

(2009) 07 UK CK 0006
In the Uttarakhand High Court

Mrs. Vimla Devi and Others

APPELLANT

Vs

Nirmal Jeet Singh Hoon and Others
Hoon Vs Irtiza Hussain and Others

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 15, 25
Transfer of Property Act, 1882 — Section 106

Citation : (2011) 1 UC 172 : (2009) 2 UD 155

Hon'ble Judges : V.K. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Gupta, C.J.—This almost four decades old litigation is being brought to an end by this Common Judgment, whereby these two Civil Revision Petitions are being disposed of together. It took full 35 years for the Trial Court to decide and dispose of a mere eviction proceeding filed by the landlords against the tenants. Actually the delay, inordinate delay, even by the national standards is all the more intriguing if one keeps in mind the fact that, in the ultimate analysis, the eviction proceeding was based just upon the ground of determination of tenancy by afflux of time.

2. The case has a chequered history. The subject matter of the dispute forming the central, focal point of litigation is a Hotel presently known by the name of "Hotel Grand Hakman" situated on The Mall in the famous hill resort of Mussoorie in the district of Dehradun. The plaintiffs undoubtedly are the owners / landlords of the Building, details whereof have been clearly mentioned in Schedule "A" to the Plaint. The defendants have been the tenants of the said Building. The historical background of this Building dates back to the year 1904 when Grand Central Hotel (the name which this Building previously had) was started by one Jan Mohammad. He had a son by the name Hazi Razzak. Hazi Razzak had two wives, the first being Bismillah Begum and the second Jahida Khatoon. Hazi

Razzak was Jahida's second husband. From her first husband Jahida Khatoon had following four children:

- (i) Irtaza Hussain
- (ii) Murtaza Hussain
- (iii) Shahida Khatoon
- (iv) Sajida Khatoon

3. Bismillah Begum had one son, namely, Sultan Mohd. born out of the wedlock between her and Hazi Razzak. Sarvari Khatoon is the wife of Sultan Mohammad. On 08.11.1923, Hazi Razak executed a lease deed in favour of H.R. Hakman for the aforesaid Hotel. H.R. Hakman died on 22.04.1932. Upon his death, his rights devolved upon his wife Mrs. H.R. Hakman. On 05.02.1946, Sultan Mohammad, son of Hazi Razzak and Bismillah Begum executed a fresh lease deed in favour of Mrs. H.R. Hakman. On 22.06.1946, Mrs. H.R. Hakman executed a Deed of Conveyance in favour of Ram Prasad.

4. Case No. 94 of 1973 was filed by the landlord / respondents against the tenants, being an Eviction Application u/s 21(1)(a) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 ("1972 Act" or "Act No. 13 of 1972, wherever the context so requires, for short). This case was decided in favour of the landlords on 28.10.1976. Appeal u/s 22 of 1972 Act was filed by the tenants against this Judgment. The Appellate Court allowed the said Appeal vide its judgment dated 05.12.1985. Aggrieved, the landlords filed Writ Petition No. 6334 of 1986 in the Allahabad High Court. On 29.10.1999, this Writ Petition was dismissed by Allahabad High Court as having become infructuous in view of the averments and assertions made by the tenants, who were the respondents in the said Writ Petition, that the rent of the premises in question being Rs. 28,405.95 per annum (being thus more than Rs. 2000/- per month), Act No. 13 of 1972 was not applicable to the property in question.

5. Simultaneously even while Case No. 94 of 1973 was pending, the landlords filed Case No. 5 of 1973 u/s 8 of 1972 Act for determination and fixation of the "standard rent". Vide order dated 08.11.1974, the Prescribed Authority disposed of this Application by fixing standard rent @ Rs. 23,125/- per annum, which was made effective from 15.07.1972. The landlords and the tenants, both, filed Appeals against this order, both being dissatisfied therefrom, being Appeal Nos. 268 of 1974 and 274 of 1974. Both these Appeals were dismissed by the Appellate Court (District Judge) on 23.03.1975. Tenants, feeling dissatisfied, filed Writ Petition No. 8365 of 1975 against the aforesaid order of the Appellate Court, but this writ petition was also dismissed on 29.11.1978 by the Allahabad High Court upholding the fixation of Standard Rent @ Rs. 23,125/- per annum which thus assumed finality.

6. Even while the landlords' Application filed u/s 21 (1)(a) of 1972 Act, being Case No. 94 of 1973 was pending, they filed Case No. 41 of 1974 on 14.03.1974

for eviction of the tenants on the ground of defaults in the payment of rent and subletting in terms of Clauses (a) and (e) of Sub-section (2) of Section 20 of 1972 Act. (Decree passed on 22.08.2008 in the said Case has been challenged in these two Revision Petitions.).

7. Recapitulating and coming once again to the historical background further, it has to be mentioned that on 08.12.1954, in Suit No. 105 of 1948, a settlement had been arrived at between the defendants Nos. 1 & 2 and Hazi Razzak Mohammad, husband of plaintiff No. 2 and Smt. Sarvari Khatoon, plaintiff No. 4, whereby it was agreed between the parties that the period of lease with respect to the Hotel was to stand extended up to 31.12.1962. It was also agreed that defendant No. 2 (M/s United Hotels Pvt. Ltd.) was to be the lessee of the property in question, but in case of any default in the payment of rent, the liability to pay the rent rested with defendant No. 1 (Ram Prasad, since deceased) personally. On the death of Ram Prasad, his personal liability stood devolved upon his heirs. Under the said Agreement, the yearly rent earlier fixed at Rs. 22,000/- was reduced to Rs. 18,500/- with the following breakup:

(a) Rent of the Building : Rs. 13,500/- per annum.

(b) Hire Charges of Furniture, Crockery and Cutlery etc. : Rs. 5,000/- per annum.

----- Total : Rs. 18,500/- per annum

8. In the said Agreement, it was clearly agreed upon between the parties that the aforesaid two items, viz. annual rent of Rs. 13,500/- and the hire charges of Rs. 5,000/- per annum, would be inseparable until the termination of the lease and the Furniture, Crockery and Cutlery etc. were also not to be replaced by the lessor on any account during the continuance of the lease and the lessee was bound to make good the deficiency, if any, of the Furniture, Crockery, Cutlery etc. It was also stipulated in the said Agreement that a fresh Lease Deed was to be executed between the parties and duly got registered incorporating the above terms and conditions along with the conditions of the last Lease Deed dated 05.02.1946 so far as these were not inconsistent with the terms of the aforesaid Agreement. The text of this Agreement reads thus:

1. That the lessee Shri Ram Pershad Managing Director United Hotels Ltd. shall pay Rs. 13,500/- a year as rent of the building and Rs. 5,000/- as hire of furniture, total Rs. 18,500/- a year. The two items shall be inseparable until the termination of the lease and the furniture shall not be replaced by the landlords on any account during the continuance of the lease.

2. That the lease shall be renewed as from 1st January, 1952 on the above amongst others terms as embodied in the original lease in favour of Mrs. Hakman deceased which are not inconsistent with the terms hereof.

3. That the lease shall be for period of 10 years from 1st January 1952.

4. That the lessee giving up his claim for Rs. 25,000/- for the excess of the rent paid under the old lease and landlords give up their claim to Rs. 9,000/- which was allowed by Court to the lessor for repairs.

5. That the landlord shall immediately carry on all the major and minor repairs in consultation with the help of the lessee.

6. That details of such repairs will be decided upon when the parties have met at Mussoorie or Lucknow till the end of the December 1954 and repairs shall be carried out under the supervision of a representative of both defendant No. 1 and the plaintiff.

7. That the amount of such repairs will be upto Rs. 20,000/- and this amount will be advanced by the lessee towards rent and he shall be entitled to deduct it from the yearly rent of Rs. 18,500/- in two years beginning from the 1st January, 1995 in equal six monthly installments.

