

(1980) 09 DEL CK 0040

In the Delhi High Court

Case No : Second Appeal No's. 139 of 1973 and 46 of 1978

B.P.N. Shrivastava

APPELLANT

Vs

Poori Bai

RESPONDENT

Date of Decision : 29-09-1980

Acts Referred:

Citation : AIR 1981 Delhi 101 : (1980) 18 DLT 31 : (1980) 1 DRJ 184 : (1981) 1 ILR Delhi 13 : (1980) RLR 727

Hon'ble Judges : S. Ranganathan, J;Prakash Narain, J

Bench : Division Bench

Advocate : M.C. Anand, Maehswar Dayal, J.K. Seth, Sheba Gupta and R.L. Tandon, for the Appellant;

Judgement

Prakash Narain, J.

(1) A common question of law that arises for determination in the two appeals is the construction to be placed on the words,

"By the fifteenth of each succeeding month" in Section 15(1) of the Delhi Rent Control Act, 1958, here in after referred to as the Act.

(2) Ln S.A.O No.139 of 1973 the Rent Control Tribunal confirmed the order of the Rent Controller directing eviction of the tenant. The Rent Controller had, inter alia, held that in as much as the tenant had not complied with the order passed u/s 15(3) of the Act, he was not entitled to the benefit of Section 14(2) of the said Act. The Rent Control Tribunal had upheld that decision. The order u/s 15(3) of the Act had been made by the Rent Controller on November 3, 1970 directing the tenant to deposit the arrears of rent at the rate of Rs. 175.00 P.M. with effect from January 10, 1970 up to dale within one month of the order and to deposit future rent at the rate of Rs. 175.00 P.M., month by month by the fifteenth of each succeeding month. Admittedly, the tenancy in the case was a monthly tenancy commencing from the 10th of the month to the 9th of the next month according to the British Calendar. The tenant deposited the arrears of rent for the

period January 10, 1970 to November 9, 1970 on November 28, 1970. There after the tenant deposited the rent month by month, admittedly, within time No rent was deposited for the period January 10, 1972 to February 9, 1972 as the tenant claimed that one month's rent had been spent on repairs and he was entitled to adjust the same towards rent. For the period February 10, 1972 to March 9, 1972 a deposit was made on March 15, 1972 and for the period March 10, 1972 to April 9, 1972 a deposit was made on April 15, 1972. Similarly, for the period April 10, 1972 to May 9, 1972 deposit was made on May 15, 1972. The Rent Control Tribunal held that there was no evidence to show that the tenant had spent Rs. 175.00 towards repairs and so, he could not claim adjustment. In as much as no rent was deposited for the period January 10, 1972 to February 9, 1972 within 15 days of February 9, 1972 there was a default and the subsequent deposits, if taken to be deposits for the tenancy month of January 10, 1972 to February 9, 1972 and thereafter would all be regarded as made beyond 15 days and in consequence rendering the tenant liable to eviction for default in depositing the rent in accordance with the provisions of Section 15(1) of the Act. The Rent Control Tribunal negated the contention that the word "month" meant British Calendar month and so, on a true construction of Section 15(1) of the Act the rent for the period January 10, 1972 to February 9, 1972 had to be made by April 15, 1972.

(3) In S.A.O. No. 46 of 1978 also the Rent Control Tribunal affirmed the decision of the Rent Controller on a similar default, said to have been committed by the tenant. In this case the monthly tenancy was from 17th of the month to the 16th of the succeeding month. An order u/s 15(1) of the Act had been made on January 3, 1974 directing the tenant to deposit the entire arrears of rent with effect from April 17, 1973 up to date and thereafter monthly rent, month by month, by the fifteenth of each succeeding month. The tenant deposited arrears of rent and continued to deposit rent month by month for some time. For the period November 17, 1973 to December 16, 1973 he deposited rent on February 1, 1974 and for the period November 17, 1974 to December 16, 1974 he deposited rent on January 16, 1975. For the period December 17, 1974 to January 16, 1975 he deposited rent on February 13, 1975. In view of these three defaults it was held that the protection of Section 14(3) of the Act was not available to the tenant and he was liable to eviction.

