
(2016) 03 AHC CK 0214
In the Allahabad High Court
Case No : Rent Control No. 3457 of 2016

West Watch Company	Vs	APPELLANT
Additional District Judge and Others		RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114
General Clauses Act, 1897 — Section 27
Rajasthan General Clauses Act, 1955 — Section 30
Ut

Citation : (2016) 117 ALR 842 : (2016) 2 ARC 259 : (2016) 34 LCD 612

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : Aslam Khan and Arif Khan, for the Appellant; Anurag Srivastava and Kabir Ahmad Khan, for the Respondent

Final Decision : Allowed

Judgement

Ram Surat Ram (Maurya), J.—1. Heard Sri Mohd. Arif Khan, Senior Advocate, assisted by Sri Mohd. Aslam Khan and Sri Mohd. Shadab Khan, for the petitioner and Sri Kabir Ahmad Khan along with Sri Anurag Srivastava, for respondent-3. The counsel for respondent-3 stated that he did not propose to file Counter Affidavit as such with consent of the parties, writ petition is being decided finally.

2. The writ petition has been filed against the orders of Prescribed Authority dated 04.10.2011 and Additional District Judge dated 05.02.2016, passed in proceeding under Section 21 of U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act).

3. Mohd. Asif Naseer (respondent-3) (hereinafter referred to as the applicant) filed an application (registered as P.A. Case No. 10 of 2008) under Section 21(1) (a) of the Act, on 20.03.2008, for release of Shop No. 64, situated on Ground

Floor of Building No. 31/72, Mahatma Gandhi Marg, Hazratganj, Lucknow, size of which is given as 42 Sq. feet. The applicant took plea that he had purchased the disputed shop, through sale deed dated 29.10.2004 (registered on 30.10.2004) from its previous owners Prashant Kumar Das and others, residents of Shri Bhawan, 39/59, Ram Tirath Marg, Narhi Bazar, Lucknow, for his personal use. West Watch Company (the petitioner) is tenant in disputed shop, on monthly rent of Rs. 15/- and doing business of repair/sale of watches, on small scale. After purchasing disputed shop, the applicant requested the petitioner to vacate it. Previously, the petitioner took time for vacating the shop but later on he refused to vacate it. Hence release application was filed. The petitioner is a rich man and owner of two buildings, one at mohalla Lalbagh and other at Khurram Nagar, Lucknow. The family of the petitioner has also commercial accommodation in their possession at main market Hazratganj, Khurram Nagar and I.T. Crossing Nirala Nagar in Lucknow city. The applicant has moved release application i.e. P.A. Case No. 8 of 2008, Mohd. Asif Naseer Vs. M/S Mangal Prasad and sons, for release of shop No. 63, situated in this building, area of which is 190 Sq. feet, which is pending. Shop Nos. 63 and 64 are adjacent to each other. The applicant is a young man and wants to start his own business of watches in these shops after its renovation. At present, he was assisting his father in business of watches and has experience of this business. These shops are suitable for his business. The applicant was residing with his father in house No. 203/28 (known as 3, Nabi Ullah road), City Station, P.S. Wazirganj, Lucknow. His family consists himself, his wife and one minor daughter. Disputed shop is a commercial accommodation and he is ready to pay two years rent as compensation to the petitioner. The petitioner is in position to take alternative commercial accommodation in city for his business. Need of the applicant is genuine, bonafide, pressing and urgent. He undertakes not to let out shop in dispute in future and will use it for his personal business.

