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**(2012) 07 AHC CK 0006**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 24853 of 1989**

Brij Nandan Gupta

APPELLANT

Vs

IIIrd Addl. District Judge, Rampur and Another

RESPONDENT

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**Date of Decision :** 30-07-2012

**Acts Referred:**

Evidence Act, 1872 — Section 114, 114(g)  
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —  
Section 21(1)(a), 21(a), 3(j), 30(2)

**Citation :** (2013) 1 RCR(Rent) 108

**Hon'ble Judges :** Sudhir Agarwal, J

**Bench :** Single Bench

**Advocate :** A.K. Gupta, B.K. Pandey, B.R. Pandey and K. Ajit, for the Appellant;  
J.S. Tomar, Murlidhar and Pradeep Kumar, S.C., for the Respondent

**Final Decision :** Dismissed

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## Judgement

Sudhir Agarwal, J.—Heard Sri K. Ajit, learned counsel for the petitioner. None appeared for the respondents though the case has been called in revised list. The petitioner is purchaser of land in dispute subsequently and the tenant was occupying the premises in question before such purchase. The petitioner filed an application u/s 21(1)(a) of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972) (hereinafter referred to as "Act, 1972") for eviction and release which was allowed by Trial Court but the same has been reversed by Appellate Court on the ground that notice contemplated u/s 21(1)(a) first proviso was not served upon the tenant, therefore application itself was not entertainable by the Court below. Aggrieved by Appellate Court order dated 16th September, 1989, present writ petition has been filed by the landlord petitioner.

2. It is contended that a notice was issued by registered post, hence presumption lie that it must have been served upon the addressee in view of Section 114(g) of Indian Evidence Act, 1872 (hereinafter referred to as "Act,

1872"), and, the Revisional Court has committed a patent error of law in not appreciating the above provision and its legal consequence.

3. In order to appreciate the above contention and correctness of the judgment of the Appellate Court, it would be pertinent to have a bird eye view to the relevant facts in brief. 2

4. The respondent-tenant was occupying first floor of the house in dispute namely a residential house situated at Rajdwara Road, Rampur owned by one Sri Jagat Prakash Gupta Son of Sri Raghunandan Prasad, R/o. Moh. Jain Mandir Rampur since before 1981. The petitioner purchased aforesaid house from erstwhile owner Sri Jagan Prakash Gupta through a registered sale deed dated 13th April, 1981. The petitioner sent a registered notice dated 20th September, 1982 (by Registered Post, Acknowledgement Due) to the respondent tenant Radhey Shyam Bhatiya (since deceased and now his legal heirs are substituted as respondents No. 2/1 to 2/6) informing him about transfer of ownership to the petitioner and putting him on notice of six months to vacate the premises and hand over vacant possession to petitioner. Another notice of the same date i.e. dated 20.9.1982 is said to have been sent by petitioner informing the respondent tenant to pay rent to the petitioner since he has purchased the house in question. This notice is also said to have been sent by registered post acknowledgement due.

5. It is alleged that respondent tenant stopped payment of rent whereafter another notice was given on 8.11.1982 terminating his tenancy on expiry of 30 days since he was in arrears of rent having not paid the same from 13th April, 1981 to. 31st October, 1982 and onwards. A forth notice issued on 12.12.1983 by petitioner through his counsel Sri R.C. Srivastava determining tenancy of respondent-tenant and asking him to hand over vacant possession of premises to petitioner. Thereafter an application u/s 21(1)(a) of Act, 1972 was filed before Prescribed Authority, Rampur registered as P.A. Case No. 13 of 1984.

