

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT PORT BLAIR
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

SA 2 OF 2024
WITH
SA 3 OF 2024

ARJUN SINGH
VS.
DINESH KUMAR SHARMA

For the appellant : Ms. Anjali Nag, Advocate
For the respondent : Mr. Mohammad Tabraiz, Advocate
Heard on : 29.01.2026
Judgment on : 23.03.2026

Ravi Krishan Kapur, J.:

1. Both these second appeals arise from the judgment dated 11 December 2019 passed by the Additional District Judge, Andaman and Nicobar Islands, Port Blair reversing the judgment and decree for eviction dated 27 December 2018 passed by the Civil Judge (Senior Judge), South Andaman District, Port Blair.
2. The suit is for eviction and mesne profits.
3. The appellant/plaintiff is the recorded tenant of the premises bearing Survey No.1084/1, measuring an area of 171 sqmtrs situated at Village Junglighat under Port Blair Tehsil. In or about 2009, the appellant commenced construction of the building when the respondent/defendant approached the appellant for taking on lease two floors being the first and the second floor and three shop rooms on the ground floor in the proposed triple storeyed RCC Building.

4. Subsequently, by a lease deed dated 4 November 2010 between the appellant and the respondent, the appellant agreed to lease out three shop rooms measuring 160 sqft each situated on the ground floor of the above premises and the entire first floor and second floor of the building to the respondent. It was agreed that out of the three shop rooms; one room would be handed over to the respondent on the date of execution of the lease; the second shop room would be handed within one month from the date of execution of the lease and the third would be handed over within nine months from the date of signing of the lease agreement. The lease agreement also provided that the appellant would initially lease out the entire first floor and the second floor measuring 126 sqmtrs each at a monthly rent of Rs.33000/- which would be enhanced to Rs. 36000/- upon the handing over of the third shop room on the ground floor. In addition, a sum of Rs. 8 lacs was also paid by the respondent to the appellant as security deposit which was to be refunded at the time of vacating the suit premises. On 16.02.2011, the suit premises was handed over to the respondent.
5. On 3 October 2012, the respondent issued a notice to the appellant alleging that the terms of the lease had been violated and third parties were interfering with the peaceful possession of the respondent. By the said notice, the respondent insisted that the third shop room on the ground floor be handed over to the respondent to which the appellant responded by a letter dated 29 October 2012 requesting the respondent not to violate the terms of the lease agreement. Subsequently, a fresh notice dated 7 February 2014 was issued by the respondent determining the tenancy to which the appellant by a notice dated 3 March 2014 replied accepting termination of the lease and further demanding rental arrears since September 2012.

6. In this background, the appellant filed this suit for eviction. Upon completion of pleadings, the following issues were framed by the Trial Court:

1. *Whether the suit is maintainable in its present form in law?*
2. *Whether there is any cause of action to file the instant suit?*
3. *Whether the defendant is the tenant of the suit premises under the plaintiff ?*
4. *Whether the lease agreement is terminated by virtue of a valid notice?*
5. *Whether the defendant has made any default in paying the rent?*
6. *Whether the plaintiff is entitled to the relief as prayed for?*

7. The parties adduced both oral and documentary evidence. By a judgment and decree dated 27 December 2018, the Trial Court decreed the suit and directed the tenant to vacate the suit premises within two months. By such decree, the respondent was also directed to pay a sum of Rs. 6,17,960/- on account of outstanding rental arrears. Upon consideration of all the evidence and the pleadings filed by the parties, the Trial Court held that the notice unambiguously expressed an intention to terminate the relationship between the parties and the respondent had defaulted in making payment of rent in terms of an order dated 13 April, 2017.

8. Being aggrieved and dissatisfied with the judgment and decree dated 27 December 2018, the respondent preferred an appeal before the Court of the Additional District Judge, Andaman and Nicobar Islands, Port Blair. By the impugned judgment, the appeal was allowed and the judgment dated 27 December 2018 was set aside on the ground that there was no lawful notice issued under section 106 of the Transfer of Property Act, 1882 nor was any proper demand notice issued under section 13(1)(a) of the Andaman and Nicobar Islands Rent Control Regulation, 1964. Being aggrieved by the impugned judgment, both these second appeals have been filed.

