Kulkarni Patterns Pvt. Ltd. And Ors vs Vasant Baburao Ashterkar And Ors on 17 January, 1992

Equivalent citations: 1992 AIR 1097, 1992 SCR (1) 227, AIR 1992 SUPREME COURT 1097, 1992 (2) SCC 46, 1992 AIR SCW 941, 1992 (1) ALL CJ 558, (1992) 1 SCR 227 (SC), 1992 SCFBRC 37, 1992 BOMRC 293, 1992 HRR 286, 1992 (1) SCR 227, (1992) 1 JT 194 (SC), 1992 ALL CJ 1 558, (1992) 1 MAHLR 972, (1992) 1 RENCJ 161, (1992) 1 RENCR 292, (1992) 1 SCJ 236, (1992) 1 ALL RENTCAS 131, (1992) 3 BOM CR 667

Author: N.M. Kasliwal

Bench: N.M. Kasliwal, R.C. Patnaik

PETITIONER:
KULKARNI PATTERNS PVT. LTD. AND ORS.

Vs.

RESPONDENT:
VASANT BABURAO ASHTERKAR AND ORS.

DATE OF JUDGMENT17/01/1992

BENCH:
KASLIWAL, N.M. (J)
BENCH:
KASLIWAL, N.M. (J)
PATNAIK, R.C. (J)

CITATION:
1992 AIR 1097 1992 SCR (1) 227
1992 SCC (2) 46 JT 1992 (1) 194
1992 SCALE (1)96

ACT:
Transfer of Property Act-Section 106-Termination notice-Sent by post-Service-Presumption and rebuttal-When arises.
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947-Section 13 (1) (b)- Applicability of.

HEADNOTE:
The Respondents-landlords filed a suit for possession of the suit premises against the appellants on the ground of

default in payment of rent, amongst other, The 7th Additional Small Causes Judge, dismissed the suit holding that the service of notice dated 7-8-1980 on the defendants terminating the tenancy was not proved, even though one out of the three acknowledgments due, had been received duly signed. As regards the question of default in payment of rent, the learned Judge took the view that the case did not fall under Section 12(3)(b) of the Act, as the defendants had paid Rs. 55,800 on 16.1.1984 and thereafter made regular payment of Rs. 600 every month. On appeal by the respondent-landlords, the learned additional District Judge reversed the findings of the trial Court and decreed the suit. The learned Additional District Judge held that when the notices are sent by registered post, it is presumed to have been served and mere denial by the tenants had no value, unless they proved some extraordinary happenings or events which prevented following of usual course of business. On the question of default in payment of rent the learned Judge held that as the defendants did not deposit the entire arrears on the first date of hearing and did not deposit the further rent during the pendency of the appeal, they persistently committed defaults during the pendency of the suit and also the appeal. The appellants thereupon filed a writ petition in the High Court challenging the validity of the aforesaid order of the learned Additional District Judge. The High Court dismissed the writ petition and affirmed the order passed by the learned Additional District Judge. Hence this appeal by the appellants, after obtaining special leave.

Dismissing the appeal, this Court,

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HELD: The notice under Section 106 T.P. Act can be sent by post to the party who is intended to be bound by it. Thus the notice sent by registered post in the name of the defendant company who is the tenant is fully in accordance with the requirement of section 106 of the Transfer of Property Act.[232H-233A]

The plaintiffs had sent a copy of the notice to all the three defendants by registered post. Three postal receipts Exhs. 52,53 and 54 have been filed in the present case Exh. 51, one acknowledgment receipt. As regards Exh. 51, the defendants No.2 has appeared in the witness box and has denied his signatures. However, it has not been shown that this acknowledgment receipt was related to which of the three notices sent vide postal receipts Exhs. 52,53 and 54. [231E-F]

The rebuttal, if any, made by defendant No.2 can be related only with regard to Exh. 51 for one notice but not with regard to all the three notices sent by registered post vide Exhs. 52 to 54.[232D]

The service of notice shall have to be presumed so far as defendant company is concerned and there is no rebuttal to presumption by the defendant appellants. [232E]

The finding recorded by the learned Additional District Judge that the defendants were defaulter in the payment of rent as full amount of rent was not paid or deposited on the first date of hearing and no rent was paid month by month during the pendency of the appeal could not be assailed. [233B]

Green View Radio Service v. Laxmibai Ramji and Anr., [1990] 4 SCC 497, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4134 of 1991.

