

(1974) 08 AHC CK 0019
In the Allahabad High Court
Case No : Second Appeal No. 152 of 1973

Shri Pratap Narain

APPELLANT

Vs

Juggilal Kamlapat Iron and Steel Co. Ltd.

RESPONDENT

Date of Decision : 19-08-1974

Acts Referred:

Evidence Act, 1872 — Section 91

Transfer of Property Act, 1882 — Section 105, 106, 111, 116

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3(1)

Citation : AIR 1975 All 73

Hon'ble Judges : M.P. Mehrotra, J

Bench : Single Bench

Advocate : K.M. Dayal, for the Appellant; Vibhav Bhushan Upadhyaya, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Mehrotra, J.—This is the defendant's second appeal arising out of a suit for ejectment, arrears of rent and damages, etc.

2. The plaintiff's allegations in brief are these. The plaintiff-respondent is a public limited company incorporated under the Indian Companies Act. The defendant-appellant Pratap Narain was employed as a worker in the factory of the said Company at Kalpi Road. The plaintiff Company took on rent some of the Kamla Town Trust quarters from the landlord thereof with a view to allot the said quarters to its own employees for their use and occupation during the period of their employment. In consideration of the Defendant's employment and, in fact, as a part of his contract of employment, the defendant was allowed to occupy quarter No. 3/16 on a monthly rent of Rs. 16.25 and the understanding was that he would continue to occupy the said quarter as long as he was in the plaintiff's employment and would vacate the same and deliver its vacant possession to the plaintiff as soon as his services were terminated and the employment stood determined. The defendant resigned from service on the 23rd February, 1963

and his resignation was accepted. His services were terminated with effect from 1st of March, 1963. The plaintiff sent a Registered notice on 21-3-1963 to the defendant calling upon him to vacate the said quarter within seven days. A subsequent notice dated 20-5-1963 was sent to the defendant to vacate the said quarter and deliver vacant possession within 30 days of the receipt of the notice. However, the defendant failed to comply with the said notices and hence arose the necessity of filing the suit in question. It was claimed that the suit was covered by Section 3 (1) (g) of the U. P. Act III of 1947 and consequently no permission of the District Magistrate was necessary for filing the suit for ejectment. In the alternative, it was pleaded that the defendant was a licensee and the licence had been revoked prior to the institution of the suit. Arrears of rent and damages for use and occupation were also claimed. The defendant contested the suit, inter alia, on the grounds that the termination of the employment was illegal and the dispute was pending before the Labour Court, that the notices served by the plaintiff were invalid and illegal, that he was not a licensee but a tenant and that the suit was not covered by Section 3 (1) (g) of the U. P. Act III of 1947 and the same was barred by Section 3 of the said Act. The defendant also claimed gratuity, bonus and unpaid wages, etc.

3. After framing the necessary issues the trial Court tried the suit and dismissed the same. The defendant's counter-claim in respect of gratuity was decreed. The plaintiff filed an appeal in the Lower Appellate Court and the same was allowed. The plaintiff's suit was decreed in full and feeling aggrieved, the defendant has come up in the instant appeal to this Court.

4. In support of the appeal I have heard Sri K.M. Dayal and in opposition Sri V. B. Upadhyaya has made his submissions.

5. Sri K.M. Dayal, the learned Counsel for the appellant, made the following contentions before me,

6. Ext. 15 dated 4th February, 1955, which was held to be the declaration by the defendant-appellant related to quarter No. 3/14 Kamla Nagar and it did not relate to the quarter in dispute in the suit which bore No. 3/16 Kamla Nagar.

7. Attention was drawn to the statement of P. W. 3, S.D. Agarwal, who stated that the subsequent allotment of quarter No. 3/16 was covered by the declaration relating to quarter no. 3/14. Counsel contended that the real persons who could have deposed to that effect did not enter the witness-box. S.D. Agarwal was not a witness to the deed of declaration and the real person, according to Sri Dayal, who could have testified on the controversy would be the Works Secretary, G. C. Sadi.

8. Counsel further contended that oral evidence to the effect that the declaration (Ext. 16) related to quarter No. 3/16 was inadmissible under the provisions of Sections 91(1) and 91(2) of the Indian Evidence Act.

9. He further contended that as the subject-matter of tenancy was changed by

the change of the quarter in question, hence, it was a case of a new tenancy and the declaration which related to the old tenancy could not be held to be applicable to the new tenancy which came into existence.

10. In this connection learned Counsel made a point that Ext. 17 which is the letter dated 1st January, 1957, from the defendant addressed to the employer related to a separate independent transaction and it could not be regarded as a variation of the old contract contained in Ext. 15, i.e., the declaration, hence proviso 4 of Section 92 could not be held to be applicable to the instant case.

11. In reply to the contention of Sri Upadhyaya, learned Counsel for the plaintiff-respondent, that the declaration contained in Ext. 15 created a licence and not a lease, Sri Dayal made the following points:--

(a) It was not open to the plaintiff-respondent to canvass a case of licence in the second appeal as no court-fee on the basis of title was paid by the plaintiff. He invited my attention to paragraph 13 of the plaint to show that the payment of court-fee was on the basis of the suit being between a landlord and tenant and the relief for ejectment was valued at one year's rent as provided for by Section 7 (xi) of the U. P. Court Fees Act.

(b) Counsel invited my attention to paragraph 8-A of the plaint which showed that principally the plaintiff was seeking the ejectment of the defendant treating him as its ex-tenant and only in the alternative a case of licence was set up.

(c) Attention was invited, to paragraph 11 of the plaint wherein exemption was claimed u/s 3 (1) (g) of the U. P. Act III of 1947 and that again showed that the case was being fought on the basis of the landlord-tenant relationship.

(d) None of the witnesses examined on behalf of the plaintiff deposed to a case of licence and, in fact, the statement of S.D. Agarwal (P. W. 3) clearly showed that the plaintiff treated the defendant as a tenant. The said witness all through used the expression "kirayadari" and "Kiraya" and he did not utter a single word that the defendant was a licensee.

(e) It was really a case of tenancy and not of licence and in this connection learned Counsel drew my attention to the expressions used in the declaration (Ext. 15) itself. Under Clause (2) thereof a monthly rent of Rs. 16/4/- was agreed to be payable by the defendant. In Clause (3) it was stated that there would be no sub-letting of the quarter in question.

12. Lastly, in the forfeiture clause it was stated "I shall forthwith forfeit all my claim to tenancy rights of the quarter occupied by me."