9. On behalf of the appellant, it is alleged that the respondent paid rent only upto 2012 and thereafter defaulted in payment of rent for the entirety of the suit

premises. The respondent failed to show that their ingress and egress was obstructed by the other tenants and that they were not in possession of either the first or the second floor of the suit premises. It is also contended that the impugned judgment failed to consider the true scope of section 13(1)(a) of the Regulations, 1964 read with section 106 of the Transfer of Property Act, 1882. It is contended that the respondent had sufficient notice both in respect of termination and default in payment of rent. The notices were duly received by the respondent. The respondent was also cross examined on the notices and admitted determination and default in payment of rent in terms of the lease agreement.

10. On behalf of the respondent, it is contended that the 1964 Regulation provides for service of a notice which has not been complied with. In the absence of a notice the suit was liable to be dismissed.

11. By an order dated 7 September 2021, the following substantial questions of law had been framed at the time of admitting these appeals:

SA 2 of 2024

- (i) *Whether the Court of Appeal was justified in reversing the judgement and decree of the Trial Court solely on the ground that the notice demanding the arrear of rent does not specify the provisions of law under which the same has been issued?*
- (ii) *Whether the Court of Appeal was justified in reversing the judgement and decree of the Trial Court without noticing that despite an order having been passed for deposit of arrears of rent, the tenant did not deposit the same, and therefore, exposed himself liable to be evicted under Regulation 13(1)(a) of the Andaman and Nicobar Islands Rent Control Regulations, 1964?*

SA 3 of 2024

- A. *Whether it is imperative on the part of the Court of Appeal to record an independent finding while disposing of an appeal pertaining to the recovery of rent?*
- B. *Whether the Court of Appeal below was justified in dismissing the appeal without returning its independent finding on the merits of the case and therefore exposed the impugned judgment liable to be set aside?*

12. For convenience, section 106 of the Transfer of Property Act 1882, and Regulation 13 of the Rent Control of the Andaman and Nicobar Islands Rent Control Regulation, 1964 are set out below:

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.

13.(1) Notwithstanding anything to the contrary contained in any other law or any contract, no tenant of any premises shall be liable to be evicted therefrom except by an order of the court on any one or more of the following grounds, namely:-

(a) that the tenant has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within one month of the date on which a notice of demand for the arrears of the rent has been served on him by the landlord in the manner provided in section 106 of the Transfer of Property Act, 1882;

(b) that the tenant has, without obtaining the consent in writing of the landlord, sublet the premises or used the premises for a purpose other than that for which they were let:

(c) that the landlord requires the premises bonafide for-

(1) occupation as residence for himself or any member of his family:

(ii) carrying out repairs, alterations or additions to the premises and such repairs, alterations or additions cannot be made without the premises being vacated:

(d) that the premises were let for use as residence and neither the tenant nor any member of his family has been residing therein for a period of six months immediately before the date of institution of any proceeding for eviction:

(e) that the tenant has, whether before or after the commencement of this Regulation, built acquired vacant possessions of, or been allotted, a suitable residence:

(f) that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the commencement of this Regulation, to be in such service or employment; or

(g) that the tenant has, whether before or after the commencement of this Regulation, caused or permitted to be caused substantial damage to the premises or notwithstanding previous notice, has used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government while giving him a lease of the land on which the premises are situated.

(2) No order for eviction shall be passed on the ground specified in clause (a) of sub section (1), if on the first day of hearing of the proceeding or within such further time as may be allowed by the court, the tenant deposits with the court the arrears of rent then due together with the costs of the suit:

Provided that no tenant shall be entitled to the benefit under this sub-section, if having obtained such benefit once in respect of any premises, he again makes default in the payment of rent in respect of those premises for three consecutive months.

(3) For the purposes of clause (b) of sub-section (1), a court may presume that the premises let for use as a residence were or are sublet by a tenant in whole or in part to another person, if it is satisfied that such person not being a servant of the tenant or a member of the family of such tenant was or has been residing in the premises or any part thereof for a period exceeding one month otherwise than in commensality with the tenant.