From the Judgment and Order dated 30.8.1991 of the Bombay High Court in Writ Petition No 3580 of 1991.

J.P.Pathak and P.H. Parekh for the Appellants. A.M. Khanwilkar and S.K. Parshankar for the Respondents.

The Judgment of the Court was delivered by KASLIWAL, J. This appeal by grant of special leave is directed against the judgment of the Bombay High Court dated 30th August, 1991 in a suit for possession under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Act). The suit was dismissed by the 7th Additional Small Causes Judge. On appeal the learned 10th Additional District Judge, Pune by Judgment dated 25.4.1991 set aside the order of the trial court and decreed the plaintiff's suit for possession. The tenants filed the writ petition in the High Court challenging the order of the Additional District Judge, But the same was dismissed and the decree for possession passed by the Additional District Judge was affirmed.

The trial court held that the service of notice dated 7.8.1980 on the defendant-tenants was not held proved. The plaintiffs were unable to prove that the postal acknowledgement Exhibit 51 Contained the signatures of defendant no 2 or 3. It was held that on the point of service of notice the case of the plaintiff was rather confusing and not clear. It was held that even assuming that the notice had been served yet the case did not fall under Section 12(3) (a) of the Act. The trial court also held that the case did not fall under Section 12(3) (b) of the Act as the defendants had paid Rs. 55,800 on 16.1.1984 and thereafter made regular payment of Rs. 600 every month. According to the learned trial court the issues were framed on 26.8.1985 and before that the defendants had made full payment as demanded in the notice and as such no decree can be passed under Section 12(3)(b) of the Act.

Learned Additional District Judge reversed the above finding of the trial court and held that the evidence of the plaintiff showed that the copy of the notice was sent to all the defendants by registered post. The postal receipts have been filed as exhibits 52, 53 and 54. Learned Additional District Judge further held that when the notices are sent by registered post it is presumed to have been served and mere denial by the tenants had no value, unless they proved some extraordinary

happenings or events which prevented following of usual course of business. Learned Additional District Judge further held that the notice was sent on the address given in the plaint and it was admitted by the defendant in his statement that it contained the correct address. A presumption of service of notice was drawn under Section 27 of the General Clauses Act and Section 114 of the Evidence Act. Learned additional District Judge though affirmed the finding of the trial court that the case is not covered under section 12(3)(a) of the Act, but the plaintiffs were entitled to a decree under Section 12(3) (B) of the Act. In this regard learned Additional District Judge recorded the finding that the entire arrears of rent amounted to Rs. 71,088 but the defendant-tenant only deposited Rs 66.000 till the first date of hearing and thus remained in arrears of Rs. 5,088. It was also held that the provisions of 12(3)(b) of the Act are mandatory provisions and those are required to be strictly complied with by the tenants during the pendency of the suit and also appeal when the landlord-claims possession of the suit premises on the ground of Section 12(3)(b) of Act. The defendant-tenant did not deposit the entire arrears on the first date of hearing and did not deposit the further rent during the pendency of the appeal. Thus the defendant persistently committed defaults during the pendency of the suit and also the appeal in paying the rent.

We have heard learned counsel for the parties and have thoroughly gone through the record. It is important to note that M/s Kulkarni Patterns Pvt. Ltd/. (defendant No.1) Was the tenant, defendant No 2 Shri D G. Kulkarni was the Chairman of the company and defendant No 3 Mrs M.D. Kulkarni was the wife of defendant No 2 and Director of defendant No

1. The plaintiffs sent a notice dated 7.8.1980 to all the defendants vide postal receipts Exhibit 52,53 and 54. Exhibit 51 is only one acknowledgement receipt which has been produced on record.

