

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 29 of 2013

Reserved on: 31.3.2026

Date of Decision: 22.04.2026

Lekh Raj (since deceased) through LRs ...Appellants

Versus

Kamal Kumar ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes.

For the Appellants : Mr Mohinder Verma, Advocate.

**For the Respondent : Mr. N.K. Thakur, Senior
Advocate, with Mr Divya Raj
Singh, Advocate.**

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 27.11.2012, passed by the learned Additional District Judge, Una, H.P. (learned Appellate Court), vide which the judgment and decree passed by the learned Civil Judge (Senior Division), Court No.1, Una, H.P. (learned Trial Court), were partly set aside. (*Parties shall hereinafter be referred to in the*

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

same manner as they were arrayed before the learned Trial Court for convenience.

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned Trial Court for recovery of arrears of rent of ₹21,000/- and ejectment of the defendant from the shop denoted by letter ABCD shown in the site plan (Ex.PW5/A) located in Khewat No. 98 (min), Khatauni No. 158 (min), Khasra No. 300 and Khewat No. 99 (min), Khatuani No. 159 (min) and Khasra No. 299 in Village Bout, Tehsil Bangana District Una, H.P., (*hereinafter referred to as the suit premises*). It was asserted that the plaintiff is the owner of the suit premises, which was rented by him to the defendant at the rate of ₹800/- per month for 11 months, vide an agreement dated 1.1.2000. The defendant started running a shop in the name and style of Indian Garments Gift Centre. The rent of the shop was increased to ₹1,000/- w.e.f. 1.1.2003. The defendant failed to pay the rent w.e.f. 1.5.2003 till 31.1.2005, and he was in arrears of rent of ₹21,000/-. The plaintiff required the shop to establish the business for his son. He served a notice (Ex. P3) upon the defendant asking him to hand over the vacant possession of the shop by the end of

January, 2005 and pay the arrears of rent of ₹21,000/-. The notice was duly served upon the defendant, but he failed to hand over the possession or pay the arrears. Hence, the suit was filed to seek the relief mentioned above.

3. The suit was opposed by filing a written statement denying the existence of the agreement. It was asserted that the rent of the suit premises was fixed at ₹300/- per month. The defendant had invested a huge amount in his business. The notice was vague, and a proper reply was sent to it. The plaintiff tried to take forcible possession of the defendant's property, and the defendant filed a civil suit for restraining the plaintiff from interfering with his possession. The plaintiff filed the present suit as a counterblast to the suit filed by the defendant. Hence, it was prayed that the suit be dismissed.

4. A replication denying the contents of the written statement and affirming those of the plaintiff was filed.

5. Learned Trial Court framed the following issues on 27.10.2005: -

1. Whether the plaintiff is entitled for arrears of rent to the tune of ₹21,000/- as prayed for? OPP.

2. Whether the respondent is liable to be ejected from the shop in question as prayed? OPP.
 3. Whether the plaintiff is entitled to all the profits for the use of occupation of shop in question during the pendency of suit, as prayed for? OPP.
 4. Whether the suit is not maintainable, as alleged? OPD.
 5. Relief.
6. The parties were called upon to produce the evidence, and plaintiff examined Suresh Kumar (PW1), Sanjeev Kumar (PW2), Charan Singh (PW3), Balbir Singh (PW4) and P.L. Bains (PW5). The defendant examined himself (DW1).
7. The learned Trial Court held that the rent of the suit premises was ₹800/- per month. The plaintiff had served a notice upon the defendant, which was duly received by him on 18.1.2005. He sent a reply to the notice. It was doubtful that the defendant was running the business in the suit premises. The defendant was in arrears of rent w.e.f. 1.5.2003 and was liable to pay the simple interest on the arrears at the rate of 6% per annum. Hence, the learned Trial Court decreed the suit of the plaintiff for the recovery of ₹79,712/- at the rate of 6% per annum till the realisation of the amount. The defendant was directed to hand over vacant possession of the suit premises to the plaintiff within three months.

