

(1985) 02 DEL CK 0035

Delhi High Court

Case No: Second Appeal No. 152 of 1980

H.M. Doyal Co.

APPELLANT

Vs

Ram Nath Chitkara
and Others

RESPONDENT

Date of Decision: Feb. 25, 1985

Acts Referred:

- Delhi Rent Control Act, 1958 - Section 14(1)

Citation: AIR 1986 Delhi 101 : (1985) 28 DLT 212 : (1985) RLR 414

Hon'ble Judges: Sultan Singh, J

Bench: Single Bench

Advocate: Ishwar Sahai, for the Appellant;

Judgement

Sultan Singh, J.

(1) This appeal u/s 39 of the Delhi Rent Control, Act, 1985 (for short the Act) is directed against the judgment and order dated 1st March, 1980 of the Rent Control Tribunal confirming the order dated 19th March, 1979 of the Additional Rent Controller passing an order of eviction u/s 14(l)(a) of the Act against the appellants.

(2) The brief facts are : The appellants M/s. H.M. Doyal Co. were tenants in shop No. 5394, Light Building, 58, G.B. Road, Delhi on a monthly rent of Rs. 27.50 besides other charges. Shri R.N. Chitkara, respondent No. 1 purchased the property by means of a sale deed dated 11th August, 1964, Respondent No. 1 has alleged that in September, 1972 he filed a petition for eviction of the appellants and respondent No. 2 Ram Lal on various grounds including the ground of non-payment of rent. He had alleged in the previous eviction petition that the appellants were in arrears of rent from 1st June, 1971 and they neither paid nor tendered the arrears of rent within two months of the service of a notice of demand, that an order u/s 15 (1) of the Act directing the appellants to deposit rent from 1st June, 1971 was passed. The Additional Rent Controller by order dated 2nd November 1976 held that the ground

of eviction u/s 14(l)(a) of the Act was available but the tenants having complied with the order u/s 15(1) of the Act were entitled to the benefit of Section 14(2) of the Act. The Additional Controller gave them benefit u/s 14(2) of the Act and dismissed the eviction petition. Respondent No. 1 has now alleged that the appellants deposited rent for the period ending October, 1976 in the previous eviction case, that he received a letter dated 20-3-1978 along with a cheque dated 16th March, 1978 for Rs. 247.50 purporting to be rent from July, 1977 to March, 1978 (nine months) from the appellants, that he did not accept the cheque as it did not cover the whole of arrears of rent due and the cheque was not a legal tender. He has further alleged that he returned the said cheque with his registered letter dated 27th March, 1978 calling upon the appellants to remit the whole of the arrears of rent and to treat his letter dated 27th March, 1978 as a notice of demand ; that the appellants neither paid nor tendered the whole of the arrears of rent due within two months from the notice of demand although they have been in arrears of rent since 1st November, 1976, that they have committed second default and are thus liable to eviction u/s 14(1)(a) of the Act.

(3) The appellants in their written statement have pleaded that no notice of demand was ever served, that a cheque dated 27-5-77 for Rs. 247.50 as rent from October, 1976 to June, 1977 with letter dated 27th May, 1977 was sent by registered A.D. post, that another cheque for Rs. 247.50 dated 16th March, 213 1978 as rent from July, 1977 to March, 1978 with letter dated 20th March, 1978 was sent by registered A.D. post, that respondent No. 1 wrongfully refused to encash the said two cheques. They have pleaded that they did receive on 30th March, 1978 an unsigned letter in a registered cover from respondent No.1.

(4) Respondent No. 1 in support of his case examined himself as A.W. 1 while the appellants examined two partners Prem Parkash (R.W. 1) and Gursaran Dass (R.W. 2). The Additional Rent Controller by order dated 19th March, 1979 held that a valid notice of demand was served, that the cheque dated 27th May, 1977 for the period October, 1976 to June, 1977 was not sent by the appellants, that the other cheque for the period July, 1977 to March, 1978 sent to respondent No. 1 was not for the entire period and the same was returned to the appellants and the cheque was not a legal tender, that the appellants had neither paid nor tendered any rent after the receipt of the notice dated 27th March, 1978. It was further held that the appellants having earlier taken the benefit of Section 14(2) of the Act were liable to be evicted. He thus passed an order of eviction u/s 14(1)(a) of the Act against the appellants.

(5) On appeal the Rent Control Tribunal held that the first cheque dated 27th May, 1977 for the period October, 1976 to June, 1977 was also sent by the appellants to respondent No.1. The Tribunal however confirmed the order of eviction and all other findings of the Additional Rent Controller.

