

SMCST/178/2016

JUDGMENT

Registration No. : SMCST/178/2016.
Filing No. : SMCST/178/2016.
Filed On : 06/04/2016.
Registered On : 06/04/2016.
Decided On : 05/02/2018.
Duration : 01 YY 09 MM 30
DD

Exh. ____.

IN THE SMALL CAUSE COURT NO.9, AT AHMEDABAD,**H.R.P. Suit No.178 of 2016****SMCST/178/2016****Plaintiff:**

1. Irshadahmed Nisar Ahmed Ansari,
Age: 51 years, Occupation: Business,
Address: 7, Ankleshwariya Compound, Parsi
Bungla. Meter Gauge, Saraspur, Ahmedabad.

V E R S U S**Defendant:**

1. Sardarji Sarbatjitsingh Charansingh,
Address: Prabha Electronics,
Survey No.180-A/15/1, At the end of
Saraspur bridge, Near Heera Hotel, Beside
Faizanul Kuran School, Near Meter Gauge
Railway Station, Saraspur, Ahmedabad.

Appearance:

Mr. S. D. Nayak, Ld. Adv. for the plaintiff.
Mr. P. V. Nayak, Ld. Adv. for the defendant.

Coram: Mr. Daxesh Rajeshkumar Jaguwala, Judge.**J U D G M E N T**

1. The short facts of the plaintiff's plaint
are as under:-

The plaintiff has purchased the property which is mentioned in para-1 of the plaint from the previous owner and the said property *paiki* one shop survey no.322/1 bearing municipal tenement no.00230/43/0006/0002/F rented to the defendant for business purpose at the monthly rent of Rs.2,800/- plus municipal tax, education cess, etc. all charges and the said shop hereinafter referred as "suit premises" and the plaintiff executed rent agreement on 17.04.2013. The plaintiff has filed H.R.P. Suit No.1657/2013 and the said suit has withdrawn with a condition to file fresh suit. The defendant has stopped to pay the rent to the plaintiff therefore the plaintiff has given notice to the defendant and the defendant has given reply against the said notice and denied to comply with the said notice and the defendant has asked the documents regarding the transactions of the plaintiff and the previous owner and the plaintiff has provided the same to the defendant vide his reply dated 07.05.2013 but the defendant has not paid rent amount to the plaintiff and rent is due for more than six months and the defendant is not using the suit premises from last six months and the defendant is trying to sublet the suit premises to third party and thereby profiteering. Therefore, the plaintiff has filed the present suit and prayed relief as

per para-7 of the plaint against the defendant.

2. The defendant has been duly served with summons of the suit and he has appeared before the court through his learned advocate and filed his written statement vide Exh.10 wherein the defendant has denied almost all the facts the plaintiff's case and contended that this suit is premature. The rent agreement executed on 17.04.2013 which is false and illegal as the plaintiff cheated the defendant that the plaintiff has to submit writing in Ahmedabad Municipal Corporation therefore the defendant has given notice dated 30.04.2013 to revoke the said rent agreement and H.R.P Suit No.1658/2013 has been filed and same has been withdrawn. The defendant is doing business in the suit premises from year 1977 and established goodwill and telephone bill, light bill, certificate issued by Shops & Establishment, Ahmedabad Municipal Corporation and tax bills are in the name of the defendant but the plaintiff has misused the aforesaid agreement and filed the present false suit. As per the Registration Act, it is required to get sale-deed and registered it in the Office of Sub-registrar and only by general power of attorney and sale-agreement, the plaintiff cannot become the owner of the suit premises. The original landlord of the suit premises was Dahyabhai Khubchand and he

had rented the suit premises at the monthly rent Rs.160/- inclusive of municipal tax and the defendant is tenant of the suit premises from year 1977 and he was paying maintenance and the previous owner had not collected the rent from year 2007 and the evidence of the defendant had burnt to ashes due to horrible fire dated 09.10.2002. In fact, the plaintiff is not owner of the suit premises. Rest of the say of the defendant however is in denial. Therefore, the present suit is liable to dismiss with cost.

3. In view of above pleadings, my predecessor learned judge has framed following issues vide Exh.13:-

1. Whether the plaintiff proves the terms of tenancy?
2. Whether the plaintiff proves that defendant became tenant in arrears for more than six months immediately preceding the date of institution of the suit?
3. Whether the plaintiff proves that the suit notice is legal and valid?
4. Whether the plaintiff proves that defendant is not using suit premises without reasonable cause for continuous period of six months immediately preceding the date of

institution of the suit?

5. Whether the plaintiff proves that defendant has sublet the suit premises and thereby making profiteering?

6. Whether the plaintiff is entitled to get relief as prayed for?

7. What order and decree?

4. My findings for the above issues are as under:-

1. In the Affirmative.

2. In the Negative.

3. In the Negative.

4. In the Negative

5. In the Negative.

6. In the Negative.

7. As per final order.

5. The plaintiff has produced following oral as well as documentary evidence:-

<u>Oral Evidence</u>	
Exh.16.	Affidavit of examination-in-chief of the plaintiff namely, Irshadahmed Nisar Ansari.

<u>Documentary Evidence</u>

Exh.29.	Original rent agreement executed by the defendant.
Exh.41.	Xerox copy of rent agreement executed by the defendant.
Exh.42.	Xerox copy of notice given by the defendant to the plaintiff.
Exh.43.	Xerox copy of reply cum notice given by the plaintiff to the defendant.
Exh.24.	Closing pursis.