It has been contended on behalf of the appellants that the learned Additional District Judge was wrong in drawing presumption of service of service of notice in the facts of the present case. It was submitted that the plaintiff initially stated that the acknowledgement receipt Exhibit 51 contained the signatures of defendant NO.3, but subsequently admitted that it contained the signature of defendant No. 2. It was further argued that defendant No.2. had appeared in the witness box and clearly denied his signatures on Exhibit

51. It was thus contended that the presumption of service of notice was rebutted and thereafter the burden lay on the plaintiffs to prove the service of notice by examining the postman or by other evidence and the plaintiffs having failed to do so, the service of notice having not established, the suit was liable to be dismissed. Reliance in support of the above contention was placed on a decision of this Court to which one of us was a party in Green view Radio Service v. Laxmibai Ramji And Another., [1990] 4 S.C.C. 497. Reliance was placed on the following observations made in the above case.

> "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 acknowledgement due. The acknowledgement 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 acknowledgement due receipt contains the signatures of the addressee himself and the addressee as a witness states that he never received such letter and the acknowledgement 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."

In the present case the plaintiffs had sent a copy of the notice to all the three defendants by registered post. Three postal receipts Exhibits 52, 53 and 54 have been filed in the present case and Exhibit 51, one acknowledgement receipt. As regards Exhibit 51, the defendant No.2 has appeared in the witness box and has denied his signatures. However, it has not been shown that this acknowledgement receipt was related to which of the three notices sent vide postal receipts Exhibits 52,53 and 54. The plaintiffs have clearly proved that three notices were sent by registered post and which is clearly born out from the three postal receipts. Admittedly the premises were taken on rent in the name of the defendant No.1 namely Kulkarni Patterns. Pvt. Ltd. and it is proved that one of the notices by registered post was also sent to the company. It has been admitted by the defendant No.2 in his statement that the notice was sent on the correct address. The defendant No.2 in his statement has nowhere stated that no notice has bee received by the company. The only denial is in respect of the acknowledgment receipt Exhibit 51 and the only inference which could legitimately be drawn is that in respect of one notice, it was not proved as to who acknowledged the receipt of the notice. We do not approve the following statement of law made by the learned Additional District Judge "that the evidence of the defendant did not show any extraordinary happenings or the events which prevented the following of usual course of business and thus, his mere denial has no value". However, in the present case three notices were sent by registered post and one of which was sent in the name of the defendant company who was the tenant, a presumption can legitimately be drawn that the notice dated 7.8.1980 had been served on the company. There is no rebuttal on behalf of the defendant as regards the notice served on the company and in the facts and circumstances of the present case we hold that notice dated 7.8.1980 sent by registered post was served on the defendant company, In Green View Radio Service (supra) it was held that the acknowledgement due receipt contained the signature of the addressee himself and the addressee as a witness stated that he never received such letter and the acknowledgement due did not bear his signature and such statement of the addressee if believed then it would be a sufficient rebuttal of the presumption drawn against

him. The burden will 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. Even applying this statement of law in the facts of the present case, the rebuttal, if any, made by defendant No.2 can be related only with regard to Exhibit to Exhibit 51 for one notice but not with regard to all the three notices sent by registered post vide exhibits 52 to 54 Thus, in the facts of the case in hand before us we are fully convinced that the service of notice shall have to be presumed so far as defendant company is concerned and there is no rebuttal to such presumption by the defendant appellants.

The requirement of sending notice under Section 12(2) of the Act is to be done in the manner prescribed under paragraph two of Section 106 of the Transfer of Property Act which reads as under.

> "Every notice under this Section 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."

The reading of the above provision clearly shows that the notice can be sent by post to the party who is intended to be bound by it. Thus, the notice sent by registered post in the name of the defendant company who is the tenant is fully in accordance with the requirement of section 106 of A the Transfer of Property Act.

So far as the finding recorded by the learned Additional District Judge that the defendants were defaulter in the payment of rent and full amount of rent was not paid or deposited on the first date of hearing and no rent was paid month by month during the pendency of the appeal could not be assailed by the learned counsel for the appellants. Thus, the learned Additional District Judge as well as High Court was right in passing a decree for possession under section 12(3)(b) of the Act. As a result of the above discussion and findings recorded by us, we find no force in this appeal and the same is dismissed with costs.

Y.L Appeal dismissed.