On appeal in both these cases to this court it was contended that the word "month" must mean month as defined in the General Clauses Act which is British calendar month and, Therefore, there was no default. On behalf of the respondents it was contended that the section as a whole has to be read in the light of the legislative scheme and month must mean tenancy month and not British calendar month.

(4) In S.A.O. No. 30 of 1972, Smt. Prakash Wati vs. Shri Babu Rom, decided on April 21, 1972, a learned Single Judge of this court has held that the word "month" in Section 15(1) of the Act must be held to refer to a British calendar

month. Our learned brother repelled the contention that the legislative intent is to refer to the tenancy month. A contrary view in somewhat similar situation has been taken by a Bench of the Gujarat High Court in *Bhikhalal Bhovan Vs. Sunni Vora Noormamad Abdul Karim and Others*, .

(5) S.A.O. No. 139 of 1973 came up for hearing before Leila Seth, J. when the rival contentions and conflicting authorities were brought to her notice. She has made a reference to a larger Bench. In SA.O. No. 46 of 197? which came up before our brother, T.P.S. Chawla, J., the attention of the learned Judge was invited to the conflict of decisions, above-referred to, as well as the reference made by Leila Seth, J. Our learned brother, Therefore, also chose to make a reference to a larger bench. That is how the matter is before us. Section 15(1) of the Act reads as under :-

"15(1) In every proceeding for the recovery of possession of any premises on the ground specified in clause (a) of the proviso to sub-section (1) of section 14, the Controller shall, after giving the parties an opportunity of being heard, make an order directing the tenant to pay to the landlord or deposit with the Controller within one month of the date of the order, an amount calculated at the rate of rent at which it was last paid for the period for which the arrears of the rent were legally recoverable from the tenant including the period subsequent there to up to the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit, month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate."

(6) The contention on behalf of the tenants in both the cases is that the relevant clause in Section 15(1) of the Act cannot be read as 15 days after the last day of the tenancy month and in as much as the word "month" is not defined by the Act, the word has to be given the meaning contained in Clause (35) of Section 3 of the General Clauses Act. In other words, if the tenancy month finished on the 6th of any British calendar month, the rent for the period, 7th of the preceding month to the 6th of that month, will have to be deposited on or before the 15th of the succeeding month and not within 15 days of 6th. On behalf of the respondents it has been contended that on a proper reading of the section though rent is due on the last day of the tenancy month, 15 days, grace is given to the tenant to deposit the rent of the succeeding tenancy month. The former view found favor with our brother Dalip K. Kapur, J. in *Smt. Parakash Wati v. Shri Babu Ram*. Our learned brother noticed that a tenancy month may coincide with a calendar month or may be different from it. There would be no problem as far as tenancies commencing on the 1st of the calendar month and ending on the last day of the calendar month are concerned. The problem arises in the cases of those tenancies which commence from a particular day in a calendar month and end with the day previous to the corresponding day in the succeeding calendar month. In his view there is a fixed date on which all payments have to be made according to Section 15(1) of the Act and that fixed day is the 15th day of every calendar month. Reliance was placed by our learned brother on the definition of

the word "month" given in the General Clauses Act. In *Bhikhalal Bhovan Vs. Sunni Vora Noormamad Abdul Karim and Others*, the word "month" came up for construction in the context in which it has been used in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. u/s 12 of the said Act no suit for possession could be instituted by a landlord against a tenant prior to the expiry of "one month" next after the notice in writing of demand of the standard rent had been served upon the tenant. The tenancy premises in this case was a shop. A notice was served on the tenant on October 8, 1971 calling upon him to pay arrears of rent from 1.11.1970 to 30.9.1971.