6. The defendant has produced following oral as well as documentary evidence:-

<u>Order Evidence</u>	
Exh.28.	Affidavit of examination-in-chief of the defendant namely, Sardarji Sarbatjitsingh Charansingh.

<u>Documentary Evidence</u>	
Exhs.30 to 37.	Original rent receipts.
Exhs.38 and 39.	Original municipal tax bills mentioning the name of the defendant as occupier.
Exh.46.	Closing pursis.

7. I have heard learned advocate for both the parties at length and perused oral as well as documentary evidence on record and considering the same my reasons for the above findings of

issues are as under:-

R E A S O N S

Issue No.1:-

8. It is the case of the plaintiff that he has purchased the premises from the previous owner, from which one shop survey no.322/1 bearing municipal tenement no.00230/43/0006/0002/F rented to the defendant for business purpose. To prove his case, the plaintiff has submitted his affidavit of examination-in-chief on oath vide Exh.16, wherein he has reiterated the facts stated in the plaint. The plaintiff has produced original rent agreement vide Exh.29, which has been executed between the plaintiff and the defendant. The defendant has denied said rent agreement but in his cross-examination, he has admitted that the plaintiff has intimated him regarding the purchase of the suit premises. He has further admitted his signature and also admitted that he has executed the rent agreement produced vide Mark-15/1(Exh.29). Therefore, in view of the admission made by the defendant, the plaintiff succeed to prove the terms of tenancy with the defendant. Hence, I answer Issue No.1 in to "**Affirmative**".

Issue No.2 & 3:-

9. My learned predecessor has framed these

issues in respect of that whether the plaintiff proves that defendant became tenant in arrears for more than six months immediately preceding the date of institution of the suit and the notice is legal and valid. To prove his case, the plaintiff has submitted his affidavit of examination-in-chief on oath vide Exh.16, wherein he has deposed that the defendant is tenant in arrears of rent and he has issued notice to the defendant, but looking to the examination-in-chief of the plaintiff, he has not mentioned in the oral evidence that what amount of rent is due from the defendant. Now, looking to the reply cum notice produced vide Exh.43, wherein the plaintiff has not mentioned the amount of monthly rent, period for the arrears of rent and even not mention the total amount of arrears of rent due to the defendant and therefore, in absence of required contents, the notice cannot be said to be legal and valid as provided under Section 12 of the Bombay Rent Act and when the notice is not legal and valid, the plaintiff is not entitled to get the eviction decree on the ground of tenant in arrears of rent. Hence, the plaintiff failed to prove that the defendant is tenant in arrears of rent and also failed to prove that the notice given to the defendant is legal and valid. Hence, I answer Issue No.2 and 3 in the "**Negative**".

Issue No.4:-

10. My learned predecessor has framed this issue in respect of non-user of the suit premises without reasonable cause for continuous period of six months immediately preceding the date of institution of the suit. To prove his case, the plaintiff has submitted his affidavit of examination-in-chief on oath vide Exh.16, wherein he has deposed that the defendant is not using the suit premises from last six months and keep the suit premises in close condition. It must be noted here that for obtaining eviction decree under the provision of Sec.13(1)(k) of the Bombay Rent Act, the landlord is under obligation to establish convincingly on record that the suit premises has not been used for continuous period of six months immediately preceding the date of the suit. But looking to the evidence on record, except oral version of the plaintiff, the plaintiff has not produced any cogent documentary evidence to show that the suit premises is in non-used condition for six months immediately preceding the date of the suit. On the contrary, in the cross-examination made by learned advocate for the defendant, the plaintiff has admitted that since long the defendant is doing business of electronic repairing work in the suit premises and also admitted that whenever he goes to the

suit premises during 4 or 5 days, it seems to be open. Therefore, in view of the above discussion and admission made by the plaintiff, the plaintiff failed to prove the Issue No.4. Hence, I answer Issue No.4 in the "Negative".

Issue No.5:-

11. My learned predecessor has framed this issue in respect of whether the plaintiff proves that defendant has sublet the suit premises and thereby making profiteering?. In his deposition, the plaintiff has deposed that the defendant is trying to sublet the suit premises to third party and thereby profiteering. In his cross-examination, the plaintiff has admitted that the defendant has never transferred or sublet the suit premises to any person and not profiteering from it. Therefore, it is clearly admitted by the plaintiff that the defendant has not transferred or sublet the suit premises to any third party and profiteering from the same. Therefore, the plaintiff failed to prove the Issue No.5. Hence, I answer Issue No.5 in to "Negative".

Issue No.6 & 7:-

12. As the plaintiff failed to prove the issue regarding tenant in arrears of rent, non-user, subletting of the suit premises, he is not

entitled to get the possession of the suit premises as prayed for. Hence, I answer Issue No.6 in the "**Negative**" and in the interest of justice, I pass following final order in respect of Issue No.7:-

O R D E R

1. This suit of the plaintiff is hereby dismissed.
2. Both the parties to bear their own costs.
3. Decree to be drawn accordingly.

Signed and pronounced in the open Court today on this 5th day of February, 2018.

Ahmedabad

(Daxesh Rajeshkumar Jaguwala)

Date : 05/02/2018

Judge, UIC No.GJ00973,
Small Cause Court No.9,
Ahmedabad.