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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 228 OF 2023

Hushang Adi Vakil **...Appellant**

V/s.

Hindustan Petroleum Corporation Ltd. **...Respondent**

Mr. Pradeep J. Thorat *with Ms. Aditi S. Naikare, Mr. Aniesh S. Jadhav and Mr. Rushikesh S. Kekane for Appellant.*

Mr. Javeed Hussein *with Mr. Mubashir Hussein, Mr. Munzir Hussein, Munibah Iram, Mr. Jay Patel, Ms. Alvina Shaikh and Samreen Ansari i/b Hussein and Co., for Respondent.*

CORAM: SANDEEP V. MARNE, J.

RESERVED ON: 29 OCTOBER 2026

PRONOUNCED ON: 5 NOVEMBER 2026.

JUDGMENT:

1) The Appellant has filed this Second Appeal challenging the judgment and decree dated 25 November 2022 passed by the District Court at Palghar allowing Regular Civil Appeal No. 56 of 2018 and setting aside the judgment and decree dated 27 August 2018 passed by the Joint Civil Judge Junior Division in Regular Civil Suit No. 32 of 1999. The Trial Court has decreed the Suit filed by the Appellant/Plaintiff and had directed Defendant to handover possession of the suit land to the

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Plaintiff in addition to direction for payment of arrears of rent and for conduct of inquiry into mesne profits.

2) Briefly stated, facts of the case, as pleaded in the Plaint, are that Plaintiff is the owner of land situated at Village-Vadkun Lonipada Tq. Dahanu, District- Palghar bearing old survey No. 67, Hissa No. 1 and now bearing No. 117(part). The land originally belonged to Plaintiff's mother Mani Adi alias Ardeshir Vakil, who had let out portion of land admeasuring 155 ft. X 155 ft. total 24025 sq. ft. **(suit land)** to M/s Esso Standard Eastern Inc. **(Esso**). The interest of Esso devolved upon Hindustan Petroleum Corporation Ltd. **(HPCL)** who continued in possession of the suit land in pursuance of lease created in favour of Esso. According to Plaintiff after expiry of the lease, Defendants started paying monthly rent in respect of the suit land at the rate of Rs. 4100 per month. Mani Adi alias Ardeshir Vakil passed away on 31 May 1995 leaving behind her last will and testament dated 18 October 1993 bequeathing all her immovable and movable properties including the suit land to the Plaintiff. This is how, Plaintiff claims ownership in respect of the suit land. Plaintiff gave information of his title in the suit land to the Defendant by letter dated 24 August 1998 and called upon the Defendant to pay arrears of rent as well as future rent.

3) According to the Plaintiff, Defendant was using the suit land for operation of a Petrol Pump and its agent Eclipse Distributing Agency was operating the Petrol Pump and constructed a structure admeasuring 20 ft. X 20 ft on the suit land.

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4) Plaintiff claims that Defendant was in arrears of rent and therefore notice dated 24 August 1998 was served on the Defendant calling it upon pay the arrears of rent. Plaintiff also terminated the tenancy of Defendant by notice dated 19 November 1998 with effect from 31 December 1998 and called upon Defendant to handover vacant and peaceful possession of the suit. Since Defendant did not act in terms of the notice, Plaintiff filed Regular Civil Suit No. 32 of 1999 in the Court of Civil Judge Junior Division, Dahanu seeking possession of the suit premises from the Defendant as well as recovery of arrears of rent of Rs. 49,200/-. The suit was resisted by Defendant-HPCL by filing a written statement. Based on pleadings, the Trial Court framed issues, Plaintiff examined himself as PW-1, and the witnesses Mr. Eraj Barjor Zhaiwala and Selvan Victor Dyanabranam. Defendant examined Mr. Chandraraj Misrimal Bothra as DW-1, Mr. Balkrishna Mahadev Khelya as DW-2. Both the parties relied on several documents.

5) After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to decree the suit by judgment and order dated 27 August 2018. The Trial Court directed Defendant to deliver peaceful and vacant possession of the suit land to the Plaintiff within three months. The Trial Court directed Defendant to pay arrears of rent of Rs. 49,200/-, the Trial Court also directed separate inquiry into mesne profit under Order XX Rule 12(c) of the Code of Civil Procedure, 1908 (**Code**).

6) Aggrieved by the Trial Court's decree dated 27 August 2018, Defendant-HPCL filed Regular Civil Appeal No. 56 of 2018 before the

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District Court at Palghar. By judgment and order dated 25 November 2022, the District Court has allowed the Appeal preferred by the Defendant-HPCL and has set aside the judgment and decree dated 27 August 2018 passed by the Trial Court in R.C.S. No. 32 of 1999. Plaintiff has filed the present Second Appeal challenging the decree of the Appellate Court dated 25 November 2022.