6. On the part of respondent-tenant, it is claimed that rent was regularly paid to the owner of house in question. He has also pleaded that after the death of owner of the house in question namely Raghunandan Prasad and a number of legal heirs came to own property therefore petitioner's contention that Sri Jagat Prasad Gupta was the sole owner of accommodation in question and could have sold the entire accommodation in his own rights to the petitioner is not correct. The receipt of notices dated 8.11.1982 on 12.12.1983 was admitted. It is also said that the notice was replied by tenant on 10.12.1982 wherein he informed of a serious doubt regarding genuinity of ownership of petitioner and said that he would deposit rent in Court. Subsequently vide application u/s 30(2) of Act, 1972 registered as Misc. Case No. 17/83 (Radhey Shyam v. Brij Nandan Gupta), rent was deposited in the Court and the said matter is pending. It was also admitted that notice dated 12.12.1983 was received on 14.12.1983 and was also replied on 14.1.1984 acknowledged by petitioner on 17.1.1984. A notice dated 25.2.1983 was received from one Sri. Ashwani Kumar Son of Sri Rajendra Prasad

and grand son of Raghunandan Prasad asking the tenant to pay rent of the disputed accommodation to him and not to any other person.

7. The Trial Court after exchange of pleading and evidence etc. formulated five issues as under:

1. Whether applicant is landlord of house in dispute.
2. Whether this case is bad due to non service of prescribed notice under Proviso to Section 21(a).
3. Whether the applicant is in real and bona fide need of the house in dispute.
4. Whether principle of comparative hardship is in favour of the applicant.
5. Whether applicant is entitled for any relief.

(English Translation by the Court)

8. The issue No. 1 was decided vide Prescribed Authority's judgment dated 7.10.1988 in favour of petitioner holding him landlord within the definition of "landlord" u/s 3(j) of Act, 1972. Similarly issue No. no. 2 was also decided in his favour holding that a valid notice u/s 21(1)(a) was issued and tenant failed to prove its non service. Having said so, issues No. 3 and 4 relating to bona fide need an comparative hardship were also determined in favour of the petitioner-landlord and as a result whereof the suit was decreed. The accommodation in question was released in favour of petitioner- landlord and tenant was directed to hand over possession of the vacant accommodation to the petitioner-landlord.

9. Aggrieved by Prescribed Authority's judgment dated 7.10.1988, the respondent-tenant preferred Rent Control Appeal No. 103 of 1988. The appellate Court decided vide judgment dated 16.9.1989 confirming findings of Trial Court on issue No. 1 in favour of the petitioner-landlord.

10. The second question argued before it at length was non compliance of requirement of giving notice u/s 21(1)(a) i.e. issue No. 2. It is this issue which has been answered in favour of tenant and the findings of Trial Court on issue No. 2 have been reversed by lower Appellate Court. In respect to issues No. 3 and 4, namely bona fide need and comparative hardship, the lower Appellate Court has observed that in view of subsequent events namely death of petitioner-landlord, elder son, for whose benefit the need was stressed in the application got mitigated also for the reason that he can get further construction on the accommodation he already possessed separately, and that is how can meet his requirement. The Lower Appellate Court held that compelling need of landlord no more survive which would justify eviction of tenant from accommodation in question. Though findings on issues No. 3 and 4, recorded by lower Appellate Court are based on irrelevant considerations and cannot be sustained in law in view of this Court but since issue No. 2 goes to the root of the matter wherein this Court finds that the lower Appellate Court was justified in holding that no valid notice was demonstrated to have been served upon the tenant as

contemplated in Section 21(1)(a), therefore application u/s 21(1)(a) itself was not maintainable, this court finds no reason to go on for recording a final opinion on issues No. 3 and 4.

11. Where a property is already in occupation of a tenant before its purchase by another person, an application for release of such building u/s 21(1)(a) cannot be filed unless conditions provided in proviso thereto are satisfied. It reads as under:

Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds, mentioned in clause (a), unless a period of three years has elapsed since the date of such purchase and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years.

12. A perusal of the above shows that there is a restriction upon the Prescribed Authority to entertain the application on the grounds mentioned in Section 21(1)(a);

(a) unless the purchaser landlord show that period of three years has elapsed since the date of such purchase; and

(b) The landlord has given a notice in that behalf to the said tenant not less than six months before such application.