4. The petitioner contested the release application and filed his written statement on 19.07.2010. The petitioner admitted the applicant as "landlord" of the disputed shop. The petitioner stated that his father was tenant in disputed shop since 1951 and carrying on business of repair and sale of watches. He was helping his father in business since 1960. Income from this shop was only source of livelihood of his family. He tried to obtain another shop in the locality of Hazratganj, but could not get, in spite of best efforts made in this respect. He has also applied for allotment of other shop to Rent Control and Eviction Officer, Lucknow. Had respondent-3 any genuine need, he would have purchased vacant shop and not old tenanted shop. Entire area of disputed shop is 6 feet x 2.5 feet = 15 Sq. feet and front of said shop is 4 feet x 2.5 feet = 10 Sq. feet, total 25 Sq. feet. Open surrounding area of said shop is 2.5 feet x 5 feet, which is Nazul land, from which the applicant has no concern. The applicant never asked the petitioner to vacate the disputed shop. No oral or written notice was given to him, regarding vacation of the shop. In the absence of notice, release application is not maintainable under Section 21 of the Act. The applicant has already moved

an application for release of shop No. 63, which is 7 times bigger than dispute shop No. 64. Although, there was no need of the applicant even for shop No. 63 but in case it is released then his alleged need would be satisfied. The applicant is doing property business. He used to purchase old buildings and shops and after its repair/renovation used to sell it and earning profit on it. His intention is to get shop vacated and raise multistory building over it, after demolition of existing building. West Watch Company is not a juristic person nor it is tenant in disputed shop rather Mohd. Ishaq Khan is tenant and doing business in it. It has been denied that Mohd. Ishaq Khan was rich man or owned any commercial accommodation. It has been stated that house of Mohd. Ishaq Khan at Khurram Nagar is in lane in residential area, it cannot be used for commercial purpose. The petitioner has constructed his house from loan, taken from State Bank of India and was still paying its instalments from income of disputed shop. His house at mohalla Lalbagh was ancestral house, in which, he had very less share. He has no shop at Saltanat Plaza, Mahatma Gandhi Marg, Hazratganj, which is a building owned by waqf and the Act was not applicable over it. Shop of 85 Sq. feet, at Saltanat Plaza are on monthly rent is Rs. 12,000/-, and Mohd. Shahab, his son was tenant in it. The petitioner and his sons have no shop at I.T. Crossing, Niralanagar. The applicant was also doing business of repair/sell of watches in the name and style M/S King Watch Company, Shambhu Building, Aminabad Crossing, Lucknow, along with his father, who was very old and aged man and not fit for doing that business. The applicant has no need of disputed shop. He malafide wants to eject old tenants and raise multi-story building in place of old building and to sell it. The applicant was jointly residing with family of father and his brother at house No. 203/28, Nabiullah Road, City station, Lucknow. Although the applicant has purchased premises No. 31/72, Mahatma Gandhi Marg, Hazratganj through sale deed dated 29.10.2004 but has not disclosed as to what business was being done by him. The applicant has purchased premises in dispute by investing Rs. 9,00,000/-, which shows that the applicant was independently doing business of repair/sell of watches in the name and style M/S King Watch Company, Shambhu Building, Aminabad Crossing, Lucknow, in a shop of an area 20 feet x 15 feet = 300 Sq. feet and allegation that he was unemployed, is incorrect. He is a married man, having three members family as such it is unbelievable that he is unemployed. The petitioner was doing business in disputed shop from very old time and has no alternative shop in Lucknow, to shift his business. In case disputed shop is released in favour of the applicant, then his entire family will come at the stage of starvation. Area of disputed shop is very small and will not serve the need of the applicant. Mohd. Arif, brother of the applicant, was carrying on business of repair/sell of watches in name and style of Crown Watch Company, in a shop of an area of 600 Sq. feet in Shambhu Building, Aminabad Crossing, Lucknow. The father of applicant was aged about 80 years and is not in a position to carry on business. Term of lease of Nazul land, over which, disputed shop is lying, has expired on 31.03.2008, as mentioned in sale deed dated 29.10.2004 and Nazul land cannot be sold without prior permission of competent authority. The applicant and his