(6) Learned counsel for the appellants has argued the following points : A. Notice dated 27th March, 197 8 (Ex. A. 5) is not a valid notice of demand as it does not

indicate the amount of arrears, rate of rent or the period for which the rent was due. The appellants were not in arrears of rent on 27th March, 1978 the date of notice because they had already delivered cheque dated 27th May, 1977 for Rs. 247.50 as rent from October, 1976 to June, 1977 and cheque dated 16th March, 1978 for Rs. 247.50 as rent from July, 1977 to March, 1978 by registered A.D. post and respondent No. 1 never returned the two cheques, and the cheque is a legal tender.

(7) Respondent No. 1 has argued that the cheque dated 27th May, 1977 alleged to have been sent by registered A.D. post was never received by him and Ex. R.6, A.D. receipt does not bear his signatures, that notice of demand dated 27th March, 1978 Ex. A.5 is valid, that the appellants were in arrears of rent from 1st November, 1976, they neither paid nor tendered any rent in spite of service of said notice of demand, that tender of rent by cheque to him was not a legal tender as there was no agreement between the parties for payment of rent by cheque and he has always refused to accept cheque.

(8) Learned counsel for the appellants submits that the letter dated 27th March, 1978 (Ex. A.5) to the appellants is not a notice demand as it does not specify the amount of arrears, monthly rate of rent and the period for which the rent was due. Ex. A.5 reads as under : "Registered A.D. 19, Netaji Subhash Marg, New Delhi-2 27th March, 1978 216 Messers H.M. Doyal & Co. 55, G.B. Road, Delhi-110006 Dear Sirs, With reference to your letter R/Table/2731 dated 20-3-1978, I am returning the enclosed cheque as it does not cover the whole of the arrears of rent due and also as a cheque is not a legal tender. Please remit the whole of the arrears of rent due and treat this letter as a notice of demand. Enclosed Yours faithfully, Sd/- Ram Nath Chitkara Cheque No. Ndlc 592779 dated 16-3-1979 on the Union Bank of India, Chawri Bazar, Delhi." Ex. A.5 was in reply to the letter dated 20th March, 1978 (Ex. R.I) from the appellants with which they had sent cheque dated 16-3-1978 for Rs. 247.50 on account of rent from July, 1977 to March, 1978 @ Rs. 27.50 per month. This letter shows that the monthly rent was known to the appellants. It is also admitted on record that in the previous litigation between the parties an order u/s 15(1) of the Act was passed directing the appellants to pay or deposit the rent @ Rs. 27.50 per month for the period 1st June, 1971 onwards and they deposited for the period ending 31st October, 1976. In other words they admit that the rent was due from them for the period from 1st November, 1976 @ Rs. 27.50 per month. Respondent No. 1 submits that in the facts and circumstances of the present case Ex. A.5 was the correct notice of demand as the appellants were in the knowledge of the period for which they had deposited rent in earlier litigation, they were aware of the rate of rent and as such they were in a position to comply with notice of demand by payment or tender of the rent for the period from 1st November 1976 up to the date of receipt of notice @ Rs. 27.50 per month but the appellants neither paid nor tendered any amount to the landlord. In Harihar Banerji and others v. Ramashashi Roy and others AIR 1918 PC 102 a case on appeal from Calcutta High Court to the Privy Council, it has been observed as under : "They (English Authorities) establish

that notices to quit, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law ; that the test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to refer, but what they would mean to tenants presumably conversant with all those facts and circumstances, and, further, that they are to be construed not with a desire to find faults in them which would render them defective but to be construed *ut res magis valeat quam pereat*. The above principles, Privy Council observes, are applicable to notices containing mistakes honestly but inadvertently made and not to inaccuracies deliberately inserted for fraudulent purposes. There is no allegation on behalf of the appellants that respondent No. 1 did not specify the rate of rent or the period for which the rent was due or the amount of arrears with any deliberate or fraudulent intention. As already stated, the rate or rent and the period for which the rent was due was specially within the knowledge of the appellants as admittedly they were depositing rent prior to 1st November, 1976 in the court of the Additional Controller in pursuance of the order u/s 15(1) of the Act. The letter Ex. A. 5 addressed to the appellants requires them to remit the whole of the arrears of rent. This is sufficient notice of demand of arrears of rent within the meaning of Section 14(l)(a) of the Act reading as under : "14(1) Notwithstanding anything to the contrary contained in any other law or contract, no order of decree for the recovery of possession of any premises shall be made by any court or controller in favor of the landlord against a tenant : Provided that the Controller may, on an application made to him in prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely : (a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in Section 106 of the Transfer of Property Act, 1882". According to Section 14(l)(a) of the Act a landlord is only required to send a notice demanding arrears of rent and the tenant on receipt of notice is under a duty to pay or tender the whole of the arrears of rent legally recoverable from him within two months. The only duty cast upon the landlord is to send a notice demanding arrears of rent. The clause (a) of the proviso to Section 14(1) of the Act does not require that the notice of demand shall state the amount due from the tenant. A notice of demand may not mention the amount at all. It may simply ask the tenant to pay the arrears which he has not paid. As soon as a notice of demand is served, it is the duty of the tenant to pay such amount as he thinks is due from him and if ultimately it is found that the amount paid by the tenant was the correct amount, the landlord's petition for eviction will be dismissed. There can be no justification for the tenant to remain silent and not pay even the amount, which according to him is due and then to claim that the notice was invalid and he was not liable to eviction. u/s 26 of the Act a tenant is required to pay rent within the time fixed by contract and in the absence of such contract, by the 15th day of month next following the month for which it is payable.