8. Being aggrieved by the judgment and decree passed by the learned trial Court, the defendant filed an appeal which was decided by the learned Additional District Judge, Una, HP, (learned appellate Court). The Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the rent of the premises was ₹800/- per month, the defendant had failed to pay the rent w.e.f. 1st May, 2003, and the plaintiff had served a notice upon the defendant, which was received by him on 18.1.2005. The tenancy was terminated w.e.f. 31.1.2005, and only a period of 14 days was provided to vacate the premises, which is less than the 15 days provided under Section 106 of the Transfer of Property Act. Learned Trial Court did not notice this aspect; hence, the judgment passed by the learned Trial Court directing the defendant to deliver the possession of the suit premises was set aside, while the judgment and decree of the learned Trial Court for the recovery of ₹79,712/- along with interest at the rate of 6% per annum was upheld.

9. Being aggrieved by the judgment and decree passed by the learned Appellate Court, the plaintiff has filed the present appeal, which was admitted on the following substantial questions of law on 11.1.2013: -

1. Whether the tenancy of the respondent has been terminated by the appellant/plaintiff by serving notice under Section 106 of the Transfer of Properties Act, lawfully?
2. Whether the respondent waived the objection of invalidity of notice under Section 106 of the Transfer of Properties Act, by way of not challenging the findings on this score?

10. I have heard Mr Mohinder Verma, learned counsel for the appellants and Mr N.K. Thakur, learned Senior Counsel, assisted by Mr Divya Raj Singh, learned counsel for the respondent.

11. Mr Mohinder Verma, learned counsel for the appellants, submitted that the learned Appellate Court erred in holding that the notice was contrary to the provisions of Section 106 of the Transfer of Property Act. Section 106 of the Transfer of Property Act clearly provides that the notice would not be bad on the ground that 15 days notice was not served if the suit was filed after the expiry of 15 days. No objection regarding the validity of the notice was raised, and it is deemed to be waived. This plea could not have been taken for the first time before the learned Appellate Court, and the learned Appellate Court erred in entertaining this plea. Hence, it was prayed that the present appeal be allowed and the judgment and decree passed by the

learned Appellate Court be set aside. He relied upon the following judgments in support of his submission: –

- (i) *Parwati Bai Vs. Radhika* (2003) 12 SCC 551;
- (ii) *Dharam Pal Vs. Harbans Singh* (2006) 9 SCC 216;
- (iii) *Arvind Verma Vs. A.C. Shandil*, RSA No. 357 of 2004, decided on 8.5.2015;
- (iv) *K. Devabalan and others Vs. M. Vijayakumari and others* (2020) 19 SCC 399;
- (v) *Bijay Kumar Manish Kumar Huf Vs. Ashwin Bhanulal Desai* (2024) 8 SCC 668;
- (vi) *Shree Ram Urban Infrastructure Limited Vs. Court Receiver, High Court of Bombay* (2015) 5 SCC 539;
- (vii) *Union of India & ors. Vs. Kartar Kaur* (2012) 12 SCC 505;
- (viii) *Karunanidhi Vs. Seetharama Naidu and others* (2017) 5 SCC 483;
- (ix) *Bhagabandas Agarwalla Vs. Bhagwandas Kanu and others*, Civil Appeal No.2080 of 1968, decided on 25.2.1977; and
- (x) *Parwati Bai Vs. Radhika* AIR 2003 SCC 3995.

12. Mr N.K. Thakur, learned Senior Counsel for the respondent, submitted that the learned Appellate Court had rightly noticed that the notice served upon the defendant did not provide a clear 15-days time to the defendant to hand over the

vacant possession. This notice was contrary to the provisions of Section 106 of the Transfer of Property Act, and the learned Appellate Court had rightly declined the relief of possession. Hence, he prayed that the appeal be dismissed.

13. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Question of Law No.1:

14. Section 106 of the Transfer of Property Act reads as follows:

106. Duration of certain leases in absence of written contract or local usage.—(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section,

where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.]

