

(1985) 10 DEL CK 0022

In the Delhi High Court

Case No : Second Appeal No. 142 of 1985

Hindustan Everest Tools Ltd.

APPELLANT

Vs

Shakti Kumar

RESPONDENT

Date of Decision : 08-10-1985

Acts Referred:

Citation : (1986) 29 DLT 216 : (1986) 10 DRJ 22 : (1986) 1 ILR Delhi 40 : (1986) RLR 1

Hon'ble Judges : Gian Chand Jain, J

Bench : Single Bench

Advocate : I.S. Mathur and Swantantar Kumar, for the Appellant;

Judgement

This Judgment has been overruled by : Rakesh Kumar and Anr Vs. Hindustan Everest Tool Ltd., AIR 1988 SC 976 : (1988) 1 JT 619 : (1988) 1 SCALE 556 : (1988) 2 SCC 165 : (1988) 3 SCR 88 : (1988) 1 UJ 613

G.C. Jain, J.

(1) This order shall also dispose of Sao No. 143 of 1985, Hindustan Everest Tools Ltd. v. Mr. Rakesh Kumar as it arises out of a common order and involve common question of law. The sole question which requires determination in these appeals is whether the notice dated April 19, 1982 served on the appellant/tenant was a "notice of demand for arrears of rent" within the meaning of the expression used in proviso (a) to sub-section (1) of Section 14 of the Delhi Rent Control Act, 1958 (for short "the Act").

(2) By means of two separate lease deeds, both dated December 18, 1979, the appellant M/s Hindustan Everest Tools Ltd., took on lease shop Nos. FF-1 and FF-2, Dohil Chambers, 46, Nehru Place, New Delhi on rent- FF-1 from Rakesh Kumar on a monthly rent of Rs. 4071.50 and FF-2 from Shakti Kumar on a monthly rent of Rs. 2600.00 . On November 16, 1982, Rakesh Kumar brought a petition (E-603/82) for eviction of the appellant from the said premises. A similar application (E-619/82) was filed by Shakti Kumar on November 23, 1982. Both of

them claimed eviction on the grounds contained in clauses (a), (j) and (k) of the proviso to Sub-section (1) of Section 14. The grounds under clauses (j) and (k) were later on given up. As regards ground under clause (a) the plea raised by both the landlords was that the tenant had neither paid nor tendered the arrears of rent due from February, 1982 in spite of service of notice in April, 1982.

(3) The tenant resisted both the petitions on identical grounds. The main plea raised was that it was not liable to pay rent as it had been deprived of the facilities of water, electricity and lift resulting loss of business. It was also alleged that no legal and valid notice had been served on it.

(4) By two separate orders, both made on February 29, 1984, the Rent Controller directed the tenant to deposit the arrears of rent with effect from 1st February 1982 till the end of the month immediately preceding the month in which the deposit was made and thereafter to continue to deposit the subsequent rent month by month by the 15th of each succeeding month. In the case filed by Shakti Kumar the rent was directed to be deposited at the rate of Rs. 2600.00 per month. In the other case it was to be deposited at the rate of Rs. 4071.50 per month.

(5) The appellant filed appeals against these orders before the Tribunal. The Tribunal by its common order dated 16th May 1984 partly accepted the appeal and modified the order to the extent that the amount attached by the Corporation was not to be paid to the landlord till the attachment remained in force. Appeals against the order of the Tribunal were dismissed by this Court on June 1, 1984.

(6) The tenant did not comply with the orders made u/s 15(1) of the Act as modified by the Tribunal and consequently its defense was struck off by separate orders both dated December 12, 1984. Ultimately eviction orders under clause (a) of the proviso to Sub-section (1) of Section 14 of the Act were made by the Controller on March, 8, 1985. The appeals filed against the said orders were dismissed by the Tribunal by a common order dated 21st March, 1985. Hence these second appeals.

(7) Clause (a) of the proviso to Sub-section (1) of Section 14 reads as under:

"14. Protection of tenant against eviction. (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against a tenant: Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely : (a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in Section 106 of Transfer of Property Act, 1882 (4 of 1882)."

A perusal of the above provision reveals that for obtaining an order for recovery of possession under clause (a) the landlord must prove (1) that there existed a relationship of landlord and tenant between the parties; (2) that the tenant was in arrears of rent legally recoverable on the date of notice of demand; (3) that a notice for demand for arrears of rent had been served on the tenant in the manner provided in Section 106 of Transfer of Property Act; and (4) that the tenant had neither paid nor tendered the whole of the arrears of rent legally recoverable within two months of the service of notice of demand.

(8) It was not disputed by Mr. Ishwar Sahai, learned counsel appearing for the tenant, that the relationship of landlord and tenant existed between the parties; the tenant had received notices dated April 19, 1982; it was in arrears of rent on the date of the notices and had neither paid nor tendered the arrears of rent within two months of the receipt of the said notices. He, however, submitted that these notices were notices terminating the tenancies and not notices of demand for the arrears.

