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**(2014) 12 RAJ CK 0130**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 4641/2011**

Jagdish Kapoor

APPELLANT

Vs

Mohan Singh

RESPONDENT

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**Date of Decision :** 04-12-2014

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Evidence Act, 1872 — Section 77

**Citation :** (2015) 2 RLW 1408

**Hon'ble Judges :** Alok Sharma, J

**Bench :** Single Bench

**Advocate :** S.C. Gupta, Advocate for the Appellant; Swaraj Sharma, Advocate for the Respondent

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## Judgement

Alok Sharma, J.—This petition purporting to both under Articles 226 & 227 of the Constitution of India challenges the order dated 08.03.2011, passed by the Appellate Rent Tribunal, Kota affirming the judgment of the Rent Tribunal, Kota passed on 21.07.2008 whereby the respondent-landlord-plaintiff's (hereinafter "the landlord") eviction petition under Section 9(a) of the Rajasthan Rent Control Act, 2001 (hereinafter "the Act of 2001") was allowed. The eviction of the petitioner-tenant-defendant (hereinafter "the tenant") directed on the ground of default and a certificate of possession on rented premises-a shop (hereinafter "tenanted premises") was issued in favour of the landlord.

2. I have heard the counsel for the parties and perused the impugned judgments passed by the rent tribunal as also the appellate rent tribunal.

3. Paraphrased Section 9(a) of the Act of 2001 provides that eviction of a tenant can be directed by the jurisdictional rent tribunal where the tenant neither pays, nor tenders the amount of rent due from him for over four months within 30 days from the receipt of notice for the purpose from the landlord demanding the rent due and disclosing the Bank account within municipal limit where the tenanted premises are situate, where the rent could be deposited.

4. The case set up by the landlord against the tenant was that the rent due for the period 01.06.2005 to 03.04.2006 had not been paid. The period of the outstanding rent was 11 months and the monthly rent of the tenanted premises was Rs. 500/-. The notice was sent on 12.05.2006 under Section 9(a) of the Act of 2001. Admittedly the last of the amount due for the period aforesaid i.e. 11 months @ Rs. 500/- per month was paid as per the statement of tenant himself before the rent tribunal, on the deposit of Rs. 1,500/- in the disclosed bank account of the landlord on 16.06.2006. The rent tribunal as also the appellate rent tribunal held that as per the assertion of the landlord in his eviction petition as also his affidavit in evidence in support thereof and the cross-examination whereupon he remained unshaken, the notice had been sent on 12.05.2006 and served on 15.05.2006. According to the tribunals below, the averments in the eviction petition as also the assertion in the testimony of the landlord were buttressed by Exhibit-4 which was a certificate issued by the postal authority evidencing the fact that the registered letter dated 12.05.2006 (article) had been delivered on the addressee i.e. tenant on 15.05.2006. The rent tribunal as also the appellate rent tribunal therefore held that the rent in terms of proviso II Section 9(a) of the Act of 2001 had to be deposited within 30 days of the receipt i.e. by 14.06.2006. Admittedly as per the say of the tenant himself, the rent having been deposited on 16.06.2006, it was quite apparently beyond the 30 days interdict of law and therefore was sufficient to make out a ground of default in the payment of rent by the tenant. So holding, the eviction of the tenant was directed and certificate of possession in favour of the landlord issued.

5. Mr. S.C. Gupta, appearing for the tenant as the petitioner in this writ petition has submitted that there was no evidence of any probative worth before the rent tribunal or for that matter before the appellate rent tribunal to hold that the notice dated 12.05.2006 in terms of proviso II Section 9(a) of the Act of 2001 was served on the tenant on 15.05.2006. He submitted that in fact the notice was served on 23.05.2006 and the deposit of due rent for the period in issue upto 30.04.2006 having been admittedly made on 16.06.2006 was not well in time and within 30 days provided for by law. He submitted that the specific case of the tenant was overlooked by the tribunals without good cause. His further submission is that even as per the best case of the landlord, the notice having been served on 15.05.2006 and the rent due and outstanding for a period of 11 months having been deposited on 16.06.2006 by a mere delay of two days, it was not a fit case for directing the eviction of the tenant who is otherwise unprovided for and would be rendered pernicious resulting from the loss of livelihood as the tenanted premises is a shop. His submission is that the rent tribunal as also the appellate rent tribunal ought to have taken a liberal view, that this court should and condone two days" delay dismissing the eviction petition laid by the landlord.

