



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR FIRST APPEAL NO. 126 OF 2024 (EJE)

BETWEEN:

1. MR. K. P. ABDUL SHUKKOOR
SON OF LATE T C AHMED
NAYEEM, MAJOR 55 YEARS
RESIDING AT THANEEM
CHACHERY, POST - MOWANCHERY
KANNUR DISTRICT
KERALA - 670 613.
2. SRI ASKAR
FATHER NAME NOT KNOWN
AGED ABOUT 40 YEARS
RESIDING AT SHOP NO. 6
KABAB SOUQ, 494/2
GROUND FLOOR, 1ST 'A' MAIN ROAD
M J COMPLEX, VIGNANA NAGARA
NEW THIPPASANDRA
BANGALORE - 560 075.

...APPELLANTS

(BY SRI. VENKATESH PRASAD R.,ADVOCATE)

AND:

SMT. SUMITRA
WIFE OF M SURESH KUMAR
AGED ABOUT 52 YEARS
RESIDING AT NO. 127(OLD NO. 220)
OPP. ANJANEYA TEMPLE
G M PALYA





NEW THIPPASANDRA POST
BANGALORE - 560 075.

...RESPONDENT

(BY SRI. RAMESH K R., ADVOCATE AND
SRI. D HANUMANTHARAYAPPA FOR C/RESPONDENT)

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER 41
RULE 1 OF CPC., AGAINST THE JUDGMENT AND DECREE
DATED 28.11.2023 PASSED IN OS NO.3086/2020 ON THE FILE
OF LXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE,
BENGALURU., DECREETING THE SUIT FOR EJECTMENT.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

The captioned appeal is filed by the defendants
assailing the judgment and decree dated 23.11.2023
passed in O.S.No.3086/2020 on the file of the LXV
Additional City Civil and Sessions Judge, Bangalore
(CCH-66), whereby the defendants are directed to quit
and deliver the vacant possession of the suit schedule
premises and also directed to pay arrears of rent of
₹1,82,000/- with interest at the rate of 9% per month.
The learned Judge has also held that the plaintiff is
entitled for *mesne* profit at the rate of ₹10,000/- per



month from the date of suit till vacating and handing over suit schedule premises.

2. For the sake of brevity, the parties are referred to as per their rankings before the Trial Court.

3. Facts leading to the case are as under;

The plaintiff instituted a suit seeking relief of ejectment, recovery of arrears of rent and *mesne* profit contending that she is the absolute owner of the suit schedule premises and that she had inducted defendant No.1 as tenant in respect of the ground floor shop, wherein defendant No.1 is running a hotel under the name and style of "Kabab Souq". The plaintiff specifically asserted that the tenancy commenced in January 2006 on a monthly rent of Rs.2,500/- with an advance amount of Rs.25,000/- for a period of 11 months. The plaintiff specifically pleaded that there was no written agreement between the parties and that the tenancy was purely oral. The plaintiff also asserted that as per oral understanding



between the parties, the rent was periodically enhanced from January 2007 onwards and as such, the monthly rent was fixed at Rs.10,000/- per month with effect from January 2017.

4. The plaintiff contends that defendant No.1 committed default in payment of rent from January 2017 onwards, thereby accumulating arrears quantified at ₹4,19,000/-. It is his specific case that, in view of the persistent default, a legal notice dated 05.11.2019 was issued terminating the tenancy in accordance with Section 106 of the Transfer of Property Act, 1882 (for short, "TP Act"), calling upon the defendant to vacate and deliver vacant possession of the suit schedule premises within 60 days from the date of receipt of notice. The plaintiff asserts that the notice was duly dispatched to the permanent address of defendant No.1 in Kerala and was served. Despite service, the defendant neither complied with the demand nor issued any reply controverting the allegations. Hence, the plaintiff was constrained to



institute the present suit seeking ejectment and recovery of arrears.

5. The defendants entered appearance and filed written statement contesting the claim. While denying the alleged enhancement of rent, defendant No.1 contended that the lease was for a fixed term of 24 months commencing from 07.01.2006. He further asserted that he had paid a security deposit of ₹3,00,000/- at the inception of tenancy and therefore, questioned the legality and validity of the notice purportedly issued under Section 106 of the "TP Act". The defendants also disputed the very service of notice and alleged, on the contrary, that the plaintiff had interfered with their peaceful possession and had earlier locked the premises.

6. In order to substantiate their respective claims, both parties adduced oral and documentary evidence. The plaintiff examined himself and produced relevant documents in support of the tenancy, default, and



issuance of notice. The defendants also stepped into the witness box and marked documents to establish their defence.

7. The Trial Court, upon appreciation of the entire oral and documentary evidence on record, decreed the suit. The learned Judge recorded a finding that the tenancy was validly terminated in compliance with Section 106 of the "TP Act". The Court further observed that the defendants, during cross-examination, admitted the existence of arrears. The Trial Court also took note of the fact that during the pendency of the proceedings, the defendants paid a sum of ₹2,50,000/- to the plaintiff. Such payment was treated as an acknowledgment of the jural relationship of landlord and tenant and of the subsisting liability towards arrears of rent. On these findings, the suit for ejectment and consequential reliefs came to be decreed.