13. The suit against the defendant was barred u/s 3 of the U. P. Act III of 1947 and the plaintiff could not invoke the benefit of Section 3 (1) (f) of the said Act. In this connection, Sri Dayal made the following submissions:--

(a) No contract of employment was filed by the plaintiff which would show that the defendant tenant was allowed to occupy the accommodation as a part of his

contract of employment under the landlord.

(b) Attention was invited to paragraph 4 of the plaint and paragraph 4 of the written statement wherein the allegation made in para 4 of the plaint was not admitted. Further attention was invited to paragraphs 16, 17 and 29 of the written statement.

(c) It was emphasised that the defendant took up the employment with the plaintiff sometime in 1944 and the allotment of the quarter in question was made in 1955. It was, therefore, obvious that the allotment could not be a part of the initial contract between the parties and there is no pleading and no contention on behalf of the plaintiff that there was a subsequent variation or novation of the contract between the parties.

(d) In the declaration (Ext. 15) it was stated that in consideration of the employment the defendant was allotted the quarter No. 3/14. It was contended that the expression "consideration" could not be equated with the expressions used in Clause (g) of Section 3 (1) viz., "part of the contract of employment under the landlord."

(e) In the instant case, there was no relationship between the duties which were being performed by the defendant as an employee of the plaintiff and the provision of a quarter to him. The point was expanded in this manner that if a watchman is given a quarter, then it should be deemed to be a part of the contract of employment, but where an independent allotment of a quarter is made having no connection with the discharge of the duties by the employee, then in such a case Clause (g) of Section 3 (1) cannot be said to be attracted. Learned Counsel emphasised that there is a distinction between something being a part of the contract of employment and benefits resulting in consequence or in consideration of employment.

(f) The phraseology used in Section 3 (1) (g) of the U.P. Act III of 1947 (and which has been reproduced in Section 20 (2) (g) of the U.P. Act 13 of 1972) differs very materially from corresponding provisions in the various Rent Control Acts which are in operation in Bombay, Delhi, Madhya Pradesh, Mysore, Rajasthan and West Bengal.

14. Even if the plaintiff was entitled to the benefit of Section 3 (1) (g) of the U.P. Act III of 1947 and hence the suit did not stand barred under the said Act, still, the instant suit could not be decreed for ejectment as there was no determination of the tenancy of the defendant by a valid notice u/s 106 of the Transfer of Property Act. Counsel made the following points in support of this contention:--

(a) Admittedly, the notice dated 21st March, 1963, (Ext. 13) did not determine the tenancy. It treated the defendant as a trespasser and called upon him to vacate the quarter within 7 days of the receipt of the notice. Apart from the fact that this document did not even recognise the defendant to be a tenant, looking

to the duration which was mentioned in the notice, it could never be a valid notice u/s 106, T.P. Act. It may be stated here that the learned Counsel for the plaintiff-respondent did not treat the said document to be a notice u/s 106, T.P. Act. According to him, it was given on the footing that the defendant occupied the quarter in question as a licensee and the licence was put to an end by the said document.

(b) So far as the notice dated 20th May, 1963 (Ext. 3) was concerned, the same was also bad in law because in the notice the plaintiff did not treat the defendant to be the tenant. Paragraphs 3, 4, 5, 6 and 7 of the said document showed that the plaintiff treated the defendant to be formerly a licensee of the quarter in question and subsequently with effect from 1st April, 1963, as a trespasser. If paragraph 8 of the said notice stood alone, then it might be suggested that the defendant's tenancy was being determined u/s 106, but in view of the preceding paragraphs in the notice, such an interpretation was not possible in the instant case. Sri Dayal emphasised that inasmuch as paragraph 7 clearly stated that the defendant was occupying the quarter as a trespasser with effect from 1st April, 1963, therefore, it could not be argued that the tenancy was going to be determined in the future. If paragraph 8 were interpreted as determining the defendant's tenancy, then it would lead to inconsistent and self-contradictory positions. Learned Counsel argued that the two authorities of this Court which could possibly be cited against him were really distinguishable. These authorities are: Ram Chandra and Another Vs. Lala Dulichand, and Raj Narain v. Shiv Raj Saran, (1969 All LJ 358 at p. 362). In support of his contention. Counsel relied on the following cases:--

Farooq Ahmad Vs. Muneshwar Bux Singh, . Bhagwan Sri Krishenji Maharaj Virajman Mandir, Khanpur Vs. Chuttan Lal, , Ahmad Ali Vs. Mohd. Jamal Uddin, , Pattan Din v. Sardar Karam Singh 1967 All LJ 396 ,Harihar Banerji v. Ram Shashi Roy AIR 1918 PC 102, Bradley v. Atkinson ILR (1885) 7 All 899 (FB). The Calcutta Credit Corporation Ltd., and Another Vs. Happy Homes (P) Ltd., and Gorakh Lal Vs. Maha Prasad Narain Singh and Others, .

15. In reply to the contention of Sri Upadhya, learned Counsel for the plaintiff-respondent, that no notice at all was necessary in the instant case as it was a case where there was a contract to the contrary u/s 106. T.P. Act and/or as it was a case either of tenancy at will or where the tenancy stood determined on the happening of particular event, Sri Dayal made the following contentions:--

(a) In the instant case there was no tenancy at will as in such a tenancy the option must be of both the parties. In the instant case there was no such option of both the parties. See Kanwar Lal Thapper Vs. Raja Bahadur Kamakhya Narayan Singh and Another, .

(b) Even if Clause (5) of the declaration (Ext. 15) had the effect of determining the tenancy with the termination of the defendant's service by his resignation, still, the plaintiff did not avail of its right to eject the defendant on the basis of

the said clause immediately on the resignation of the defendant on 23rd February, 1963. Thereafter it allowed the defendant to hold over by its clear statement that it was prepared to accept rent upto 31st March 1963 and treated the defendant to be a trespasser with effect from 1st April 1963. Therefore, it was a case where Section 116 T.P. Act stood attracted and by virtue of the provisions contained in the said section, a monthly tenancy came into existence which could only be determined by a valid notice of 30 days determining the tenancy. Sri Dayal emphasised that if Clause (5) of the declaration was sought to be availed of by the plaintiff, then immediately on the submission of his letter of resignation the plaintiff could, according to its own contention, directly file a suit for ejectment and there was no necessity to give a notice to the tenant, but admittedly it was not done and two notices namely Exhibit 3 and Exhibit 13 were given to the defendant. Therefore, even if the plaintiff had a right under Clause (5), the same was not availed of and by subsequent conduct of the parties Section 116, T.P. Act came into play. Further, it was emphasised that the plaintiff's case in the pleading was not that the tenancy stood determined on the happening of a particular event and, in fact, in the plaint the determination of tenancy was stated to be based on the expiry of the period mentioned in the notices in question. Hence, it is not open to the plaintiff-appellant to contend that in the instant case there was no necessity to give a notice determining the tenancy.

