

**SUPREME COURT OF INDIA**

Apollo Zipper India Limited

Vs.

W.Newman and Co.Ltd.

C.A.No.4249 of 2018

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

20.04.2018

**JUDGMENT**

**Abhay Manohar Sapre,J.,**

SLP(Civil)No.27775 of 2017

1. Leave granted.
2. This appeal is directed against the final judgment and decree dated 13.06.2017 passed by the High Court at Calcutta in APD No. 510 of 2015 whereby the Division Bench of the High Court allowed the appeal filed by the respondent herein W. Newman And Co. Ltd. and set aside the order dated 14.10.2015 passed by the Single Judge of the High Court and granted unconditional leave to the respondent to defend the suit and remanded the suit for its trial on merits.
3. The short issue involved in this appeal relates to grant of leave to the respondent (defendant) to defend the summary eviction suit filed by the appellant against them in relation to the suit premises.
4. In order to appreciate the issue involved, it is necessary to set out the background facts which led to filing of the summary eviction suit leading to passing of the impugned order.
5. The background facts of the case are as follows:
6. The appellant is the plaintiff whereas the respondent is the defendant in a summary suit out of which this appeal arises.
7. There is a Hotel in the city of Kolkata called "Great Eastern Hotel" (hereinafter referred to as "GEH"). It is situated in Old Court House Street (Hemanta Basu Sarani), Kolkata. The Hotel has been in existence for the last more than a century. It is a heritage Hotel. The Hotel building has several floors and consists of several shops, business premises including the

Hotel. The building and the Hotel was owned and run by the Company called “Great Eastern Hotel Limited” (hereinafter referred to as “GEHL” ).

8. The shops and business premises in the Hotel building are mostly on the ground floor and were let out by GEHL to different persons as their tenants. One such business premises (No.18) measuring around 6000 sq. feet, which is the subject matter of this appeal (hereinafter referred to as the “suit premises”), was let out by GEHL, a century back, to the respondent for non-residential purpose. The monthly rent of the suit premises at the relevant time was Rs.40,000/-.

9. In the year 1975, the State of West Bengal passed an Act called “The Great Eastern Hotel (Taking Over of Management) Act, 1975 (Act XXXII of 1975)” (hereinafter referred to as “the Act 1975”). The Act 1975 was passed to provide for taking over of the management of the undertaking of the GEHL as defined under Section 2(d) for a limited period of five years in public interest and also to secure its proper management. Pursuant thereto, the State Government took over the management of the undertaking of the GEHL.

10. The Act of 1975 was followed by another Act passed by the State of West Bengal on the expiry of five years in 1980 called “The Great Eastern Hotel (Acquisition of Undertaking) Act, 1980 (Act No XXVII of 1980)” (hereinafter referred to as “the Act 1980”). The Act 1980 was passed for the acquisition of the undertaking of the GEHL.

11. On 18.06.1981, the State Government issued a notification under Section 3(1) of the Act 1980 whereby the undertaking of GEHL stood transferred to and vested absolutely in the State Government with effect from 17.07.1980.

12. The Governor issued a notification under Section 3 (2) of the Act 1980 for better and efficient management and administration of the GEH, and directed therein that the undertaking of the GEHL shall stand transferred to and vest in the Great Eastern Hotel Authority (for short, “GEHA”) constituted under Section 5 (1) of the Act 1980.

13. Consequent upon enacting of the Act 1980 and issuance of the aforementioned notification under the Act of 1980, the State Government (GEHA) became the owner of the GEHL (which included the land, Hotel building, assets and the management of GEHL) by operation of law.

14. As a consequence thereof, the respondent, who was originally the tenant of GEHL, became the tenant of the State Government, i.e., GEHA on the same terms and conditions with effect from 17.07.1980. The respondent too accepted this transfer of ownership of the suit premises and accordingly started paying monthly rent of Rs.40,000/- to GEHA which they paid till 2005.

15. On 05.10.2005, the Governor issued another notification under Section 3(2) of the Act 1980 and directed therein that all the fixed and current assets of the GEHA be vested in the Company called "Apollo Zipper India Limited" (appellant herein).

16. As a result of issuance of this notification, all the assets (fixed and current) of GEHA stood vested in the appellant-Company with effect from 05.10.2005. This is how the appellant became the absolute owner of GEHA including the suit premises let out to the respondent.

