

CASE DETAILS

M/S PAUL RUBBER INDUSTRIES PRIVATE LIMITED

v.

AMIT CHAND MITRA & ANR.

(Civil Appeal No. 6149 of 2023)

SEPTEMBER 25, 2023

[ANIRUDDHA BOSE AND VIKRAM NATH, JJ.]

HEADNOTES

Issue for consideration: To what extent the Court can take cognizance of a clause, relating to purpose for which a lease is granted, contained in an unregistered deed of lease for immovable property stipulating its duration for a period of five years.

Transfer of Property Act, 1882 – ss.106, 107 – Unregistered lease deed for a period of five years – Inadmissibility – Purpose of lease – If for ‘manufacturing purpose’ – Burden to prove – Tenancy of “month to month” character:

Held: The subject agreement had a duration of five years with a provision for renewal for a further period of five years – Hence, under the first part of s.107, for the said lease agreement to be admissible, registration of the same would have been necessary – That is the mandate of s.107 and ss.17 and 49, 1908 Act – The Court cannot admit it in evidence – This is a prohibition for the Court to implement and even if the Trial Court has taken it in evidence, the same cannot confer legitimacy to that document for being taken as evidence at the appellate stage – The parties cannot by implied consent confer upon such document its admissibility – Further, the lease was for use by the predecessor of the appellants “for the purpose of his business and/or factory” – The property was described in the schedule to be estimated 16 cottahs of land “with a factory shed/godown space” – Such description would not be sufficient to establish that the same was for manufacturing purpose – In the absence of a registered instrument, the courts are not precluded from determining the factum of tenancy from other evidence on record as well as the purpose of tenancy – In this case,

factum of creation of tenancy has been established – But the purpose of tenancy, so as to attract the six months’ notice period u/s.106 cannot be established by such evidence as in such a situation, registration of the deed would have been mandatory – Burden of proving that the lease was for manufacturing purpose lies on the party who claims it to be so – Onus was on the appellant-defendant to establish that manufacturing activity was being carried on from the demised premises – A mere statement by DW-1 or the purpose of lease as specified in the lease agreement would not be sufficient to demonstrate the purpose of lease to be for manufacturing – This could be proved by explaining what kind of work was being carried on in the factory shed however, in such a situation also, the registration of the deed would have been necessary – In absence of such registration, tenancy would have been of “month to month” character – High Court did not err in dismissing the appellant’s appeal – Lease – Registration Act, 1908 – ss.17, 49. [Paras 10, 11 and 14]

Registration Act, 1908 – ss.17, 49 – Nature and character of possession – “collateral purpose” – Plea of the appellant relying upon *Sevoke Properties Ltd. v. West Bengal State Electricity Distribution Company Limited* (2020) 11 SCC 782 that for establishing nature and purpose of possession, even an unregistered document could be looked into as that would come within the ambit of collateral purpose:

Held: *Sevoke Properties* is not an authority for the proposition that nature and character of the possession in an unregistered lease deed could always constitute collateral purpose so that the Court could examine the deed for that reason – The purpose for which lease is granted forms an integral part of the lease deed in this case and this very issue forms one of the main disputes – The expression “collateral purpose” has been employed in proviso to s.49 to imply that content of such a document can be used for purpose other than for which it has been executed or entered into by the parties or for a purpose remote to the main transaction – Nature and character of possession contained in a flawed document (being unregistered) in terms s.107, 1882 Act and ss.17 and 49, Registration Act can form collateral purpose when the “nature and character of possession” is not the main term of the lease and does not constitute the main dispute for adjudication by the Court – Transfer of Property Act, 1882 – s.107. [Para 12]

LIST OF CITATIONS AND OTHER REFERENCES

Sevoke Properties Ltd. -vs- West Bengal State Electricity Distribution Company Limited (2020) 11 SCC 782 – distinguished.