father have share in building known as Rani Ki Kothi, Thakurganj, Lucknow, which is in an area of 32,000 Sq. feet. They have share in commercial building at Gautam Budh Marg, (Latouche Road), Lucknow, which consisted 6 shops and one hall but they have sold it. They have one flat in building Trikon, opposite to Christian College, Golaganj, Lucknow. Family of the petitioner consisted 13 members apart from one married daughter. His mother, Smt. Sikandar Jahan, was aged about 75 years and she has medical expenditure of Rs. 2000/- per month. Shahab Khan, son of the petitioner was tenant in a shop of 85 Sq. feet, in building of Waqf, Rani Saltanat, Hazratganj, Lucknow, which is exempted from operation of the Act. On these allegations, release application was contested.

5. The petitioner moved an application under Rule 22(e) for consolidation of cases i.e. P.A. Case No. 10 of 2008 along with P.A. Case No. 8 of 2008 Mohd. Asif Naseer Vs. Mangal Prasad and sons. Prescribed Authority vide order dated 17.01.2011 rejected this application. Later on P.A. Case No. 8 of 2008 Mohd. Asif Naseer Vs. Mangal Prasad and sons was dismissed by order dated 30.08.2014. The appeal filed by the applicant i.e. Rent Appeal No. 61 of 2014 was also dismissed by order dated 22.08.2015. The applicant has filed a writ petition against aforesaid orders, which is pending.

6. The applicant, in support of release application, filed his affidavit and affidavits of Rishabh Khanna and Mohd. Irfan. He filed copy of notice dated 25.07.2006, Certificate of Posting, copies of the application (Misc. Case No. 230 of 2007) filed by the petitioner, under Section 30 of the Act, application dated 27.10.2007, Counter Affidavit filed in Misc. Case No. 230 of 2007, order dated 07.11.2008 passed in it, Electricity bills of Shambhu Building, Election Identity Card of Mohd. Naseer and Mohd. Asif. The petitioner, in support of his case, filed affidavits of Mohd. Ishaq Khan, Mahmood and Mirza Raees Beg. He filed bills of BSNL, prescription slips, of Nishat hospital and Jagrani hospital, Power of attorney executed by Mohd. Ishaq Khan in favour of Mohd. Ishaq Khan, papers relating to shops owned by Mohd. Asif Khan in Lucknow, copy of affidavit filed before Mukhya Nagar Adhikari, Lucknow and copy of application, P.A. Case No. 8 of 2008 Mohd. Asif Naseer Vs. Mangal Prasad and sons.

7. Prescribed Authority, after hearing the parties, by order dated 04.10.2011, held that the applicant has given six months prior notice to the petitioner as required under Section 21(1)(a) Proviso of the Act. The petitioner had knowledge that the applicant was owner and landlord of the shop in dispute, before filing of release application. Release application was filed after expiry of three years from sale deed obtained by the applicant. The need of the applicant is bonafide and pressing. At present he had no shop in Lucknow. Although about 2-1/2 years have passed after filing of the release application but there is nothing on record to prove that the petitioner had made any effort to search alternative accommodation. Comparative hardship is in favour of the applicant. On these findings, he allowed release application.

8. The petitioner filed an appeal (registered as Rent Appeal No. 45 of 2011) from

the aforesaid order. The appeal was heard by Additional District Judge, who by his judgement dated 05.02.2016, held that relationship of landlord and tenant, between the applicant and the petitioner is proved. Prescribed Authority recorded a finding that six months prior notice was given to the petitioner, "Under Certificate of Posting". The need of the applicant is bonafide and pressing. On these findings, he dismissed the appeal. Hence this writ petition has been filed.