7) By order dated 17 January 2024, this Court has admitted the Second Appeal on following three substantial questions of law:-

i) Whether the tenancy of the Tenant holding over after expiry of the period of lease can be held to be a yearly lease determinable only by issuing a six months' notice?

ii) Whether the Lower Appellate Court is justified in discarding the documentary evidence in the form of unrealized cheques ExhibitS-31 to 34 dated January 1995, March 1995, April 1995 and June 1995 respectively which were issued for an amount of Rs.4100 on the ground that the same were not encashed and hence the same have no value ?

iii) Whether yearly lease executed for a period of 10 years which has expired by efflux of time in the year 1974 can be deemed to be continued till the year 1999 in order to hold that the said Lease is determinable by issuing a 6 months Notice ?

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8) By a separate order passed on 17 January 2024, this Court has injuncted HPCL from creating any third-party rights or parting with possession of the suit land with flexibility to change the dealer. The Second Appeal is taken up for final hearing.

9) Mr. Thorat, the learned counsel appearing for the Appellant/Plaintiff submits that the first Appellate Court has grossly erred in reversing a well-considered decision of the Trial Court. He submits that the Appellate Court has erroneously arrived at a conclusion that the lease held by Defendant is a yearly lease which required issuance of notice of six months. That Defendant's case that the land is let out for agricultural purposes is already rejected by both the Courts. That upon expiry of the contractual lease, the same automatically stands converted into a month-to-month tenancy by virtue of the provisions of Sections 106, 107, 111 and 116 of the Transfer of Property Act, 1882. Since the Defendant is a lessee holding over in the absence of a written contract, the purpose of the lease would determine whether the tenancy is on a yearly or monthly basis. Further, since the original lease itself was not created through a registered instrument, the tenancy would be deemed to be on a month-to-month basis. He relies on judgment of the Apex Court in ***Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation ltd. V/s Khaja Midhat Noor and Ors***.[1]

10) Mr. Thorat further submits that the Plaintiff had produced cheques below Exhibits 31 to 34 issued by the Defendant to demonstrate that monthly rent was paid by HPCL. That issuance of cheques is not

1 (1988) 3 SCC 44.

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disputed. That the Appellant also relies on his own letter dated 24 August 1998 demanding monthly rent. That there was no dispute on the part of the Defendant about payment of monthly rent. That the Trial Court had rightly arrived at a conclusion that there was monthly tenancy upon expiry of the contractual lease. That the first Appellate Court has erroneously reversed the said finding of the Trial Court.

11) Mr. Thorat further submits that lease Agreement executed by predecessor of the Appellant on 1 January 1964 for ten years is not renewed by any registered agreement. That therefore Defendant can be regarded as a tenant holding over under Section 116 of the Transfer of Property Act. Therefore, in absence of any written contract between the parties, the Appellate Court was not justified in holding that even after termination of the lease, the same would be a yearly lease requiring six months' notice. On above broad submissions, Mr. Thorat prays for setting aside the impugned decree of the First Appellate Court.

12) Mr. Hussein, the learned counsel appearing for Respondent-HPCL opposes the Appeal submitting that the first Appellate Court has properly considered the entire material on record for arriving at a conclusion that yearly lease exists between the parties. That though the lease Agreement is not registered, stamp duty is paid thereon and therefore the same can be read in evidence for co-lateral purpose. He submits that the Agreement itself records at several places that the lease is granted on yearly rent. He submits that Plaintiff gave express admission of renewal of lease "on same terms" after expiry of the initial tenure. That since lease is renewed on same terms, the renewed lease

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will be obviously on yearly basis. That since there is no valid termination of lease, the Appellate Court has rightly set aside the erroneous decree passed by the Trial Court.

13) Mr. Hussein further submits that the Appellate Court has rightly discarded the unrealized cheques relied upon by Plaintiff in support of plea of monthly tenancy. He submits that when Plaintiff did not encash the cheques, he cannot be permitted to raise a plea of monthly tenancy. That Plaintiff did not produce any evidence as to how rent was paid for several years after expiry of the tenure of lease. That Plaintiff withheld vital information and documents from the Court and the Appellate Court is justified in drawl of adverse inference against the Plaintiff. He therefore prays for dismissal of the Appeal.

14) Rival contentions urged on behalf of the parties, now fall for my consideration.