Anthony -vs- K.C. Ittoop & Sons and Others (2000) 6 SCC 394: [2000] 1 Suppl. SCR 645; *Shri Janki Devi Bhagat Trust, Agra -vs- Ram Swarup Jain (Dead) by Lrs.* (1995) 5 SCC 314; and *Satish Chand Makhan and Others -vs- Govardhan Das Byas and Others* (1984) 1 SCC 369: [1984] 1 SCR 621; *G. Mackertich -vs- Steuart and Co. Ltd.* (1971) 3 SCC 39; *Shivaji Balaram Haibatti -vs- Avinash Maruthi Pawar* (2018) 11 SCC 652: [2017] 12 SCR 344; *K.B. Saha and Sons Private Limited -vs- Development Consultant Limited* (2008) 8 SCC 564: [2008] 8 SCR 290; *Allenbury Engineers Pvt. Ltd. -vs- Ramkrishna Dalmia and Others* (1973) 1 SCC 7: [1973] 2 SCR 257 – relied on.

Rai Chand Jain -vs- Miss Chandra Kanta Khosla (1991) 1 SCC 422: [1990] 3 Suppl. SCR 91; *Park Street Properties Private Limited -vs- Dipak Kumar Singh and Another* (2016) 9 SCC 268 – referred to.

Messrs Shree Nursing Timber Works and Messrs. Shree Nursing Electric Stores -vs- Sm. Amala Bala Dassi [1973 CWN 522 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION : Civil Appeal No.6149 of 2023.

From the Judgment and Order dated 20.07.2022 of the High Court at Calcutta in FA No.36 of 2021.

Appearances:

Shyam Divan, Sr. Adv., Ms. Anshula Lavaiya, Santosh Kumar, Abhijit Sarkar, Rupak Ghosh, Dhruv K. Dave, Shakti Kanta Pattanaik, Advs. for the Appellant.

Paramjit Singh Patwalia, Nikhil Nayyar, Sr. Advs., Vikram Hegde, Debmalaya Ganguli, Anupam Dasadhikari, Ms. Vandana Tiwari, Ms. Simran Singh, Chanchal Kumar Ganguli, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

ANIRUDDHA BOSE, J.

Leave granted.

2. The main point which we have to address in this appeal is as to what extent the Court can take cognizance of a clause relating to purpose for which a lease is granted contained in an unregistered deed of lease for immovable property stipulating its duration for a period of five years. In the judgment under appeal, opinion of a Division Bench of the Calcutta High Court is that such deed cannot be received as evidence of any transaction affecting the property over which the lease is executed. On 27.03.2003, a document captioned “Tenancy Agreement” was executed by and between one Sabita Mitra (the landlady, since deceased), now represented before us by her legal heirs being the two respondents and an incorporated company, Paul Rubber Industries Private Limited. The latter is the appellant in this proceeding. In this judgment, we shall refer to the landlady and her legal representatives as the respondents interchangeably and the appellant Paul Rubber Industries Pvt. Ltd. shall be described as defendant. The property in question comprises of approximately 16 cottahs (one cottah is equivalent to approximately 720 sq. ft.) of land situated at Radha Madhab Dutta Garden Lane, within the city of Kolkata. The tenure of the agreement, as stipulated therein was for a period of five years with provision for renewal for further five years. There is stipulation for further renewal for such period and on such terms and conditions as might have been agreed upon by the parties. This is contained in clause 2 of the agreement. But no such renewal was effected. First five years of the tenancy stood completed on 31.10.2007, and a letter was sent by the landlady on 07.11.2007 seeking enhancement of rent. It does not appear that the defendant had paid rent thereafter. It had, however, raised a plea that such rent used to be collected on behalf of the landlady on due date, but this was stopped after October 2007. Thereafter, on 06.03.2008, the landlady served a notice requiring the defendant to vacate the subject-premises with effect from 31.03.2008. In this letter of 06.03.2008,

the defendant was addressed as monthly tenant. Default in payment of monthly rent was highlighted in this letter. It was also specified therein that the landlady needed the said premises for her own use and occupation and for business purpose of her family members. This letter is being projected by the respondents as notice for fifteen days, as per stipulation of Section 106 of the Transfer of Property Act, 1882 (herein after “1882 Act”).