(4) Where an order for the eviction of the tenant is passed on the ground specified in sub-clause (i) of clause (c) of sub-section (1) the landlord shall not be entitled to obtain possession thereof before the expiration of a period of three months from the date of the order.

13. A notice to quit may be given either by the lessor or by the lessee. The requirement of a notice is a technical requirement. The object of such notice is to furnish the requisite basis for termination of the relationship. It only provides a mode of procedure for getting relief in respect of a cause of action and does not constitute the cause of action itself. The purpose behind such notice is to give a clear indication that there has been a default by the tenant and the termination of the relationship between landlord and tenant. The essence of the notice being to determine the tenancy. The rationale of the sections being to convey an unequivocal intention of termination of the lease or tenancy and determination of their relationship.

14. It is also well settled that the filing of eviction suit itself is a notice to quit on the tenant. In such circumstances, the suit itself constitutes the notice so long as the eviction is beyond the prescribed time period. (*Dharam Pal v. Harbans Singh*, (2006) 9 SCC 216 @ para 6 and *Sevoke Properties Ltd. v. W.B. State Electricity Distribution Co. Ltd.* (2020) 11 SCC 7821, *V. Dhanapal Chettiar vs. Yesodai Ammal* (1979) 4 SCC 214@ paras 18 and 19, *Nopany Investments (P) Ltd. v. Santokh Singh (HUF)* (2008) 2 SCC 728 @ para 22, *Pal Singh v. Sunder Singh* (1989) 1 SCC 444, *M/s Jeevan Diesels & Electricals Ltd. Vs Jasbir Singh* 2011 SCCOnline Delhi 1515 @ paras 11 & 12 and *Krishnadeo Narayan Aggarwal v. Ram Krishan Rai* (1982) 3 SCC 230).

15. The facts of the case reveal that on 3 October 2012 the respondent had issued a letter through his Advocate alleging that the appellant has not fulfilled the

terms and conditions under the lease. It was further alleged that the obligation under the lease to handover the third shop room in the ground floor and permit them to utilise the same had not been complied with. In this background, the respondent expressed an unequivocal intention to determine the lease deed. By its reply dated 29 October 2012, the appellant refuted the allegations made by the respondent and demanded that the respondent comply with the terms and conditions of the lease agreement.

16. Subsequently, by a notice dated 7 February 2014, the respondent determined the lease agreement. In response, by a letter dated 3 March 2014, the appellant accepted determination of the lease deed and further demanded rental arrears which remained outstanding since September 2012. On a combined reading of the notices, it would be evident that both parties were *ad idem* as to determination of the lease. The respondent was also put on notice that there were rental arrears in respect of the suit premises and the same had not been paid. A conjoint reading of the correspondence exchanged and the evidence adduced would also demonstrate that the continuity of the lease had been irretrievably broken. This position had been unequivocally accepted by the parties. In fact, during cross examination, DW1 admitted having sent a notice for termination of the lease and that rent was not being paid in terms of the lease agreement. In such circumstances, no subsequent unilateral action by the respondent or appellant could alter this position. The only reasonable inference from a combined reading of the correspondence is that the respondent was no longer interested in protection against eviction. The entire correspondence was duly exhibited before the Trial Court. The parties were examined and cross-examined on the said notices.

17. Incidentally, the Law Commission of India in its 181st Report on “Amendment to section 106 of the Transfer of Property Act, 1882” had concluded “that the purpose of the provision in section 106 is to terminate the relationship of lessor and lessee before the lessor sues for possession. The object being every lessee must have some reasonable notice before being required to vacate the premises”. In fact, relevant portion of the report is set out below:

“The purpose of the provision in sec. 106 is to terminate the relationship of lessor and lessee before the lessor sues for possession. He has no right of entry till the tenancy is disrupted. Further, the idea is that every lessee must have some reasonable notice before he is asked to vacate the premises. If these were the purposes behind section 106 but in fact, the lessee had, by the date of suit or the date of dismissal of suit years later, more than the period specified, in the statute, it is nothing but injustice to the lessor if he is compelled to file a fresh suit. Any procedure that leads to multiplicity of court cases must be avoided.”