15) Plaintiff is the lesssor in respect of the suit lands and his mother had granted lease of the suit lands in favour of Esso. Defendant-HPCL took over the activities of Esso and continued occupation of the suit land from where it has been operating the Petrol Pump through various dealers. Plaintiff terminated the tenancy by notice dated 19 November 1998 *inter alia* on the ground of arrears of rent of Rs. 49,200/-. According to Plaintiff, the monthly rent payable in respect of suit premises was Rs. 4,100/- Plaintiff accordingly filed a suit seeking eviction of the Defendant from the suit land. In the written statement filed by the Defendant-HPCL, defence was raised that the termination notice was

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invalid since there exists yearly tenancy between the parties. Defendant also denied arrears of rent and contended that several cheques of rent were sent by the Defendant, which were deliberately not encashed by the Plaintiff.

16) In the light of above position, one of the main issues before the Trial Court was whether the tenancy in favour of the Defendant was yearly or monthly. The issue assumes importance since the tenancy was sought to be terminated by issuing 15 days' notice under Section 106 of the Transfer of Property Act. If tenancy is monthly, it is terminable by issuing 15 days' notice under Section 106. On the other hand, if the tenancy is yearly, the same requires service of notice of six months under Section 106.

17) As observed above, the Trial Court decreed the suit holding that there was monthly tenancy between the parties and termination notice was valid. This finding of the Trial Court is reversed by the Appellate Court by holding that the tenancy was on yearly basis. In the present Appeal, it is the endeavour of the Appellant to demonstrate before this Court that the tenancy at the time of termination was monthly tenancy and that therefore the termination notice was valid. I accordingly proceed to answer the three questions framed at the time of admission of the Appeal on 17 January 2024.

Question No.1

i) Whether the tenancy of the Tenant holding over after expiry of the period of lease can be held to be a yearly lease determinable only by issuing a six months notice?

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18) To answer question No. 1, it would be necessary to refer to the provisions of Transfer of Property Act. Chapter 5 of the Act deals with leases of immovable property. Section 106 of the Act deals with duration of leases in absence of written contract or local usage and provides thus:

> **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.

19) Thus, under Section 106 of the Transfer of Property Act, 1882, a lease of an immovable property for agricultural or manufacturing purposes is deemed to be a lease from year to year, terminable by the lessor by giving six months' notice. In the case of a lease of immovable property for any other purpose, the same is deemed to be a lease from month to month, terminable by either party by giving fifteen days'

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notice. However, the aforesaid provisions are subject to any contract to the contrary between the parties.

20) Thus, the effect of provisions of Section 106 (1) of the Transfer of Property Act is such that either the 'contract' governing the lease or the 'purpose' of grant of lease determines whether it is year to year lease or month to month lease. If lease is for agricultural or manufacturing purpose, the same is presumed to be a year-to-year lease unless parties contract otherwise. On the other hand, in absence of contract to the contrary, every lease for all other purposes is presumed to be a month-to-month lease. However, in a given case, where the lease is not for agricultural or manufacturing purposes, the parties can still agree/contract that the lease would be on year-to-year basis. To illustrate when a house is let out, it is open for parties to enter into contract and agree that lease would be on year-to-year basis. If there is no such contract, law presumes that lease for residential purposes is on month-to-month basis.

21) The nature of the lease assumes significance in determining the manner in which the tenancy may be terminated. In the case of a year-to-year lease, it is mandatory to issue a notice of six months for termination, whereas a month-to-month tenancy may be terminated by serving a notice of fifteen days.

22) Section 107 of Transfer of Property Act deals with the manner of making of leases. Every lease of immovable property either from year to year or for any term exceeding one year or reserving a yearly

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rent can only be made by a registered instrument. All other leases may be made either by a registered instrument or even by oral agreement accompanied by delivery of possession. Section 107 of the Transfer of Property Act provides thus:

> **107. Leases how made**
> A lease of immovable 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 immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.
>
> Where a lease of immovable 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 immovable 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.