3. The tenant had not delivered vacant possession as a result of which the suit, which gives rise to the present appeal, was instituted by the landlady on 04.09.2008 before the Civil Judge, Senior Division at Sealdah, having jurisdiction over the suit property. The original plaintiff (i.e. the landlady) claimed, inter-alia, recovery of possession as also decree for mesne profit. Various defences were set up by the defendant in its written statement. One of them was that since it was an agreement for lease under which it was inducted as a tenant and the same was unregistered, the suit was not maintainable. Another plea of the defendant was that the subject property stood vested in the State under the thika tenancy law. This is a special type of tenancy prevalent in the Kolkata region involving multiple-tier of tenancy and ownership structure. The defendant claimed to have filed certain returns before the Thika Controller. This issue was not raised before the High Court and is not in lis before us also. The defendant in the written statement, denied expiry of tenancy on 31.01.2007. As regards default in payment of rent, we have already referred to the defendant’s stand. Altogether, five issues were framed by the Trial Court. The first two issues framed by the Trial Court related to maintainability of the suit in the form it was framed and subsistence of cause of action. These two issues had not been pressed during trial and the Trial Court found that the suit was maintainable. The other three issues related to the question as to whether the plaintiff was entitled to the reliefs claimed or not.

4. The defendant, in its written statement, referred to the said agreement of 27.3.2003. In paragraphs 6, 8 and 10 of the written statement, main defence of the defendant was disclosed. Plea was also taken denying default and vesting of the property in the State under the thika tenancy law. Before us, arguments have been advanced mainly on legal position of the unregistered agreement and the consequences thereof. Rest of the written statement contained broad denial of the plaintiff’s claims. We quote below the said three paragraphs of the written statement:-

“6. As a matter of fact, the plaintiff by representing herself to be the Owner/Landlady of the suit premises inducted the defendant therein as a lessee as would be evident from the Agreement dated 27.3.2003. The plaintiff has not sought any leave from this Learned Court to rely upon the said Agreement neither a copy of which has been filed. However this defendant craves leave of this Ld. Court to rely upon the said Agreement at the time of hearing.

The aforesaid Agreement on the face of it was an Agreement of Lease not registered under the statute and accordingly the suit is not maintainable.

8. It is denied that the tenancy if at all, expired on 31.01.2007 as the defendant was assured of a renewal by the plaintiff and the defendant was willing to renew the same which was known to the plaintiff.

10. The notice of the plaintiff served upon the defendant is defective. Admittedly the defendant was a Lessee under the plaintiff on the strength of the aforesaid Agreement and on expiry of the initial period of five years was subject to a renewal. The plaintiff never denied the fact of renewal to the defendant and is therefore put to the strictest proof thereof.”

Main argument before the Trial Court centred around legality of the notice. The defendant's case was that the premises was let out for manufacturing purpose and in terms of Section 106 of the 1882 Act, a clear six months' notice was required to be given. The Trial Court on analysis of evidence found that the suit property was not let out for agricultural or manufacturing purpose.

5. The Trial Court held:-

“I have no hesitation to hold that the tenancy of the defendant was month by month governed under the T.P. Act and after expiry of terms of the lease, the said tenancy was not extended by the parties with mutual consent as per provision of the agreement dated 27.03.03. It is the case of the plaintiff that the defendant is also a defaulter and he did not pay the rent of the suit premises from October, 2007. Such contention of the plaintiff is also admitted by the plaintiff that the rent, municipal charges and maintenance charges of the suit premises were not paid by

the defendant from October, 2007 but pleaded that the plaintiff never sent her representative to the defendant for collection of rent which was the usual practice. From Ext. 7 which is the notice issued upon the defendant, it appears that a 15 days clear notice was duly served upon the defendant by the plaintiff asking him to quit and vacate the suit premises on and from 31.03.08. It is further appears from the case record hat during the trial, the defendant has filed a return before the reasonable office of Thika Controller for determination of right title interest under the Thika Tenancy Act along with others which was registered as Misc. Case 79 & 80 of 2007. From Ext. 8 filed by the plaintiff, it appears that upon hearing the parties, the Ld. Thika Controller was pleased to hold that the plaintiff is the recorded owner of the suit premises.

So, from the overall discussion, evidence and materials on record, I am of view that the suit premises was let out to the defendant for other purposes other than agricultural or manufacturing purposes and such tenancy of the defendant deemed to be a lease from month to month terminable on the part of either lessor or lessee by 15 days notice and after expiry of the term of the lease i.e. on 31.10.07, a clear 15 days notice was served upon the defendant requesting him to quit and vacate the suit premises and hand over the peaceful possession of the same to the plaintiff. As such, the plaintiff is entitled to get relief as prayed for. Hence, the above issues are also decided in favour of the plaintiff.”

