

(2000) 03 AHC CK 0032
In the Allahabad High Court
Case No : C.M.W.P. No. 10542 of 1983

Sri Nanhey Khan

APPELLANT

Vs

1st Addl. District Judge, Farrukhabad and others

RESPONDENT

Date of Decision : 07-03-2000

Acts Referred:

Evidence Act, 1872 — Section 114
General Clauses Act, 1897 — Section 27
Post Office Act, 1898 — Section 44(1)
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2)

Citation : (2000) 2 AWC 1528

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Haider Husain and G.N. Verma, for the Appellant; M.D. Singh and S.C., for the Respondent

Judgement

Sudhir Narain, J.—The petitioner is aggrieved against the decree for recovery of arrears of rent, ejectment and damages passed against him by the courts below.

2. The plaintiff-respondent Nos. 3 and 4 filed S.S.C. Suit No. 115 of 1990 against the petitioner for recovery of arrears of rent, ejectment and damages with the allegations that the petitioner was tenant at monthly rent of Rs. 100 and Rs. 30 per month as electric charges. He had not paid rent for the period 1.9.1979 to 30.6.1980 amounting to Rs. 1,000 and electric charges amounting to Rs. 300. He sent a notice dated 9.7.1980 demanding this amount which was served on him on 11.7.1980 but inspite of service of notice he did not pay the amount. The petitioner denied the averments made in the plaint. His case was that the rent was Rs. 100 per month inclusive of electric charges. He had sent a money order on 14.7.1980 for a sum of Rs. 1.000 but It was refused by the plaintiff, Prem Chandra. The trial court decreed the suit on 17.12.1981 on the finding that the landlords had not refused to accept the money order alleged to have been sent

by the petitioner. This judgment has been affirmed In revision by the respondent No. 1 on 6.8.1983. These orders have been challenged in the present writ petition.

3. The core question is whether the petitioner has committed default In payment of arrears of rent. Admittedly the petitioner had sent money order on 14.7.1980 for a sum of Rs. 1,000. This amount covered the period for which the notice was sent. The money order, however, is alleged to have been delivered to Prem Chandra. the plaintiff, after the period of one month. In Full Bench decision of this Court in Bhikha Lal and others v. Munna Lal 1974 AWR 294. the question referred was whether the tenant could be said to have committed default u/s 3 (1) (a) of U. P. (Temporary Control of Rent and Eviction) Act. 1947, in respect of payment of rent which he had sent to a landlord by money order well within time but had reached the landlord after expiry of 30 days. The Court answering the said question held that if the landlord has demanded the arrears through the registered notice, the amount sent by money order there, will be implied authority to the tenant to send the amount through the postal agency and if the tenant sends the amount within the time prescribed in law to the landlord, unless he withdraws it. the tender will be valid tender to the landlord within time even if the money order does not reach him within the prescribed time under law. It was observed as under :

"Thus, assuming that by reason of Section 44(1) of the Post Office Act. the post office is the statutory agent of the tenant, It can still be held to be the agent of the creditor also provided the circumstances of the case Justify that Inference. We are thus free to consider the question before us unhampered by Section 44(1) of the Post Office Act."

"Thus, It appears to me that the Court in this case Inferred an Implied authority to the debtor to send the cheque by post merely because a demand had been made by post. This principle to my mind is based on sound logic. If a trader sends me a reminder of an outstanding bill through a messenger, in the absence of any intention expressed to the contrary. I believe I would be Justified in assuming that the trader, by implication has authorised me to send the amount outstanding through that messenger. Extending this principle, if a creditor who resides in a different town, makes a demand from his debtor by means of a letter despatched through the post he impliedly Invites the debtor to meet his obligations through the post. In this connection it may be borne in mind that "Government exercises a governmental power for the public benefit in the establishment and operation of the postal money order system and is not engaged in commercial transactions, notwithstanding it may have some aspects of commercial banking."

4. in Smt. Priya Bala Ghosh and others Vs. Bajranglal Singhanian and another, . where the tenant had remitted the money order within time but reached to the landlord after the outer limit of time fixed by the law, the tenant was not held defaulter. The Supreme Court held that the law envisages that remittance of

money order must be made before the last day runs out prescribed by the statute. The delay in reaching the money order to the landlord may be for various reasons which may not be under the control of the tenant and in those circumstances he cannot be held to be defaulter in paying rent within time prescribed by the statute.

5. Admittedly the petitioner had remitted the money order for a sum of Rs. 1,000, the demand made by the plaintiff-respondent, within one month from the date of service of notice, he cannot be held to be defaulter.

