

Green View Radio Service

Vs

Laxmibai Ramji and Another

Civil Appeal No. 2688 of 1984

(P. B. Sawant, N. M. Kasliwal JJ)

11.09.1990

JUDGMENT

P. B. SAWANT, J. -

1. This appeal is by a tenant against the order of his eviction which is confirmed by two courts below. The eviction suit was filed on the ground of arrears of rent and on the ground that a permanent structure was erected in the suit premises without the previous permission in writing, of the landlord. The Small Causes Court, Bombay granted a decree of eviction in favour of the respondent-landlord only on the ground of the arrears of rent holding that the other ground, viz., the construction of a permanent structure by the tenant without the authority of the landlord was not proved. This decision was confirmed in appeal by the Appeal bench of the Small Causes Courts, Bombay. The writ petition filed in the High Court against the said judgment was dismissed summarily.

2. The only point which was canvassed before us, was whether the appellant had received the notice dated September 3, 1963 demanding the arrears of rent and whether the appellant had failed to pay the arrears of rent within thirty days of the receipt of the said notice as required under the relevant provisions of the Bombay Rent Act (hereinafter referred to as the "Act"), there being no dispute that the rent in arrears was for more than six months. The notice was dated September 3, 1963 and the rent due was from March 1, 1963 till August 31, 1963. It was sent by registered post acknowledgment due. The acknowledgment is on record with a copy of the notice as Ex. E (Colly.). The suit premises are used for business purposes and the appellant is a proprietary concern, and its proprietor, Amarjeet Singh denied that he had received the notice. The finding of the two courts of fact is that notwithstanding the denial of Amarjeet Singh, the notice was in fact received at the suit premises. To come to this conclusion, the courts have given several reasons. They have pointed out that it was addressed correctly in the name of the appellant and at the suit premises. The earlier notices were also addressed similarly at the same address and the appellant had admitted the receipt thereof. They are on record as Ex. 2, Ex. B (colly.) Ex. F (colly.). There is a legal presumption that the communication sent by post properly addressed to the addressed is received by him in due course of business and that the acknowledgment was received back from the post office duly signed with the recipient's signature and that acknowledgment is on record. The notice was sent by the respondent-landlord's advocate and the acknowledgment was received at his office. The court further held that Amarjeet Singh, the proprietor of the premises was in the habit of changing his signature from time to time and had signed different documents in different styles. The appellant further did not lead sufficient evidence to rebut the presumption of service. It was admitted by Amarjeet Singh that either he himself or his brother or his employee would always be present in the suit premises. Although he came out with a alibi that he was not present in the premises on the dated

on which the postal acknowledgment is signed, he has not stated that nobody else was present in the shop on that day and hence nobody could have received the said notice on behalf of the appellant. The courts, therefore, held that the service of the notice on the appellant was proved. Since the rent was admittedly not paid within thirty days of the receipt of the said notice, according to the mandatory provisions of the Act, the appellant was liable to be evicted.

3. In this connection, we may also point out that the provisions of Section 106 of the Transfer of Property Act require that notice to quit has to be sent either by post to the party or be tendered or delivered personally to such party or to one of his family members or servants at his residence or if such tender or delivery is not practicable, affixed to a conspicuous part of the property. The service is complete when the notice is sent by post. In the present case, as pointed out earlier, the notice was sent by the plaintiff's advocate by registered post acknowledgment due. The acknowledgment signed by the party was received by the advocate of the plaintiff. Thus in our view the presumption of service of a letter sent by registered post can be rebutted by the addressee by appearing as witness and stating that he never received such letter. If the acknowledgment due receipt contains the signatures of the addressee himself and the addressee as a witness states that he never received such letter and the acknowledgment due does not bear his signature and such statement of the addressee is believed then it would be a sufficient rebuttal of the presumption drawn against him. The burden would then shift on the plaintiff who wants to rely on such presumption to satisfy the court by leading oral or documentary evidence to prove the service of such letter on the addressee. This rebuttal by the defendant of the presumption drawn against him would of course depend on the veracity of his statement. The court in the facts and circumstances of a case may not consider such denial by the defendant as truthful and in that case such denial alone would not be sufficient. But if there is nothing to disbelieve the statement of the defendant then it would be sufficient rebuttal of the presumption of service of such letter or notice sent to him by registered post.

4. In the present case it is an admitted position that the notice by registered post had been sent at the proper address. Similar address appeared in the earlier notice given to the defendant and the same is admitted to have been received by the defendant. It has come on record that the defendant proprietor Amarjeet Singh signs his name differently at different times. This is borne out from his signatures on the receipt of summons in the suit, vakalatnama of his former advocate Mr. Mattai and the written statement in the suit which have been signed by him in English in three different ways. It may be further noted that Amarjeet Singh had deposed that he had paid rent for April 1963 to the Gurkha employee of the plaintiffs but no rent receipt was brought to him. He also produced a copy of letter dated June 5, 1963 addressed by him to plaintiffs together with a certificate of posting as Ex. 7 (Col. 1). The plaintiffs in this regard did not admit the receipt of this letter and their case was that the copy of letter and certificate of posting Ex. 7 (Col. 1) have been fabricated by the defendant of the original written statement. The trial court while dealing with this matter arrived at the conclusion that the copy of the letter dated June 5, 1963 and the certificate of posting were not genuine documents and no reliance could be placed upon them. The above matter was also examined by the High Court in detail and it recorded the finding that the appellant (defendant) had made an unsuccessful attempt by inserting on record a suspicious document in order to make out a case of payment of rent for the month of March 1963. The High Court observed that the learned trial Judge had rightly disbelieved this evidence and it found no reason to differ from him on this point. The above conduct of the defendant goes to show that no reliance can at all be placed on the bald denial of Amarjeet Singh that he did not receive the notice dated September 3, 1963 sent to him by registered post. He was capable of introducing certificate of posting (Ex. 7) in support of his case which was found to be not genuine. As already mentioned above, Amarjeet Singh was signing in different manner and his above conduct of relying on a fabricated document clearly goes to show

that no credence can be given to his statement that he had not received the notice in question.

5. In view of these circumstances, we hold that the mere denial by Amarjeet Singh that he did not receive the notice cannot be believed and as such there is no rebuttal of the presumption drawn against him under Section 114 of the Evidence Act.

6. Hence, we cannot fault the reasoning of the courts below. In the circumstances, we dismiss this appeal.

7. However, in the facts and circumstances of the case and particularly in view of the fact that the appellant has been carrying on the business at the suit premises for the last about 40 years, we are of the view that a sufficient time should be given to find out alternative premises. We, therefore, direct that the eviction decree shall not be executed for a period of three years from today subject to the appellant giving the usual undertaking within four weeks from today.

8. In the circumstances of the case, there will be no order as to costs.

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