(7) As the tenant failed to pay the rent a suit was instituted on November 22 1971. The objection taken was that the suit could only be instituted on the expiry of November, 1971 as much as notice had been served only on October 8, 1971, and the calendar month had not expired. This view did not find favor with the lower courts and eviction was ordered. The tenant came up in revision. As the question involved was of some importance the matter was referred to a larger bench. The learned Judges of that court observed as under:-

" In common parlance, the term "month" is hardly understood as a calendar month but it by and large means "space of time from a day in one month to the corresponding day in the next". This is the meaning of the term "month" given in the Concise Oxford Dictionary, 1964 Edition. The term "month" has been explained also in the Bombay General Clauses Act, 1904. The term "month" as defined in S. 2(3) of the Bombay General Clauses Act, means "a month reckoned according to the British Calendar." The term reckoned" is equivalent of the term "calculated" or "counted". If the legislature wanted the month to mean only a compact unit of a calendar month, the normal definition would have been as a British Calendar month, or a calendar month. The elaborate Explanation given in the definition of the term "month" and particularly the reference to calculation clearly and pointedly suggest that what is intended to be referred to by the term is a space of time between the two dates of the two contiguous months."

(8) After reading Section 12(2) of the Act in question the learned Judges further observed as under :

" The phrase until the expiration of one month next after notice in writing is served" clearly indicates that the month is to be counted from the date of service of the notice on the tenant. The adjective "next" occurring therein is the superlative form of the term "nigh" which is equivalent or synonym of the term "near". The term "next" Therefore, means" nearest , "closest", "most contiguous". When a month is to be counted immediately after the date of the service of notice, it means that no days are to be left out in between for counting of the month. As for example, let us take the facts of the case on hand. The notice ex. 18 was served on 8-10-77 on the tenant. What sub-section (2) of S. 12 requires is that the landlord must wait before instituting a suit against a tenant on the ground of nonpayment of the standard rent or permitted increases due, till the expiry of one month to be reckoned immediately after the notice in

writing of the demand has been served upon the tenant. Another connotation of the word "next" would mean immediately. The phrase "next after" is equivalent to "immediately after" and the term "next" does not allow any scope for the intervention of any days in between."

(9) The learned Judges did not agree with the contrary view taken by a Single Judge of their court. They also did not command importing the definition given in the General Clauses Act to construe the meaning of the word "month" in the context in which that word had been used in Section 12(2) of the Bombay Act. In *In Re: V.S. Metha and Others*, a Bench of that court was concerned with interpreting the phrase "within three months of the date occurring in Section 106 of the Factories Act, 1948. A challenge had been made to certain prosecutions launched under the Factories Act and it was urged that in as much as prosecutions had been launched more than three months after the date on which the alleged commission of offence came to the knowledge of the Inspector, the prosecutions were beyond time and cognizance thereof could not be taken. Thus, the plea raised was of limitation. Some argument was advanced that a month should be construed to mean 30 days and so, prosecution had to be launched within 90 days. Support for that contention was found from an old Madras case reported as *Varna Daya Dasikar v. Maygesa Mudali* ILR 29 Mad 75. This view did not find favor with the Bench which relied on *Sashi Kumar Banerjee and Others Vs. Mrs. D.J. Hill and Others*, in which it was held that the word "month" means calendar month and not a lunar month. Reference was also made to Section 3 of the General Clauses Act in this regard. It was held that month shall mean a month reckoned according to the British calendar and three calendar months would thus mean three calendar months as reckoned according to the British calendar. Prima facie the prosecution case seemed to be barred by time but the court relied on Section 21 of the Limitation Act, 1908 to give the benefit of the way on which the Inspector received knowledge of the commission of offence by excluding it. This case, relied upon on behalf of the tenant, Therefore, does not really advance their case. On the other hand, a careful study of the rule enunciated in it would show that reference to the word "month" has to be taken to be reference in accordance with the British calendar month for reckoning of a period of time in the context in which the word has been used in the Factories Act. As we look at it, the word "month" must have reference to the tenancy month in Section 15(1) of the Act. The word "month" has been used three times in Section 15(1) of the Act. The first time that it occurs it postulates deposit to be made with the Controller or payment being made to the landlord within one month of the date of the order u/s 15(1). Obviously, this reference is to a period of time which must elapse between the making of the order and the payment or deposit of the money. It can have no reference to the expiry of any particular month. Indeed, the judgment of the Andhra Pradesh High Court, referred to above, brings this out clearly, If the order is made, say, on the 10th of September, 1980, the deposit or payment has to be made on or before 10th October 1980. The second time that the word occurs in Section 15(1) is when