9. The counsel for the petitioner submitted that the appeal is a valuable right of a litigant. The appellate court is required to reconsider each and every evidence on record and record his independent findings on all the points. In this case, appellate court merely noticed the arguments and case law and without considering evidence and assigning any reason for believing/disbelieving them, recorded his findings. He dismissed the appeal, without assigning any reasons for discarding the grounds raised by the petitioner, which shows non-application of mind. Premises in dispute situates over Nazul land. Term of lease has expired on 31.03.2008. Alleged sale deed dated 29.10.2004, was executed without prior permission of competent authority. A perusal of sale deed shows that under the will of last owner, property cannot be sold to an outsider of the family. The applicant did not get any title over disputed shop on its basis and release application moved by him was not maintainable. Under Section 21(1)(a) Proviso, a transferee landlord is required to give six months notice of sale deed prior to filing of release application. In this case, no notice was given to the petitioner. In release application also there is no mentioned about compliance of this mandatory provision. When the petitioner, in written statement, raised a ground in this respect, then in rejoinder affidavit, allegation has been made that notice was sent on 25.07.2006, "Under Certificate of Posting" to the petitioner as it is easy to fabricate "Certificate of Posting". There is no evidence that alleged notice dated 25.07.2006 was ever served upon the petitioner. The Courts below have raised presumption of service under Section 114 of Evidence Act, 1872. In any case on denial, presumption stood rebutted and burden lies to prove personal service by adducing positive evidence in this respect but there is absolutely no evidence to prove that notice dated 25.07.2006 was served upon the petitioner. The applicant filed P.A. Case No. 8 of 2008 Mohd. Asif Naseer Vs. Mangal Prasad and sons, for release of Shop No. 63, area of which was mentioned as 181 Sq. feet. While area of present Shop No. 64 is 25 Sq. feet only. The applicant took plea that he would renovate two shops amalgamating them together. P.A. Case No. 8 of 2008 Mohd. Asif Naseer Vs. Mangal Prasad and sons has been dismissed. Thus need as set up by the applicant has been frustrated. In any case, Lay Out Map for renovation of two shops has been rejected by Lucknow Development Authority by order dated 31.03.2011 as shop No. 64 has come in road widening thus alleged need will not be fulfilled even if the petitioner is ejected. Prescribed Authority, in judgement dated 30.08.2014, passed in P.A. Case No. 8 of 2008, Mohd. Asif Naseer Vs. Mangal Prasad and sons, held that the applicant's sale deed dated 29.10.2004 was void but contrary findings has been recorded in this case. Which shows that collusive orders were passed malafide to

eject the petitioner as in case, P.A. Case No. 8 of 2008 had been allowed then need of the applicant must have satisfied as Shop No. 63 was a bigger shop. The applicant is doing business of repair/sell of watches along with his father, who is at present 80 years old and was not able to run his business without help of the applicant. This fact has been illegally ignored by respondents-1 and 2. Had the applicant any need for his separate business, he would have taken vacant shop and not old tenanted shop by investing Rs. 9,00,000/-. Thus intention of the applicant is to purchase old shop and after its renovation or raising multi-story building, sell it for profit and not to run his own business. He relied upon judgement of Supreme Court in *Martin and Harris Ltd. Vs. Vith ADJ and others*, , 1998 (1) SCC 732 and *Nirbhai Kumar Vs. Maya Devi and others*, , (2009) 5 SCC 399, in which it has been held that six month prior notice is mandatory for a release application by a transferee landlord under Proviso to Section 21(1)(a) of the Act. Judgement of this Court in *Swatantra Kumar Vs. Sachchidanand*, , 2011 (1) ARC 513, in which it has been held that right of waiver of the notice is of the tenant. He submits that orders of respondents-1 and 2 are illegal and liable to be set aside.