(quoted verbatim from the paperbook)

6. The Trial Court found that the tenancy of the defendant was month by month governed under the 1882 Act and after the expiry of the lease, the said tenancy was not renewed by the parties on mutual consent as per the terms and provisions of the agreement dated 27.03.2003. On the question of Thika tenancy, the Trial Court recorded that the Thika Controller had already held that the plaintiff was the owner of the suit premises.

7. The appeal of the defendant was examined by the Division Bench of the High Court and on considering a large body of authorities, the High Court found no reason to interfere with the judgment of the Trial Court. The appeal was dismissed. It was the view of the High Court that the agreement

being unregistered, the same could not be looked into for determining the rights and liabilities of the parties and for its duration. On the question as to whether the purpose of the lease was “manufacturing” or not, the High Court held that it was for the appellant to establish that factor. The appellant not having adduced any evidence in that regard, the High Court drew adverse inference on that count and the Trial Court judgment was not interfered with.

8. For the purpose of adjudicating the present appeal, we need to look into the provisions of Sections 105, 106 and 107 of the 1882 Act and the provisions of Sections 17 and 49 of the Registration Act, 1908 (hereinafter “1908 Act”). The said provisions of the 1882 Act stipulate:-

“105. Lease defined.—*A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.*

Lessor, lessee, premium and rent defined.—*The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.*

[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.]

107. Leases how made.—*A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.*

[All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

[Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:]

Provided that the State Government may from time to time, by notification in the Official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.]”

Sections 17 and 49 of the 1908 Act read:-

“17. Documents of which registration is compulsory.— *(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—*

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]

Provided that the [State Government] may, by order published in the [Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

[(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) [any document other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or

(vii) any grant of immovable property by [Government]; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

(xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

[Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.”

.....

“49. Effect of non-registration of documents required to be registered.—No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

- (a) affect any immovable property comprised therein, or*
- (b) confer any power to adopt, or*
- (c) be received as evidence of any transaction affecting such property or conferring such power;*

unless it has been registered:

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.]”

9. The aforesaid provisions were analysed by this Court in the case of **Anthony -vs- K.C. Ittoop & Sons and Others** [(2000) 6 SCC 394], and this authority was also cited before the High Court. This was a case in which the respondent was inducted into possession of a premises under a lease deed for a period of five years, but the deed was not registered. It has been held in this judgment:-

“11. The resultant position is insurmountable that so far as the instrument of lease is concerned there is no scope for holding that the appellant is a lessee by virtue of the said instrument. The Court is disabled from using the instrument as evidence and hence it goes out of consideration in this case, hook, line and sinker (vide Shantabai v. State of Bombay [AIR 1958 SC 532 : 1959 SCR 265] , Satish Chand Makhan v. Govardhan Das Byas [(1984) 1 SCC 369] and Bajaj Auto Ltd. v. Behari Lal Kohli [(1989) 4 SCC 39 : AIR 1989 SC 1806] .

12. But the above finding does not exhaust the scope of the issue whether the appellant is a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first para has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third para can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within the ambit of the second para. Thus, dehors the instrument parties can create a lease as envisaged in the second para of Section 107 which reads thus:

“All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.”