liability is fixed on the tenant to pay or deposit arrears of rent legally recoverable from him, including the period subsequent thereto up to the end of the month previous to that in which payment or deposit is made. The words "legally recoverable" would be the key words to understand the meaning of the word "month" in this part of the section. Legally recoverable rent would be rent calculated backwards for a period of three years from the date of the filing of the eviction petition on the basis of the tenancy month. It could not obviously have reference to calendar month. When it is stipulated that rent should be deposited up to the end of the month previous to that in which payment or deposit is made, it obviously makes a reference to rent due and recoverable. Rent is not recoverable or due for a part of the tenancy month. The third time that the word "month" occurs is in the phrase "month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate". If on the previous two occasions the word "month" means tenancy month, it will be straining the language of the section to give it a different meaning in this phrase. The words "month by month" have reference to period of time. So also, "fifteenth of each succeeding month" must have reference to time and not a date. If the respondents' contention is to be accepted the phrase should have read "fifteenth of each succeeding calendar month". Consistency in interpretation is a cardinal principle. It is settled law when a word is used in a particular sense in a statute, and more particularly in a section, the same meaning must be attached to it in the other provisions of the Statute and certainly in the other part of the same section. It is not possible to import the meaning of the word "month" as it has been imported into Section 15(1) by Kapur, J. Indeed, there is no conflict in the definition in the General Clauses Act and the interpretation that we are placing. When a month has to be calculated it has to be calculated on the basis of the British calendar month and not on the basis of a lunar month, as was done in the Madras case, referred to above. In the context in which the phrase, "fifteenth of each succeeding month" has been used, it must mean a grace period of 15 days to the tenant from the date on which according to the terms of the tenancy rent becomes due and payable. Any other meaning would make the entire scheme of the Act illogical. If the tenancy month was to commence in the first 15 days of a month the phrase, "fifteenth of each succeeding month" would give a tenant more than a month to deposit the rent due and payable. For a tenancy commencing in the latter half of the month it would give less than a month. This would amount to discrimination and the interpretation put on the phrase by Kupur, J. may tend to make the provision violative of Article 14 of the Constitution. The only way, therefore, in which we can read this section in the context of providing equality before the law is to construe it to mean that the tenant has 15 days' grace to pay or deposit rent once it becomes due and payable on the expiry of the tenancy month. The references are answered accordingly.

(10) The legislative intent to give 15 days, grace period to the tenant to pay the rent due can also be discerned from a reading of Section 26(1) of the Act. This provision reads as under :

"26(1)Every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable."

From a reading of the above provision it is obvious that the reference is to the tenancy month and not the calendar month. If the tenancy is from the first to the last day of a calendar month, rent becomes due on the last day or on the expiry of the last day of the month. 15 days" time is then given by Section 26(I) to pay the rent failing which it will be deemed to be in arrears. Therefore, u/s 15(1) of the Act the same intent has to be read that rent may be paid or deposited within 15 days of its becoming due during the pendency of the proceedings.

(11) Though not very important, yet an administrative difficulty may be noticed if the interpretation put by our brother Kapur, J. is to be accepted. If 15th of every calendar month is the date on which rent becomes payable or is to be deposited, there will be such a rush of litigants seeking to deposit rent on the 15th of each month that it will not be possible to tackle the rush. Of course, there is no bar to depositing rent before the 15th of each month but then human nature being what it is, quite often we find people wait till the last date to make the necessary deposits. The papers of the two appeals may now be placed before the two learned Judges who made the references for disposal of the appeals on merits keeping in view the law enunciated by us. Costs will abide the results in the respective appeals.