10. In reply to the aforesaid arguments, the counsel for the applicant submitted that the applicant purchased premises in dispute through sale deed dated 29.10.2004. The applicant gave notice to the petitioner on 25.07.2006, under "Certificate of Posting" to the petitioner. Notice and Certificate of Posting were filed along with affidavit and relied upon by the Courts below, who recorded concurrent findings that six months prior notice was served upon the petitioner. The notice was sent on correct address of the petitioner through post office as such under Section 114, Illustration (e) and (f), the court is bound to raise presumption of service in due course. The release application was filed on 20.03.2008. Prior to it, the petitioner filed an application (Misc. Case No. 230 of 2007) under Section 30 of the Act on 27.10.2007, in which he had admitted the applicant as landlord and stated that he had tendered rent for the period 29.10.2004 to 31.12.2007 to the applicant through money order dated 29.09.2007. This admission corroborated with the evidence of the applicant that notice of sale deed dated 29.10.2004 was given to the petitioner, six months prior to filing of release application on 20.03.2008. No form for giving notice has been prescribed. Purpose of notice is to give knowledge of sale deed, which has been brought to his knowledge. In written statement filed by the petitioner, he has admitted status of the applicant as landlord. Judgement dated 30.08.2014 passed in P.A. Case No. 8 of 2008 is not final. In any case, it is not admissible in evidence, between the parties, in this case and no reliance can be placed on it. The applicant is an unemployed young man and want to set up his own business of repair/sell watches. He has experience of this business. Both the Courts below concurrently found that need of the applicant is bona fide and genuine. It has been further held that the petitioner has no alternative accommodation for his business. These findings are findings of fact and cannot be re-appreciated by this Court. Release application has been filed on 20.03.2008. There is nothing on

record to prove that the petitioner has made any effort to obtain alternative accommodation during this period. Thus bona fide of the petitioner is not proved. He relied upon the judgment of this Court in Writ Petition No. 516(R/C) of 2016, Sri Dharmendra Singh Sonkar vs. Additional District and Sessions Judge and others, (decided on 12.2.2016) and Neeraj Rohtagi vs. Smt. Uma Kejariwal, , 2011 (1) ARC 350, in which it has been held that concurrent findings of fact recorded by the Courts below cannot be set aside by this Court in exercise of writ jurisdiction. Ramesh Chandra Joshi and others vs. Daulat Singh and others, 1982 ARC 674 in which it has been held that while considering the genuineness of Landlord's bona fide need Prescribed Authority is not required to refer the circumstances of the tenant. Smt. B.B. Begum vs. Dr. Awadhesh Narain and others, , 2009 (27) LCD 222 in which it has been held that Rule 10 (3) casts an obligation on the tenant to search an alternative accommodation after filing of release application. Mahabir Prasad vs. VIth Additional District Judge, Gonda and others, , 1993 (2) ARC 401 in which it has been held that bona fide requirement does not mean that the Landlord should be on street and fact that tenant will not get any accommodation in the area of disputed accommodation does not bar deciding the comparative hardship in favour of the landlord. Bhagwan Das vs. Additional District Judge, Dehradun and others, 1996 (1) ARC 220 and Rais Ahmad vs. Special/Additional District Judge, Saharanpur and others, , 1997 (2) ARC 190 in which it has been held that under Section 114, Illustration (e) and (f) a presumption regarding service of a letter sent through "Certificate of Posting" can be raised. M/s. Bata India Limited and others vs. Vth ADJ, Agra and others, 1999(1) ARC 464, it has been held in proceeding under Section 21 of the Act, pleadings are to ascertain about the real controversy and for enabling both the parties to adduce evidence accordingly. Prescribed Authority will not be too technical in regard to pleadings. Madho Ram vs. Sardar Punjab Singh and others, 1981 ARC 37 in which it has been held that in written notice of demand is not necessary. It may be oral notice also. Amit Kumar vs. Puttan Babu and another, 2016 (1) ARC 71 in which it has been held that in the absence of any effort being made by tenant to search an alternative accommodation the factum of comparative hardship tilt in favour of the Landlord. Brij Behari Lal Budholiya vs. IVth Additional District Judge, Jalaun at Orai and others, 2000 (2) ARC 456, in which it has been held that even if an order is illegal this Court in exercise of jurisdiction under Article 226 of the Constitution, has no jurisdiction to interfere with the findings of fact. Om Prakash vs. Khub Chand and others, 1982 ARC 137 in which it has been held that Rules relating to pleadings as provided under Code of Civil Procedure cannot be strictly applied in the proceeding under U.P. Act No. 13 of 1972. Judgements of Supreme Court in Rishi Kumar Govil vs. Maqsoodan and others, , 2007(2) ARC 1, it has been held that Landlord is the best judge of his requirement and court has no concern in the matter. Martin & Harris Ltd. vs. VIth Additional District Judge & others, 1998 (1) ARC 109 in which it has been held that period of three years as provided under Section 21(1)(a) Proviso does not restrict filing of the application. However, prior notice of six months is required to be given before to filing of the application. Anwar Hasan Khan vs.