8. That after these repairs the lessee shall be liable for major and minor repairs (with the Exception of Acts of God) until the termination of the lease.

9. That the arrears for the period of 1st January, 1952 to 31st December, 1954 amounting to Rs. 50,300/- are being paid by 4 cheques dated 01-12-1954, 31-01-1955, 28-02-1955 and 31-03-1955 of which the first cheque is for Rs. 20,300/- and the rest 3 cheques for Rs. 10,000/- each at the time of the verification of this compromise. Should the money be not realized on the due dates of the cheques or any one of them is dishonoured, the compromise shall not come into force.

10. That a part from the liability of the Limited Company for the rent, the Managing Director (Shri Ram Prasad) will also remain personally liable for arrears of rent due under the lease.

11. That the above terms are beneficial to the parties and it will save unnecessary expenses and protracted litigation.

9. It is a common ground between the parties that actually, however, no fresh Lease Deed was ever executed and, therefore, the defendants became tenants from month to month. Plaintiff No. 1 Irtiza Hussain purchased 1/32 share of Raziunnisa Begum insofar as the suit property was concerned through a registered Sale Deed executed somewhere in October, 1967. Defendants Nos. 1 & 2 were informed of this fact accordingly. Irtiza Hussain thereby became entitled to receive and recover the rent to the extent of 1/32 share with effect from October, 1967, which earlier was being paid to Raziunnisa Begum.

10. As noticed earlier, Case No. 41 of 1974 was filed by the plaintiffs / landlords against the defendants / tenants on two grounds, namely defaults in the payment of arrears of rent and subletting. Since the learned Trial Court has decided the issue relating to subletting against the plaintiffs and because this finding has neither been challenged nor is it relevant for our purposes, I need not

even make an attempt to refer to this aspect of the case, confining myself only to the ground of default in the payment of arrears of rent as far as this ground would be relevant in the context and perspective of the contours upon which these Revision Petitions shall ultimately be decided. Insofar as the issue regarding the defaults is concerned, the averments with respect thereto are contained in Paras 18, 19 & 20 of the Plaint, which for ready reference are reproduced hereunder. These three Paras read thus:

18. That defendants 1 (since deceased) and 2 failed to pay 1/32 share since October, 1967, which was payable to plaintiff No. 1 Irtiza Husain and further failed to pay entire rent since 1-1-1972. The rent for the period 1-1-1972 to 30-06-1972 fell due on 15-06-1972 and rent for 1-7-1972 to 31-12-1972 fell due on 15-09-1972 and the rent for the period 1-1-1973 to 30-6-1973 fell due on 15-06-1973.

19. That on 14-08-1973 the plaintiffs through their counsel sent a composite notice of demand and termination of tenancy under registered cover as required u/s 106 of the Transfer of Property Act, 1882. The plaintiffs were entitled to send one month's notice for termination of tenancy but by way of abundant caution the plaintiffs sent six months' notice.

20. That the notice referred to above was served upon the defendants 1 (since deceased) and 2 on 17-08- 1973, but they neither vacated the premises nor paid any amount.

11. Two noticeable events took place during the pendency of this litigation. The first event was the amendment of Act No. 13 of 1972 brought about by U.P. Amendment Act No. 5 of 1995, made effective from 26.09.1994, whereby Clause (g) of Sub-section (1) of Section 2 of 1972 Act was introduced, which reads thus:

g. any building, whose monthly rent exceeds two thousand rupees;

12. The second event related to and arose out of the proceedings in Case No. 94 of 1973 filed by the landlords / respondents u/s 21(1)(a) of 1972 Act. As has been noticed in the earlier part of this Judgment, even though this Case was decided in favour of the landlords on 28.10.1976 by the Prescribed Authority, Appeal against this Judgment filed by the tenants u/s 22 of 1972 Act was allowed by the Appellate Court, which judgment was challenged by the landlords in Allahabad High Court through Writ Petition No. 6334 of 1986. This Writ Petition, when came up for consideration before Allahabad High Court on 29.10.1999, it was dismissed as having become infructuous on the ground that the rent of the property in question being more than Rs. 2,000/- per month, by virtue of the fact of the introduction of Clause (g) in Sub-section (1) of Section 2 of 1972 Act through the aforesaid amendment brought about in 1995, 1972 Act was not applicable to the property in question, it having gone outside the purview and scope of 1972 Act by virtue of the aforesaid 1995 Amendment. Order of Allahabad High Court passed on 29.10.1999 in the aforesaid Writ Petition No. 6334 of 1986 is being noticed hereunder for our ready reference so that a

reading of this Order would indicate to us the background under which it had come to be passed. The Order reads thus:

The petitioners are the landlord (sic) of the accommodation which is non-residential in nature. They filed an application u/s 21(1)(1) (sic) of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (the Act) for eviction of the tenant (sic). This application was allowed by the Prescribed Authority but the tenant's appeal was allowed on 5.12.85, hence the present writ petition.

I have heard Sri N.M. Dayal, B.K. Jain learned Counsel for the petitioners and Sri Rajesh Tandon, learned Counsel for the respondents. The respondents have filed a counter affidavit in which para 34 of the writ petition it is stated that the rent of premises is Rs. 28,405.95 per annum (more than Rs. 2,000/- per month) and tenant (sic) has also mentioned in para 28 of the counter affidavit that in view of the fact the rent is more than Rs. 2,000/- per month, the building is exempted for (sic) operation of the Act and the writ petition is not maintainable. Even if this writ petition is allowed and the matter remanded back of (sic) the appellate court for re- decision the proceedings can not be proceeded. In view of this the writ petition have (sic) become infructuous, it is accordingly dismissed.

13. Since this Order mentioned and made a reference to some paras of the counter affidavit filed in the said Writ Petition by the tenants / respondents therein, it is worthwhile to notice the contents of these Paras of the said counter affidavit. Actually, a careful perusal of the counter affidavit (affirmed on 12th November, 1997) filed by the respondents in the aforesaid Writ Petition reveals to me that Paras 28 to 36 of this counter affidavit, alone, are relevant for our purposes insofar as the consideration of the issue relating to the applicability of 1972 Act to the property in question is concerned. Paras 28 to 36 accordingly are reproduced hereunder which read thus:

28. That the present writ petition is not legally maintainable as the property is exempted from operation of the Act in view of Section 2(i) (g) of the Act as amended by U.P. Act No. 5 of 1995. The writ petition is liable to be dismissed.

29. That the property was let-out on annual rental of Rs. 18,500/- per annum which was inclusive of Rs. 5,000/- per annum as hire charges of the furniture, crockery, cutlery, etc.

30. That the petitioners made an application u/s 8 (1) of the Act for determining the standard rent of the building of Hakmans Grand Hotel, Mussoorie excluding Servant quarters, out houses, phoenix lodge cottage and delight cottage and open land.

31. That the Rent control & Eviction Officer, Mussoorie by order dated 08-11-1974 declared the standard rent payable by the tenants to be Rs. 23,125/- per annum which was exclusive of Rs. 5,000/- being the hire charges of furniture, crockery, cutlery, etc. The appeal filed against the order dated

08-11-1974 before the District Judge, Dehradun was dismissed by order dated 23-09-1975.

32. That the respondent filed a writ petition in the Hon'ble Court against the order dated 08-11-1974 and 23-09-1975 being Civil Misc. Writ Petition No. 8365 of 1975 Sri Ram Prasad and Ors. v. District Judge, Dehradun and Ors. The said writ petition was dismissed by order dated 29-11-1978, holding that the rent fixed by the Rent Control & Eviction Officer at Rs. 23,125/- per annum was in accordance with law. A copy of the Hon'ble Court's order dated 29-11-1978 is Annexure-1 to this affidavit.

33. That u/s 7 of the Act, the tenant is liable to pay the rent to the landlord in addition and as part of rent, water tax and 25% of the house tax. The water tax is payable at the rate of 12.5% per annum and house tax is payable at 1.25% per annum.