17. By letter dated 24.02.2006, GEHA informed the respondent about the transfer of their entire assets to the appellant with effect from 05.10.2005 followed by another letter dated 28.04.2006 of the Advocates of GEHA sent to the respondent informing them about the transfer of ownership and assets of GEHA to the appellant with effect from 05.10.2005 including transfer of the suit premises to the appellant.

18. On 17.05.2012, the appellant sent a quit notice to the respondent under Section 106 of the Transfer of Property Act, 1882(hereinafter referred to as “the TP Act”) and terminated the respondent's tenancy with effect from 03.06.2012 and demanded arrears of rent and vacant possession of the tenanted premises from the respondent. On receipt of the quit notice, the respondent did not reply to it. (See page180 of SLP- order of the Single Judge).

19. This led to filing of the summary suit being Civil Suit No.201/2012 by the appellant against the respondent on the original side of the High Court at Calcutta claiming therein arrears of rent (Rs.39,20,000/-), the vacant possession of the suit premises and mesne profits at the rate of Rs.40,000/- per day.

20. The suit was filed under Chapter XIII- A (Rule 1-B) of the Rules of the High Court at Calcutta (original side), 1914 (for short, “The Rules”). The appellant filed evidence by way of affidavit in support of their case. The respondent on being served of the summons of the suit also filed affidavit opposing the suit of the appellant.

21. It may be mentioned here that the appellant filed another Civil Suit No.53/2007 against the respondent in the High Court at Calcutta for permanent injunction restraining them from carrying out any changes in the nature and character of the suit premises and from transferring and alienating the suit premises to any third party.

22. Similarly, the respondent also filed one suit (Title Suit No.1183/2012) in the City Civil Court at Calcutta against the appellant for a declaration that the quit notice dated 17.05.2012 sent by the appellant to the respondent under Section 106 of the TP Act is void, that the respondent is a monthly tenant of the suit premises, and also prayed for issuance of mandatory injunction against the appellant, who was made defendant No.1 in the said suit, and Bharat Hotels Ltd., GEHA and the State of West Bengal as defendant Nos. 2, 3 and 4 respectively, directing them to accept the monthly rent from the respondent(plaintiff) at the rate of Rs.1600/- in respect of the tenanted premises. This suit is pending.

23. The respondent also filed Writ Petition No.569/2004 in the High Court at Calcutta challenging therein the rate of monthly rent of the suit premises.

24. Coming now to the facts of the summary suit filed by the appellant (C.S. No.201 of 2012) out of which this appeal arises, the appellant (plaintiff) claimed that they are entitled to a decree for eviction against the respondent from the suit premises and also a decree for arrears of rent and mesne profits under Rule 6 of the Rules because the respondent has failed to raise any arguable and substantial defense on merits in support of their case in answer to the appellant's summary suit.

25. The respondent, however, raised essentially three grounds to oppose the appellant's suit by way of defense and sought leave to defend the suit on the said grounds.

26. First, the suit, as filed by the appellant by taking recourse to the provisions of the TP Act, is not maintainable. According to the respondent, the suit should have been filed under the West Bengal Premises Tenancy Act, 1997 (for short, "the Tenancy Act") because the monthly rent of the suit premises is less than the limit prescribed under Section 3(f) of the Tenancy Act (monthly rent is Rs.1600/- whereas the limit prescribed is Rs.10,000/-).

27. Second, the respondent has not attorned to the appellant inasmuch as it is also not clear as to who is the owner of the suit premises, viz., the appellant-Company or Bharat Hotels limited and, therefore, the appellant is required to prove their title over the suit premises. It is more so for want of any attornment made by the respondent of the appellant's ownership and the tenancy in question. This, according to the respondent, needs an elaborate trial in the suit.

28. Third, the monthly rent of the suit premises is Rs.1600/- whereas the respondent is paying Rs.38,400/- towards maintenance charges to the landlord. It was contended that since there is a dispute as to whether the monthly rent is Rs.40,000/- or Rs.1600/-, the same also needs an elaborate trial on merits in the suit.

29. The Single Judge, by order dated 14.10.2015, declined to grant leave to defend to the respondent and decreed the appellant's suit by passing an eviction decree against the respondent in relation to the suit premises. The Single Judge held that none of the grounds raised by the respondent to seek leave to defend the suit are prima facie arguable and nor have any merit and nor these grounds constitute any substantial defense, which may require an elaborate trial on such grounds and, therefore, no case is made out to grant any leave to defend the suit to the respondent.