23) Section 111 of the Transfer of Property Act, 1882, deals with determination of lease. It provides that a lease of immovable property may be determined by the efflux of the time limited thereby or upon the expiration of a notice to determine the lease. It further enumerates various other circumstances under which a lease may be determined. Section 111 of the Act provides thus:

> **111. Determination of lease.—**
> A lease of immoveable property determines—
> (a)by efflux of the time limited thereby;

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(b)where such time is limited conditionally on the happening of some event—by the happening of such event;

(c)where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event;

(d)in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;

(e)by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;

(f)by implied surrender;

(g)by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease;

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f)

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

24) Section 116 of the Transfer of Property Act deals with the effect of 'holding over' and provides that if a lessee of property remains in possession thereof after determination of lease and the lessor accepts rent from the lessee or otherwise assents to his continuing in possession, in absence of agreement to the contrary, the lease is renewed from year to year or from month to month, according to the purpose for which the

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property is leased, as specified in Section 106. Section 116 of the Act provides thus:

> **116. Effect of holding over.—**
>
> If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.
>
> Illustrations
>
> (a) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.
>
> (b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

25) Thus, when lease is determined under Section 111 of the Act, but lessee continues to remain in possession of the property and the lessor accepts rent, the lease is deemed to have continued. However, in such case, renewal of lease either on year-to-year basis or month-to-month basis depends on the 'purpose' for which the property is leased. In case, the property is leased for agricultural or manufacturing purpose, the renewal of lease under Section 116 would be on year-to-year basis. In all other cases, the renewal would only be from month-to-month basis.

26) Upon application of the above provisions of the Transfer of Property Act to the facts of the present case, it is clear that the parties initially created lease on year-to-year basis. This is clear from the lease Agreement produced at Exh-5, which was created by Mani Adi alias

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Ardeshir Vakil in favour of Esso on 1 January 1964. The lease Agreement clearly provides for payment of yearly lease rent of Rs. 4,100/-. The lease was for period of ten years.

27) Though, the Defendant-HPCL raised a plea that the lease was granted for manufacturing purposes, the said plea is rejected concurrently by Trial and the First Appellate Court. Even otherwise grant of lease for operation of retail fuel outlet by an oil marketing company cannot be treated as the one granted for manufacturing purposes. No manufacturing activity can be carried out by an oil marketing company on the land on which a retail outlet/petrol pump is operated by it or by its dealer. I am therefore, in agreement with concurrent findings recorded by both the Courts that the lease was not made for manufacturing purpose. Therefore, the lease would ordinarily partake a character of month-to-month lease. However, there is express contract between the parties to have the lease on year-to-year basis. As observe above, Section 106 (1) of the Transfer of Property Act makes an exception where parties agree to the contrary in which case presumption of month-to-month lease does not arise even though the lease is granted for purpose other than agricultural and manufacturing. Therefore, the lease was on year-to-year basis during the tenure of the Agreement dated 1 January 1964.

28) There is nothing on record to indicate that the tenure of lease was extended after expiry of period of ten years. However, there is evidence to show that Defendant paid and Plaintiff accepted rent even after expiry of tenure of lease. This converted the status of Defendant-

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HPCL from contractual lessee to that of ‘lessee holding over’ under Section 116 of the Transfer of Property Act. However, upon change of status of Defendant from a contractual lessee to that of lessee holding over, the nature of lease got converted from year-to-year lease to that of month-to-month lease. This is because the exception of "contract to the contrary" does not apply in relation to a lessee holding over. The very concept of lessee holding over applies when contract of lease expires and the lease is determined under Section 111(a) of the Act. Once the contract vanishes but lessee continues to hold over on account of the act of lessor in accepting the rent, the ‘purpose’ for which lease is granted becomes the only determinative factor for deciding nature of lease. In the present case, since lease was not granted for agricultural or manufacturing purpose, the same got converted to month-to-month lease upon expiration of the Lease Agreement. Thus, Section 116 of the Transfer of Property Act converted the nature of lease of Defendant-HPCL from year-to-year lease during currency of contract to month-to-month lease once it became the lessee holding over.

29) In my view, therefore, by pure operation of law, the tenancy/lease of Defendant-HPCL was on month-to-month basis at the time when termination notice dated 19 November 1998 was served by the Plaintiff. Therefore, there was no need for service of six months’ notice. Under Section 106(1) of the Transfer of Property Act the monthly tenancy of Defendant-HPCL was determinable by issuance of 15 days’ notice.

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30) Question No. 1 is answered accordingly by holding that tenancy of a tenant holding over after expiry of period of lease (*when lease is not for agricultural or manufacturing purpose*) becomes monthly tenancy which does not require issuance of six months' notice.