34. That Rs. 2,390.95 per annum is payable as water tax and Rs. 2,890/- is payable as house tax. Thus the annual rent of the premises is Rs. 28,405.95 per annum which is more than Rs. 2,000/- per month. The bills dated 28-04-1992 issued by Municipal board, Mussoorie regarding house tax for the year 1992-93 is Annexure-2 to this affidavit.

35. That the petitioners have filed the suit for ejectment being S.C.C. Suit No. 41 of 1974, Sri Irtiza Hussain v. Sri Ram Prasad and Ors. which is pending in the court of the District Judge, Dehradun. In the said suit the petitioners have claimed the rent @ Rs. 23,125/- per annum + Rs. 5,000/- per annum as hire charges of furniture, crockery and cutlery etc. The rent claimed is exclusive of the house tax and water tax. A certified copy of the plaint of S.C.C. Suit No. 41 of 1974 is Annexure 3 to this affidavit.

36. That thus the property is exempted from the operation of the Act and the writ petition filed by the petitioners have become infructuous and is liable to be rejected.

14. It is in the aforesaid background that the Plaint in Case No. 41 of 1974 came to be amended by the plaintiffs / landlords. Through this amendment, the plaintiffs / landlords took their Suit (Case No. 41 of 1974) outside the ambit and purview of 1972 Act on the clear premise and ground that because the monthly rent of the property in question was more than Rs. 2,000/-, the provisions of 1972 Act were not applicable to the property in question. The relevant paras of the Plaint, which thus underwent amendments because of the aforesaid changed circumstance, are as under:

17-A. That the application u/s 21 of the plaintiffs having been rejected by the appellant authority, they preferred a writ petition No. 6334/86.

17-B. That during the pendency of the said writ petition, U.P. Act No. 13 of 1972 was amended by U.P. Act No. 5 of 1995 by virtue of which premises having rent of Rs. (More than) Rs. 2,000/- P.M. were exempted from the operation of the

said Act.

17-C. That the defendants filed counter affidavit in the said writ petition No. 6334/86 and contended that the rent of premises being Rs. 23,125/- plus Rs. 5,000/- i.e. Rs. 28,125 plus Rs. 2,390.95 water tax and Rs. 2,890/- house tax total being Rs. 33,405.95 which was more than Rs. 24,000/- P.A. as such the writ petition was not legally maintainable.

17-D. That the Hon"ble High Court upheld the contention of the defendants and dismissed the writ petition as infructuous since the rent of the premises was more than Rs. 2,000/- P.A. vide judgment dated 02-10- 1999.

17-E. That as such U.P. Act No. 13 of 1972 is not applicable to the premises and any contention of the defendants to the contrary would be barred on the principles of resjudicata and the year estopped from contending the same on account of pleadings set up by them in the said writ petition resulting the dismissal of the said writ petition.

15. Connected with the aforesaid, was another issue relating to the fixation of the Standard Rent at the rate of Rs. 23,125/- per annum, which found a reflection, also through an amendment brought about in the Plaint, by introduction of Para 14A, which reads thus:

14-A. That the case u/s 8 of the U.P. Act No. 13 of 1972 has been finally decided by the Hon"ble High Court vide order dated 29-11-1978 holding the standard rent of the premises to be at Rs. 23,125/- per annum. And so the plaintiffs are entitled to recover at such rate.

16. The defendants filed Additional Written Statement in answer to the amended Plaint and, whereas they dealt with Para 14A, they omitted to deal with the aforesaid Paras 17A, 17B, 17C, 17D & 17E. Insofar as Para 14A is concerned, the reply was as evasive as it possibly could be. The reply to Para 14A is reproduced hereunder, which reads thus:

That the allegations made in Para 14A of the Plaint as alleged are wrong and are denied. The order u/s 8 of the Act is void and is not enforceable.

17. The aforesaid plea was taken despite the fact that the order fixing the Standard Rent had assumed finality through the judgments passed by the District Judge as well as the High Court.

18. The filing of Case No. 41 of 1974 was preceded by service of composite notice in terms of Section 106 of The Transfer of Property Act, 1882 on 14.08.1973. Averment to the effect that Notice dated 14.08.1973 was issued through the Counsel of the plaintiffs is contained in Para 19 of the Plaint. Similarly, the averment to the effect that this Notice was served upon the defendants on 17.08.1973 is contained in Para 20 of the Plaint. These two Paras have already been taken note of in the earlier part of this Judgment. Since a lot has been said about this Notice, it is worthwhile to take a look at its text which

reads thus:

1. That my above clients are owner- landlords of Grand Central Hotel, Mussorie including its annexies known as Phoenix Lodge, Laurel Bank, Powey's Cottage, Delight Cottage and, Delight house etc. the said Hotel is presently known as Hakman's Grand Hotel and its Annexies etc. situated at Mall Road, Mussoorie, and you are tenant, month to month of the said premises alongwith furniture, crockery and cutlery etc.

2. That the rent of the said premises was at the rate of Rs. 13,500/- per year plus Rs. 5,000/- per annum hire charges of furniture etc. but after the enforcement of the U.P. Act XIII of 1972 the rent of the premises under your tenancy has become at the rate of Rs. 29,062.50 per year with effect from 15-07-1972 in addition to Rs. 5,000/- per annum as hire charges of furniture etc.

3. That you failed to pay the share of 1/32 to Sri Irtiza Hussain since the date on which he purchased the said share from Smt. Yaqoob Ali Rizvi and beside the above you have also failed to pay any rent since 01-01- 1972 in spite of notice of demand.

4. That you are hereby called upon to pay the entire arrears of rent within a month from the date of the service of this notice failing which you will be treated as defaulter.

5. That you had illegally sublet the portions of the premises under your tenancy to different persons namely Powey's cottage to Rani Saheba, Laurel Bank to Indian Airlines, Phoenix Lodge to Mussoorie Cooperative Club, Cinema Hall to one Mr. Jugal Kishore and so on.

6. That now you have sublet the entire premises under your tenancy to Mr. N.S. Hoon.

7. That our clients in view of the above circumstances do not want to keep you as their tenant any more.

8. That you are a month to month tenant but if your tenancy be treated to be yearly tenancy, you are liable for ejectment on 6 months" notice.

9. That notice is hereby given and your tenancy in respect of the premises under your tenancy is hereby determined to take effect on expiry of 6 (six) months time from the date of service of this notice and you are hereby called upon to vacate the premises under your tenancy on the expiry of six months" time from the receipt of this notice.

19. It is in the aforesaid background that, based upon the pleadings of the parties, the following 29 issues were framed by the learned Trial Court for trial:

1. Whether the plaintiffs had served a valid notice of ejectment and demand as alleged in the plaint and whether the defendants have been served with it? If so, whether the tenancy of defendant Nos. 1 and 2 has been terminated as alleged

in the plaint?

2. Whether the suit is not maintainable as alleged in paras 27 and 55 of the written statement?
3. Whether the provisions of U.P. Act No. 13 of 1972 are not applicable to the suit? If so, its effect?
4. Whether the defendants are entitled to the benefit of Section 20(4) as alleged in para 33 of the written statement?
5. Whether the defendant No. 1 and 2 have sublet the premises in suit to defendant No. 3 without the permission of the landlord as alleged in para 15 of the plaint, if so, its effects?
6. Whether defendant Nos. 1 and 2 have committed default in the payment of rent within meaning of Section 20 of the Act No. 13 of 1972? If so, its effect?
7. Whether the suit is liable to be stayed u/s 10 or 151 C.P.C. as alleged in para 26 of the written statement?
8. Whether a sum of Rs. 5,000/- is payable by defendant Nos. 1 and 2 on account of rent of furniture, is not part of the rent payable for which the premises in dispute? If so, its effect?
9. Whether the defendants are liable to payment for crockery, cutlery, and furniture, etc. ? if so its effect?
10. Whether the plaintiffs are not entitled to recover the rent @ Rs. 23,125/- per annum for reasons stated in para 45 of the written statement? If so, are defendants entitled to proportionate rent? If so at what rate?
11. Whether the rent is in suspension as alleged in para 46 of the written statement?
12. Whether the defendants are entitled to the adjustment of Rs. 50,000/- as claimed in para 49 of the written statement?
13. Whether the claim for adjustment of Rs. 50,000/- may be made by the defendants without payment of court fees?
14. Whether the court has no jurisdiction to try this suit?
15. To what relief, if any are the plaintiffs entitled?
16. Whether the defendants surrendered any portion of the premises and whether the plaintiffs illegally occupied any portion of the disputed premises? If so, are the defendants entitled to deduction of rent on that account? If so, the extent of amount to be adjusted as claimed?,
17. Whether defendants spent Rs. 18,815.98 on behalf of the plaintiffs in contesting municipal appeals? If so, are the defendants entitled to its

adjustment? Extent?