13. The proviso however permits issuance of notice to the tenant even before expiry of three years but it must be six month notice and application u/s 21(1)(a) shall be entertained only after expiry of three years from the date of purchase.

14. In the present case, petitioner landlord purchased building in question on 13.4.1981 and filed application before Prescribed Authority in May, 1984, to be more precise 11th May, 1984. The application therefore was filed after expiry of three years and twenty seven days from the date of purchase. The landlord claims that six months' notice, as contemplated in proviso to Section 21(1)(a) was given to the tenant on 20th September, 1982. The said notice was put in transmission for onwards service upon the tenant by registered post acknowledgement due. Two other notices dated 8.11.1982 and 12.12.1983 sent by petitioner landlord for termination of tenancy have been acknowledged by the tenant but he has seriously disputed receipt/service of the notice dated 20th September, 1982 which the landlord alleged as compliance of Section 21(1)(a) first proviso of Act, 1972. If this notice was not served upon tenant, an application u/s 21(1)(a) was not entertainable by Prescribed Authority at all. It is a jurisdictional question and therefore has to be proved by landlord beyond doubt by adducing relevant evidence.

15. On behalf of landlord it is contended that evidence adduced to draw an

inference of service upon the tenant was "receipt of registered post" and copy of the registered notice. It is contended that once a registered letter has been sent which mentions correct address of the addressee, presumption is that it must have reached the addressee unless proved otherwise. Therefore onus to show that the said notice was not received by tenant lie on him which he failed to discharge.

16. In my view, this contention of Sri K. Ajit, Advocate is thoroughly misconceived. Presumption u/s 114(g) of the Evidence Act is rebuttable. Once the addressee deny receipt/service of registered letter, the addresser has the onus to show that it was actually served received upon or received by the addressee or he refused to receive the same though sought to be served upon him by the postal agent. In the present case no such evidence has been adduced by petitioner landlord to discharge initial onus lie upon him once service/receipt of notice dated 10.9.1982 was denied by respondent-tenant not only in his written statement but also by filing an affidavit before the Courts below.

17. Here is not a case where either acknowledgement was received by the landlord containing signature of tenant or that letter/notice was received with endorsement of Postman that it was refused by the tenant. In fact neither registered letter was received back by the landlord nor acknowledgement was received by him. It is in these circumstances presumption that letter sent by registered post at the correct address must be deemed to have been served upon the tenant and denial of tenant about its service/receipt itself would not be sufficient unless he prove otherwise would not lie and this is not the correct approach to answer the problem.

18. It cannot be doubted that presumption of certain facts as illustrated in Section 114 is stronger when a letter is sent by registered post to the addressee. (See Harihar Banerji v. Ram Sahai Rai, AIR 1918 PC 102; and Balgovind Rastogi Vs. Bhargava School Book Depot, .

19. It also cannot be disputed, if a notice is sent by landlord to the tenant by registered post and acknowledgement is received back by the landlord containing signature of the tenant, presumption of service would have to be drawn against the tenant unless tenant prove otherwise by adducing relevant evidence as held in M/s. Green View Radio Service Vs. Laxmibai Ramji and another, .

20. Similarly, if a notice has been sent by landlord by registered post and it is received back with an endorsement made by an official of Post Office namely Postman that it was refused by the addressee, presumption of service upon addressee shall be drawn unless the tenant prove that the letter was never offered to him by the Postman and endorsement made thereon is not correct. The tenant's bare denial would not be sufficient in such a case and he will have to prove his case by adducing relevant evidence. Such denial can be by making statement on oath and in such case onus would shift on the landlord to prove that refusal was by the tenant which he can show by summoning the postman

and adducing his oral evidence. However, this is one aspect of the matter. Sometimes from the conduct of tenant or other circumstances, his denial even if on oath, can justifiably be disproved by the Court without having Postman examined. There is no hard and fast rule on this aspect as observed by the Apex Court in *Anil Kumar Vs. Nanak Chandra Verma*, .