(9) It cannot be disputed and has not been disputed by Mr. Swatantra Kumar, the learned counsel appearing for the landlords, that service of notice of demand for arrears of rent is a must for obtaining eviction under clause (a). This ground would not be available if such a notice has not been served on the tenant. He, however, contended that the notices in question were notices of demand as well.

(10) The notices issued in the two cases are in identical terms. It reads :-

"REGISTERED A.D. Date: 19-4-82 To The Secretary, M/s. Hindustan Everest Tools, FF-1 & FF-2, Dohil Chambers, 46, Nehru Place, New Delhi. Dear Sir, I have the instructions from my client Mr. H. Dohil, E-39, South Extension Part I, New Delhi, to serve you with a notice as follows:- 1. That my client is the attorney of Shri Shakti Kumar and Shri Rakesh Kumar, and, is, Therefore, competent to give me instructions on their behalf. 2. That you are the tenant of the First Floor i.e. Shop No. FF-1 and FF-2, Dohil Chambers, 46, Nehru Place, New Delhi, of which Mr. Shakti Kumar and Mr. Rakesh are the owners. As per the terms of the agreement deed between you and my client you are liable to pay a sum of Rs. 4,071.50 per month as rent for shop No. FF-1, and Rs. 2,600.00 for shop No. FF-2. The rent is payable for these respective shops by you in advance by 5th of each calendar month. 3. That my client served upon you different notices to pay the rent of the said premises/shops but you have failed to pay the amount of rent due from you without any reason. 4. That for both these shops, FF-1 and FF-2. you have not paid the rent for the months of February, March and April 1982. Therefore, a sum of Rs. 7800.00 is due from you as rent for the said shop No. FF-2 and a sum of Rs. 12,214.50 is due as rent in relation to shop No. FF-1. However, I have the instructions to say that you have demolished the internal wall of the premises under your tenancy without the consent of my client in writing or otherwise, and, have, Therefore, committed the violation of the terms of the lease and the agreement executed between my client and M/s Dohil Construction Co. Pvt. Ltd., Dohil Chambers, Nehru Place, New Delhi, the promoters of the building. 5. That

in view of the above facts and circumstances my client do not wish to keep you a tenant in its premises any longer and they clearly show their intention by means of this notice to terminate your tenancy which is hereby terminated by means of this notice. You are no longer tenant of my client. You are requested to hand over the peaceful vacant possession of the two shops i.e. FF-1 and FF-2, Dohil Chambers, 46, Nehru Place, New Delhi, under your tenancy/occupation on 31st May 1982. You are also requested to place the premises under your tenancy in the same condition as they were at the time when the possession was given to you. Further my client reserves its rights to claim damages for causing damage to the property of my client. Thanking you, Yours faithfully, sd/- Gita Mittal (Miss Gita Mittal) Advocate"

(11) By this notice the landlord intimated the tenant-(I) that it was in possession of shops FF-1 and FF-2 as a tenant of Rakesh Kumar and Shakti Kumar respectively; (2) agreed rent was Rs.4071.50 per month for shop FF-1 and Rs. 2600.00 per month for shop No. FF-2; (3) the rent was payable in advance by 5th of each succeeding month; (4) a sum of Rs. 7800.00 was due from shop No. FF-2 and Rs. 12,214.50 for shop No. FF-1; (5) that several notices had been served on the tenant for paying the rent but the tenant had not paid the rent without any reason; and (5) that it had demolished the internal wall without the consent of the landlord. After giving these intimations the landlord terminated the tenancies and called upon the tenant to handover the peaceful and vacant possession of two shops and to place the premises in the same condition in which they were let.

(12) This notice is an unconditional notice terminating the tenancy. It did say that the tenant was in arrears of rent but it did not demand the rent. Proviso (a) requires the service of a "notice of demand for the arrears". The word "demand" has to be given its ordinary meaning. "Demand" according to Chambers 20th Century Dictionary (New Edition) means "the asking for what is due : peremptory asking for something : a claim : desire shown by consumers : the amount of any article, commodity, etc., that consumers will buy: inquiry". According to Webster's Third New International Dictionary it means "the act of demanding or asking esp. with authority : a peremptory request : the asking or seeking for what is due or claimed as due : the right or title in virtue of which something may be claimed : a thing or amount claimed to be due". Giving the ordinary meaning to the word "demand" and read in the context in which this word has been used the expression "notice of demand" used in the proviso (a) means a notice asking the tenant to pay the arrears of rent. In other words, the tenant must be called upon to pay the arrears or rent. Law, no doubt, does not require that a demand notice should be in any prescribed form. Particular words are not required to be used but the notice must make a demand of arrears of rent. For making the demand any proper word connoting the demand could be used. A mere statement of arrears without anything more is not sufficient. The main purpose of "the Act" is to protect the tenant from eviction. The requirement of the service of notice of demand in clause (a) is to afford an opportunity to the