18. Whether the defendants are entitled to any adjustment on account of messing by the plaintiffs with the defendants? If so, its extent?

19. Whether the suit for enhanced amount of rent is barred by time as alleged?

20. Whether defendants entitled to claim adjustment without payment of court fee on the amount claimed to be adjusted?

21. Whether court fee paid is insufficient and suit is undervalued as claimed?

22. Whether the plaintiff No. 1 and 3 and plaintiff No. 2 are landlords of the property in suit?

23. Whether Smt. Sarvari Khatoon wife of Sri Sultan Mohd. migrated to Pakistan in the year 1942-46 and did not return to India?

24. Whether the alleged sale deed dated 16-06- 1982 is illegal and executed for a fictitious person and not by the real Smt. Sarvari Khatoon and confers no right and title on plaintiff Nos. 1 and 3?

25. Whether the defendants had incurred heavy expenditure in regular wear and tear of the property in dispute for reasons stated in para 6 of the Additional Written Statement? If so, whether they are entitled to any adjustment in rent?

26. Whether the sale deeds executed by Razia Unnisa Begum in favour of the plaintiff No. 1 in the year 1997 is forged and fictitious? If so, its effect?

27. Whether the oral gift made by Smt. Zahida Khatoon in favour of the plaintiff No. 1 is illegal and void for the reasons stated in para 18 of the Additional written statement?

28. Whether the defendants are not liable to pay any rent or mesne profits as the leased property is in possession of other persons?

29. Whether the plaintiff Nos. 1 to 3 have sold the property to Mr. Ramesh Chand Gupta and suit on this ground is not maintainable?

20. Findings of the Trial Court with respect to the aforesaid issues, as duly returned based upon the appreciation of evidence and the applicability of the facts and law on the subject, are being summarized by me as herein below:

Issue No. 1: Decided in favour of the plaintiffs. Held that Notice, valid in all respects, has been duly served upon the defendants / tenants and the tenancy of the defendants has accordingly been terminated validly.

Issues Nos. 2 & 14: Both decided together in favour of the plaintiffs holding that the Court has the jurisdiction and the Suit, in the present form, was maintainable.

Issue No. 3: Provisions of Act No. 13 of 1972 were applicable to the property in question as on the date of the filing of the Suit, but these were held not

applicable as after the amendment to Section 2 of the Act, in the light of the judgment of Allahabad High Court passed on 29th October, 1999.

Issue No. 4: The Trial Court held that because of its finding on Issue No. 3, there was no question of Section 20(4) of Act No. 13 of 1972 being invoked because this Act was not applicable to the premises in question, but even on facts, assuming that Section 20(4) of Act No. 13 of 1972 could be invoked, the defendants had not deposited the entire amount of arrears of rent along with 9% interest thereupon and the costs of the Suit and, therefore, no benefit could be derived by them from the aforesaid provision of law.

Issue No. 5: Decided against the plaintiffs.

Issue No. 6: Decided in favour of the plaintiffs by holding that the defendants had committed defaults in the payment of arrears of rent.

Issue No. 7: Issue had become redundant.

Issue No. 8: Decided in favour of the plaintiffs by holding that the defendants were liable to pay at the rate of Rs. 5,000/- per annum on account of rent of the furniture etc.

Issue No. 9: Decided against the plaintiffs by holding that the defendants were not liable to make any extra payment for crockery and cutlery.

Issues Nos. 10 & 11: Decided in favour of the plaintiffs. Held that the plaintiffs never forcibly dispossessed the defendants from any portion of the tenanted premise. Defendants voluntarily surrendered items 12 to 16 of the property and, therefore, the question of deduction of any rent or apportionment of the same never arose.

Issue No. 12: Decided in favour of the plaintiffs.

Issue No. 13: Had already been decided on 06.08.1976.

Issues Nos. 16, 17, 18 & 20: Decided against the defendants.

Issue No. 19: Decided against the defendants.

Issue No. 21: Had been decided earlier (on 16.03.1982) in favour of the plaintiffs holding that the Suit had been correctly valued and sufficient court fee had been paid on the valuation of the Suit.

Issue No. 22: Decided in favour of the plaintiffs holding that plaintiffs 1, 2 & 3 were the landlords of the Suit property.

Issues Nos. 23, 24, 26 & 27: The Trial Court held that it was not necessary for it to adjudicate upon these Issues because these Issues were not necessary for any just or proper decision of the present case for the simple reason that the existence of the relationship of landlord and tenant between the parties stood admitted by the defendants.

Issues Nos. 25, 28 & 29: Decided in favour of the plaintiffs and against the defendants.

21. Based upon the aforesaid findings on the Issues by the learned Trial Court, the Suit of the plaintiffs / respondents was decreed against the defendants with costs. A Decree for ejectment, arrears of rent, restoration of the items of furniture, crockery & cutlery was passed against the defendants / petitioners and in favour of the plaintiffs / respondents with mesne profits. The defendants in the impugned Decree have been directed by the Trial Court to handover the peaceful possession of the property in question within 30 days of the passing of the Decree along with the items of furniture, crockery and cutlery etc. The Trial Court also, in the impugned Decree, directed the defendants to pay Rs. 49,112/- as arrears of rent along with pendentelite and future mesne profits at the rate of Rs. 2838/- per month till the date of actual delivery of possession. The amount already paid by the defendants to the plaintiffs or deposited in the Court during the pendency of the Suit was made adjustable towards the decretal amount.

22. Aggrieved against the aforesaid Decree, the petitioners have preferred these two Revision Petitions.

23. Mr. Sharad Sharma, learned Senior Counsel appearing for the petitioners has assailed the impugned Judgment on the following grounds:

(i) Act No. 13 of 1972 was applicable to the property in question. According to Mr. Sharma, the Judgment dated 29th October, 1999 passed by Allahabad High Court was not applicable or binding upon the petitioners because the concession / statement made by the defendants in the counter affidavit filed in Writ Petition No. 6334 of 1986 in Allahabad High Court was not based on facts.

(ii) The petitioners had not committed defaults in the payment of arrears of rent.

(iii) The Composite Notice sent u/s 106 of The Transfer of Property Act, 1882 had not been validly served upon the defendants nor was this Notice in accordance with law.

(iv) The court of District Judge, Dehradun, as a court of small causes under law, had no jurisdiction to receive, entertain and decide the Suit and, therefore, the Decree impugned was non est in the eyes of law, the same having been passed by an incompetent court inherently lacking the jurisdiction to pass the Decree.

24. No other point was urged. Even though in the Revision Petitions various grounds were taken, in the course of hearing of the petitions, Mr. Sharma confined his challenges to the impugned Decree only on the aforesaid grounds.

