# Maya Parshi and Others Vs Monoroma Patra and Others

**Court:** Calcutta High Court

**Date of Decision:** March 21, 2013

**Citation:** (2013) 3 WBLR 237

**Hon'ble Judges:** Tapan Kumar Dutt, J

**Bench:** Single Bench

**Advocate:** Sushanta Kr. Kundu and Saptarshi Kr. Kundu, for the Appellant;

## Judgement

Tapan Kumar Dutt, J.
Today when the appeal was called out for hearing, none appears on behalf of the respondents. This Court has

heard the learned Advocate for the appellants and has considered the materials on record.

2. The facts of the case, briefly, are as follows:

The plaintiffs-respondents filed a suit for eviction against the predecessor-in-interest of the defendants-appellants inter alia on the ground of default

in payment of rent and reasonable requirement upon the building and rebuilding of the suit premises. It appears from the facts of the case that on

21.6.1975 the landlord had issued a notice of ejectment to the tenant but did not file any suit pursuant to the said notice of the year 1975. The

landlord issued a second notice to quit on 10.10.1988 which was served upon the defendants in the suit for eviction and pursuant to such second

notice the present suit for eviction was filed against the defendants. The said suit being Title Suit No. 210 of 1988 was contested by the defendant

and ultimately the said suit came up for hearing before the learned Civil Judge (Junior Division), 1st Court, Ranaghat, Nadia and the learned trial

Court by its judgment and decree dated 28.3.2000 dismissed the said suit by observing that there is ample cause of action for the suit but since the

second notice to quit was illegal and invalid, the plaintiffs were not entitled to any decree for eviction. The learned trial Court came to the finding

that the defendant was a defaulter in payment of rent but since the suit was not maintainable as it was based on the second notice to quit which was

illegal and invalid, the plaintiffs were not entitled to any decree. The learned trial Court was of the view that since the first notice to quit had not

been waived, there was no legality in bringing of the suit on the basis of the second notice. The learned trial Court further observed that after the

issuance of the first notice no new tenancy was created and there is no proof that the old tenancy had continued as it will appear that the defendant

also did not pay any rent to the plaintiffs after the first notice.

3. Challenging the judgment and decree passed by the learned trial Court, the plaintiffs filed a Title Appeal No. 5 of 2004 which was placed before

the learned Civil Judge (Senior Division), Ranaghat, Nadia and the said Title Appeal came up for hearing when the learned First Appellate Court

by its judgment and decree dated 19.9.2006 allowed the said appeal by setting aside the judgment and decree passed by the learned trial Court.

The learned First Appellate Court came to the finding that the defendants in the suit were defaulters in payment of rent and they were not entitled to

any protection under 17(4) of the West Bengal Premises Tenancy Act, 1956. The learned First Appellate Court also decided the question as to

whether the suit was bad for defect of parties and came to the conclusion that the suit was not bad for defect of parties as a question in this regard

was raised by the defendants in the suit. The learned First Appellate Court found that the notice to quit dated 10.10.1988 is valid and sufficient and

it determined the contractual tenancy of the defendants in the suit and the said second notice to quit was served upon the defendants.

4. Challenging the judgment and decree passed by the learned First Appellate Court, the defendants in the suit have come up in the second appeal

before this Court.

5. At the time of admission of the appeal an Hon''ble Division Bench of this Court has been pleased to formulate the substantial question of law on

the basis of which this appeal would be heard. The following is such substantial question of law.

Whether the learned First Appellate Court committed error in law in holding that by virtue of the notice dated 10th October, 1988, the tenancy of

the defendant had been duly determined and in view of the said notice to quit dated 10th October, 1988, suit is maintainable?

6. Mr. Kundu, learned Advocate for the appellants has argued before this Court that the first notice to quit dated 21.6.1975 was a valid notice and

the tenancy was determined by such notice but even thereafter the defendants continued to be in possession of the suit property without tendering

any rent to the landlords and in such situation the second notice to quit was invalid as the relationship of landlord and tenant had ceased upon

issuance of the first notice. Since the suit was filed in the year 1988, Mr. Kundu, learned Advocate, further submitted that the said suit was barred

by law of limitation as per Article 67 of the Limitation Act and, therefore, the suit was not maintainable. The Hon''ble Division Bench by the said

order dated 31.1.2008 has been pleased to formulate the only substantial question of law with regard to the point of notice.

7. There is no dispute with regard to the fact that after the issuance of the first notice in 1975, the defendant continued to be in possession of the

suit property without making payment of rent and the landlord had issued a second notice to quit in the year 1988. Only because the defendant did

not make payment of rent after issuance of the first notice cannot mean that the landlord had forfeited his right to issue a second notice if the

occasion so arose.

8. The facts and circumstances of the present case clearly indicate, as found by the learned First Appellate Court, that the landlord had waived the

first notice to quit; at least there was an implied waiver. If Mr. Kundu''s argument is accepted, then it has to be said that the defendant continued to

occupy the suit property after the issuance of the first notice as a trespasser and even if the present suit is a suit for ejectment of a tenant whose

tenancy has been determined, Court is not barred from passing a decree for eviction in case the Court finds that the defendant turns out to be a

trespasser. For such purpose the plaintiffs-landlords cannot be relegated to a separate suit. However, in the present case this Court is of the view

that the plaintiff-landlord had waived the first notice and the defendant continued with the old tenancy till the second notice to quit was issued. The

learned First Appellate Court has already found that the second notice to quit was legal and valid and also served upon the defendant in the suit.

9. Sm. Malina Mondal Vs. Sm. Puspa Rani Dasi, . The learned Court in the said reports has been pleased to observe in paragraph - 6 of the said

reports that the defendant in the said case continued in possession even after service of the first notice and thereafter the plaintiff served the second

notice and, therefore, there was implied waiver of the first notice. The learned Court in the said paragraph was further pleased to find that the

learned Munsif in the said case had held that even after the first notice the defendant tendered rent for the post notice period to the plaintiff and

continued in possession and thereafter the second notice was served by the plaintiff.

10. This Court cannot see any reason as to how such reports cannot be of any assistance to the appellants in the present case. Just because the

defendants in the present case did not tender any rent after issuance of the first notice, it cannot compulsorily lead one to the conclusion that there

cannot be any waiver of the first notice.

11. Article 67 of the Limitation Act cannot be invoked in the facts and circumstances in the present case as this Court has come to the conclusion

that there has been a waiver of the first notice and the issuance of the second notice was quite valid and sufficient and legal.

12. In view of the discussions made above, this Court does not find any merit in the present second appeal which is dismissed.

13. The judgment and decree passed by the learned First Appellate Court is affirmed.

14. There will, however, be no order as to costs.

15. The lower Court records be sent back to the learned Court concerned. Urgent certified xerox copy of this judgment, if applied for, shall be

given to the parties as expeditiously as possible on compliance of all necessary formalities.