13. When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed.”

10. The same view was broadly reflected in the cases of **Shri Janki Devi Bhagat Trust, Agra -vs- Ram Swarup Jain (Dead) by Lrs.** [(1995) 5 SCC 314] and **Satish Chand Makhan and Others-vs- Govardhan Das Byas and Others** [(1984) 1 SCC 369]. Section 107 of the 1882 Act which we have quoted above stipulates that a lease of immovable property from year to year or for any term exceeding one year can be made only by a registered instrument. So far as Section 106 of the said statute is concerned, in which distinction is made between lease of immovable property for agricultural or manufacturing purpose and lease of immovable property for any other purpose, the same provides that a lease of immovable property for agricultural or manufacturing purpose shall be deemed to be a lease from year-to-year terminable by six months' notice. In other cases, termination would require fifteen days' notice. The subject agreement had a duration of five years with a provision for renewal for a further period of five years. Hence under the first part of Section 107, for the said lease agreement to be admissible, registration of the same would have been necessary. The deeming provision of sub-section (1) of Section 106 so far the same related to lease for agriculture or manufacturing purpose would not be applicable as the deed was not registered. The appellant has argued that the Trial Court had admitted the lease agreement in evidence, and for determining the purpose of lease, we can examine the deed. But this argument is flawed. This provision contemplates lease for manufacturing purpose, in absence of contract or local law to the contrary, shall be deemed to be year to year lease. In that case, it would require six months' notice for termination. But here, the agreement itself provides a five year duration, and hence ex-facie becomes a document that requires compulsory registration. That is the mandate of Section 107 of the 1882 Act and Sections 17 and 49 of the 1908 Act. The Court cannot admit it in evidence, as per the judgment in the case of **Anthony** (supra). A coordinate Bench in the case of **Shyam Narayan Prasad -vs- V. Krishna Prasad and Ors.** [(2018) 7 SCC 646] has re-affirmed this view, referring to Section 49 of the Registration Act. This is a prohibition for the Court to implement and even if the Trial Court has taken it in evidence, the same cannot confer legitimacy to that document for being taken as evidence at the appellate stage. The parties cannot by implied consent confer upon such document its admissibility. It is not in dispute in this case that the period between service of notice and institution

of the suit fell short by four days of completion of six months. In any case, we do not consider it necessary to address this question as in our opinion, the requirement to give six months' notice does not arise in this case. That point has not been raised before us.

11. The fault line in the defendant's case also lies on the point as to whether the lease was for manufacturing purpose or not, which was examined by the High Court and decided against the appellant. The defendant tried to establish from the clause of the lease agreement, statement made in the plaint as also his evidence before the Trial Court that the lease was for manufacturing purpose. All these materials no doubt point to the fact that the lease was given for commercial purpose (as pleaded in the plaint). In cross-examination, DW-1 had stated that he was doing business of rubber. In the case of **G. Mackertich -vs- Steuart and Co. Ltd.** [(1971) 3 SCC 39], it has been held that burden of proving that the lease was for manufacturing purpose lies on the party who claims it to be so. In the present appeal, it would have been for the defendant (appellant before us) to discharge this burden, as held by the High Court. In the case of **Shivaji Balaram Haibatti -vs- Avinash Maruthi Pawar** [(2018) 11 SCC 652] as also in a judgment of the Calcutta High Court in the case of **Messrs Shree Nursing Timber Works and Messrs. Shree Nursing Electric Stores -vs- Sm. Amala Bala Dassi** [1973 CWN 522], it has been held that on this ground, there must be pleading supported by evidence to prove that the lease was for manufacturing purpose.

12. On behalf of the appellant, however, it was urged, referring to the provisions of Section 49 of the Registration Act that for establishing nature and purpose of possession, even an unregistered document could be looked into as that would come within the ambit of collateral purpose. On this point, judgment of this Court in the case of **Sevoke Properties Ltd. -vs- West Bengal State Electricity Distribution Company Limited** [(2020) 11 SCC 782] has been relied upon. In the case of **Sevoke Properties** (supra) a coordinate Bench opined that as the agreement for lease in that case was unregistered, contents of the instrument were inadmissible in evidence. There was admission in the written statement of respondent in the case of **Sevoke Properties** (supra) by the defendants that they were in occupation under the lease agreement (in controversy in that case) for a period of

fifteen years with effect from 1981 and that period of lease had expired on 24.05.1996. The issue decided in that case was whether the lease stood determined by efflux of time and once it did, what would be the position of the lessee? The coordinate Bench found that the position of the lessee would be that of a tenant at sufferance. In that context, it was held that there was no necessity to terminate the lease under Section 106 of 1882 Act. That case was decided on the basis of admission in written statement and has no application to the facts of the present case. The observation made in the case of **Sevoke Properties** (supra) that only purpose for which the lease can be looked at for assessing nature and character of the possession was in that context and that judgment proceeded on the basis that the period of lease had expired on a certain date. This decision is not an authority for the proposition that nature and character of the possession in an unregistered lease deed could always constitute collateral purpose so that the Court could examine the deed for that reason. The purpose for which lease is granted forms an integral part of the lease deed in this case and this very issue forms one of the main disputes. The expression “collateral purpose” has been employed in proviso to Section 49 of the Registration Act to imply that content of such a document can be used for purpose other than for which it has been executed or entered into by the parties or for a purpose remote to the main transaction. This view was taken by this Court in an earlier decision, in the case of **K.B. Saha and Sons Private Limited -vs- Development Consultant Limited** [(2008) 8 SCC 564]. The position of law on this point has been summarized in paragraph 34 (of the report) in this judgment:-

“34. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:*

- 1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.*
- 2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.*
- 3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.*

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.”