tenant to pay the arrears of rent within two months of the service of notice of demand. That purpose could be achieved only when the demand is made. The tenant must be asked to pay rent or face eviction. In the absence of the demand it cannot be said that the tenant had been given the required opportunity to save his tenancy from the consequences of default by not paying the rent. The notice dated April 19, 1982, served on the tenant in both the cases, Therefore, was not a notice of demand. I find support to this view from decisions in Ram Krishna Prasad Vs. Mohd. Yahia, ; Peter Paul Coelho and others v. Smt. Constance D'Souza and others, AIR 1980 Ker 38 and Khimji Bhimji Majithia Vs. Taraben Lalji Soni, . In Hari Mohan Nehru Vs. Rameshwar Dayal, , this Court even went further and held "the word "demand" used in the Act suggests something more than mere asking. The "demand" of rent holds out a threat to enforce it by eviction proceedings, if not paid within two months of service of demand."

(13) Mr. Swatantra Kumar, learned counsel appearing for the landlord, contended that under the lease deed the tenant had agreed and undertaken to pay the monthly rent of the premises in advance by 5th of each calendar month. In para 3 of the notice dated April 19, 1982, it has been stated that different notices had been served on the tenants to pay rent but they had failed to pay the amount of rent without any reason. The tenant had been informed of the arrears of rent due. Read as a whole, in the context of the lease deed, argued the learned counsel, the notices in question were notices of demand I find no merit in this submission. The mere recital that rent was due and that in past the tenant had not paid the rent in spite of notices would amount to demanding the rent by means of the notice on the basis of which the eviction was sought. The notice which gives the cause of action must contain a demand.

(14) The tenant sent a reply dated June 1, 1982. In this reply it was stated that it was arranging to send the rent directly to the landlords. In view of this averment in the reply, it was argued that the tenant took this notice as a notice of demand. This reply, in my view, would not convert the notice dated April 19, 1982 into a notice of demand.

(15) On behalf of the landlord reliance was placed on various authorities. The main authority is the decision of this Court in Ram Sarup v. Sultan Singh etc., 1977 (2) Rcj 552 In this case no demand had been made still the notice was held to be a valid notice of demand. This judgment turned on the peculiar facts of that case. The demand was presumed on account of the conduct of the landlord who had already filed a suit for recovery of the rent arrears and had threatened to file a petition for eviction; the law governing which also provided that the tenant had to pay the arrears of rent to the landlord. These circumstances do not exist in the present case.

(16) In Mangoo Singh Vs. The Election Tribunal, Bareilly and Others, , the Supreme Court interpreting the term "notice of demand" as used in Section 168 of the U P. Municipalities Act (2 of 1916) held as under:

"NOR do we think that the word "demand" attracts the operation of Section 168. It may be readily conceded that the word "demand" ordinarily means something more than what is due; it means something which has been demanded, called for or asked for. But the meaning of a word must take colour from the context in which it is used. In clause (g) the context in which the word "demand" is used has a very obvious and clear reference to the amount of arrears or dues on which the disqualification depends; Therefore, the expression used is-"arrears in the payment of municipal tax or other dues in excess of one year"s demand". The word "demand" in that context and in the collocation of words in which it has been used can only mean" in excess of one year"s municipal tax or other dues." We have been referred to several meanings of the word "demand" in standard English dictionaries and Law lexicons. When the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers. If it sufficient for our purpose to state that even in standard dictionaries and law lexicons, it is well recognised that the word "demand" may mean simply a "claim" or "due" without importing any further meaning of calling upon the person liable to pay the claim or due."

These findings of the Supreme Court were made while interpreting the term "notice of demand" used in Section 168 of the U.P. Municipalities Act. It would not govern the interpretation of the expression "notice of demand" used in proviso (a) to Sub-section (1) of Section 14 of the Act. It may be added that in the earlier part of the paragraph 9 of the judgment it was observed by the Supreme Court that the word "demand" ordinarily meant something more than what is due; it meant something which is demanded, called for or asked for. The word "demand" used in proviso (a) read in the context in which it has been used requires that it was given its ordinary meaning. "Notice of demand" required to be served on the tenant, Therefore, must demand, call for or ask for payment of rent.

(17) The decision of the Supreme Court in Smt. Anand Kaur v. Pritam Lal, 1982 (1) Rcj 674 has no application to the question involved in the present appeals.

(18) For all these reasons, in my view, notices dated 19th April, 1982, were not notices of demand. In the absence of the notice of demand, the landlords were not entitled to claim eviction under clause (a) of the proviso to Sub-section (1) of Section 14 of the Act. The orders made by the courts below were erroneous and cannot be sustained.

(19) In conclusion, I accept the appeals, set aside the impugned orders and instead dismiss both the eviction petitions filed by the landlords.

(20) The parties are, however, left to bear their own costs.