15. Thus, the section provides that a notice is not deemed to be invalid merely because the period mentioned therein falls short of the period of 15 days when a suit is filed after the expiry of the period mentioned in the Section. It was laid down by the judicial committee of the Privy Council in *Harihar Banerji v. Ramsashi Roy*, 1918 SCC OnLine PC 58, that the notice to quit must be construed as it would appear to the parties and not to the strangers. It was observed:

“If this were a case arising in England, the English authorities would therefore be applicable. 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 them

which would render them defective, but to be construed *ut res magis valeat quam pereat*.”

16. It was laid down by the Hon’ble Supreme Court in ***Bhagabandas Agarwalla*** (supra) that a notice to quit must not be construed in a hyper-technical manner with the desire to find faults in it. It was observed: -

“Now, it is settled law that a notice to quit must be construed not with a desire to find faults in it, which would render it defective, but *valeat quam pereat*. “The validity of a notice to quit”, as pointed out by Lord Justice Lindley, L. J. in ***Side-botham V. Holland***, (1895) 1 QB 378, ought not to turn on the spitting of a straw”. It must not be read in a hyper-critical manner, nor must its interpretation be affected by pedagogic pendantism or over-refined subtlety, but it must be construed in a common sense way. See ***Harihar Benerji V. Ramasashi Roy***, 45 Ind App 222 = (AIR 1918 PC 102). The notice to quit in a present case must be judged for its validity in the light of this well-recognised principle of interpretation.”

17. In the present case, the notice (Ex. P3) mentions the period of 15 days and terminates the tenancy by the end of January. The plaintiff filed the civil suit on 17.2.2005 after the expiry of the period of 15 days. Therefore, the suit was filed after the expiry of the period of 15 days, even though the tenancy was terminated earlier. It was laid down by the Hon’ble Supreme Court in ***Shree Ram Urban Infrastructure Limited*** (supra) that even if the notice is short of the period specified in Sub Section (1),

but the suit is filed after the expiry of the period, the notice cannot be held to be bad. It was observed: -

18. The second point urged by Mr Ranjit Kumar, learned senior counsel, is that the suit is bad with regard to Section 106 of the Transfer of Property Act. We have duly considered the said question, and we find that the suit was filed after six months from the date of the notice issued under Section 106 of the Transfer of Property Act, by the Receiver and furthermore, after the amendment of Section 106(3), which reads as follows:

“(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.”

We have noticed that the High Court duly considered the question of notice and correctly came to the conclusion that the Legislature wanted to plug the loopholes and to redress the mischief by making a change in the law. Therefore, if the notice is short of the period specified in sub-section (1) but the suit or proceeding is filed after the expiry of the period mentioned in sub-section (1), the notice shall not be deemed to be invalid. Clearly, in this matter, the notice was issued on July 26, 2001, and the suit was actually filed on February 6, 2002 – after six months; therefore, the notice cannot be declared or deemed to be invalid.

18. A similar view was taken by this Court in *Arvind Verma* (supra), wherein it was observed: -

“12. The suit house has not been rented out to the defendant for agricultural or manufacturing purposes and rather for residential purposes, hence for the purpose of termination of the tenancy covered by the second part

of sub-section (1) of Section 106 of the Act. In the absence of a contract to the contrary, the present is a case where the tenancy has to be treated from month to month basis. The same, therefore, can be terminated either by the lessor or lessee by serving 15 days' notice. The period of 15 days, of course, shall commence from the date of receipt of the notice as provided under sub-section (2) of Section 106 of the Act. In a situation where the period of notice fell short of the period specified under sub-section (1), the notice cannot be treated to be invalid in case the suit or proceedings are initiated against the tenant after the expiry of the period so prescribed.”

19. The attention of the learned Appellate Court was not brought to the amended provisions of the Transfer of Property Act, and the learned Appellate Court erred in holding that the notice was bad because it had provided a period less than 15 days to hand over the possession.