18. The essence of any notice to quit is to determine the tenancy. The ground to seek such eviction was default in the payment of rent. The suit was filed on that ground. Both parties went to trial and adduced evidence on that basis. There has been a categorical finding that the respondent has failed and refused to make payment of rental arrears. In fact, by an order dated 13 April, 2017, the Trial Court after hearing both parties on merits allowed an application under section 14(1) of the Andaman and Nicobar Islands Rent Control. Regulation, 1964 and held that there were outstanding rental arrears of Rs. 6,78,960/- due and payable to the appellant. There has been no challenge to the said order and the same had become final, binding and conclusive between the parties. In such circumstances, the ground of default of rent had been conclusively proved and satisfied by the appellant. The parties were also *ad idem* as to termination of the tenancy. It is well settled that such notices are to be liberally construed to bring out the true intention of the parties. The aim being that neither of the parties are misled by the notice.

19. In such circumstances, on a reading of the pleadings and keeping in mind that both parties had adduced evidence on this aspect, serving a notice afresh or filing of a fresh suit would be redundant and would only lead to multiplicity of proceedings. The respondent had for all purposes been sunk in a quagmire of notice both insofar as determination of the lease was concerned and the outstanding rental arrears in respect of the suit premises.
20. During the interregnum, the respondent continues to occupy exclusive and absolute possession of the suit premises and commercially exploit the same. In this background, it would be wholly unnecessary for the appellant to issue a fresh notice to quit and consequently a fresh suit. In view of the above, the conditions under section 106 read with Regulation 13(1)(a) have been duly satisfied and the appellant is entitled to a decree for eviction.
21. In view of the above, the questions of law framed are answered as follows:

SA 2 of 2024

- i. Whether the Court of Appeal was justified in reversing the judgement and decree of the Trial Court solely on the ground that the notice demanding the arrear of rent did not specify the provisions of law under which the same has been issued?*

The Appellate Court committed a substantial error of law in not interpreting the true scope and purport of the notice dated 3 March 2014 being exhibit 4. In such cases, nomenclature is inconsequential. The notice clearly specified that rental arrears were due and payable by the respondent and an unequivocal intention of determination of the lease which included the reasons thereof. The Court was bound to interpret the correspondence in a manner so as to ascertain the true and real meaning of the same and not going into technicalities and inaccuracies of language. The Appellate Court

misinterpreted the law in not considering the true and real object of the notice dated 3 March 2014.

- ii. *Whether the Court of Appeal below was justified in reversing the judgement and decree of the Trial Court without noticing that despite an order having been passed for deposit of arrears of rent, the tenant did not deposit the same, and therefore, exposed himself liable to be evicted under Regulation 13(1)(a) of the Andaman and Nicobar Islands Rent Control Regulations, 1964?*

The Appellate Court failed to consider the order dated 13 April 2017 allowing the application under section 13(1) of the Andaman Regulations which proved that there were outstanding rental arrears payable by the respondent. The ground of default was conclusively proved and the decree of the Trial Court warranted no interference.

SA 3 of 2024

- i. *Whether it is imperative on the part of the Court of Appeal to record an independent finding while disposing of an appeal pertaining to the recovery of rent?*
- ii. *Whether the Court of Appeal below was justified in dismissing the appeal without returning its independent finding on the merits of the case and therefore exposed the impugned judgment liable to be set aside?*

The Appellate Court was bound to record an independent finding while disposing of the appeal dealing with the issue of rental arrears. This was the basis of the judgment of the Trial Court and has not been dealt with in the impugned judgment. In such circumstances, the Appellate Court was not justified in dismissing the appeal without returning any finding on merits. The Appellate Court erred in re-evaluating the evidence and substituting the judgment of the Trial Court without recording an independent finding pertaining to the recovery of rent. All the questions of law are answered accordingly.

22. In view of the above, the impugned judgment is unsustainable and is set aside. SA 2 of 2024 and SA 3 of 2024 stands disposed of. The respondent is liable to vacate the occupied premises i.e. two rooms on the ground floor, first floor and the second floor of the suit premises within one month from the passing of this order and also make payment of the outstanding rental arrears until vacating of the entire suit premises after giving due credit for the sum advanced.

(Ravi Krishan Kapur, J.)