16. Sri Dayal contended that here Section 113. T.P. Act did not come into play. The said Section will not be applicable to a situation where the tenancy stands determined by the happening of any event and he emphasised that there is a difference in the results which follow from the application of Section 113 and those which follow as a result of the application of Section 116, T.P. Act. In the former case the old contract of tenancy continues, but in the latter case a new tenancy comes into existence. Reliance was placed in this connection on Chotey Lal Vs. Sheo Shankar, Head Note C The other cases in connection with the interpretation of Section 116 on which reliance was placed are:--

Sailabala Dasse vs. H.A. Tappassier, , Lala Kishun Chand Vs. Sheo Dutta, , Zahoor Ahmad Abdul Sattar Vs. State of Uttar Pradesh and Another, , Adinath Bhattacharjee Vs. Krishna Chandra Bhattacharjee and Others, , and Ramsunder Tewari v. Dulhin Bataso Kuer AIR 1935 Pat 271 Head Notes A and B.

17. Sri V. B. Upadhyaya, learned counsel for the plaintiff-respondent made the following contentions:--

1. The declaration in question (Ext. 15) related to the quarter in dispute in the suit. He contended that no new contract came into existence. The old contract remained, only the employee got himself shifted from one quarter to another. In this connection learned Counsel drew my attention to Ext. 17, the defendant's letter dated 1st January, 1957. The said letter clearly showed that the employee only sought a change from quarter No. B. 3/14 to B. 3/16 which in the meantime had fallen vacant. The letter proved that the employee was not seeking any

change in any other terms and conditions contained in Ext. 15 (declaration), Counsel contended that Ext. 15 and Ext. 17 should be read together and not in isolation.

Sections 91 and 92 did not shut out the oral evidence which was led on behalf of the plaintiff-respondent to prove that the declaration in question (Ext. 15) was applicable to the quarter in dispute in the suit also. It was emphasised that there was no genuine rebutting evidence from the side of the defendant who went to the length of even denying his signature on the declaration but which was found to be a genuine document bearing his signature.

2. Ext. 15 really brought into existence a relationship of licensor and licensee and not a relationship of landlord and tenant. The terms of licence were contained in the said declaration and reading the entire document it was clear that the intention was that the right of occupation was given to an employee by the employer which was to last till the period of employment. In this connection Clause 4 of the declaration was emphasised where the defendant undertook to make his own arrangement for scavenging and water supply in case the said facilities were withdrawn any time by the employers. Sri Upadhyaya contended that a tenant would never agree to the withdrawal of these facilities and it showed that the real intention was to bring about a relationship of licensor and licensee. He also submitted that the phraseology of Clause (5) of the said document seemed to be more in consonance with the case of licence than with a case of tenancy. In this connection learned Counsel contended that the mere isolated use of the expression "rent" or even "tenancy" did not change the real nature of the relationship and the Court had to interpret the document taking into consideration its entire drift and could not go by the use of isolated expressions like "tenancy" and "rent". "Rent" in reality, meant licence fee in the instant case. Clause (6) of the declaration was also asserted to be more in consonance with a case of licence than with a case of tenancy. Learned Counsel placed reliance on the following two cases decided by our Court in this connection:-- Kuber Nath Kandu Vs. Gorakh Prasad, and Shanti Sarup Vs. Radhaswami Satsang Sabha, Dayalbagh Agra and Others, .

3. Alternatively, if it was a case of tenancy, then Section 3 (1) (g) of the U.P. Act III of 1947 would be applicable and the suit was not hit by the prohibition contained in Section 3 of the said Act. Learned Counsel in this connection emphasised that the significant recital in Ext. 15 was "in consideration of my present employment in the J. K. Iron Steel Co. Ltd." He invited my attention to the meaning of the word "consideration" as given in Webster's Dictionary. Counsel said that apart from the recital viz., "in consideration of my present employment". Clause (5) of the declaration laying down that "I shall be vacating the quarter immediately on termination of my employment or a demand for its vacation from the Kamla Town Trust or my employers without any plea or excuse of want of accommodation elsewhere", had the effect of attracting the provisions of Section 3 (1) (g) of the said Act. Clause (5) made the occupation of the

defendant in the quarter in question "a part of his contract of employment under the landlord".

4. In reply to the contentions raised about the invalidity of the notices in question, learned Counsel made the following submissions:--

(A) The declaration in question (Ext. 15) was a contract to the contrary u/s 106 T.P. Act and, therefore, no notice u/s 106 was required. In this connection attention was also invited to Section 111(b) T.P. Act which lays down as under:--

"Section 111. Determination of lease --A lease of immovable property determines--

(b) Where such time is limited conditionally on the happening of some event -- by the happening of such event."

In the instant case Clause (5) of the declaration laid down the event (the termination of employment) on the happening of which the tenancy ipso facto stood determined. Therefore, the tenancy came to an end in the instant case when the employment of the defendant came to an end with the submission of the letter of resignation by him. Learned Counsel contended that in case no notice was required to determine the tenancy (as was the case here), then the mere fact that notices were given calling upon the defendant to vacate the premises could be considered to be a mere superfluity but could not affect the legal position. Reliance was placed on the following cases:--

Dr. Harumal v. Smt. Sahjadi Bibi AIR 1970 Raj 272 Head Note C) : ILR (1966) GAU 285.

On the basis of the Raiasthan case learned Counsel contended that the instant case would be deemed to be a case of tenancy at will and not a case of monthly tenancy. This plea was based on Clause (5) of the declaration, whereunder the defendant undertook to vacate the quarter at any time whenever called upon to do so.