Mohammad Shafi and others, , 2001 (2) ARC 554, in which it has been held that proviso to Section 21(1)(a) of the Act is not a permanent clog on the rights of purchaser and has no obligation after expiry of period of three years and six months. Nirbhai Kumar vs. Maya Devi and others, 2009 (1) ARC 767 in which it has been held that giving six months prior notice under proviso to Section 21(1) (a) of the Act is mandatory. However, the notice could be waived by the tenant. Vijay Lata Sharma vs. Raj Pal and another, , 2004 (2) ARC 524, in which it has been held that in the proceeding under the Act title cannot be decided. Ranju @ Gautam Ghosh vs. Rekha Ghosh and others, , 2008 SCFBRC 82, it has been held that notice can be served in any manner and it cannot be said that the same should be served only by registered post with acknowledgement due. Faruk Ilaht Tamboli and another vs. B.S. Shankarrao Kokate (D) by Lrs. And others, , 2016 ARC 1, in which it has been held that property owner has the right to use his property as he chooses.

11. I have considered the arguments of the counsel for the parties and examined the records. Section 34(7) of the Act, requires the appellate authority to record reasons for every order. Supreme Court in Girijanandini Devi v. Bijendra Narain Choudhary, , AIR 1967 SC 1124, held that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the trial court. Expression of general agreement with reasons given by the court decision of which is under appeal would ordinarily suffice.

In view of above, this Court cannot interfere with impugned orders only on this ground that appellate court has not recorded its independent reasons.

12. It is admitted that the petitioner was tenant in disputed shop, at the time when the applicant obtained sale-cum-assignment deed dated 29.10.2004. The petitioner also admits that previous landlords were owners of superstructure, in which, the petitioner was tenant and they had been transferred to the applicant. The petitioner in paragraphs-1 and 3 of his written statement admitted the applicant as his landlord. As such, this Court does not propose to examine validity of deed dated 29.10.2004.

13. Now issue raised that release application as filed on 20.03.2008 was not maintainable for want of six months prior notice is required to be examined. Section 21(1)(a) Proviso, which is relevant is quoted below:-

"Section 21. Proceedings for release of building under occupation of tenant.--(1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists namely--

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where

the landlord is the trustee of a public charitable trust, for the objects of the trust;

(b)

Provided that where the building was in the occupation of a tenant since before its purchase by the landlord, such purchase being made after the commencement of this Act, no application shall be entertained on the grounds, mentioned in clause (a), unless a period of three years has elapsed since the date of such purchase and the landlord has given a notice in that behalf to the tenant not less than six months before such application, and such notice may be given even before the expiration of the aforesaid period of three years.

14. Supreme Court in *Martin & Harris Ltd. v. ADJ*, (1998) 1 SCC 732, held that so far as this point is concerned it must be held on the clear language of the first proviso to Section 21(1) of the Act that application for possession under Section 21(1)(a) had to be filed by the landlord concerned not earlier than expiry of six months from the date of issuance of the notice by the landlord. This view has been approved by a larger Bench in *Nibhai Kumar Vs. Maya Devi*, (2009) 5 SCC 399, in which it has been held the provision for six months' notice before initiation of proceedings under Section 21(1) of the Act, though is mandatory and confers protection on the tenant concerned, it can be waived by him.