21. But these cases however have no application to the present case for the simple reason that here neither any third party intimation is available with the landlord that the tenant was served with the notice but he declined to receive the same nor acknowledgement has received/come in the hands of landlord containing signature of tenant to show its service. The only thing available in the present case is the fact that a registered letter with acknowledgement duly sent by landlord to the tenant on correct address. In such a case tenant's bare denial supported with an affidavit is sufficient rebuttal unless proved otherwise by landlord. Without anything further namely availability of acknowledgement containing signature of tenant or the postal agent's endorsement of refusal etc., the addressee may rebut the presumption by making statement on oath denying service of the registered letter. I need not to burden this judgment with the catena of decisions on this aspect except simply referring to a few one namely *Radhakishan Vs. State of U.P.*, ; *Appabhai Motibhai Vs. Laxmichand Zaverchand and Co.*, and *Ram August Tewari and Others Vs. Bindeshwari Tewari and Others*, which fortify the view I have taken hereinabove.

22. Thus onus lie upon the landlord to prove his case by producing the best evidence. Under the Post Office Act, if addresser of a registered letter makes enquiry from Post Office about service of registered letter upon addressee, he could have received a reply therefrom and that could have been an evidence of service of notice. Similarly, the Postman could have been examined by summoning him. Unfortunately the landlord has chosen to follow none of these.

23. Learned counsel for the petitioner has relied on Apex Court's decision in *Samitri Devi and Another Vs. Sampuran Singh and Another*, Recent Apex Judgments (R.A.J.) 449 : (2011) 3 SCC 556. The Court has observed therein that a letter if sent on a correct address and its certificate of posting has been received from the Post Office, presumption can be drawn that in normal course of business it would have been served upon the addressee in absence of any pleading alleging anything otherwise in respect to the certificate of posting or denial of the addressee about its service. The Apex Court relied and referred to an earlier decision of the Privy Council in *Harihar Banerji v. Ramsashi Roy*, (supra) and Full Bench judgment of this Court in *Ganga Ram Vs. Smt. Phulwati*, . The question of presumption u/s 114 in this case is not the core issue in the matter. Moreover the Court also said that service if denied by addressee the position would be different. But here is a case where addressee has specifically come up with a case that he was never served with the alleged notice and has sworn the above statement on oath. It is in this background the question is whether presumption of service is conclusive or it is so strong that a bare denial

of tenant is not sufficient unless he further prove it. Obviously a negative fact would not be required to be proved. In such cases, in absence of anything further, the landlord would have to prove the factum of service of notice by adducing positive evidence since presumption u/s 114 is rebuttable. The aforesaid judgment therefore lends no help to the petitioner since there was no denial of service of notice by the addressee.

24. So far as rigour of proviso to Section 21(1)(a) is concerned, that notice is mandatory. The issue is squarely covered by Apex Court's decision in *Nirbhai Kumar Vs. Maya Devi and Others*, wherein the three Judge Bench of Apex court has held that it is mandatory and has overruled its earlier decision in *Anwar Hasan Khan Vs. Mohammad Shafi and Others*, . An earlier two judge Bench judgment in *Martin and Harris Ltd. Vs. VIth Additional District Judge and Others*, has been affirmed by the larger Bench of Apex Court in *Nirbhai Kumar (supra)*.

25. In the facts and circumstance of this case, it cannot be disputed that denial of service of notice dated 20.9.1982 by the tenant on oath was sufficient to rebut presumption of service of registered notice upon him and onus then shifted upon the landlord to prove service. In absence of any service of such notice, application u/s 21(1)(a) was not entertainable being barred by first proviso to Section 21(1)(a) of Act, 1972.

26. The discussion above led to inescapable inference that the Lower Appellate Court's findings on issue No. 2 that notice u/s 21(1)(a) first proviso having not been served upon the tenant, application was not competent and not maintainable cannot said to be faulty legally or otherwise. Hence it warrants no interference. The writ petition lacks merit. Dismissed with costs which I quantify to Rs. 5,000/-.