(B) In case It be held that there was a monthly tenancy in favour of the defendant in existence between the parties, then the same stood determined by the notice dated 20th May, 1963, (Ext. 3). Whereas Ext. 13 revoked the licence, Ext. 3 determined the tenancy. In this connection learned counsel submitted that Section 106 has to be read along with Section 111(h). It can be a notice determining tenancy in specific words or it can be a notice to quit or of an intention to quit. This is made clear by Clause (h) of Section 111. Reliance in this connection was placed on the aforesaid two cases Ram Chandra and Another Vs. Lala Dulichand, , which were sought to be distinguished by Sri Dayal but which, Sri Upadhyaya contended, fairly applied to the facts of the present case. Reliance was also placed on The Calcutta Credit Corporation Ltd., and Another Vs. Happy Homes (P) Ltd., . Learned Counsel contended that Clause (8) of Ext. 3 clearly called upon the defendant to quit and deliver vacant possession of the quarter in dispute within 30 days of the receipt of the notice, failing which a suit for

ejection was to be filed against the defendant. The direction contained in this clause was in full consonance with the requirement of Section 111(h) T.P. Act. Ext. 3 could not be held to be invalid merely because in the earlier clauses i.e. clauses earlier than Clause (8), it was stated that the defendant was a trespasser with effect from 1st April 1963. The said incorrect statement did not take away or nullify the effect of the direction contained in Clause (8). The earlier clauses in such a situation would be treated as redundant or superfluous. Learned counsel further contend that Clause (8) really contained the plaintiff's alternative case -- alternative in the sense that the basic contention of the plaintiff was that the defendant was in occupation as a licensee whose licence stood revoked both by the termination of his employment and subsequently by a clear notice being Ext. 13 dated 21-3-63, The alternative case was that of tenancy. Learned counsel supported this contention viz. that Clause (8) contained the plaintiff's alternative case, on two grounds viz., (a) otherwise there was no necessity for the plaintiff to give the second notice dated 20-5-1963 (Ext. 3) after the first notice dated 21-3-1963 (Ext. 13) which revoked the licence. The second notice had to be given because, in the alternative, the plaintiff wanted to determine the defendant's tenancy, (b) the use of the expression "30 days" in Clause (8) clearly was in contemplation of the requirement of Section 106 T.P. Act as amended in the State of Uttar Pradesh which has substituted the expression "30 days" for the expression "15 days" as contained in the parent section.

18. The following points arise for determination in the instant appeal:--

1. Whether Ext. 15 related to the suit accommodation ?
2. Whether the suit accommodation was held by the defendant-appellant as a tenant or as a licensee thereof ?
3. Whether Section 3 (1) (g) applied to the suit accommodation in case the defendant-appellant was a tenant therein and not a licensee.
4. Whether there was a valid determination of the tenancy in case the defendant-appellant was a tenant in the suit accommodation and not a licensee.

19. I shall take up each point seriatim. Point No. 1:

Ext. 15 is a declaration dated 4th February, 1955 by the defendant-appellant. It is reproduced below:--

"Declaration.

I, Pratap Narayan, son of Rameshwar Singh, capacity Pumpman in Works Maintenance Deptt. Works Maintenance, an employee of M/s. J.K. Iron and Steel Co. Ltd., Kanpur, in the J.K. Group, do hereby assert as follows:--

Whereas in consideration of my present employment in the J.K. Iron and Steel Co. Ltd., and whereas I have requested my employers to provide a living accommodation and whereas they have been pleased to allot me one of their quarters No. B 3/14 in Kamla Nagar, I hereby undertake to occupy the above

said quarter subject to the conditions below:--

(1) That I shall be depositing in cash with my employers a sum of Rs. 25/- (Rupees twenty-five) as caution money against any damages or breakages that may be caused to the building, fittings and fixtures or any other articles provided for my use refundable to me after my vacating the quarter and producing a clearance certificate from the Kamla Town Trust Authorities.

(2) That I shall be paying a monthly rent of Rs. 16/4/- (Rupees sixteen and annas four) deductible from my wages/ salary bill through my employers regularly every month.

(3) That I shall exclusively utilise the quarter for my own use and shall under no circumstances either sub-let it in full or part or accommodate any outsiders whether they are serving under J. K. Group or elsewhere.

(4) That I shall be making my own arrangements for scavenging and water supply, should the existing facilities in these regards, if any, accorded by my employers for the time being as a special case, be withdrawn any time.

(5) That I shall be vacating the quarter immediately on termination of my employment or a demand for its vacation from the Kamla Town Trust or my employers without any plea or excuse of want of accommodation elsewhere.

(6) That I shall abide by all the directions and changes in rules and regulations made by the Kamla Town Trust or my employers from time to time.

Should I, on any occasion, be found contravening the terms and conditions set forth above and accepted by me at the time of my occupation, I shall forthwith forfeit all my claim to tenancy rights of the quarter occupied by me and the Kamla Town Trust Authorities will have full rights for my ejectment without any notice.

Dated 4-2-1955 Signature of Occupant Quarter No. B 3/14 (Block No. 3 Quarter No. 14)".

20. On the face of the document it relates to quarter No. 3/14 and not to quarter No. 3/16 which is the accommodation in dispute in the suit. However, this document has to be read along with Ext. 17 which is the letter dated 1st January, 1957, addressed by the defendant-appellant to the plaintiff-respondent. In the said letter it was stated that quarter No. 3/16 fell vacant and the defendant-appellant who was in occupation of quarter No. 3/14 desired to shift to quarter No. 3/16, The plaintiff-respondent was, therefore, prayed to allot quarter No. 3/16 to the defendant-appellant. The said prayer was allowed on the same date and it seems that thereafter the defendant-appellant left quarter No. 3/14 and shifted to the new quarter No. 3/16. Treating both the documents together it seems reasonable to infer that the declaration of the defendant-appellant (Ext. 15) continued to be in operation between the parties even, after the defendant-appellant shifted to the new quarter. He was not called upon to make any new

deposit as caution money (vide Clause (1)) of the declaration; there was no change in the rate of rent payable by him; in fact, no new declaration was asked for from him which the employers would have required in case a new tenancy or licence was sought to be brought into existence between the parties. It seems to me, therefore, reasonable to infer that the parties clearly understood that the old declaration made by the defendant-appellant continued to govern the relationship between the parties and the only change which took place on the request of the defendant-appellant was that he changed his quarter from No. 3/14 to No. 3/16. In this connection the conduct of the defendant-appellant is also relevant. He admittedly submitted his letter of resignation (Ext. 141 on 23rd February, 1963. The plaintiff-respondent accepted the said resignation. By its letter dated 21st March, 1963 (Ext. 13), the plaintiff-respondent called upon the defendant-appellant to vacate the quarter in dispute within seven days of the receipt of the letter. It is important that in this letter the defendant-appellant's attention was drawn to his declaration dated 4th February, 1955 (Ext. 15) "in respect of the quarter allotted to you" and he was intimated that as he was no more an employee of the plaintiff-respondent Company, therefore, he should vacate the quarter. This letter goes to show that the plaintiff-respondent clearly asserted that the defendant-appellant's declaration in question dated 4th February, 1955 (Ext. 15) was referable to the quarter in dispute. The reply of the defendant-appellant to Ext 13 is dated March 26, 1963 (Ext. 12). This reply is quoted in extenso:

"To

The Manager, M/s. J. K. Iron and Steel Co. Ltd., Kanpur.

