

**(1962) 03 AHC CK 0020**

**Allahabad High Court**

**Case No:** Second Appeal No. 3722 of 1958

Chanda Babu

APPELLANT

Vs

Chaugani Ram

RESPONDENT

**Date of Decision:** March 23, 1962

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 100
- Transfer of Property Act, 1882 - Section 106

**Citation:** AIR 1963 All 250

**Hon'ble Judges:** S.S. Dhavan, J

**Bench:** Single Bench

**Advocate:** N. Kumar, for the Appellant; N.A. Rahman, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

S.S. Dhavan, J.

This is a tenant's second appeal against the decision of the Additional Civil Judge, Mathura, decreeing the landlord's suit for his ejectment.

2. The facts are these : The defendant-appellant Chanda Babu was the tenant of the plaintiff-respondent Chaugani Ram. The landlord filed suit for ejectment on two grounds -- first, that the tenant had created a nuisance, and secondly, he had not paid arrears of rent in spite of notice of demand. The tenant contested the suit and denied that he had been guilty of creating any nuisance. He also alleged that no notice of any demand had been served on him. The trial Court held that the tenant had created no nuisance and had not been served with any notice of demand. Accordingly it dismissed the suit. On appeal the learned Judge concurred with the view of the trial Court that no nuisance had been created, but did not agree that the notice of demand had not been served. Holding the tenant guilty of default in payment of rent, he allowed the appeal and decreed the suit for his ejectment. The tenant has now come to this Court in second appeal.

3. Both the Courts below also passed as decree for recovery of rent which has not been challenged in this appeal which is only directed against the decree for ejectment.

4. Mr. N. Kumar learned counsel for the appellant urged three arguments in favour of the appeal. First he contended that the notice terminating the tenancy u/s 106 of the Transfer of Property Act was no longer operative on the date when the suit for ejectment was filed as the landlord had sent two other notices subsequent to it. Learned counsel contended that each notice must be deemed to have operated as a waiver of the previous notice and thus extended the tenancy by a further period of one month. As the period of last notice has not expired on the date of the suit, it was incompetent and no decree for ejectment could be passed. Learned counsel admitted that this plea was not raised in the written statement or at any stage in the Courts below. I do not think it will be fair to the plaintiff-respondents to permit the appellant to raise it in second appeal. The question whether a subsequent notice operates as a waiver of the previous notice is partly one of fact. If the appellant has raised it earlier, the landlord could have established by evidence that there was no waiver of the previous notice. This argument fails.

5. Secondly the learned counsel contended that the finding of the appellate Court that the notice of demand for rent had been duly served on the tenant is wrong in law. That Court has found that the landlord sent a notice of demand by registered post which was refused by the tenant, and therefore the notice must be deemed to have been, served. Mr. Kumar contended that as there was no evidence that the tenant knew that the registered envelope contained a notice of demand, it could not be presumed that he had willfully refused the latter knowing it to contain such a demand. Counsel relied on an observation of Beaumont, C. J., in Vaman Vithal Kulkarni Vs. Khanderao Ramrao Sholapurkar, which runs thus:

"I should not be prepared to hold that a registered letter tendered to the addressee and refused and brought back unopened was well served. There are, I know, some authorities in this Court to the contrary, but it seems to me impossible to say that a letter has been served so as to bring the contents to the notice of the person to whom the letter is addressed, if the agent for service states that in fact the notice was not served, although the reason may have been that the addressee declined to accept it. One cannot assume that because an addressee declines to accept a particular sealed envelope he has guessed correctly as to its contents. Many people in this country make a practice of always refusing to accept registered letters, a practice based, I presume, on their experience that such documents usually contain something unpleasant."

Learned counsel relied on this observation for his argument that the refusal by the tenant of a registered letter contained a notice of demand raises no presumption that he willfully refused it with the knowledge that it was a demand. Counsel contended that the onus is on the landlord to prove that the tenant knew at the time

that the letter contained a notice of demand. I am not prepared to accept this argument. If accepted it will create an intolerable situation for the landlord, who will find it impossible to prove that the tenant was aware of the contents of the letter when he refused to accept it.

I am prepared to accept, with respect, the observation of Beaumont, C. J., in the Bombay case to this extent that a tenant may not always know the contents of a letter which he refuses to accept. The learned Chief Justice admitted that the people of India make a practice of refusing to accept registered letters because they are afraid such documents usually contain something unpleasant. In other words, the refusal to accept a registered letter amounts to unusual conduct. I would hold that the onus is on the tenant to prove that when he refused the landlord's letter sent by registered post he was not aware that it contained a notice of demand. The onus will be heavy, because the very refusal will raise a presumption of mala fides against him. People do not ordinarily refuse to accept letter unless there is some motive behind it. In this case the letter was refused by the tenant and he had offered no explanation. As the letter was sent by registered post he could see that it was sent by the landlord whose name appeared on the envelope. It is difficult to resist that he knew that the letter contained, in the words of Beaumont, C. J., "something unpleasant"" When a tenant knows that he is in arrears of rent and receives a registered letter from the landlord but refuses to accept it, it will be presumed that he did it because he thought it contained a notice of demand and the onus is on him to rebut this presumption.

6. Lastly Mr. Kumar argued that the notice of demand was invalid. He admitted that this question was not raised by the appellant before the Courts below. I do not think it would be fair to permit him to raise it now.

7. No other point was urged before me. The appeal is dismissed with costs.