
AIR 1925 Bom 167 : (1925) 27 BOMLR 102 : 94 Ind. Cas. 631

Bombay High Court

Case No: O.C.J. Suit No. 3356 of 1924

Mahomedally Ebrahimji
Leheri

APPELLANT

Vs

Haji Abdulla Kazim

RESPONDENT

Date of Decision: Nov. 11, 1924

Acts Referred:

- Transfer of Property Act, 1882 - Section 106

Citation: AIR 1925 Bom 167 : (1925) 27 BOMLR 102 : 94 Ind. Cas. 631

Hon'ble Judges: Marten, J

Bench: Single Bench

Judgement

Marten, J.

It is clearly proved here that the plaintiff is the owner of a building known as Leheri Mansion in Sandhurst Road and that the defendant is a monthly tenant of a portion of that property. Under the decree of March 24, 1924, in Suit No. 4017 of 1923, the standard rent of that property has been fixed at Rs. 530 per mensem, I find as a fact that the monthly tenancy runs from the first day of each month to the last day of each month according to the English dates.

2. On July 31, 1924, the attorneys for the plaintiff gave the defendant notice to quit in the following terms so far as material:-

We have to call upon you to quit and deliver quiet and peaceful possession of the portion ...occupied by you for the purposes of your hotel as our client's monthly tenant at the end of next month (i. e. August 31, 1924). In default our client will file an ejectment suit against you to recover possession of the said premises at your risk as to costs, which please note

3. The point is whether a notice to quit on the last day of the month, viz., August 31, 1924, is invalid inasmuch as the tenancy would not expire until the end of the day constituting

August 31, 1924. Counsel has pointed out that u/s 106 of the Transfer of Property Act, a notice to quit may be by a notice expiring with the end of a month of the tenancy, in the absence of any contract or local usage to the contrary. In the present case, I think, having regard to what is said in *Bhojabhai v. Hayem Samuel* ILR (1898) 22 Bom. 754, that local custom probably requires a month's notice in the case of property in Bombay like the property in the present case, and that accordingly the fifteen days' notice mentioned in Section 106 would be insufficient.

4. But there is nothing whatever in the local practice, so far as I am aware, to suggest that a notice expiring with the end of a month of the tenancy would not be a proper notice in the case of a month's notice as opposed to a fifteen days' notice. On the contrary in *Kikabhai v Kalu* I. L. R. (1896) 22 Bom. 241, a case which was decided by Sir Charles Farran and Mr. Justice Hosking, a notice was given to quit on March 31, 1892, and that was held to be a good notice. That was a case where the tenancy was an annual tenancy and where the notice to be given was a six months notice. So that case is in effect an authority for the proposition that a notice to quit on the last day of the tenancy is a valid notice.

5. Then counsel has been good enough to draw my attention to a recent English case of *Simmons v. Crosaley* [1922] 2 K. B. 95 where the question was what notice must be given to determine a monthly tenancy. What happened there was that the landlord thinking that the tenancy was longer than a monthly tenancy gave a six months' notice to determine the tenancy, and notice was given to quit on September 29. That date, it will be observed, is one day short of the actual end of the month, viz., September 30: Accordingly it was argued that the notice to quit was bad inasmuch as it was given for one day short of the end of the month, And that it could not be given for any day other than the last day of the month. There counsel for the tenant contended that the notice must expire either on the last day of one month or on the first day of the next month calculated at the date of its commencement and at no other time.

6. But the actual decision of the Court was that all that was required was a reasonable notice, and that it can be given for some day other than the last day of a month. But there it will be observed the notice was a very long one. If the length of notice had been under a month, then it would clearly have been invalid, but being so long as six months the Court held that the landlord could fix a different date for the termination than the mere end of a calendar month. Many authorities were there cited by the learned Judges, and the importance of the case to us in the present suit is that it was conceded that notice expiring on the last day of a month would be good.

7. So, too, in *Ismail Khan Mahomed v. Jaigun Bibi* I. L. R. (1900) Cal. 570, the English case of *Page v. More* (1860) 16 Q. B. 684 was relied on by the tenant as showing that a notice to quit at noon on the last day is bad. But that case was held distinguishable in the *Calcutta* case where the notice to quit was not at any particular time on the last day of the tenancy but merely before it. I, however, notice that according to p. 572 of the report the

notice to quit was not "before" the last day but "by" the last day of the particular Chait year.

8. Then in *Harikar Banerji v. Ramsashi Ray* (1918) 21 L.R. 522 their lordships of the Privy Council have considered this question of notices to quit, and they say:-

It has not been suggested, and could not, their Lordships think, be successfully contended, that the principles they lay down are not equally applicable to cases arising in India, They establish that notices to quit, though not strictly accurate or consistent in the statements embodied in them may still be good" and effective in law" that the test of their sufficiency is not what they -would, mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to refer, but what they would mean to tenants presumably conversant with all those facts and circumstances) and further, that they are to be construed not with a desire to find faults in would render them defective but to be construed *ut res magis valeat quam pereat*.

9. On these authorities then I hold that this notice did not mean that the tenant was to give up possession at any definite hour prior to midnight on August 31, 1924, and that accordingly the notice in my opinion was a valid notice. It is clear that the Bombay Rent (War Restrictions) Act expired on or before August 31, 1924, and in my opinion there was nothing in that Act which would prevent the landlord from giving notice to quit at the expiration of that Act. The rest of the judgment is not material to this report. His lordship passed a decree in ejectment and declined to grant any extension of time to the defendant.