25. Whether Act No. 13 of 1972 was applicable to the property in question has to be judged and decided solely on the consideration of the rent of the property being more than Rs. 2,000/- per month. As noticed, Clause (g) of Sub-section (1) of Section 2 of 1972 Act clearly lays down that nothing in the Act shall apply to a building whose monthly rent exceeds Rs. 2,000/-. In Writ Petition No. 6334

of 1986 filed in Allahabad High Court by the plaintiffs / landlords / respondents herein against the Judgment dated 05.12.1985 passed by the District Judge upsetting the order / judgment dated 28.10.1976 passed by the Prescribed Authority allowing the landlords' Application u/s 21(1)(a) of 1972 Act, the landlords even while were on challenge to the aforesaid Judgment of District Judge, the challenge proceeding on the sole premise that 1972 Act was applicable to the building in question, in Paras 28 to 36 of the counter affidavit filed by the petitioners herein in answer to the aforesaid Writ Petition No. 6334 of 1986 had clearly taken an unambiguous and categorical stand that the annual rent of the property was Rs. 23,125/- per annum which was exclusive of Rs. 5,000/- being the hire charges of furniture, crockery, cutlery etc. This statement is contained in Para 31 of the counter affidavit which was, in turn, based on the order passed by the Rent Controller on 08.11.1974 fixing and determining the standard rent at the aforesaid rate of Rs. 23,125/- per annum. In Para 32 of the counter affidavit, the aforesaid categorical factual assertion was repeated with reference to the decision of the Writ Petition by the High Court upholding the fixation of standard rent (at the rate of Rs. 23,125/- per annum) both by the Prescribed Authority as well as the District Judge. In Para 34 of the counter affidavit, the petitioners herein once again made a categorical factual assertion that the annual rent of the property in question was Rs. 28,405.95 per annum, which came to more than Rs. 2,000/- per month. This amount of Rs. 28,405.95, as per the statement made in Para 34 of the counter affidavit, was arrived at by adding the Water Tax of Rs. 2390.95 per annum and House Tax of Rs. 2890.00 per annum. The breakup of the amount of Rs. 28,405.95, therefore, is as under:

Annual Rent : Rs. 23,125/-

Water Tax : Rs. 2,390.95

House Tax : Rs. 2,890/- ----- TOTAL : Rs. 28,405.95

This liability of including Water Tax and House Tax to the annual rent was linked and arrived at by the petitioners in Para 33 of the aforesaid counter affidavit based upon Section 7 of Act No. 13 of 1972, which clearly stipulated that every tenant shall be liable to pay to the landlord, in addition to and as part of the rent, the water tax and the house tax.

26. It was based on the aforesaid factual assertion that Allahabad High Court, vide its Judgment dated 29.10.1999, dismissed Writ Petition No. 6334 of 1986 as having become infructuous only on the basis of the fact that by virtue of the amendment brought about in 1972 Act [by introduction of Clause (g) in Sub-section (1) of Section 2 thereof] and the fact that the monthly rent of the building was more than Rs. 2,000/-, the Act was not applicable to the property in question.

27. Apart from the aforesaid figure of Rs. 28,405.95/- per annum being the annual rent as admitted and asserted by the petitioners themselves in the counter affidavit filed in Allahabad High Court, the amount of Rs. 5,000/- per

annum as the hire charges for furniture and fixtures etc. has also to be included in the annual rent of the property in question. This is based upon a very tangible legal aspect. Section 3(i) of Act No. 13 of 1972 defines the word "Building" as under:

(i) "building", means a residential or non- residential roofed structure and includes -

(i) any land (including any garden), garages and out-houses, appurtenant to such building;

(ii) and furniture supplied by the landlord for use in such building;

(iii) any fittings and fixtures affixed to such building for the more beneficial enjoyment thereof.

28. With reference to the aforesaid definition, it clearly turns out and emerges that a building would include, apart from the land upon which it situate, any furniture supplied by the landlord for use in such building and any fittings and fixtures affixed to such building for the more beneficial enjoyment thereof.

29. Because of the aforesaid definition of the word "Building" occurring in Section 3(i) of 1972 Act, it also transpires that the hire charges of the furniture, fittings and fixtures would be a part of the rent payable by the tenant to the landlord. Even if, therefore, one goes by the admission of the tenant in the aforesaid counter affidavit calculating the annual rent at Rs. 28,405.95, if one includes hire charges of Rs. 5,000/- per annum, the annual rent would escalate to Rs. 33,405.95/-. Either way, looking from any angle, the annual rent is more than Rs. 24,000/- per annum, in other words more than Rs. 2,000/- per month.

30. It is too late in the day now for the petitioners / tenants to assail the Judgment dated 29.10.1999 passed by Allahabad High Court or to wriggle out of the same or the factual assertion made in the counter affidavit filed in that Writ Petition. Allahabad High Court Judgment, being inter-party, is binding upon the petitioners.

31. In the case of State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others, , their Lordships of the Supreme Court held as under:

14. Before proceeding with these arguments in detail, we can dispose of second contention very shortly. This argument proceeds on a fundamental misconception, as it seeks to equate an incorrect decision with a decision rendered without jurisdiction. A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review, which the law provides. The learned Judges of the High Court who rendered the decision on 04-04-1952 had ample jurisdiction to decide the case and the fact that their decision was on the merits erroneous as seen from the later judgement of this Court, does not render it any the less final and binding between the parties

before the Court. There is, thus, no substance in this contention. The decision of the High Court dated 04-04-1952 bound the parties and its legal effect remained the same whether the reasons for the decision be sound or not.

32. The aforesaid ratio clearly lays down that a wrong decision by a Court having jurisdiction is as much binding between the parties as a right one and can be superceded only by appeals to higher tribunals or taking recourse to other procedures like review etc.

33. To the same effect is the ratio in Para (4) of the Judgment in the case of Gorie Gouri Naidu (Minor) and another Vs. Thandrothu Bodemma and others, , which reads thus:

4. It however appears to us that previously between the parties another suit was instituted in the Court of the learned Subordinate Judge Srikakulam being original suit No. 50 of 1954. In the said suit, the validity of the deed of gifts made by Sowamma was questioned. It was held by the learned Subordinate Judge that the said deeds of gifts were not valid under the Hindu Law. The appeal was taken to the Andhra Pradesh High Court being appeal No. 514 of 1968 and by judgment dated 12-02- 1971, the High Court disposed of the said appeal No. 514 of 1968 wherein the High Court held that such deed of gift was invalid in law. By the impugned judgments, the Division Bench of the Andhra Pradesh High Court has held that in view of such declaration of the said deed of gifts as invalid, no claim of title on the basis of the said deed of gift or family settlement can be made. In our view, such decision of the Division Bench is justified since the said earlier decision in declaring the deeds of gift as invalid, is binding between the parties. There is no occasion to consider the principle of estoppel since considered by the learned Single Judge in the facts and circumstances of the case for holding the said transfers as valid, in view of the earlier adjudication on the validity of the said deeds in the previous suit between the parties. The law is well settled that even if erroneous, an inter party judgment binds the party if the Court of competent jurisdiction has decided the lis. We, therefore, find no reason to interfere with the impugned decision of the High Court. This appeal therefore fails and is dismissed without any order as to costs.

34. Even if the petitioners had any right about the non-applicability of 1972 Act to the property in question based on a particular rate of rent (assuming it to be less than Rs. 2,000/- per month), they waived this right by making factual assertions in the aforesaid Paras 28 to 36 of the counter affidavit filed in Allahabad High Court. In K. Vilasini and Ors. v. Edwin Piera and Ors. reported in 2009(1) ARC 282, it has clearly been held that by now it is a settled principle of law that a legal right can always be waived by a party in judicial proceedings. Para (12) of this Judgment, which lays down the aforesaid principle of law, is reproduced hereunder, which reads thus:

12. We have noticed hereinbefore that apart from other mortgagors who are not

the appellants, appellant No. 1 herself had filed an application for withdrawal of the amount. Even possession has been delivered in favour of the respondents. The right to redeem a mortgagee thus having been enforced, in our opinion, it is not a fit case where the impugned order should be interfered with. It is now, a well settled principle of law that even a legal right can be waived. It is also well settled that nobody can approbate and reprobate at the same time (See Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others, .).