Respected Sir,

I am in receipt of your letter dated 25-3-1963 in respect of the vacating the quarter which is under my possession since long. It is necessary to intimate you that there are so many dues still lying with the Company and I have not finally paid all those my arrears as yet. The resignation which I submitted to you has been accepted is, of course, admitted. But no account of the service gratuity has so far been paid as other employees of the concern have been paid whenever they have time to time resigned from the service and they were paid accordingly.

In view of the above you will understand the position on the basis of which I respectfully submit you that if you want to get the quarter vacated which is in my possession first of all I should be paid then the question of vacating of the quarter is to be arised. Moreover, I assure you that so far as the rent of the quarter is concerned I am prepared to pay it monthly till my condition is not fulfilled.

The dues in respect of adjudication Case No. 122/61 before the Labour Court (I), Kanpur are also pending for the restoration of the deducted wages; each amount is also scheduled to be paid by the management. Dated March 26, 1963.

Yours obediently, Sd/- Pratap Narain, 3/16, Kamla Nagar, Kanpur."

21. It is, therefore, clear that at the said stage the defendant-appellant was neither denying his declaration dated 4th February, 1955 nor was he contending that the said declaration was not referable to the quarter in his occupation. He clearly took up the position that in case his full dues were cleared off then he would vacate the quarter in dispute;. Further, it is important that the defendant-appellant never contended in the Courts below that the declaration in question did not refer the quarter in dispute i.e., quarter No. 3/16, on the ground that the declaration referred to quarter No. 3/14 In fact, in view of his awareness of the significance of the said declaration in respect of the controversy in the suit, the defendant-appellant chose to deny his signature on the said declaration. However, on the basis of the expert's opinion both the Courts have held that the declaration did contain his signature and the document was a genuine one. Therefore, it seems to me that the point which the learned Counsel has raised in the second appeal is the nature of the counsel's contribution and in the circumstances set out above, the same seems to me to be untenable. I do not think Section 91. Evidence Act will, stand in the way of a party trying to show that an original agreement between the parties continues to govern their relationship despite the change or variation in respect of a particular term of the agreement. Moreover, in my view even if the oral evidence on the said point be excluded, still, in the circumstances of the case stated above, the conclusion which I have reached will remain unaffected.

22. Point No. 2. In my view the defendant-appellant occupied the accommodation in question not as a licensee but as a tenant therein. I find substance in the contentions which have been raised by the learned Counsel of the defendant-appellant and which I have set out in detail above. The distinction between a licence and a lease is not always easy to determine. Basically it turns upon the intention of the parties as emphasised in *Mrs. M. N. Clubwala v. Fida Hussain Saheb* AIR 1965 GC 610. If there be a formal document, then this intention is to be inferred from the terms of document itself, However, if there be no formal document or if there be any ambiguity in the same, then the question is to be decided with reference to parol evidence, if admissible, and with reference to the attendant circumstances. At one time it used to be thought that the fact of exclusive possession was almost conclusive to establish the existence of a lease instead of a licence. However, subsequent cases decided in England held that even the said test was not conclusive. Still, the significance of the said aspect of the matter has been reiterated in *Mrs. M.N. Clubwala and Another Vs. Fida Hussain Saheb and Others*, . It has been laid down therein;

"We must, therefore, look at the surrounding circumstances. One of these circumstances is whether actual possession of the stalls can be said to have continued with the landlords or whether it had passed on to the stall holders. Even if it had passed to a person, his right to exclusive possession would not be conclusive evidence of the existence of a tenancy though that would be a

consideration of first importance. That is what was held in Errington v. Errington and Woods (1952) 1 KB 290 and Cobb v. Lane (1952) 1 All ER 1199."

23. In the said Supreme Court case it was held that the legal possession of the stalls continued with the landlords and not with the stall-holders. Therefore it was held that there was a licence in existence and not tenancy between the parties before the Supreme Court. In the same way in the two cases relied upon by the learned Counsel for the plaintiff-respondent the decisions turned on the particular facts of the said cases. In Shanti Sarup Vs. Radhaswami Satsang Sabha, Dayalbagh Agra and Others, it was clearly emphasised that the Satsangis who were allowed to construct houses in the Dayalbagh Colony had no interest therein. In Kuber Nath Kandu Vs. Gorakh Prasad, the agreement between the parties contained a stipulation that the defendants in the said case would construct temporary stalls for the purpose of keeping shop and that they would vacate the land if required to do so by the Raja's agent or officials. The learned Single Judge attached significance to the nature of the constructions which were agreed to be made on the site taken. Therefore, it obvious that the decided cases have basically turned on the particular facts and circumstances involved therein. In the instant case, in my opinion, looking to the phraseology used in the declaration (Ext. 15) it is difficult to contend that a mere licence was granted to the defendant-appellant. The expressions in the said document are "tenant" and "tenancy", "rent" "sub-letting", "Forfeiture of tenancy rights" etc. The other considerations which Sri K. M. Dayal pointed out also reinforce me in my conclusion that the defendant-appellant occupied the quarter in question not as a mere licensee but as a tenant.

24. Point No. 3: Section 3 (1) (g) of the U.P. Act III of 1947 laid down as under:

"Restriction on eviction -- (1) Subject to any order passed under Sub-section (3) no suit shall, without the permission of the District Magistrate, be filed in any Civil Court against a tenant for his eviction from any accommodation, except on one or more of the following grounds:

.....

(g) that the tenant was allowed to occupy the accommodation as a part of his contract of employment under the landlord and his employment has been determined."

I do not agree with the learned Counsel for the appellant that merely because the accommodation in dispute was provided to the defendant subsequent to his joining the employment with the plaintiff, therefore, the accommodation in question could not be deemed to be a part of his contract of employment under the landlord. I do not see any difficulty in an employee joining employment and after the expiry of some time the landlord providing such employee an accommodation as a part of his contract of employment. The mere fact that the allotment of accommodation comes about subsequently i.e., subsequent to the date of employment will not mean that Clause (g) of Sub-section (1) of Section 3

of the U.P. Act No. 3 of 1947 will necessarily stand ousted. Similarly, I do not think there is any infirmity in the pleadings because no subsequent variation or novation of the contract was pleaded by the plaintiff. The initial contract between the parties had no relevance so far as the dispute at hand was concerned and, therefore, it was not necessary to set out the terms of the original contract between the parties. The fact that the original contract of employment was not filed by the plaintiff, therefore, is also not relevant. It is an admitted position that the accommodation in question was provided to the defendant much later than his taking up employment with the plaintiff.