Question No.2

> *ii) Whether the Lower Appellate Court is justified in discarding the documentary evidence in the form of unrealized cheques Exhibit-31 to 34 dated January 1995, March 1995, April 1995 and June 1995 respectively which were issued for an amount of Rs.4100 on the ground that the same were not encashed and hence the same have no value ?*

31) Answer to this issue is not even necessary in the light of the discussion above while answering Question No. 1. However, it is seen that the Defendant in the present case, had paid/offered rent to the Plaintiff on monthly basis. The cheques at Exhibits 31 to 34 from January 1995 to June 1995 clearly establish payment of monthly rent of Rs. 4,100/- by the Defendant-HPCL. To put any controversy at rest the letter of Defendant at Exhibit 35 dated 9 June 1995 specifically contained an admission that Defendant-HPCL was paying 'monthly rent'. Letter dated 9 June 1995 reads thus:

> प्रिय महोदय,
>
> इस पत्र के साथ हम जून 1995 **महीने के किराए** के भुगतान के लिए बैन्क ऑफ इंडिया, बम्बई शाखा के नाम लिखा दिनांक १/6/1995 का रू 4.100.00 का चेक क्रं 133045 संलग्न कर रहे है I
>
> *(emphasis added)*

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32) The first Appellate Court has erroneously discarded the documentary evidence in the form of cheques at Exhibits 31 to 34 merely because the same were not encashed by the Plaintiff. What is relevant here is the conduct of the Defendant in paying the rent by issuance of the cheques, which is relevant for the purpose of determining whether the tenancy was on year-to-year basis or month to month basis. Whether the rent offered was accepted and whether the cheques were encashed becomes an irrelevant factor. In the light of tendering of monthly rent, the Defendant was estopped from raising the plea of yearly tenancy. In my view, the first Appellate Court has grossly erred in discarding the documentary evidence of payment of monthly rent by the Defendant-HPCL only on account of failure on the part of the Plaintiff to encash the same. If Plaintiff was to encash the cheques, the same would have continued the lease of the Defendant as holding over. The cheques are therefore rightly not encashed by the Plaintiff. In any case, what is material and relevant is the act of Defendant and not that of Plaintiff. The rent was tendered on monthly basis and this is the only relevant factor. Question No. 2 is answered accordingly.

Question No.3

> *iii) Whether yearly lease executed for a period of 10 years which has expired by efflux of time in the year 1974 can be deemed to be continued till the year 1999 in order to hold that the said Lease is determinable by issuing a 6 months Notice ?*

33) This question is also partly answered while answering Question No.1. Even though the lease executed on 1 January 1964 had

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expired in the year 1974, the Plaintiff accepted the rent from the Defendant and accordingly Defendant acquired the status of 'lessee holding over' under Section 116 of the Transfer of Property Act. Since the Defendant had acquired the status of a lessee holding over, it was incumbent upon the Plaintiff to serve a notice under Section 106 of the Transfer of Property Act, 1882 for determination of the lease, particularly if the Plaintiff did not intend to accept rent from the Defendant-HPCL. In the absence of such a notice, the lease could not be treated as having been determined merely by efflux of time under Clause (a) of Section 111 of the said Act. This is because there is no contract in case of a lessee holding over and therefore there is no question of tenure of lease expiring with efflux of time. Such lease holding over needs to be determined by a positive notice under Section 106 of the Act. However, the law raises a presumption of continuation of the lease where the lessor accepts rent even after the expiry of the lease by efflux of time. In the present case, therefore, the lease in favour of Defendant-HPCL continued by virtue of it's acquiring the status of a lessee holding over.

34) Having held that service of notice is necessary for the determination of the lease of a lessee holding over, the next issue that arises for consideration is the period of notice required to be given for such determination. This is already answered while answering question No. 1. Here the 'purpose' for which lease was granted becomes the only determinative factor for deciding whether the renewed lease is year to year lease or month to month lease. Since the lease was not granted for agricultural or manufacturing purpose, the renewed lease was on month-to-month basis. Such month-to-month lease was terminable was serving

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by 15 days' notice under Section 106 of the Transfer of Property Act. The lease has been validly terminated by service of notice dated 19 November 1998. Question No. 3 is answered accordingly.

35) In view of the above discussion, the impugned judgment and decree dated 25 November 2022 passed by the first Appellate Court is unsustainable and liable to be set aside. Second Appeal accordingly succeeds and I proceed to pass the following order:

(i) Judgment and order dated 25 November 2022 passed by the District Court, Palghar in Regular Civil Appeal No. 56 of 2018 is set aside.

(ii) Judgment and decree dated 27 August 2018 passed by the Civil Judge Junior Division, Dahanu in Regular Civil Suit No. 32 of 1999 is confirmed.

(iii) Defendant shall handover possession of suit land to the Plaintiff within a period of three months.

36) Second Appeal is **allowed** in above terms with costs.

[SANDEEP V. MARNE, J.]

RENUKA SHANKARSINHA THAKUR

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