35. It is, in the aforesaid background, that the plaintiffs / landlords / respondents herein, as noticed, had carried out the desired, requisite amendments in the Plaint by introducing new paras so as to establish that the rent per month was more than Rs. 2,000/- as far as the property in question is concerned. Paras 17A, 17B, 17C, 17D & 17E of the amended Plaint have already been noticed in the earlier part of this Judgment. As already noticed, in the amended Written Statement filed by the defendants / petitioners, the averments in the aforesaid Paras of the amended Plaint were not denied or repudiated.

36. Now I come to the question whether the petitioners had committed defaults in the payment of arrears of rent or not. It must be clearly observed at the outset that even if the issue relating to defaults is decided against the plaintiffs / respondents, the Decree would still be upheld because Act No. 13 of 1972 has been held, both by the Trial Court as well as this Court, as not being applicable to the property in question. The default issue, therefore, more or less is of academic importance. But since the finding on this issue has been returned by the Trial Court in favour of the plaintiffs and since such finding has been assailed / challenged in these petitions, it will be worthwhile for this Court to deal with this aspect of the case.

37. Section 20(2)(a) of 1972 Act lays down that a suit for eviction of a tenant from a building, after the determination of his tenancy, may be instituted on the ground that the tenant is in arrears of rent for not less than 4 months and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand. At the risk of reiteration, it has to be noticed that this ground of eviction is in co-existence with the applicability of 1972 Act to the property in question. It will be worthwhile to reproduce herein below finding on Issue No. 6 returned by the learned Trial Court relating to the fact as to whether the petitioners had committed defaults in the payment of the arrears of rent. The entire finding on Issue No. 6, with reasoned discussion thereupon, is reproduced hereunder, which reads thus:

Issue No. 6 - Issue No. 6 was framed whether the defendant Nos. 1 and 2 have committed default in payment of the rent within the meaning of Section 20 of the Act 13 of 1972 and if so, its effect? As per the Plaint allegations, the defendants have not paid the arrears of rent inspite of notice of demand and therefore they have committed default in payment of the rent in terms of Section 20 of Act 13 of 1972 and it has been claimed that they are liable to be ejected. This has been opposed by the defendants stating that they have not committed any default of

any kind. It is pointed out that no amount of the rent was mentioned in the notice Paper No. 6C. Secondly, reference was made to the statement of DW6 at Page 23 stating that after notice, he tried to pay the rent to Mrs. Zahida Khatoon, who refused to accept the same and, therefore, there was no default in payment of the rent. Perusal of the notice Paper No. 6C reveals that the specific date from which the rent was not paid along with the rate of rent was mentioned therein. Therefore, if no specific amount was calculated and mentioned in the notice, it shall not be of any legal consequences and if the rent on calculation as per the date and rate of rent given in the notice, is found due, the defendants cannot take any benefit of this omission of non-mentioning the exact amount in the notice. Even if it is assumed that on receipt of the notice, DW6 tried to render the rent to Mrs. Zahida Khatoon, he was under a duty to send it by money order or to deposit the same in the court under the provision of Section 30 of the Act, but he did not do so. As per the finding recorded on issue No. 4, it has been found that the entire arrears of rent due was not deposited by the defendants on the first date of hearing. Therefore, it cannot be said that they have not committed default in payment of the rent. Admittedly, rent calculated @ Rs. 13,500/- per annum was deposited by the tenants that too short by Rs. 3,309/- (defendant Nos. 1 and 2), which was not at all adequate in view of the admitted rent @ Rs. 18,500/- per annum. Therefore, by not making the payment of rent @ Rs. 18,500/- per annum, it can safely be assumed that they have committed default in payment of the rent. Perusal of the file reveals that the defendants have made payment of part of rent to Mrs. Zahida Khatoon vide Paper No. 55C for the year 1970. Part of rent was paid vide Paper Nos. 57C and 59C to Smt. Zahida Khatoon for the year 1971. Again part of the rent was paid to Smt. Raziunnisa Begum vide Paper Nos. 65C and 66C for the year 1967. After Smt. Raziunnisa Begum executed the sale deed in favour of Sh. Irtiza Hussain, no rent was paid to him for the share of Smt. Raziunnisa Begum. DW6 Sh. Hira Lal at Pages 23 and 24 of his statement has admitted that the plaintiffs demanded the rent at enhanced rate, whereas he offered to pay the same on old rate. At Page 33 of his statement, he has again stated that he does not remember whether he had offered any rent to Smt. Zahida Khatoon. It is cardinal principle of law that the onus to prove payment of rent is upon the tenant. The payment of rent as alleged has not been proved. After the notice of demand was issued, the rent was not paid to the plaintiffs. If in any event Smt. Zahida Khatoon has refused to accept the rent, the same could be sent by draft or money order in the same way as was being done previously. Therefore, it is a clear case where the defendants have committed default in payment of the rent within the meaning of Section 20 of the Act. As per the finding on issue No. 4, they are also not entitled to benefit under the provision of Section 20(4) of the Act. Issue No. 6 is decided accordingly by holding that defendant Nos. 1 and 2 have committed default in payment of rent.

38. I have seen the record of the case and find myself in complete agreement with the aforesaid finding returned by the learned Trial Court, particularly the

fact that the admitted rent at the time of issuance of the notice was Rs. 18,500/- per annum and the clear finding, based on correct appreciation of the evidence by the Trial Court, that the petitioners did not pay this amount for the period mentioned in the notice to the respondents / landlords.

39. Apart from the aforesaid, it is also to be noted that after receiving the notice of demand, whatever rent was payable as per the calculation of the defendants, they could have deposited that or paid to the plaintiffs. Whether the rent was Rs. 18,500/- per annum or it was at a lesser amount, the defendants could have tendered the lesser amount also, but they did not do so. In the case of Padmakar v. Madhukar reported in 1995(2) ARC 570 and in the case of Gokaran Singh v. Ist Additional District & Sessions Judge, Hardoi and Ors. reported in 2000(1) ARC 653, it has been clearly held that the liability to pay rent, even if at a lesser amount, squarely rests with the defendants after the receipt of the notice of demand.

40. In the first case (Padmakar v. Madhukar), their Lordships of the Supreme Court have clearly noted and observed that the respondents had sought to evict the appellant / tenant on the ground that he had defaulted in the payment of rent at the rate of Rs. 75 per month. In defence, the appellant / tenant had contended that the agreed rent was Rs. 35 per month. It was also argued in the Supreme Court that so long as the application for fixation of fair rent is pending and unless and until the same is finally disposed of, there was no obligation on the part of the tenant to pay the demanded rent at the rate of Rs. 75 per month. Supreme Court disagreed with this contention and clearly held that even if the tenant did not agree on the rent at the rate of Rs. 75 per month, he was bound to pay the rent at the rate of Rs. 35 per month which was the rate of rent put forth in his contention in the Court.

41. In the second case (Gokaran Singh v. Ist Additional District & Sessions Judge, Hardoi and Ors. etc. etc.), in para 37 of the Judgment, a Full Bench of Allahabad High Court has clearly held that the tenant is not absolved from his duty to pay rent and comply with the demand contained in the Notice even though the Notice may state the amount of rent at the rate higher than the correct rate or the agreed rent.

42. Coupled with the finding on Issue No. 6 is also the finding on Issue No. 4 with reference to the petitioners availing the benefit of Section 20(4) of 1972 Act. Even though Mr. Sharma did not touch upon this aspect of the matter at all, I cannot help but noticing that the learned Trial Court has rightly decided Issue No. 4 by holding that with reference to the rate of rent between the parties and the amount deposited by the petitioners / defendants as well as 9% interest thereupon and the costs of the Suit, the petitioners could not avail of the benefit u/s 20(4) of 1972 Act. The learned Trial Court has decided this issue with reference to the admitted fact that at the time the Composite Notice was issued, the admitted rate of rent per annum was Rs. 18,500/- (Rs. 13,500/- + Rs. 5,000/- being hire charges of furniture etc.) and both these items were

inseparable. Calculating the rent at this rate along with 9% interest thereon and cost of the Suit, the amount of arrears came to Rs. 64,637/-. The breakup of this amount is as under:

_____	1. Rent from 01.01.1972 to 30.08.1974 @ Rs. Rs. 49,333.00 18,500/- per annum.	_____
_____	2. Rent towards 1/32th share of Rs. 18,500/- i.e. Rs. 2,312.50 @ Rs. 578.12/- (share of Raziunnisa Begum purchased by Irtiza Hussain vide sale deed Paper No. 67C in the year 1967) from 01.01.1968 to 31.12.1971.	_____
_____	3. Interest @ 9% per annum on item No. 1 Rs. 6,103.67	_____
_____	4. Interest @ 9% per annum on item No. 2 Rs. 423.36	_____
_____	5. Cost of the suit that time (only court fee) Rs. 4,465.00	_____
_____	6. Counsel fee (half) (approximately) Rs. 2,000.00	_____
_____	Total Rs. 64,637.00	_____

43. Basing the aforesaid admitted calculation of the arrears of rent, the learned Trial Court proceeded to hold that as against Rs. 64,637/-, the petitioners have deposited Rs. 45,600/-, thereby committing the shortfall of Rs. 19,037/-. This was not a small, minor shortfall. The Trial Court went a step further by holding that even if the amount of hire charges (Rs. 5,000/- per annum) is excluded from rent, and if the rent is calculated at the rate of Rs. 13,500/- per annum, the arrears along with 9% interest and costs of the Suit would work out to Rs. 48,909/- and not Rs. 45,600/-, the amount actually deposited by the petitioners. There would still be a shortfall. Under no circumstance, therefore, were the petitioners entitled to any protection u/s 20(4) of Act No. 13 of 1972.

44. Coming to the issue relating to any so called invalidity or a legal defect in the Notice sent u/s 106 of The Transfer of Property Act, 1882, the unambiguous language employed in the Notice leaves no one in any manner of doubt that in the said Composite Notice, demand for payment of rent was made and the tenancy was validly terminated. The text of the Notice has been reproduced by me in Para 18 of this Judgment. Para 2 of this Notice clearly mentions about the rent initially being at the rate of Rs. 13,500/- per year plus Rs. 5,000/- per year as hire charges, but it having increased at the rate of Rs. 29,062.50 per year with effect from 15th July, 1972 by virtue of the enforcement of Act No. 13 of 1972 and Rs. 5,000/- per annum as hire charges. In Para 3 of the Notice, there is a clear statement of fact that the rent was not paid since 1st January, 1972 despite the demand. In Para 8, read with para 9, of the Notice, it has clearly been stated that despite the tenancy being month to month, even if it is treated as year to year, six months" notice was being given for termination of tenancy

and for vacation of the premises in question.

45. Paras 19 & 20 of the Plaint clearly make a specific averment about the Notice having been sent on 14.08.1973 and it having been served upon the respondents / tenants on 17.08.1973. Paras 19 & 20 of the Plaint are reproduced herein below, which read thus:

19. That on 14-08-1973 the plaintiffs through their counsel sent a composite notice of demand and termination of tenancy under registered cover as required u/s 106 of the Transfer of Property Act, 1882. The plaintiffs were entitled to send one month's notice for termination of tenancy but by way of abundant caution the plaintiffs sent six months' notice.

20. That the notice referred to above was served upon the defendants 1 (since deceased) and 2 on 17-08-1973, but they neither vacated the premises nor paid any amount.

46. Paras 19 & 20 of the Written Statement with reference to the aforesaid Paras 19 & 20 of the Plaint may be noted. These read as under:

19. That the allegations made in Para 19 of the Plaint are wrong and denied.

20. That the allegations made in Para 20 of the Plaint are wrong and denied.

47. Rules 3, 4 & 5 of Order VIII C.P.C., insofar as these relate to the averments required to be contained in Written Statement, read thus:

(3) Denial to be specific. - It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

(4) Evasive denial. - Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

(5) Specific Denial. - (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the court may, in its discretion, require

any such fact to be proved.

(3) In exercising its discretion under the proviso to Sub-rule (1) or under Sub-rule (2), the court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.

48. Applying the established principle of law with respect to and arising out of the aforesaid three Rules, it can be safely said that the averments contained in Paras 19 & 20 of the Plaint have not at all been dealt with by the defendants in the Written Statement and the replies, being evasive, vague as well as non-committal and in total disregard to the binding statutory provisions contained in Rules 3, 4 & 5 (supra), have to be treated as admissions of the facts averred in Paras 19 & 20 of the Plaint. This is apart from the fact that the learned Trial Court has clearly returned a finding of fact that Notice was served upon the defendants.

49. Apart from the aforesaid, it has to be clearly observed that a mere ipse dixit of the petitioners either in the Trial Court or in this Court about any invalidity or defect with respect to the Notice will be of no useful purpose to the petitioners unless a particular defect is pointed out in the Notice. How and in what manner was the Notice illegal or defective has not only to be specifically pleaded, but established beyond any shadow of doubt. Any illegality in the Notice, apart from specifically been averred and pleaded in the Written Statement, has to be established and proved with reference to material facts as well as material particulars. In the case of Jagdish Prasad v. the IVth Additional District Judge, Etah and Ors. reported in ARC 1984 26, it has been held as under:

4. Having heard counsel for the parties I am of opinion that there is substance in this submission. A copy of the plaint has been filed as Annexure-1 to the writ petition and that of the written statement of the tenant-respondents as Annexure-2 thereof. In paragraph

5 of the plaint it was specifically asserted that a 30 days notice terminating the tenancy of the tenant-respondents u/s 106 of the Transfer of Property Act was served on them. The reply to paragraph 5 of the plaint in the written statement was that the receipt of the notice was admitted and so was admitted giving reply to that notice. No where in the written statement any averment has been brought to my notice specifically denying this fact that the notice which was served on the tenant-respondents was a 30 days notice. A general allegation in paragraph 6 of the written statement was no doubt made that the notice which had been given by the petitioner was invalid and illegal. What was the invalidity or the illegality in the notice was not pleaded. It is true that neither the tenant-respondents filed the original notice which was admittedly served on them nor did the petitioner file a copy thereof or summon the original notice from the

tenant-respondents, but in my opinion this was of no consequence on the facts of the instant case. Rule IV of Order XII, CPC inter alia provides that where a defendant denies allegation of fact in the plaint he must not do so evasively but answer the point of substance. While dealing with the provisions of Rule v. of Order VIII, C.P.C. a Division Bench of this Court in *Misri Lal v. Bhagwati Prasad* 1955 ALJ 741, held that if the allegations of fact made in the plaint have not been specifically denied, they should be deemed to have been admitted. As seen above, the specific assertion in paragraph 5 of the plaint that the notice u/s 106 of the Transfer of Property Act served on the tenant- respondents was a 30 days notice has nowhere been specifically denied in the written statement. The general allegation in paragraph 6 of the plaint mentioned above was in this view of the matter hardly of any consequence. Section 106 of the transfer of Property Act as amended by the State of Uttar Pradesh by U.P. Act 24 of 1954 provides that a lease of immovable property for any purpose other than for agricultural or manufacturing purposes shall be terminable by 30 days notice on the part of either the lessor or the lessee and that every notice under the said section must be in writing signed by or on behalf of the person giving it and tendered to the tenant in the manner specified therein. The notice u/s 106 in the instant case was admittedly in writing and had been given by the petitioner and was a 30 days notice as asserted in paragraph 5 of the plaint which assertion, as already seen above, was not denied in written statement. In this view of the matter it was clear that the petitioner had succeeded in establishing that a notice as required by Section 106 of the Transfer of Property Act had been served on the tenant-respondents. If it was the case of the tenant-respondents that the said notice was in any way illegal or invalid it was for them to plead and prove the nature of the illegality or invalidity. This, as held by the Judge, Small Causes, they failed to do.

50. I have, therefore, no hesitation in holding that the finding of the learned Trial Court that the Notice was duly served upon the defendants and that it did not suffer from any invalidity or defect is based on sound reasoning and proper appreciation of material on record and correct application of law on the subject. This finding is affirmed.

51. Coming to the last contention raised by Mr. Sharad Sharma about the court of District Judge, Dehradun not having jurisdiction to entertain, decide or dispose of the Suit, two important provisions of law have to be taken note of. Section 15 of The Provincial Small Cause Courts Act, 1887 (as amended by U.P. Amendments) is a provision which relates to the assumption of jurisdiction and taking cognizance of suits by courts of small causes. Section 15 of the aforesaid 1887 Act reads thus:

15. Cognizance of suits by Courts of Small Causes. (1) A Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as suits expected from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that Schedule and to the provisions of

any enactment for the time being in force all suits of a civil nature of which the value does not exceed five thousand rupees shall be cognizable by a Court of Small Causes:

Provided that in relation to suits by the lessor for the eviction of a lessee from a building after the determination of his lease or for recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease, or of compensation for use and occupation thereof after the determination of the lease, the reference in this Sub-section to five thousand rupees shall be construed as a reference to twenty-five thousand rupees.

Explanation:- For the purposes of this Sub-section, the expression "building" has the same meaning as in Article 4 in the Second Schedule.

52. Connected with Section 15 of the aforesaid 1887 Act is Section 25 of The Bengal, Agra and Assam Civil Courts Act, 1887, which by itself also deals with and relates to the jurisdiction to be assumed by a court of small causes under The Provincial Small Cause Courts Act, 1887 for the trial of suits cognizable by such courts. Section 25 of the aforesaid Act (as amended by U.P. Amendments) reads thus:

25(1). The High Court may, by notification in the Official Gazette, confer within such local limits as it thinks fit, upon any Civil Judge or Munsif, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 for the trial of suits cognizable by such Courts upto such value not exceeding five thousand rupees as it thinks fit, and may withdraw any jurisdiction so conferred:

Provided that in relation to suits of the nature referred to in the proviso to Sub-section (2) of Section 15 of the said Act, the reference in this Sub-section to five thousand rupees shall be construed as reference to Twenty five thousand rupees.

(2) The High Court may, by notification in the Official Gazette, confer upon any District Judge or Additional District Judge, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of all suits (irrespective of their value), by the lessor for the eviction of a lessee from a building after the determination of his lease, or for the recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease or of compensation for the use and occupation thereof after such determination of lease, and may withdraw any jurisdiction so conferred.

Explanation. - For the purposes of this Sub-section, the expression "building" has the same meaning as in Article 4 in the Second Schedule to the said Act.

(3) Omitted

(4) Where the jurisdiction of a Judge of a Court of Small Causes is conferred upon any District Judge or Additional District Judge by notification under this section, then, notwithstanding anything contained in Section 15 of the Provincial

Small Cause Courts Act, 1887, all suits referred to in Sub-section (2) shall be cognizable by Court of Small Causes.

53. In the case of Ram Lal Yadav and Anr. v. Kulwant Rai Puri and Ors. reported in 1998(1) ARC 7, it has been held as under:

10. Challenging the judgment of the learned District Judge dated 1.7.1991, the learned Counsel for the applicants submitted that the learned District Judge had no jurisdiction to try the present SCC Suit between lessor and lessee for eviction. This contention cannot be accepted in view of the notification issued by the State Government in exercise of powers u/s 25(3) of Bengal, Agra and Assam Civil Courts Act, 1887. After the notification was published in U.P. Gazette the High Court issued Notification u/s 25(3) of Bengal, Agra and Assam Civil Courts Act, 1887 dated October 25, 1972, published in U.P. Gazette dated 11.11.1972, which is quoted below:

Notification u/s 25(2) of Bengal, Agra and Assam Civil Courts Act, 1887 - October 25, 1972, No. 525 - In exercise of the powers conferred by Sub-section (2) of Section 25, of the Bengal, Agra and Assam Civil Courts Act, 1887 (Act XII of 1887), as amended by the Uttar Pradesh Civil Laws (Amendment) Act, 1972 (U.P. Act No. 37 of 1972), delegated by the State Government under Sub-section (3) of the said Section 25 to the High Court, the High Court pleased to confer upon all the District Judges and Additional District Judges, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Causes Courts Act, 1887 (Act IX of 1887) for the trial of all suits (irrespective of their value) of the nature referred to in the said Sub-section (2).

Published in U.P. Gazette dated 11.11.1972 page 3758.

11. From the perusal of the above notification, it is established that there was no lack of jurisdiction in deciding the present suit by the learned District Judge, Lucknow.

54. In the case of Smt. Chinia Devi and Anr. v. Dayanath Gupta and Ors. reported in 1977(3) ALR 381, it has been held as under:

It is a well accepted rule of construction that several section of an Act should be construed harmoniously. There is no reason to think that Section 15 of the Small Cause Courts Act has any special position and overrides other sections of the Act. If the proviso to Sub-section (3) of Section 15 of Small Causes Courts Act, stood by itself, the pecuniary limit for a suit for eviction of a lessee from a building after determination of his lease as suit of small cause nature would be only Rs. 5000/-. But Sub-section (2) of Section 25 of the Small Cause Courts Act (inserted by U.P. Act No. 37 of 1972) makes an exception by providing that where a District Judge or an Additional District Judge functions as a small causes court, there is no pecuniary limit to try such suits as suits of small cause nature.

....

In view of Sub-section (2) of Section 25 of the Act, the learned Additional District Judge was, in my opinion, right in overruling the preliminary objection of the defendants and holding that he had jurisdiction to try the suit for eviction as a suit of small cause nature though the pecuniary value of the suit exceeded Rs. 5000/-.

55. There is absolutely no manner of doubt that a combined reading of Section 15 of The Provincial Small Cause Courts Act, 1887 and Section 25 of The Bengal, Agra and Assam Civil Courts Act, 1887, as both these provisions are applicable to U.P. (Uttarakhand) by virtue of U.P. State amendments, clearly establishes beyond any doubt that the District Judge was duly notified as a court of small causes for entertaining, receiving, hearing as well as disposing of a small cause suit with unlimited pecuniary jurisdiction. The contention of Mr. Sharad Sharma about the lack of jurisdiction on the part of District Judge, therefore, is without any force and merit and is accordingly rejected.

56. No other point was urged. The learned Trial Court, vide the impugned Judgment, had given 30 days" time to the petitioners to vacate the premises in question. To my suggestion of giving some reasonable time to the petitioners to vacate the premises in question after the passing of this Judgment, there was some opposition. However, considering the fact that the premises in question is a running Hotel, not giving some reasonable time to the petitioners to vacate would be unjust as well as unreasonable and may amount to undue hardship to them. This is despite the fact that, in the peculiar facts and circumstances of this case, one can plead that the tenants / petitioners in this particular case are not entitled to any indulgence or latitude by this Court because of the fact that they have done everything possible to delay this litigation by almost four decades. It was pointed out at the Bar that around 250 interlocutory applications were filed in the course of the litigation and the tenants / petitioners brought the respondents / landlords to the High Court many times over. Ignoring the aforesaid facts and the aforesaid opposition, I direct that the impugned Decree shall not be executed for a period of three months from today subject to the condition that the petitioners / tenants file an Undertaking in the learned Trial Court within two weeks from today to the effect that they shall vacate and handover the vacant possession of the property in question to the respondents / landlords before the expiry of three months and shall also pay the mesne profits at the rate of Rs. 40,000/- per month as directed by this Court vide order dated 29.09.2008. The Undertaking shall also contain all the other usual terms and conditions.

57. The Petitions are dismissed but without any order as to costs.