In my view, the question whether the accommodation was given to the defendant as a part of his contract of employment under the landlord has to be decided on an interpretation of the declaration of the defendant himself i.e., Ex 15. But before I take up that document and interpret it I think I should state that the contention raised on behalf of the appellant that the provision of accommodation by the employer to the employee should, in some manner, be correlated to the duties of such employee in his employment, has also not impressed me. That will be taking a too narrow view of the scope of Clause (g) of sub-section (1) of Section 3 of U.P. Act III of 1947. I do not think that the said clause, in any way contemplates that the provision of the accommodation to the employee must bear some sort of relationship with the nature of duties which are performed by such employee. In these days of scarcity of accommodation, employers both in the public sector and in the private sector consider it a part of full dress industrial set-up to make provision for the residence of the employees. While offering accommodation to the employees the employers do not insist that the nature of the duties rendered by the employees will provide any criterion in this matter. Neither the phraseology of Section 3 (1) (g) supports the said contention of the learned Counsel for the appellant nor do I feel impelled to accept the said contention on the basis of general considerations and legislative intent or policy. The learned Counsel for the appellant, as stated above, invited my attention to certain paragraphs of the plaint and of the written statement. They go only to show that whereas the plaintiff was contending that the accommodation in dispute was allowed to the defendant as a part of his contract of employment under the plaintiff-landlord, the defendant denied the same. The plaintiff contended that the suit was covered by Section 3 (1) (g) but the defendant denied the same. The pleadings only go to show that the parties are in contest over the question whether Section 3 (1) (g) stands attracted to the facts of the case.

25. Now, the real point is whether the accommodation in question was allowed to be occupied by the defendant was a part of his contract of employment. Shri Dayal's contention is that the phraseology used in Section 3 (1) (g) of the U.P. Act III of 1947 (and which has been repeated in Section 20 (2) (g) of the U.P. Act XIII of 1972) differs materially from the corresponding provisions in the various Rent Control Acts in other States. In Section 13(1)(f) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the material provision

is as follows:

"that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the coming into operation of this Act, to be in such service or employment;"

Substantially, identical language has been used in Section 14(1)(i) of the Delhi Rent Control Act, 1958, in Section 12(2)(i) of the Madhya Pradesh Accommodation Control Act, 1961, in Section 13 (1)(g) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, in Section 13 (1) (g) of the West Bengal Premises Tenancy Act, 1956 and in Section 21 (g) of the Mysore Rent Control Act, 1961.

Shri Dayal's contention is that the phraseology used in the U.P. Act is strikingly different and this difference leads to the inference that whereas under the Rent Control Acts of the said States if accommodation has been provided to the employee by the employer by reason of the former's service or employment with the latter, then the employer landlord would be entitled to get back the accommodation on the employee's ceasing to be in the service or employment. Learned counsel's contention is that the expression "by reason of his being in the service or employment" is much wider than the expression "as a Part of his contract of employment": I appreciate the force of the contention made by learned Counsel. Yet in the instant case, I feel that the accommodation in dispute was allowed to be occupied by the defendant-appellant as a part of his contract of employment and not merely by reason of his employment. In the declaration (Ex. 15) it is clearly stated

"Whereas in consideration of my present employment in the J.K. Iron and Steel Co. Ltd. and whereas I have requested my employer to provide a living accommodation and whereas they have been pleased to allot to me one of their quarters No. B-3/14 in Kamla Nagar, I hereby undertake to occupy the above said quarter subject to the conditions below."

Coupled with this recital is the stipulation contained in Clause (5) of the declaration where it is laid down:

"That I shall be vacating the quarter immediately on termination of my employment or a demand for its vacation from the Kamla Tower Trust or my employers without any plea or excuse or want of accommodation elsewhere,"

In my view, these statements in the declaration clearly go to show that the accommodation in dispute was provided to the defendant as a part of contract of his employment with the plaintiff.

26. In Webster's Dictionary one of the meanings of the word "consideration" has been laid down as

"something given as recompense: as (a) payment, reward (b) (i) something that

is legally regarded as equivalent or return given or suffered by one for the act or promise of another; and act or forbearance or the promise of it done or given by one party in return for the act or promise of another."

27. In Section 2(d) of the Indian Contract Act it is laid down:

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."

In my view, taking into consideration the content of the said word as given in Webster's Dictionary and as the said expression is understood in the field of law, it is not possible in the instant case to hold that the provision of the accommodation in dispute to the defendant was not a part of the contract of employment. Consideration, it is well known, is one of the necessary ingredients of the contract under the Indian Contract Act. In view of the very explicit statement, which is contained in the aforesaid declaration, that the quarter was being given to the defendant in consideration of his employment with the plaintiff and, coupled with the said statement, the stipulation to vacate the quarter immediately on the termination of his employment. I think it will be taking an untenable view to hold that the defendant was not allowed to occupy the accommodation in question as a part of the contract of his employment. It is a well-known rule of interpretation of statutes and documents that such an interpretation should be placed upon them as will effectuate the purpose of the legislation or of the document. The legislative intent underlying Section 3 (1) (g) undoubtedly was that the employers, who offer accommodation to their employees in the course of the latter's employment, should be entitled to get back such accommodation through a regular Civil Court without the necessity of getting a prior permission of the District Magistrate to file a suit for the tenant's eviction. The same seems to have been the intention of the plaintiff in getting the declaration (Ex. 15) from the defendant. In my view, therefore, the accommodation in dispute was provided to the defendant as a part of his contract of employment under the landlord and when his employment came to an end, the landlord became entitled to get back the said accommodation and, in case a suit became necessary to be filed for the said purpose, then the same stood covered by Section 3 (1) (g) of U.P. Act No. III of 1947.

28. Point No. 4: The rival contentions of the learned Counsel have been noticed above. Briefly, the Counsel for the appellant contends that in the instant case the landlord was bound to give one month's notice determining the tenancy of the tenant, as required by Section 106 of the Transfer of Property Act as amended by the U.P. Civil Laws Amendment Act of 1954. Apart from other pleas his contention is that a mere direction to the tenant to vacate the accommodation within 30 days of the receipt of the notice is bad in law as the same does not bring about the determination of tenancy as required by Section 106 of the Transfer of Property Act. There does seem to be some conflict on this question in

the case law which has been placed before me. In Ram Chandra and Another Vs. Lala Dulichand, , a Division Bench of this Court observed:--

"Under Section 111, as we have mentioned above, the notice can be one out of three different natures, viz., (1) a notice to determine the lease; (2) a notice to quit; and (3) a notice of intention to quit. A lease governed by Section 106 of the Transfer of Property Act is thus terminable by a notice of any of these three kinds. Of course, the further requirement that the notice should be such as to make the lease terminable with the end of a month of tenancy, has also to be satisfied. Section 106 of the Transfer of Property Act does not restrict a notice under it to a notice to determine the lease only. In the present case, therefore, the notice to quit given on behalf of the appellant on 13-9-1957, was a notice which satisfies the requirements of both sections of the Transfer of Property Act."