30. In other words, the Single Judge held, that the summary suit is maintainable under the provisions of the TP Act, that the monthly rent of the suit premises is Rs.40,000/-, that the respondent has attorned to the appellant, that the appellant has prima facie proved their title over the suit premises, that the provisions of the Tenancy Act has no application because the monthly rent of the suit premises is above the prescribed limit of Rs.10,000/- and lastly, to record these findings, no elaborate trial in the suit is required inasmuch as such findings can be recorded on the basis of the documents filed by the parties.

31. The respondent felt aggrieved and filed appeal before the Division Bench of the High Court. By impugned judgment, the Division Bench allowed the respondent's appeal, set aside

the order of the Single Judge and granted unconditional leave to defend the suit to the respondent and remanded the suit for its trial on merits.

32. The Division Bench was of the view that there is some dispute regarding the title over the suit premises as to who is the owner of the suit premises, namely, whether the appellant-Company or the other Company, i.e., M/s Bharat Hotels Ltd.

33. In other words, the Division Bench held that the question of title over the suit premises needs to be gone into detail in the suit with a view to find out as to who is the actual owner of the suit premises and hence an arguable case in defense has been made out by the respondent while seeking leave to defend the summary suit.

34. The plaintiff (appellant) felt aggrieved and filed this appeal by way of special leave against the judgment of the Division Bench in this Court.

35. Heard Mr. Mukul Rohtagi and Mr. Ranjeet Kumar, learned senior counsel for the appellant and Mr. Jaideep Gupta, learned senior counsel for the respondent.

36. Mr. Mukul Rohatgi, learned senior counsel for the appellant (plaintiff) while assailing the legality and correctness of the impugned judgment, mainly reiterated the same submissions, which were urged by the appellant before the two Courts below in support of their case.

37. In substance, his submission was that the reasoning and the conclusion arrived at by the Single Judge is just, proper and legal and hence the order of the Single Judge deserves to be restored by setting aside the impugned judgment.

38. Learned counsel urged that none of the three grounds raised by the respondent for grant of leave to defend the suit were either arguable or had any prima facie merit therein. In other words, the submission was that all the three grounds were raised for the sake of raising having no arguable and substantial defense whether on facts or in law and, therefore, Single Judge was justified in declining to grant leave to defend the suit to the respondent and was justified in passing decree for eviction against the respondent.

39. On merits, learned counsel pointed out with reference to each ground that the documents on record would prima facie show that firstly, the monthly rent was Rs.40,000/-, Secondly, the appellant was the owner of the suit premises, thirdly, the respondent had duly attorned to the appellant and fourthly, the suit was rightly filed by invoking the provisions of the TP Act because the provisions of the Tenancy Act had no application to the suit premises due to monthly rent of the suit premises exceeding the limit specified under Section 3 (f) of the Tenancy Act.

40. In reply, Mr. Jaideep Gupta, learned senior counsel for the respondent supported the impugned judgment and contended that no case is made out to interfere in the impugned

judgment. Learned counsel then elaborated his submission in support of the impugned judgment and prayed for dismissal of the appeal.

41. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal, set aside the impugned judgment and restore the order of the Single Judge.

42. In our considered opinion, the reasoning and the conclusion arrived at by the Single Judge while declining to grant leave to defend the suit to the respondent and decreeing the appellant's suit for eviction deserves to be restored as against the impugned judgment passed by the Division Bench.

43. In other words, we are of the considered opinion that the grounds, which were pressed in service by the respondent, to seek leave to defend the suit are neither arguable nor have any prima facie merit therein and, therefore, there does not arise any need to have any trial in the suit on merits on such grounds. This we say for the following reasons.

44. The first question that arises for consideration in this appeal is whether the respondent attorned to the appellant or whether the appellant is required to prove their title over the suit premises or whether there exists any doubt or confusion over the issue of title of the suit premises so as to grant leave to defend to the respondent to probe these questions elaborately on merits in the summary suit filed by the appellant against the respondent for eviction.

45. It is a settled principle of law laid down by this Court that in an eviction suit filed by the landlord against the tenant under the Rent Laws, when the issue of title over the tenanted premises is raised, the landlord is not expected to prove his title like what he is required to prove in a title suit.

46. In other words, the burden of proving the ownership in an eviction suit is not the same like a title suit. (See *Sheela & Ors. vs. Firm Prahlad Rai Prem Prakash*<sup>1</sup>, Para 10 at page 383 and also *Boorugu Mahadev & Sons & Anr. vs. Sirigiri Narasing Rao & Ors*<sup>2</sup>. Para 18 at page 349 ).

