

J.W. Peters Vs Ram Narain Mehrotra and Others

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Oct. 29, 1948

Acts Referred: Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 " Section 14

Citation: AIR 1949 All 537

Hon'ble Judges: Kidwai, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Kidwai, J.

This appeal arises out of an application for execution of a decree for ejectment. The appellant is admittedly a tenant of a house

situated in Lucknow belonging to the respondents on a monthly rent of Rs. 69 but did not pay rent for a considerable length of time and on 23rd

April 1946, the respondent served notice upon him to vacate the house by 1st May 1946 and to pay arrears. The house was not vacated and the

arrears were not paid. On 26th April 1946, the respondents filed a suit only for the arrears of rent. This suit was decreed on 17th May 1946 and

the appellant was ordered to pay the decreed arrears in instalments of Rs. 69 per mensem, the last instalment to be paid on 17th December 1946.

2. On 1st June 1946, the respondents filed another suit for the appellant's ejectment from the house and obtained a decree on 24th September

1946. An appeal filed by the appellant from the decree in the ejectment suit was allowed on 8th January 1947, but on second appeal to this Court

the decree of the trial Court was restored on 7th May 1947.

3. In the meanwhile the rent for the period commencing from 1st June 1946 to 31st October 1946, remained unpaid. The respondents, therefore,

filed a third suit on 11th November 1946. Since the decree for ejectment had already been passed, this was a suit for damages for use and

occupation. This suit was decreed on 28th November 1946. These decrees remained unsatisfied.

4. On 13th December 1946, the respondents served a notice upon the appellant to pay the amount due for November 1946. Since at this time the

decree for ejectment still remained outstanding, the amount claimed was termed damages. The sum due under this decree has not been paid.

Thereafter, the respondents applied for execution of the decree on 20th May 1947. Even before this application was made, the Judgment-debtor

had, on 8th May 1947, filed objections u/s 47, Civil P.C., to the execution of the decree for ejection. In these objections, the judgment-debtor

claimed the benefit of Section 14, U.P. (Temporary) Control of Rent and Eviction Act of 1947. The execution Court upheld the appellant's

objection and dismissed the application. In the meantime, the respondents filed the fourth suit for damages for the use and occupation of the house

from the period 1st November 1946 to 30th April 1947, and got a decree on 2nd June 1947. On 4th September 1947, they filed the fifth suit and

obtained a decree for the period from 1st May 1947 to 31st August 1947.

5. The respondents appealed from the order of the execution Court dismissing their application for execution and the learned District Judge of

Lucknow has allowed their appeal and ordered execution to proceed. The judgment-debtor has now come up in second appeal.

6. Section 14 of the Act prohibits execution of a decree passed before the commencement of the Act except on any of the grounds mentioned in

Section 3. One of the grounds mentioned in Section 3 is that

the tenant has wilfully failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a notice of demand

from the landlord.

The learned District Judge has treated the institution of the suit as a notice of demand. This view cannot be upheld. In the present case, however,

there was a notice of demand dated 13th December 1946, and the rent remained unpaid for one month after this notice. The requirements of

Section 3 (a) were, therefore, satisfied and it was open to the decree-holders to obtain the eviction of the judgment-debtor-appellant.

7. It was contended that the arrears to which Section 3 (a) refers must be arrears in respect of which a decree has been passed. The decree for

eviction is, however, not passed because there is an arrear of rent but because the contract of tenancy has terminated. Under the old law as well as

under the new law, in spite of the termination of the contract of tenancy, the eviction of the tenant is not possible so long as the tenant continues to

pay his rent. The Act, however, permits his eviction if any arrears remain unsatisfied within a month after the demand. Section 3 (a) is not limited to

any particular arrear and there is no reason why words should be introduced into it which do not find a place in it.

8. Further it is to be noticed that it is not only because of arrears that eviction can take place. It can also take place for the various reasons

mentioned in Clauses (b), (c), (d), (e) and (f) of Section 3. There is nothing in any of these clauses to indicate that the action of the tenant therein

mentioned should have any reference to the decree for eviction already passed. The same rule will apply to the construction of Section 3 (a).

9. The decree of the Court below must, therefore, be upheld and this appeal is dismissed with costs.