence of specific or implied denial of having received a notice terminating the tenancy then the service of notice must be taken to have been admitted. The facts in the present case are even on better footing as not only the notice has been admitted to be received but the same has been replied to by the respondent.

11. In view of the above, the judgment dated 11.10.1999 passed by the Civil Judge (Jr.Divn.,) Hoshiarpur, as well as the judgment of the District Judge, Hoshiarpur, dated 13.1.2000 are set aside and the appeal filed by the plaintiff is allowed. Accordingly, the respondent is directed to vacate the shop in dispute within a period of three months from today.

12. As far as the question of arrears of rent is concerned, counsel for the plaintiff had relinquished his claim even before the lower Appellate Court. Hence, the findings of the District Judge, Hoshiarpur, with regard to issue No. 4 are upheld.