29. It will be seen that in the Division Bench case the landlord by his notice had called upon the defendant to vacate the premises by a particular date and deliver its possession to the former. The notice by the landlord to vacate the rented property was held to be a notice to quit u/s 111(h) and was held to be a good notice u/s 106 read with Section 111(h). This Division Bench has been followed by a learned Single Judge of this Court in 1969 All LJ 358. On the other hand, there is another Division Bench of this Court reported in Ahmad Ali Vs. Mohd. Jamal Uddin, where it is laid down-

"A notice terminating the tenancy may include a demand for possession but a notice only demanding possession cannot be interpreted as a notice terminating the tenancy."

30. The learned Single Judge in the case reported in 1969 All LJ 358 (supra) considered these observations to be obiter. However, another learned Single Judge of this Court in, the case reported in Farooq Ahmad Vs. Muneshwar Bux Singh, followed the Division Bench case reported in Ahmad Ali Vs. Mohd. Jamal Uddin, and held that a notice asking for the vacation of the premises and not terminating the tenancy was invalid. It seems that Ram Chandra and Another Vs. Lala Dulichand, were not cited before the learned Single Judge in Farooq Ahmad Vs. Muneshwar Bux Singh, , because he has observed:

"No decision of this or any other High Court taking a contrary view has been cited before me by the learned Counsel for the respondent. As a Division Bench case it is binding on me."

31. In Gorakh Lal Vs. Maha Prasad Narain Singh and Others, the point which fell for the consideration of the Bench was a different one. However, from what has been stated in the reported judgment, it seems that the notice which was considered in the said judgment merely asked the tenant to vacate the premises within 3.0 days from the date of service of the notice. The Full Bench upheld the validity of the notice. It is significant that the Full Bench was presided over by Chief Justice Desai who had earlier presided over the Division Bench whose decision is reported in Ahmad Ali Vs. Mohd. Jamal Uddin, .

32. Sri Dayal placed great reliance on an old four-Judge Full Bench decision of this Court reported in ILR 1885 All 899 (FB). In the case before the Full Bench the tenancy month began on the 1st day of each English calendar month. On 11th December, 1882, the notice was given, to the tenant in the following terms:--

"If the rooms you occupy in the house No. 5, Thornhill Road, are not vacated within a month from this date, I will file a suit against you for ejectment, as well as for recovery of rent due at the enhanced rate."

33. Such a notice undoubtedly was bound to be held to be not a good notice as there was no termination of tenancy on the expiry of the tenancy month as was the requirement of Section 106 (as it then stood). As the Division Bench in Ram Chandra and Another Vs. Lala Dulichand, emphasised even though it may be a notice to quit or vacate u/s 111(h), still, the requirement of Section 106 (as it stood before its amendment by the Civil Laws Amendment Act, 1954) that there should be a termination of tenancy on the expiry of the month of tenancy, had also to be complied with and the notice before the Full Bench in ILR (1885) All 899 (FB) did not comply with such requirement of law. Therefore, the notice undoubtedly was bad in the said case as held by the Full Bench. This aspect of the matter was emphasised by Straight, J., in the following words:--

"It has been argued by Mr. Rose that the defendant, being presumed to know the law must consequently be presumed to know that, under the notice, he would have to leave the premises by the 1st January, 1883, and that if he remained in possession after that date he would become a trespasser; that is to say, he was to read a notice which gave him till the 11th January, as meaning the 1st January. It appears to me that if the plaintiff, between the 11th December, 1882, and the 12th January, 1883, had attempted to take steps for the ejectment of the defendant, the latter would have had a good answer by setting up that he was in possession with the leave and license of the plaintiff. Under these circumstances, I am of opinion that the document is not one which gave the lessee notice to quit on the 1st January, 1883."

34. The Chief Justice also emphasised this aspect of the matter in these words:--

"The question here really is, whether the notice in question was a notice of Mr. Fairlie's intention to terminate the contract at the end of a month of the tenancy. I am of opinion that it cannot be so considered. Then, was this an intimation of an intention to terminate the tenancy on the 31st December, 1882 ? I am clearly of opinion that it was not."

35. It is true that there are certain observations in the judgment of the learned Chief Justice which may be said to support the contention of the learned Counsel for the appellant. For example, he observed:--

"He (the landlord) merely tells the lessee to vacate the rooms or to pay the penalty. This is not a notice which can terminate the tenancy and, therefore, the

tenancy was not determined".

36. These observations have to be read in their context. The Full Bench discussed the matter with reference to Section 106 of the Transfer of Property Act and it did not and, in fact, it was not called upon to consider the provisions contained in Section 111(h) of the said Act.

37. However, it is not necessary to seek to reconcile the aforesaid case law as the dispute in the instant case can be disposed of on other aspects, Mr. Upadhyaya's contention is that in the instant case it was not necessary to serve a notice u/s 106 read with Section 111(h) of the Transfer of Property Act inasmuch as either there was a contract to the contrary between the parties or else it was a case of tenancy at will. In either of the two situations, learned Counsel contends, it was not necessary to give any notice to the defendant to determine his tenancy. I propose to examine this contention of the learned Counsel now. In Clause (5) of the Declaration (Ext. 15) it is clearly laid down:--

"That I shall be vacating the quarter immediately on termination of my employment or a demand for its vacation from the Kamla Town Trust or my employers without any plea or excuse of want of accommodation elsewhere."

38. Learned Counsel's contention is that by virtue of the stipulation contained in the said clause the tenancy in question, if any, must be deemed to be a tenancy at-will and in support of the said contention he has placed reliance, as noticed earlier. In AIR 1970 Raj 272 wherein it has been laid down:--

"Where the tenants undertake to give vacant possession of the premises whenever the landlords may desire them to do so the tenancy so created is a tenancy at-will. In a case like that, no notice within the meaning of Section 106 of the Transfer of Property Act is at all necessary to terminate the tenancy."