13. In the case of **Rai Chand Jain -vs- Miss Chandra Kanta Khosla** [(1991) 1 SCC 422], dispute arose as to whether certain premises were let out for residential purpose or as to whether there was an oral agreement of letting out the premises to the tenant, for running a press. It was in that perspective, it was held in the said case that a lease deed though unregistered, could be considered for collateral purposes to show the purpose for which the premises was leased out. Thus, the lease deed was referred to for the sole purpose to defeat the claim of subsistence of an oral agreement. The ratio of this authority has been considered in the case of **K.B. Saha and Sons Private Limited** (supra) and we follow that ratio. In the case of **Satish Chand Makhan** (supra), another coordinate Bench of this Court declined to accept admissibility of an unregistered lease agreement for determining duration of the lease (9 years in that case) on the reasoning that terms of lease would not constitute collateral purpose. It was observed in this judgment that “nature and character of possession” could constitute collateral purpose but that was not the point which was directly in lis before this Court. In our opinion, nature and character of possession contained in a flawed document (being unregistered) in terms Section 107 of the 1882 Act and Sections 17 and 49 of the Registration Act can form collateral purpose when the “nature and character of possession” is not the main term of the lease and does not constitute the main dispute for adjudication by the Court. In this case, the nature and character of possession constitutes the primary dispute and hence the Court is excluded by law from examining the unregistered deed for that purpose. In respect of the suit out of which this appeal arises, purpose of lease is the main lis, not a collateral incident.

14. We, however, need not further dilate on this question. The lease was for use by the predecessor of the appellants “for the purpose of his business

and/or factory.” The property was described in the schedule to be estimated 16 cottahs of land “with a factory shed/godown space”. Such description would not be sufficient to establish that the same was for manufacturing purpose. In the decision of this Court in **Allenbury Engineers Pvt. Ltd. -vs- Ramkrishna Dalmia and Others** [(1973) 1 SCC 7], the expression ‘manufacturing purpose’ as employed in Section 106 of the 1882 Act was explained to mean:-

“8...The expression “manufacturing purposes” in Section 106, thus, means purposes for making or fabricating articles or materials by physical labour, or skill, or by mechanical power, vendible and useful as such. Such making or fabricating does not mean merely a change in an already existing article or material, but transforming it into a different article or material having a distinctive name, character or use or fabricating a previously known article by a novel process.”

15. In Park Street Properties Private Limited -vs- Dipak Kumar Singh and Another [(2016) 9 SCC 268], which was cited in the case of **Sevoke Properties** (supra), it was observed that in the absence of a registered instrument, the courts are not precluded from determining the factum of tenancy from other evidence on record as well as the purpose of tenancy. In this case, factum of creation of tenancy has been established. But the purpose of tenancy, so as to attract the six months’ notice period under Section 106 of the 1882 Act cannot be established by such evidence as in such a situation, registration of the deed would have been mandatory. The onus would be on the defendant to establish the fact that manufacturing activity was being carried on from the demised premises. A mere statement by the DW-1 to which we have referred earlier or the purpose of lease as specified in the lease agreement would not be sufficient to demonstrate the purpose of lease to be for manufacturing. This could be proved by explaining what kind of work was being carried on in the factory shed. In such a situation also, the registration of the deed would have been necessary. In absence of such registration, tenancy would have been of “month to month” character. For these reasons, we do not think the High Court erred in law in dismissing the defendant’s appeal. The present appeal shall stand dismissed on the same rationale.

15. Pending application(s), if any, shall stand disposed of.

16. There shall be no order as to costs.

Headnotes prepared by:
Divya Pandey

Appeal dismissed.