15. Section 80 C.P.C. requires giving two months notice before filing suit against government. Supreme Court in *The State of Madras vs C.P. Agencies And Another*, AIR 1960 SC 1309 has held that requirement of notice under Section 80 CPC is mandatory and there is no exception to it and in the absence of notice the suit is not maintainable. Constitutional Bench of Supreme Court in *Amar Nath Dogra v. Union of India*, AIR 1963 SC 424, has considered three points: (1) that where after a notice under Section 80 of the Civil Procedure Code, a suit is instituted but that suit is withdrawn with liberty to file a fresh suit, it is the requirement of Section 80 of the Civil Procedure Code that there should be a fresh notice before the second suit is instituted, (2) that the allegations in the plaint and the reliefs claimed in it were at variance with the cause of action and reliefs stated in the notice issued under Section 80, and (3) that the notice itself was defective as not complying with the requirements of Section 80. It has been held that we do not consider that there is much substance in the first objection we have set out above. If the plaint which is being considered by the Court has been preceded by a notice which satisfies the requirements of Section 80 of the Civil Procedure Code, then the fact that before the plaint then under consideration, there had been another plaint which had been filed and withdrawn cannot, on any principle, be held to have exhausted or extinguished the vitality of the notice issued. It is, no doubt, true that a notice under Section 80 is not a pleading and need not be a copy of the plaint and that no particular or technical form is prescribed for such a notice, still having regard to the object for which Section 80 has been enacted we consider that the details which it contains should be sufficient to inform the party on whom it is served of the nature and basis of the claim and the relief sought, and in so stating the position we are

merely reproducing the terms of the section. No doubt, a notice has to be interpreted not pedantically but in the light of common sense without one being hypercritical about the language but the question is whether in the notice before us there is substantial information conveyed on the basis of which the recipient of the notice could consider the claim of the would be plaintiff and avert the suit. For the reasons already stated this question can only be answered in the negative.

16. In the present case, there is no whisper in the release application for giving six months prior notice. The petitioner, in paragraph-5 of his written statement has raised specific ground, regarding maintainability of release application for want of notice. Then in rejoinder affidavit, the applicant came with allegation that notice dated 25.07.2006 was sent to the petitioner, "Under Certificate of Posting" and copy of notice dated 25.07.2006 and "Certificate of Posting" have been filed. On the basis of these evidence, Prescribed Authority raised presumption of service of notice, under Section 114 of Evidence Act, 1872. Relevant provisions are quoted below:-

Section 114. Court may presume existence of certain facts.--The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume--

- (a)
- (b)
- (c)
- (d)
- (e) that judicial and official acts have been regularly performed;
- (f) that the common course of business has been followed in particular cases;

17. For raising presumption of service of notice, the applicant has to prove that letter was posted through Post & Telegraph Department on a particular date. Apart of "Certificate of Posting" no employee of Post & Telegraph Department has corroborated/proved actual posting of notice. Supreme Court in Fakir Mohd. v. Sita Ram, , AIR 2002 SC 433, held that when the notice in writing is to be sent by post and the mode of service is not specified, Section 30 of the Rajasthan General Clauses Act comes into play. The notice should be sent by properly addressing, prepaying and posting the same by registered post which the tenant has failed to do in the present case. The learned counsel for the appellant-tenant submitted that in the absence of mode of service having been specified in the provision, the tenant was justified in sending the notice in writing under

certificate of posting and presumption as to service needs to be drawn under Illustration (f) of Section 114 of the Evidence Act. Suffice it to observe that the presumption arising under Section 114 of the Evidence Act is a permissive presumption which the court may or may not raise depending on the facts and circumstances of a particular case. The learned counsel for the respondent has drawn our attention to an observation made by this Court in *Shiv Kumar v. State of Haryana*, (1994) 4 SCC 445 (SCC p. 447, para 6) wherein the notices by the management to the workmen were sent through certificate of posting which fact was disputed. Supreme Court observed that "we have not felt safe to decide the controversy at hand on the basis of the certificates produced before us, as it is not difficult to get such postal seals at any point of time."