8. Being aggrieved by the said judgment and decree, the defendants have preferred the present appeal.

9. This Court has heard the learned counsel appearing for the defendants and the learned counsel appearing for the plaintiff at length. Being a first appellate Court, this Court has independently reassessed the entire oral and documentary evidence available on record.

10. In the light of the rival contentions urged and the material on record, the following points arise for consideration in this appeal:

- (i) Whether the Trial Court committed an error in holding that the tenancy was validly terminated under Section 106 of the TP Act?*
- (ii) Whether the finding of the Trial Court with regard to arrears of rent is vitiated by perversity or misappreciation of evidence?*
- (iii) What order?*



Findings on Point No.(i):-

11. On meticulous examination of the records, it is evident that there is no written and registered lease deed executed between the parties governing the terms of tenancy. In the absence of a written contract stipulating the duration and conditions of lease, the tenancy is necessarily regulated by the statutory provisions contained in Section 106 of the "TP Act".

12. Admittedly, the premises in question was let out for running a commercial establishment. In terms of Section 106 of the "TP Act", a lease of immovable property for purposes other than agricultural or manufacturing purposes is deemed to be a lease from month to month, terminable by either the lessor or the lessee by issuance of 15 days' notice expiring with the end of a month of tenancy. Therefore, the relationship between the parties answers the description of a month-to-month tenancy.



13. In the present case, the plaintiff has caused issuance of a legal notice dated 05.11.2019, which is marked as Ex.P.4, terminating the tenancy and calling upon defendant No.1 to vacate and hand over vacant possession of the suit schedule premises. Exs.P.5 to P.7, which comprise the postal receipts and tracking records, clearly demonstrate that the notice was dispatched through Registered Post to the admitted residential address of defendant No.1. The address mentioned in the notice corresponds with the address admitted by the defendant in the written statement and during the course of evidence.

14. When a notice is sent by registered post to the correct and admitted address, a statutory presumption arises under the General Clauses Act and the Evidence Act that it has been duly served, unless the contrary is proved. In the case on hand, defendant No.1 has not placed any cogent material on record to rebut this presumption. There is no satisfactory explanation as to



non-receipt of notice nor any evidence to demonstrate that the address was incorrect or that the notice was returned unserved. A mere bald denial of service is insufficient to dislodge the statutory presumption attached to postal communication sent by registered post. Hence, this Court holds that the notice dated 05.11.2019 was duly served on defendant No.1.

15. Even otherwise, Section 106(3) of the "TP Act" makes it abundantly clear that a notice shall not be deemed invalid merely because the period mentioned therein falls short of the statutory period, so long as the suit is instituted after the expiry of the prescribed period. In the present case, the suit has been filed after affording sufficient time to the defendant subsequent to issuance of notice. Therefore, even assuming there was any minor defect in computation of the notice period, such defect would not render the notice invalid in law.



16. In view of the above discussion, this Court is satisfied that the plaintiff has successfully established lawful termination of the month-to-month tenancy by issuance of a valid quit notice under Section 106 of the "TP Act". The finding recorded by the Trial Court on this aspect does not suffer from any illegality or perversity. Accordingly, Point No.(i) is answered in the **"Negative"**, holding that the Trial Court has not erred in concluding that the tenancy was validly terminated.

Findings on Point No.(ii):-

17. Insofar as the question relating to arrears of rent is concerned, the material on record unmistakably indicates that defendant No.1 was in default. A careful reading of his cross-examination reveals a clear and unequivocal admission that rent had not been paid as agreed. Such an admission, coming from the defendant himself, constitutes substantive evidence and dispenses



with the necessity of further proof on the part of the plaintiff with regard to default.

18. It is also significant to note that during the pendency of the suit proceedings, defendant No.1 paid a substantial sum of ₹2,50,000/- to the plaintiff. This payment, made after institution of the suit, cannot be construed as voluntary compliance in the ordinary course of tenancy; rather, it reinforces the plaintiff's contention that arrears had accumulated and that the defendant was attempting to mitigate the consequences of the pending litigation. The very act of making part-payment during the pendency of the proceedings amounts to an acknowledgment of subsisting liability towards rent and affirms the jural relationship of landlord and tenant.

19. The plea taken in the written statement disputing the quantum of arrears is not supported by any documentary evidence such as rent receipts, accounts, or proof of adjustment of the alleged security deposit. Except



for a bald denial, no material is forthcoming to demonstrate that rents were regularly paid or that there was any lawful adjustment extinguishing the liability. In the absence of rebuttal evidence, the admission elicited in cross-examination assumes greater significance.

20. When the admitted default is viewed in conjunction with the lawful termination of tenancy by issuance of a valid quit notice under Section 106 of the TP Act, the plaintiff's case stands fully substantiated. The finding recorded by the Trial Court with regard to arrears of rent is based on appreciation of evidence and does not suffer from perversity, misreading of evidence, or legal infirmity.

21. Accordingly, this Court finds no merit in the challenge to the finding on arrears of rent. Point No.(ii) is therefore answered in the **"Negative"**, holding that the Trial Court has not committed any error in concluding that



defendant No.1 was in default and liable for arrears of rent.

22. For the foregoing reasons, this Court proceeds to pass the following;

ORDER

(i) The appeal is devoid of merits and accordingly, stands dismissed.

(ii) Pending applications, if any, are also dismissed.

**Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE**