

(1976) 02 DEL CK 0018
In the Delhi High Court
Case No : S.A.O. No. 148 of 1975

Pritam Lal

APPELLANT

Vs

Anand Kaur

RESPONDENT

Date of Decision : 06-02-1976

Acts Referred:

Citation : AIR 1976 Delhi 256 : (1976) 12 DLT 209 : (1976) 1 ILR Delhi 596 : (1976) RLR 271

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : B.K. Chaudhary, for the Appellant; Janak Singh, for the Respondent

Judgement

This Judgment has been overruled by : Smt. Anand Kaur Vs. Pritam Lal, AIR 1982 SC 777 : (1982) 1 SCALE 2 : (1982) 1 SCC 502 : (1982) 3 SCR 43 : (1982) 14 UJ 152

1. Pritam Lal, appellant, is a tenant of a house owned by the respondent landlady Shrimati Anand Kaur. The agreed rate of rent was Rs. 15/- per month. The tenant did not pay rent from June 1, 1973 to May 31, 1974.

2. On 6-6-1974, the landlady brought an eviction case against the tenant. The sole ground on which the ejectment of the tenant was sought was non-payment of rent. In the ejectment petition it was said that the tenant had committed default once in the past and as a result of which an application for his eviction was filed and the Court made an order u/s 15(1) of the Delhi Rent Control Act (the Act) directing him to deposit rent which he did. The default in the payment of rent from June 1973 to May 1974 was said to be a second default.

3. Before the petition was filed by the landlady on December 14, 1973, she served a notice on the tenant. In the notice she wrote to the tenant as follows:-

Registered A. D.

From Shrimati Anand Kaur,

E-130, Kalkaji Colony, New Delhi-19.

Dated the 14 Dec. 1973.

Shri Pritam Lal,

A-54, Double Storey,

Kalka Ji,

New Delhi-110019

Dear Sir,

Please note that your contractual tenancy in respect of House No. A-54 (Double Storey) Kalka Ji New Delhi-19 had already been terminated where after you are a statutory tenant liable to pay damages for use and occupation at the rate of, Rs. 15/- (Rupees fifteen per month) to me.

That you have not paid the said damages after May, 1973. In case you do not clear the arrears up to date within two months from the date of this notice, I shall be compelled to issue instructions to my legal adviser to file an application for your eviction, which please note. A copy of this notice has been retained for record.

Yours faithfully,

(Anand Kaur)

4. It is not disputed that the tenant received this notice. On receipt of the notice he went to his lawyer. His lawyer sent a reply on May 15, 1974. With the reply a cheque of Rs. 180/- was also sent to the landlady.

5. It appears that before sending the cheque the tenant had remitted Rs. 135/- by money order sometimes in March, 1974, on account of rent from June 1973 to February 1974. This money order was not accepted by the landlady. The tenant then sent another money order of Rs. 150/- on account of rent for the period from June 1973 to March 1974. This was done in April 1974. This was also returned. Thereafter with the reply a cheque of Rs. 180/- was sent. The landlady refused to accept the cheque. On her behalf her lawyer wrote to the tenant on May 30, 1974, that since the tenant did not clear the arrears of rent within two months of the notice dated December 14, 1973, he had made himself liable to eviction and the landlady was going to sue him in ejectment. As regards the cheque it was said that it was too late and the notice period had expired and liability for eviction had already been incurred. The cheque was returned to the tenant. On June 6, 1974, ejectment proceedings were launched by the landlady, as I have said.

6. The tenant filed his written statement. By way of preliminary objection he said that the eviction petition was not maintainable as the notice served by the landlady upon him was not a valid notice of demand as contemplated by Section

14(1)(a) of the Act. On this ground it was submitted that the eviction petition was unmaintainable.

7. The Additional Rent Controller decided the preliminary objection against the tenant. The tenant appealed to the Tribunal. The Tribunal also rejected the preliminary objection by order dated July 16, 1975. The tenant now appeals to this court.

8. The main question is: Is the notice dated December 14, 1973, a notice of demand as required by the provisions of Section 14(1) of the Act? The Additional Controller as well as the Tribunal were of the view that it did not matter that the claim was couched in the language of damages for use and occupation as it was specifically said that the tenant was a statutory tenant. It was held that the demand was for rent and not for damages from a trespasser. The Additional Controller said this:

"When the landlord demanded damages for use and occupation from the respondent who was described as a statutory tenant obviously it would mean that rent was demanded from the respondent and not damages from trespasser."

9. The Tribunal had this to say:-

"It is of course true that in the notice dated 14-12-1973 the appellant had not been told that he was in arrears of rent and the word used is damages but in my view that is of hardly any consequence in as much as in the first para of the said notice it has been specifically mentioned by the respondent who had herself sent the notice i.e., not through a lawyer, that the contractual tenancy of the appellant had been terminated and he was liable to pay damages for use and occupation of the premises in dispute, being a statutory tenant."

10. I cannot subscribe to this line of reasoning. Clause (a) of the proviso to Section 14(1) the Act provides:

"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 the Transfer of Property Act, 1882 (4 of 1882)."

11. Sub-section (2) of Section 14 then provides.

"No order for the recovery of possession of any premises shall be made on the ground specified in clause (a) of the proviso to sub-section (1), if the tenant makes payment or deposit as required by Section 15:

Provided that no tenant shall be entitled to the benefit under this sub-section if, having obtained such benefit once in respect of any premises, he again makes a default in the payment of rent of those premises for three consecutive months."

12. The landlady founded her case on sub-section (2) as according to her the

tenant had committed default a second time and had not paid rent for more than three consecutive months. Therefore she claimed ejectment. But before any eviction case could be brought the landlady had to serve a notice in terms of clause (a). It had to be "a notice of demand for arrears of rent". These are the governing words of the statute. The clause clearly says that if the tenant has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand has been served by the landlord in the manner provided u/s 106 of the Transfer of Property Act the Controller may on an application made to him make an order for the recovery of possession. This however has to be read with sub-section (2).

13. Notices are not designed the trip people up. They are not traps in which the tenant may slip and fall. The object of notice is to make a demand of Tent on the tenant so that he may pay up and the matter may not go to court. To achieve that object appropriate words have to be used. The notice must carry out the intention of the Act. The legislature leaves us in no doubt that the demand is to be for rent and nothing else. Clause (a) uses the word "rent" not once but twice. Similarly Sections 15, 26 and 27 speak of rent.

14. It was said that the expression "damages for use and occupation" in the context mean rent as the term "statutory tenant" has been used in relation to the tenant. This reasoning found favor with the rent control authorities. The Tribunal said that the notice was given by the landlady herself and not by her lawyer and Therefore she can be excused for using inartistic language. I cannot believe that the above notice is the handiwork of the landlady. I was told that she is not a well educated lady. The notice was, I have no doubt, drafted by a lawyer. How many persons understand the true meaning of the term "statutory tenant"? The status of a statutory tenant is something of a "jurisprudential curiosity" and he himself may well be described as an "anomalous legal entity" (Shuter v. Hersh, (1922) 1 Kb 438 per Scrutton L. J. quoted in Meggary on the Rent Acts 10th Ed., p. 199). The term "statutory tenant", itself, Justice Meggary has said, is a misnomer, inaccurate and inapposite (p. 198).

15. Therefore, in order to understand the notice as a demand for rent the tenant must first discover the true

meaning and import of the expression statutory tenant". He was told that he is a statutory tenant. This is arguing in a circle. This is an instance of circumlocution. A large number of round about words have been unnecessarily used to express the simple idea of rent. Forth rightness ought to have been preferred to circumlocution in order to avoid confusion and to attain the object of the Act. .

16. All professions tend to develop innumerable terms that constitute an almost private jargon. The word "damages" carries a punitive sense. The object of award of damages is, apart from compensating the plaintiff, to punish the defendant for in the eye of the law his conduct is so outrageous as to merit punishment. Damages are a reparation for conscious wrong doing in utter

violation of another's rights. The very foundation of the cause of action for damages or mesne profits (for mesne profits are in the nature of damages) is wrongful possession of the defendant (see Section 2(12), Code of Civil Procedure). No decree for mesne profit can be passed against a person who is in rightful possession (See *Madhavan Nair Vs. Ankan and Others*,). The possession of a person against whom a decree for possession has been passed is an instance of wrongful possession. (See *Surendra Lal Chowdhury and Others Vs. Sultan Ahmed and Others*,).

17. But admittedly the appellant tenant in this case is not in wrongful possession. He is not liable to pay any damages. From him the landlady is entitled to claim rent. Rent is recompense. The primary meaning of "rent" is the sum certain, in gross, which a tenant pays his landlord for the right of occupying the demised premises. Rent must always be a profit. It is an acknowledgment made by a tenant to the lord of his realty or tenure. (Woodfall Landlord and Tenant (27th Ed. Vol. 1 page 297).

18. Rent, Therefore, is not damages. Take for instance an action for rent. It is not an action for damages. The two are as different as chalk and cheese. Rent is rent. Words Therefore matter. We have to worry about words. Words express a whole idea and form one of the units of expression in a language. Language is the instrument of thought.

19. The argument of the counsel for the landlady is that though it is true that a demand for damages for use and occupation has been made in the notice in fact it was a demand for rent as the tenant was described as a statutory tenant. A statutory tenant it was said pays rent and not damages. He is a tenant and not a trespasser and Therefore the demand is for all purposes a demand for rent, the counsel maintained. This is a circuitous reasoning. Does it require a reasoned argument to explain the meaning of notice ?

20. If the landlord used language which was really slipshod the benefit of that cannot be given to him. (See *Devshankar Gangaram Mehta Vs. Bachubha Devsing Chudasama and Others*,). It is true that it is not required that a notice should be worded with the accuracy of a plea but such construction should be placed on the notice as would not work a hardship on the tenant and would not strain the language too much against the landlord. (See *Amraoti Electric Supply Co. v. R. S. Chandak*, Air 1954 Nag 293.

21. If the tenant is not told clearly in ordinary, plain and popular English that he is in arrears of rent and has to pay rent serious consequences can follow. The Rent Controller can save him once if he complies with his order u/s 15(1). But if he makes a second default because the notice is vague, obscure and ambivalent it will result in his eviction for the Controller cannot condone the default. (See *Delhi Cloth and General Mills Co. Ltd. Vs. Hem Chand and Others*,). The first default is the basis of the second default. Whenever he trips, first or second time, it can be a serious matter. Take this very case. The tenant was unable to

understand the notice. He went to the lawyer but by then two months had passed. He was advised "safety first". He sent two money orders of over due rent in March and April 1974. In May 1975 he sent a cheque. These were not accepted by the landlady. The tenant was told that it was too late and that he had incurred the liability of ejectment.

22. In *Harihar Banerji v. Ramshashi Roy*, Air 1918 Pc 102 their Lordships of the Privy Council laid down the following as the principles deducible from English authorities on the subject: Notice to quit, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law. The test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to refer, but what they would mean to tenants presumably conversant with all those facts and circumstances. Further, notices to quit are to be construed not with a desire to find faults in them which would render them defective but to be construed ut rest magis valeat, quam pereat (that an act may avail rather than perish).

23. But the above principles are only applicable to notices containing errors honestly but inadvertently made. The principles would be entirely inapplicable to inaccuracies deliberately inserted for fraudulent purposes. (See *Harihar Banerji's* case, Air 1918 Pc 102 (supra)). The principles will also not apply where the statute demands that the notice must make a demand of rent on a tenant who is in arrears of rent. That plainly is the object of the Rent Act, namely, to protect the tenant from eviction. "The guiding light through the darkness of the Rent Acts is to remember that they confer personal security on a tenant in respect of his home" (*Feyereisel v. Turnidge*, (1952) 2 Qb 29 per Denning, L. J.)

24. The counsel for the landlady has referred me to *Gurbux Singh Vs. Bhooralal*, .This was

a case under Order 2 Rule 2, Code of Civil Procedure. The plaintiff brought two suits. The defendant said that the first suit operated as a bar. The Supreme Court held that in order to succeed the defendant had to show that the second suit was in respect of the same cause of action as that on which the previous suit was based. In the first suit the plaintiff had used the word "mesne profits". The second suit was for possession and mesne profits. It was held that what matters is not the characterisation of the sum demanded but what in substance is the allegation on which the claim to the sum was based and as regards the legal relationship on the basis of which the relief was sought. That was a case of pleadings. A notice it is true need not be couched with the particularity of a pleading. This case, Therefore, is not of much help.

25. The counsel then cited *Nazir Ahmad v. Kanhaiya Lal*, 1972 Ren Cj 55). In this case it was said that so long as the import of the notice is clear and it substantially fulfills the requirements of Section 106, Transfer of Property Act, no undue emphasis should be laid on the terminology of the notice and any un-

artfulness in expression or a slight inexactitude of terminology would not invalidate it unless the inexactness has the effect of depriving the tenant of the statutory benefit he is entitled to. The question in the present case is whether the import of the notice is clear and whether the tenant has been deprived of the benefit which he would have obtained by paying rent if the notice had been worded in clear terms as required by the Act.

26. The third ruling cited by the counsel is *The Life Insurance Corporation of India v. The Standard Button Agency*, 1972 Ren Cj 199. In this case the landlord gave an incorrect figure about the arrears of rent in the notice of demand. It was held that on that account the notice was not bad. This ruling also does not answer the point raised before me.

27. Lastly the counsel referred to *M/s. Pruthi Brothers v. Mangla Wati*, 1971 Ren Cr 854 where a Division Bench of this court held that the notice has to be construed in a manner which would make it effective instead of the contrary. This principle is as old as 1918 when the Privy Council enunciated it in *Harihar Banerji v. Ramshashi Roy*, AIR 1918 Pc 102 (supra). In the instant case the Act must be followed

and notice must be couched in the language of rent and not damages.

28. I, Therefore, hold that the notice is bad. It is not in conformity with the requirements of Section 14(1)(a). The petition is, Therefore, not maintainable. The landlady fails in liming.

29. For these reasons I would allow the appeal and set aside the orders of the rent control authorities and dismiss the respondent's petition. The parties will, however, bear their costs throughout.

Appeal allowed.