

**(2005) 10 CAL CK 0012**

**Calcutta High Court**

**Case No:** G.A. No. 32 of 2005 and CJ No. 290 of 2004

S.B. Properties Pvt. Ltd.

APPELLANT

Vs

Bank of India

RESPONDENT

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**Date of Decision:** Oct. 7, 2005

**Acts Referred:**

- Transfer of Property Act, 1882 - Section 106, 111
- West Bengal Premises Tenancy Act, 1956 - Section 3

**Citation:** AIR 2006 Cal 115

**Hon'ble Judges:** Kalyan Jyoti Sengupta, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

Kalyan Jyoti Sengupta, J.

The summons has been taken out for final judgment under Chapter XIII A of the Original Side Rules of this Court. The plaintiff has resorted to the aforesaid summary procedure the provision of which is set out hereunder:

Nature of cases in which applicable. The provisions of this Chapter shall not be applicable save to suits.

(A) ....

(i) to (iv) ....

(B) for the recovery of Immovable property with or without a claim for rent or mesne profits by a landlord against a tenant whose term has expired or has been duly determined by notice to quit or has become liable to forfeiture for non-payment of rent or against persons claiming under such tenant.

The present suit is for eviction of the defendant who has been described as a monthly tenant, and was induced by the plaintiff at a monthly rate of rent. The let

out premises is entire ground floor and first floor Including a connecting staircase having an area of 3550.25 square feet more or less of premises No. 55, Bhupendra Bose Avenue, Kolkata-700 004 (hereinafter referred to as suit premises). The aforesaid tenancy has been determined by due notice. In spite of termination of tenancy the defendant failed and neglected to quit and vacate the said premises. Hence, the suit has been filed.

2. It appears from the records that the defendant entered appearance through Mr. Durga Sankar Mullick, learned Advocate in the said suit. This fact is evidenced by his letter dated 9th December, 2004, Immediately thereafter the instant summons has been taken out. The summons and the supporting affidavit have been duly served upon Mr. Mullick and affidavit-of-service has been filed. In spite of service on 18th January, 2005 direction for filing affidavit was given though on that date none appeared. By a letter dated 19th January, 2005 which was received on behalf of Mr. D.S. Mullick, the plaintiffs Advocate on record duly Intimated of the aforesaid order giving direction for filing affidavit. This letter was also received. On 27th January, 2005, the Advocate-on- record of the plaintiff duly forwarded a copy of the order dated 18th January, 2005. The aforesaid letter appears to have been received for and on behalf of Mr. D.S. Mullick for the defendant. The aforesaid facts have been established by filing an affidavit of service and the same is kept on record. Notwithstanding communication as above no affidavit of opposition has been filed. This matter appeared in the list on 24th March, 2005. On that date none appeared. The matter was adjourned till 21st April, 2005. However, the matter was heard on 25th April, 2005 and none appeared on that date too and the same was adjourned till 2nd May, 2005. On 2nd May, 2005 the matter was finally heard. On all those days none appeared on behalf of the defendant.

3. As such the statements and averments made in affidavit in support of summons are deemed to have been admitted.

4. From the statements and averments it appears to me that the defendant was inducted on the basis of oral agreement of monthly tenancy. The tenancy stood determined with notice.

5. Mr. Banerjee appearing with Mr. Bachwat submits that it is the monthly tenancy and this tenancy is not governed by the West Bengal Premises Tenancy Act, 2001. By virtue of Section 3 of the said Act because of the rate of rent this tenancy is outside purview of the said Act. Mr. Banerjee, therefore, contends that the protection against the eviction as envisaged in the said Tenancy Act is not available to the defendant. This shall be governed by the provision of Transfer of Property Act viz. Section 111 of the Transfer of Property Act. This tenancy has to be treated as a lease from month to month and it can be determined by serving 15 days" notice by either of the parties with the end of month of the tenancy. The defendant has not come forward to challenge the validity of the notice, as such it has to be accepted by (sic) a reported as it has been a valid and lawful one.

6. In support of his contention he has relied on the following decisions of three High Courts and the Supreme Court viz. AIR 1916 Cal 358 ((Aklu v. Emman) [Sm. Durgesh Nandini Devi Vs. Aolad Shaikh](#), [Adit Prasad Vs. Chhaganlal and Another](#), [Jiwan Dass Vs. Life Insurance Corporation of India and Another](#), and [Akash Ganga Builders and Engineers \(P\) Ltd. Vs. G.P. Seth HUF and Another](#), .

7. Having considered the contentions of Mr. Banerjee and having gone through the fact it appears that the question in this case is as to whether the plaintiff is entitled to get eviction decree in a summary procedure or not while applying the law. No fact is required to be proved, as the defendant has not come forward to make any defence. Mr. Banerjee submits that this relationship has to be governed by the Transfer of Property Act. From the language of Section 111 read with Section 106 of the Transfer of Property Act it appears to me apparently that this case does not fall within the aforesaid provision. Prior to amendment of the West Bengal Tenancy Act, 2001 this case would have been governed by the Local Rent Act viz. Premises Tenancy Act. In view of the amendment and keeping this tenancy right outside of the applicability of the Act by the amending Act, the protection under the said Act of the defendant is no longer available. In this situation what should be the relationship and/or applicable law between the parties, is the moot question to be decided. In the Division Bench judgment reported in AIR 1916 Cal 358 (Aklu v. Emrnam) the Hon"ble Chief Justice Sanderson speaking for the Bench had applied the provision of Transfer of Property Act treating the same being a monthly tenancy in case of an unregistered lease, and granted a decree in favour of the plaintiff. In case of [Sm. Durgesh Nandini Devi Vs. Aolad Shaikh](#), the decision of the Division Bench of this Court, which in my view, is very apposite in this case also, has made the position clear in a situation of this nature. In absence of any lease it was held that it should be a monthly tenancy and the same is terminable by serving 5 days" notice.

8. The decision of the Patna High Court cited by Mr. Banerjee is of no direct help as in that case there has been an unregistered document of the tenancy, principle decided in that case, however, may have some value that in absence of any written lease a case shall be treated to be a monthly tenancy and the same is terminable under the provisions of Section 106 of the Transfer of Property Act. The Supreme Court judgment referred to above by Mr. Banerjee is also not applicable in this case. Similarly the Delhi High Court judgment is not also helpful in this matter.

9. In view of the discussions as above, I think the relationship between the plaintiff and the defendant was that of a monthly tenancy and the same is to be governed by the provision of the Transfer of Property Act. I find that the notice of termination is a valid and lawful one. I hold that tenancy has been determined with due process of law and in spite thereof the defendant failed and neglected to quit and vacate the suit premises or any portion thereof.

10. Thus, this application succeeds and there will be an order in terms of Prayer (a) of the master summons. However, no relief is granted at this stage so far as the other prayers are concerned. Since no evidence has been produced to support such claim at this stage, therefore, this question is to be decided at the time of the trial of the suit.

Cost costs in the cause.