6. Mr. Swaraj Sharma, appearing for the landlord has obviously supported the judgment passed by the rent tribunal on 21.07.2008 as affirmed by the appellate rent tribunal.

7. The fact of default under Section 9(a) of the Act of 2001 is inexcusable. The manner of determining a default has been statutorily provided for and it has no variation. Effectively the determination of the question as to whether the tenant is in default under Section 9(a) of the Act of 2001 is an arithmetical exercise. The tribunal has merely to see as to whether as on the date of the notice, the contracted rent or rent due otherwise in terms of the Act of 2001 was outstanding for more than four months and whether a notice in regard thereto was issued by the landlord to the tenant disclosing Bank account within the municipal limits of the place where the tenanted premises are situate and finally whether on receipt of notice the tenant paid the outstanding due amount within 30 days of the receipt of the notice. A liberal approach to the computation of the time in the payment of rent subsequent to the receipt of notice of outstanding rent cannot be warranted in the face of the statute. Therefore the rent tribunal as also the appellate rent tribunal are under a duty to approach the matter quite arithmetically with no room at all for variation.

8. It is in this context that the rent tribunal approached the evidence before it. The landlord had averred in his eviction petition as also in his affidavit in evidence in support thereof that the tenant had been in default in payment of rent due @ Rs. 500/- per month for a period of eleven months between 01.06.2005 to 30.04.2006. In support of his case, the landlord had also filed inter alia the certificate (Exhibit-4) from the postal authority evidencing the factum of the delivery of the registered notice dated 12.05.2006 on the addressee i.e. the tenant at the tenanted shop on 15.05.2006. The certificate (Exhibit-4) issued by the postal authority is a public document in terms of Section 77 of the evidence Act. As against the evidence of the landlord, the tenant's evidence was obviously lacking. Even though it was admitted that the notice dated 12.05.2006 demanding payment in the designated bank account of arrears due was indeed received, the date of the receipt was not set out in the reply to the eviction petition, nor was it averred in the affidavit in evidence in support of the reply to the writ petition. In these circumstances, the attempt of the tenant before the rent tribunal in the course of the trial of the eviction petition to establish that the notice dated 12.05.2006 had been received on 23.05.2006 was of no avail. Further the tenant admitted that the last of the amount due upto 30.04.2006 was deposited on 16.06.2006 when the 30 days period for deposit of rent due effective the receipt of the notice dated 12.05.2006 on 15.05.2006 expired on 14.06.2006. In these circumstances, the rent tribunal as also the appellate rent tribunal in my considered opinion have not erred in allowing the eviction petition laid by the landlord and issuing a certificate of possession in his favour.

9. Mr. Gupta, counsel for the tenant also attempted to establish that no amount of rent was due to the landlord from the tenant. That to my mind cannot wash inasmuch as the tenant himself in his cross-examination before the rent tribunal admitted to the fact that the last of the amounts due under the notice 12.05.2006 admittedly received by him were paid on 16.06.2006 when the time

for payment of due amount in terms of the notice dated 12.05.2006 had expired on 14.06.2006.

10. Aside of the aforesaid, the jurisdiction of this Court either referable to its superintending powers under Article 227 of the Constitution of India or its extraordinary equitable jurisdiction under Article 226 of the Constitution of India to determining as to whether the orders passed by the statutory fact finding tribunals/courts are perverse in nature and they have occasioned manifest in justice. In my considered view, neither of the two grounds can be made out in the instant petition. The judgment and certificate of possession passed by the rent tribunal on 21.07.2008 as affirmed by the appellate rent tribunal are reasonable conclusions, if not the only conclusion in the context of the state of evidence before them. The conclusions aforesaid do not warrant any interference as they are neither even remotely perverse nor vitiated by any misdirection in law.

11. The writ petition is therefore dismissed.