18. In present case, Section 27 of General Clauses Act, 1897 (as amended in U.P.) is applicable and notice is required to be sent through registered post. On denial of notice in written statement, the applicant came with case that notice was sent "Under Certificate of Posting". No evidence of employee of Post & Telegraph Department has been adduced to prove that notice was actually posted by him. In view of aforesaid law laid down by Supreme Court presumption of service of notice, could not be raised on the basis of "Certificate of Posting" in the facts of this case, as it is very easy to fabricate it in back date. The Courts below have wrongly raised presumption of service upon the petitioner. Notice under proviso to Section 21(1)(a) of the Act is mandatory. In the absence of any form of notice and mode of service, a written notice containing full particulars of cause of action ought to be served personally or through registered post. Facts relating to cause of action has come to the notice of the petitioner from other source does not absolve, mandatory requirement of law which casts a duty upon the landlord to serve notice. Alternative arguments of the counsel for the applicant that on the basis of admission as contained in the application (Misc. case No. 230 of 2007) under Section 30 of the Act, it shall be presumed that the petitioner had six months prior notice of the sale deed dated 29.10.2004, which is sufficient compliance of Proviso to Section 21(1)(a) of the Act, is not liable to be accepted, in view of judgment of Supreme Court in *Amar Nath Dognra's* case (supra). Thus release application was not maintainable for want of necessary notice under the Act.

19. Rule 16(2) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 lays down a guidelines to be considered by Prescribed Authority while deciding issue relating to need and comparative hardship, which is quoted below:-

Rule 16. Application for release on the ground of personal requirement [Sections 21(1)(a) and 34(8)].--(1) * * *

(2) While considering an application for release under clause (a) of sub-section (1) of Section 21 in respect of a building let out for purposes of any business, the prescribed authority shall also have regard to such facts as the following--

(a) the greater the period since when the tenant opposite party, or the original tenant whose heir the opposite party is, has been carrying on his business in that building, the less the justification for allowing the application;

(b) where the tenant has available with him suitable accommodation to which he can shift his business without substantial loss there shall be greater justification for allowing the application;

(c) the greater the existing business of the landlord's own, apart from the business proposed to be set up in the leased premises, the less the justification for allowing the application, and even if an application is allowed in such a case, the prescribed authority may on the application of the tenant impose the condition where the landlord has available with him other accommodation (whether subject to the Act or not) which is not suitable for his own proposed business but may serve the purpose of the tenant, that the landlord shall let out that accommodation to the tenant on a fair rent to be fixed by the prescribed authority.

20. Supreme Court in *Sushila v. IInd ADJ*, , (2003) 2 SCC 28, held that Prescribed Authority as has to decide comparative hardship in the light of principle given this Rule 16. In the present case, respondents-1 and 2 did not consider the principles given under Rule 16. In the present case, the petitioner has stated that he was tenant in disputed shop from 1951. He has stated that the applicant was also doing business of repair/sell of watches in the name and style M/S King Watch Company, Shambhu Building, Aminabad Crossing, Lucknow, along with his father, who was very old and aged man and not fit for doing that business, without help of the petitioner. The Courts below have totally ignored these facts while deciding bona fide need and comparative hardship.

21. In view of aforesaid discussions, the writ petition succeeds and is allowed. The orders of Prescribed Authority dated 04.10.2011 and Additional District Judge dated 05.02.2016 are set aside. Release application is dismissed as not maintainable, for want of six months prior notice as required under Section 21(1) (a) Proviso of the Act.