20. The defendant had also not taken any objection regarding the validity of the notice in the written statement filed by him. He asserted in para 7 of the written statement that no valid or legal notice was ever served upon the defendant. The notice was vague. The written statement nowhere stated that the notice was bad because the plaintiff did not provide the period of 15 days required under Section 106 of the Transfer of Property Act.

21. It was held in *Parwati Bai* (supra) that the objection to the validity of the notice is to be raised at the earliest; otherwise, it is deemed to be waived. It was observed: -

“The singular question to be examined in the present case is whether the tenancy was terminated in accordance with the provisions of Section 106 of the Transfer of Property Act. The receipt of notice by the defendant is admitted in the written statement. The defendant has not raised any specific objection as to the validity of the notice. An objection as to invalidity or infirmity of notice under Section 106 of the TP Act should be raised specifically and at the earliest; else it will be deemed to have been waived even if there exists one. It cannot, therefore, be said that the notice in the present case suffered from any infirmity. A copy of the notice was exhibited and proved by the plaintiff as Ext.P-4.”

22. A similar view was taken in *Dharam Pal* (supra), wherein it was held: -

7. Learned counsel for the appellant submits that none of the two recitals contained in the notice can fulfil the requirement of Section 106 of the Transfer of Property Act. One recital in the notice terminates the tenancy from the date of issue of the notice. The other one requires the tenant to vacate the premises within 15 days from the date of receipt of the notice. Both are bad in light of the requirements spelled out by Section 106 of the Transfer of Property Act. The learned counsel seems to be right in urging the pleas. However, still we feel that the appellant cannot be allowed relief. Law is well settled that an objection as to the invalidity or insufficiency of notice under Section 106 of the Transfer of Property Act should be specifically raised in the written statement, failing which it will be deemed to have been waived. In the

present case, the only objection taken in the written statement is that the notice issued by the plaintiff was "illegal, null and void and ineffective upon the right of the defendant". The thrust of the plea raised by the defendant-appellant in his written statement was that the notice was issued by a person who did not have the authority from the landlord to give the notice. The plea so taken has been found devoid of merit by the High Court and the courts below. The plea that the notice was insufficient in the sense that it did not give 15 clear days to the tenant to vacate or that the notice did not terminate the tenancy with the expiry of the month of the tenancy, has not been taken in the written statement.

8. Obviously, for want of a specific plea in the written statement, the trial court has not framed any issue reflecting an objection to the validity or sufficiency of notice, the plea in the manner in which it is sought to be urged before us. The plea as to insufficiency of notice should be deemed to have been waived by the appellant and cannot be allowed to be urged at this stage. No fault can be found with the judgment and decree of the High Court, as also of the two courts below, upholding the termination of tenancy and the plaintiff-respondent's entitlement to evict the tenant.

23. Therefore, the learned Appellate Court erred in holding that the notice was bad and violative of Section 106 of the Transfer of Property Act, when no such plea was taken by the defendant.

24. The judgment of *Vijay Kumar* (supra) deals with the mesne profit, which is not relevant as no appeal has been filed regarding the grant of mesne profits. Judgments in *K. Devabalan*

and others (supra), *Kartar Kaur* (supra), and *Karunanidhi* (supra) deal with the question that can be raised in a second appeal and are not relevant because the scope of the second appeal does not fall for consideration in the present case.

25. Therefore, the learned Appellate Court erred in holding that the tenancy was not terminated lawfully, and this substantial question of law is answered accordingly.

Substantial Question of Law No.2:

26. The memorandum of appeal filed before the First Appellate Court does not mention that any plea was taken regarding the validity of the notice; therefore, it was not permissible for the First Appellate Court to examine this question. Hence, the substantial question of law is answered accordingly.

Final Order:

27. In view of the above, the present appeal is allowed, and judgment and decree passed by the learned First Appellate Court setting aside the judgment and decree of the learned Trial Court is ordered to be set aside and the judgment and decree passed by learned Trial Court directing the defendant to hand

over the vacant possession of the suit premises is ordered to be restored.

28. Pending application(s), if any, also stand(s) disposed of.

29. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

22nd April, 2026
(Chander)