6. Another question is whether the money order was tendered to the plaintiffs by the postman concerned. The petitioner had filed money order coupons. Ext. A-36 and Ext. A-37. It was addressed to Prem Chandra, one of the plaintiffs. The coupon contained endorsement of refusal by the addressee. Prem Chandra appeared as witness and denied that he refused to accept the money order and the endorsement of the postman was wrong. None of the parties had examined the postman. One view is that the mere denial by a party that he never refused to accept the money order or any letter rebuts the presumption contemplated u/s 114(f) of the Evidence Act because the person cannot lead negative evidence except to say that he did not receive the letter or money order alleged to have tendered to him. The other view is that mere denial is not sufficient to rebut the presumption because the man is interested to deny a fact which is against him. A large number of decisions have been cited in support of rival contentions.

7. In *Wasu Ram v. R. L. Sethi and another*, 1963 AWR 472, where the landlord was alleged to have refused money order and deposed that he never received the money order, the Court held that the presumption was not rebutted. In *Salik Ram Sahu and others v. Bindeshwari Ram Rauniyar* 1965 ALJ 839, it was held that a bare denial by the addressee who stood to profit by his denial and, therefore, had all the motive in the world to deny will not necessarily weaken the presumption created by the endorsement "refused", and that if the addressee states on oath that he never received the communication, the Court must decide after considering all the surrounding circumstances, whether he should be believed. Similar view was taken in *Asa Ram v Ravi Prakash* AIR 1966 All 519.

8. In *Jamal Khan and others v. Haji Yusuf Ali and others*, 1978 UPRCC 498, it was held that the presumption stood rebutted on the denial by the addressee on oath but veracity of the statement must be considered by the Court on the light of evidence on record and the conduct of the party concerned. Similar view has been expressed in *Smt. Bachchi Deal and another v. 1st Addl District Judge and others* 1983 (1) ARC 849 ; *Ramesh Chandra v. Cyan Chandra and another* 1985 (1) ARC 13 ; *Dharam Pal Tyagi v. Ana Kumar* 1986 (2) ARC 121 and *Mahabtr Prasad Agarwal v. Bry Nath Gigras* 1989 (1) ARC 413.

9. The Full Bench in *Ganga Ram Vs. Smt. Phulwati*, has held that it is not necessary to produce and examine the postman to prove the endorsement of refusal. The controversy in regard to presumption has been considered by the

Apex Court in Anil Kumar Vs. Nanak Chandra Verma, , and taking into account both the views, held that bare statement of tenant on oath denying tender and refusal to accept delivery is not sufficient to rebut presumption. The contrary view expressed in Shiv Dutt Singh Vs. Ram Dass, and Jagaf Ram Khullar and another v. Battu Mal AIR 1976 Del 111. that bare statement of tenant was sufficient to rebut the presumption of service was not accepted. The Supreme Court observed :

"In our opinion there could no hard and fast rule on that aspect. Unchallenged testimony of a tenant in certain cases may be sufficient to rebut the presumption but if the testimony of the tenant itself is Inherently unreliable, the position may be different. It is always a question of fact in each case whether there was sufficient evidence from the tenant to discharge the Initial burden."

10. Once the tenant has remitted the money and there is nothing to show that the remitter colluded with the postman who got the money order returned to him or there is any other circumstance indicating that the money order is returned for other reasons than the remarks made by the postman, the presumption will be that the money order as tendered to the addressee. The petitioner had sent the money order within time in pursuance of the demand notice. There may not be any intention, unless there is any evidence to the contrary that he wanted that the amount remitted by the money order should not be received by the addressee.

11. The next submission of the learned counsel for the petitioner is that the presumption u/s 114 of the Evidence Act and Section 27 of the General Clauses Act can be raised only when it is proved that it was properly addressed to the person and placed reliance upon the decision Dharam Pal Tyagi v. Anii Kumar 1986 12 ARC 121. wherein it was held that before any presumption could be raised, it has to be proved that it was properly addressed to the addressee. There is no controversy on this legal position. The petitioner had filed the coupon. There are three parts of the money order form. One is returned to the remitter but the other part which is sent to the addressee was not on the record. The postal remark was that it was refused. If the address was incomplete, it could be returned to the remitter with the endorsement that the address was incomplete. The Courts below without considering this aspect held that the address was Incomplete.

12. In view of the above, the writ petition Is allowed. The order dated 6.8.1993 is quashed. Respondent No. I shall decide the revision afresh keeping in view of the observation made above and in accordance with law. In the facts and circumstances of the case the parties shall bear their own costs.