47. Similarly, the law relating to derivative title to the landlord and when the tenant challenges it during subsistence of his tenancy in relation to the demised property is also fairly well settled. Though by virtue of Section 116 of the Evidence Act, the tenant is estopped from challenging the title of his landlord, yet the tenant is entitled to challenge the derivative title of an assignee of the original landlord of the demised property in an action brought by the assignee against the tenant for his eviction under the Rent laws. However, this right of a tenant is subject to one caveat that the tenant has not attorned to the assignee. If the tenant pays rent to the assignee or otherwise accepts the assignee's title over the demised property, then it results in creation of the attornment which, in turn, deprives the tenant to challenge the derivative title of the landlord. [See *Bismillah De (dead) by Legal Representatives vs. Majeed Shah*<sup>3</sup>. Para 24]

48. It is equally well-settled law with regard to attornment that it does not create any new tenancy but once the factum of attornment is proved then by virtue of such attornment, the old tenancy continues. (See *Uppalapati Veera Venkata Satyanarayanaraju & Anr. Vs. Josyula Hanumayamma & Anr<sup>d</sup>*).

49. In the case at hand, we find that it is not in dispute that the original owner of the suit premises was GEHL, who had created the original contract of tenancy with the respondent in relation to the suit premises.

50. It is also not in dispute that the GEHL was then acquired by the State by Act of 1975 and the Act of 1980, as a consequence thereof, the suit premises stood vested in an authority called the GEHA by operation of law as per Section 3 read with Section 5 of the Act 1980 with effect from 17.07.1980 and 22.06.1981.

51. It is also not in dispute that the respondent accepted this change of ownership and accordingly started paying monthly rent to the GEHA from 1980 as monthly tenant of the GEHA and which they paid till 2005.

52. It is also not in dispute that in terms of the notification issued by the Governor on 05.10.2005 under Section 3(2) of the Act of 1980, the suit premises then stood transferred and vested in the appellant-Company (see notification dated 05.10.2005) by operation of law and the appellant accordingly became the owner of the suit premises with effect from 05.10.2005.

53. It is further not in dispute that the GEHA and their lawyer, vide letters dated 24.02.2006 and 28.04.2006, informed the respondent about the change of ownership of the suit premises and the appellant acquiring the ownership of the suit premises vide notification dated 05.10.2005.

54. In our considered opinion, the aforementioned undisputed facts, which are matter of record, are sufficient to hold in the eviction suit that the appellant became the owner of the suit premises with effect from 05.10.2005.

55. In our considered view, the respondent also attorned to the appellant and accepted the ownership of the appellant over the suit premises, which is prima facie proved by the three facts and circumstances as set out below.

56. First, when the appellant sent a quit notice dated 17.05.2012 to the respondent under Section 106 of the TP Act determining the tenancy and calling upon the respondent to pay the arrears of rent and vacate the suit premises, despite receipt of the quit notice, they did not reply to it.

57. In our view, the respondent ought to have replied to the notice at the first available opportunity, which they failed to do so. It amounts to waiver on their part to challenge the invalidity or infirmity of the quit notice including the ownership issue raised therein.

58. In the case of *Parwati Bai vs. Radhika*<sup>5</sup>, the question arose as to whether the tenancy was terminated in accordance with the provisions of Section 106 of the TP Act. The defendant despite receiving the notice from the plaintiff did not reply to it.

59. This Court held that if the defendant does not raise any objection to the validity of quit notice at the first available opportunity, the objection will be deemed to have been waived. The following Para 6 of the decision is apposite which reads as under:

“6. 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.”

60. Second, the respondent by letters dated 13.06.2006, 27.06.2006, 05.07.2006 and 11.07.2006, sent to the appellant on the question of ownership of the suit premises and payment of rent had expressed their willingness to attorn and continue the tenancy with the appellant and also offered to pay rent to the appellant. (See pages 198 & 199 of the SLP Paper Book-order of the Single Judge)

61. Third, the respondent in their civil suit (No.1183 of 2012) filed against the appellant in Paras 15, 17, 18 and relief clause (e) of the plaint admitted the ownership of the appellant over the suit premises and went to the extent of seeking the mandatory injunction against the appellant directing them to accept the monthly rent of the suit premises from the respondent.

62. In other words, reading of the aforementioned paras in the respondent's plaint including the relief clause (e) would go to show that the respondent was all along willing to accept and indeed actually accepted the ownership of the appellant over the suit premises and, therefore, sought mandatory injunction against the appellant to accept them as tenant. The conduct of the respondent, therefore, disentitles them to now raise a new plea questioning the title of the appellant over the suit premises and a plea of attornment. Both, in our opinion, are wholly misconceived pleas and, therefore, deserve to be rejected.