39. Reliance was also placed on Ramnarain and Another Vs. Kishorelal, . In my view this contention of the learned Counsel for the respondent is well founded. In the instant case as Clause (5) of the Declaration would show, the tenant undertook to vacate the quarter immediately on termination of his employment or a demand for its vacation from the Kamla Town Trust or his employers without any plea or excuse of want of accommodation elsewhere. Therefore, both the contingencies were provided for. The Kamla Town Trust or the plaintiff could ask for the immediate vacation of the quarter by the defendant even during the continuance of the employment of the defendant with the plaintiff and, in any case, the quarter had to be immediately vacated on the termination of the employment. Mr. Dayal's contention that in the instant case there could not be a tenancy at-will as such a tenancy requires the option to inhere in both the parties i.e., a landlord and a tenant may or may not be correct. He has placed reliance on Kanwar Lal Thapper Vs. Raja Bahadur Kamakhya Narayan Singh and Another, which undoubtedly supports his contention. In the instant case, however, in the Declaration, there is nothing to show that it was not open to the defendant to vacate the quarter immediately he wanted to do and without serving any notice

upon the plaintiff. Therefore, if necessary. I will hold that there was option open to both the sides to put an end to the tenancy immediately and without a notice u/s 106 read with Section 111(h), of the Transfer of Property Act. In the alternative, Mr. Upadhyaya has placed reliance on Section 111(b) which provides that a lease of Immovable property determines where such time is limited conditionally on the happening of some event by the happening of such events. In the instant case, in Clause (5) of the Declaration the defendant clearly undertook to vacate the quarter immediately on termination of his employment. In case the tenancy in question be not deemed to be a tenancy at-will, then in my view Section 111(b) of the Transfer of Property Act will be applicable as the tenancy of the defendant came to an end with the termination of his employment.

40. Section 106 of the Transfer of Property Act is clearly subject to a contract to the contrary between the parties. The very opening words in the ay "in the absence of a contract".

In The Calcutta Credit Corporation Ltd., and Another Vs. Happy Homes (P) Ltd., it is clearly laid down:

"A tenancy is founded on contract, and it is always open to the parties thereto to agree that the tenancy shall be determined otherwise than by notice served in the manner provided by Section 106 of the Transfer of Property Act, or by a notice of a duration shorter than the period provided by the Act. If the parties so agree, the tenancy will come to an end".

41. I, therefore, hold that in the instant case it was not necessary for the plaintiff-landlord to give any notice to the defendant for determining his tenancy u/s 106 read with Section 111(h) of the Transfer of Property Act. There is, however, one aspect of the matter placed by Sri K. M. Dayal which still awaits discussion. His contention is that the provisions of Section 116 of the Transfer of Property Act were attracted to the instant case inasmuch as the plaintiff did not seek to eject the defendant immediately on the resignation of the defendant on 23rd February, 1963 and allowed him to hold over by giving out that the defendant would be treated as a tenant upto 31st March, 1963. As stated above, he placed reliance on a few cases. Sri K. M. Dayal also referred to Section 113 of the Transfer of Property Act, but in my view the said provision of law has no application to the facts of the instant case. The said section lays down:--

"A notice given u/s 111, Clause (h) is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting."

42. I do not think there has been any act on the part of the plaintiff in the instant case showing any intention to treat the lease, if any, as subsisting. It, is, therefore, not necessary to examine the case law with reference to the said section. So far as the cases cited by Sri K. M. Dayal u/s 116, Transfer of Property Act are concerned, again, I do not propose to examine each case separately as in my view it will not help in resolving the controversy at hand. I have first to

satisfy myself that in the instant case there was a holding over such as is contemplated by Section 116. Transfer of Property Act. The said Section lay down as under:--

"If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accents rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106".

43. I do not think that in the facts of the instant case it can be said that there was any holding over on the part of the defendant. The defendant submitted his resignation on 23rd February, 1963, but the same was accepted subsequently and by the plaintiff's letter dated 21st March, 1963, the defendant was called upon to vacate the quarter within seven days. The defendant's attention was invited to his own Declaration dated 4th February, 1955, wherein he had undertaken to vacate the quarter on the termination of his employment. The fact that the employer gave some time to vacate the quarter after the termination of the employment will not mean that he agreed to a holding over by the tenant u/s 116 of the Transfer of Property Act. Plainly the employer's intention was not to allow any holding over of the kind contemplated by the said section of the Transfer of Property Act. A short time allowed to a tenant to vacate after the termination of his employment cannot be deemed to be such act on the part of the landlord as can be construed to lead to, or enable the tenant to claim, a holding over of the property u/s 116 of the Transfer of Property Act. In my view, ordinarily, in practice, employers would give some time to their ex-employees, to vacate the quarter in the latter's possession and I do not think that such act for the convenience of their ex-employees should be so construed as to result in penal consequences for the employers. In my view, therefore, there was no holding over in the instant case and, therefore, Section 116 of the Transfer of Property Act is not applicable.

44. It is obvious that the plaintiff wanted to eject the defendant and it was not clear to the former as to what was the relationship between the parties whether it was a case of a licence or tenancy and if it was a case of tenancy, whether it was a monthly tenancy which required notice u/s 106 read with Section 111(h) of the Transfer of Property Act. Therefore, by way of precaution the two notices were sent, the first dated 21st March, 1963 (Ext. 13) and the second dated 20th May, 1963 (Ext. 3). In the plaint also both the grounds were set out in the alternative ejectment was sought on the ground of the revocation of licence and on the ground of the determination of tenancy. In my view it is open to a landlord to seek ejectment on the basis of the alternative pleas. In *Ram Chandra and Another Vs. Lala Dulichand*, two notices were given by the landlord, the first one was dated 9th April, 1946, whereby the tenancy was terminated

Subsequently, another notice dated 13th September, 1947, was given whereby the defendant was called upon to vacate the premises by 10th October, 1947. In the second notice it was stated:

"In case of non-compliance with this notice, which is being given without prejudice and without waving my previous notice dated 9th April, 1946, legal steps shall be taken against you."

45. Further, by the second notice the landlord claimed damages at the rate of Rs. 45/- per day for the period which began after the earlier termination of the tenancy by the first notice. In spite of these facts, the Division Bench held the second notice to be a good notice which brought about the termination of the tenancy. In my view, therefore, the fact that in the second notice dated 20th May, 1963, the plaintiff did not give up its case that the defendant was a trespasser with effect from 1st April, 1963, will not mean that there was any improvement in the position of the defendant, I hold that despite the aforesaid two notices given by the plaintiff to the defendant, it is still open to it to contend that in law the defendant was not entitled to any notice whatsoever and there was no holding over u/s 116 of the Transfer of Property Act. I, therefore, decide the point accordingly.

46. In view of the aforesaid findings the appeal is dismissed but I make no order as to costs of this appeal. The defendant-appellant is granted two months' time to vacate the accommodation.