63. As mentioned above, the title of the landlord over the tenanted premises in a suit for eviction cannot be examined like a title suit. Similarly, the attornment can be proved by several circumstances including taking into consideration the conduct of the tenant qua landlord.

64. The aforesaid three circumstances, in our opinion, are, therefore, more than sufficient to record a finding that the appellant was prima facie able to prove their title over the suit premises so also was able to prove the factum of “attornment” made by the respondent in

relation to the suit premises in appellant's favour thereby entitling the appellant to determine the contractual tenancy which was devolved upon them by operation of law.

65. In the light of the foregoing discussion, we are unable to agree with the view taken by the Division Bench that there was some dispute or confusion as to who is the owner of the suit premises. In our view, there was neither any dispute and nor confusion and nor any ambiguity over the question of title over the suit premises which needed any elaborate inquiry.

66. This takes us to examine the next question as to what was the monthly rent of the suit premises - whether Rs.1600/- towards monthly rent and Rs.38,400/- towards maintenance charges as claimed by the respondent or Rs.40,000/- as claimed by the appellant.

67. In our view, the monthly rent of the suit premises was Rs.40,000/-. It is for the reason that Firstly, the respondent had been paying Rs.40,000/- per month to their previous landlord - GEHA for a long time; Second, the bifurcation of Rs.40,000/- was being sought by the respondent so that they may get the benefit of applicability of the Tenancy Act to defend therein tenant's right which they failed to prove and lastly, the rent receipts filed by the parties clearly proved that the monthly rent of the suit premises was Rs.40,000/- and not Rs.1600/-.

68. This takes us to examine the next question as to whether the suit filed by the appellant invoking the provisions of the TP Act was maintainable or it should have been filed under the Tenancy Act.

69. In our opinion, the appellant rightly filed the suit by invoking the provisions of the TP Act. It is for the reason that once the monthly rent of the suit premises was found to exceed the limit prescribed under Section 3(f) of the Tenancy Act, the provisions of the Tenancy Act had no application to the suit premises.

70. Section 3(f) of the Tenancy Act says that any premises let out for non-residential purpose when carries more than Rs. 10,000/- as monthly rent in the areas included within the limits of Municipal Corporation, the provisions of the Tenancy Act will not apply.

71. In the case at hand, the monthly rent of the suit premises was Rs.40,000/- and, therefore, the appellant was well within their right to file summary suit against the tenant's eviction and for recovery of the arrears of rent by taking recourse to the provisions of the TP Act read with Rule 1(B) of The Rules applicable to the suits filed on the original side jurisdiction of the High Court at Calcutta.

72. In the light of the foregoing discussion, we are of the view that the respondent failed to raise any arguable and substantial defense as required under Rule 6 read with Rule 9 of the Rules and the three grounds raised for seeking leave to defend the suit were only for the sake of raising and had no factual or/and legal foundation to stand for trial in the suit and hence no

leave can be granted to the respondent on such grounds under Rule 9 of the Rules. It was, therefore, rightly declined by the Single Judge but wrongly granted by the Division Bench.

73. In view of the foregoing discussion, the appeal succeeds and is allowed. Impugned judgment is set aside and that of the Single Judge is restored.

74. The respondent is granted six months' time to vacate the suit premises subject to the condition that they shall deposit the entire arrears of rent up to date at the rate of Rs.40,000/- per month within one month from the date of this order and also deposit six months' rent by way of damages for use and occupation within one month in advance.

75. The entire amount, as directed above, be deposited with the High Court. The appellant shall be entitled to withdraw the sum so deposited. The respondent shall also furnish the undertaking in this Court within two weeks stating therein that they will vacate the suit premises within six months from the date of this order and will also deposit the sum, as directed above, in time. Failure to file the undertaking and deposit of the amount will entitle the appellant to execute this order against the respondent on the expiry of one month.

76. As a consequence of this judgment, all the pending cases mentioned above such as, C.S. No.53/2007, Title Suit No.1183/2012, and W.P. No. 569 of 2004 which were filed by the parties against each other in various Courts in relation to the suit premises and, if pending till date, stand accordingly disposed of.

Judgment Referred.

<sup>1</sup>(2002) 3 SCC 0375

<sup>2</sup>(2016) 3 SCC 0343

<sup>3</sup>(2017) 2 SCC 0274

<sup>4</sup>AIR 1967 SC 0174

<sup>5</sup>AIR 2003 SC 3995