Further Section 27 of the Act provides for deposit of rent by the tenant in case the landlord does not accept any rent tendered by the tenant. In *Smt. Rama Gupta v. Rai Singh Jain*, VIII Dlt (1972) 375 it has been observed that Section 14(l)(a) of the Act does not depend on the proper amount being demanded from the tenant but depends on the failure of the tenant to comply with the same by making a tender of the arrears of rent and that it was for the tenant to tender legally recoverable rent after the service of notice of demand.

(9) Learned counsel for the appellants refers to *Bapulal Kalidas (by his heirs) and other v. Bai Kashiben*, 1977(1) R.C.R. 512 (Guj at) wherein it has been observed that the demand must be for a sum specified. Under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 the demand of 218 standard rent and permitted increase is required and it was held that the demand must be a precise demand in accordance with law. He then refers to *Hari Mohan Nehru Rameshwar Dyal*, XVII Dlt (1980) 284 where it has been observed that a notice of demand for arrears of rent must be specific and it must mention the period for which arrears of rent is due and there has to be a good demand to create a legal liability. In that case there was a dispute up to what date rent had been paid. In the notice all that was said was "that Rs 12,350.00 are due on account of arrears of rent up to 31st October, 1975 after deducting the total amount paid". No details of the amount paid were given. In these circumstances it was held that it was not possible for the tenant to determine what was the rent payable or whether the amount of Rs. 12,350.00, was correct or incorrect. In the present case the tenants had deposited rent u/s 15(1) of the Act for the period from 1st June, 1971 to 31st October, 1976. Admittedly there is no plea that any payment by the appellants was made thereafter. This judgment does not help the appellants.

(10) Learned counsel next refers to [Chimanlal Vs. Mishrilal](#), where the specific dispute was about the extent of the premises let out to the tenant. The notice did not relate to the entire accommodation let to the tenant but only with respect to a portion of it. The premises according to the tenant consisted of the entire shop, verandah and the court yard but the notice pertained to a portion of a shop and a verandah. Under these circumstances it was held that the notice demanding rent was invalid. In the instant case there is no dispute about the extent of the premises, rate of rent or the period for which rent was due. No ground of invalidity of notice has been pleaded. The only plea in the written statement is that no notice of demand has been served. This judgment does not favor the appellants.

(11) Learned counsel next submits that the appellants were not in arrears of rent on 27th March, 1978 when that letter Ex. A. 5 was issued by respondent No. 1. He submits that the appellants had tendered rents for the period from October, 1976 to March, 1978 by means of two cheques dated 27th May, 1977 and 16th March, 1978 which were not encashed. Respondent No. 1 submits that cheque dated 27th May, 1977 was not received by him and the cheque dated 16th March, 1978 was returned

to the appellants with letter dated 27th March, 1978 (Ex. A. 5) on the ground that it did not cover the whole of the arrears of rent due and it was not a legal tender. In other words no cheque was ever retained by the landlord. Presuming that the two cheques were delivered to respondent No. 1 who had not encased them, whether it can be said that mere tender of two cheques covering rent for the period in question amounted to payment of rent or there were no arrears of rent.

(12) Learned counsel for the appellants submits that the tender of the cheques and refusal by the landlord to encash the cheques amounted to payment and as such there were no arrears. He refers to [Dasharathi Ghosh Vs. Khondkar Abdul Hannan](#), , Gaga Prasad Shastri Pandit, v. Ramji Lal, I.L.R.1949 All 135 Khushro S. Gandhi v. Ferjunji J. Gandhi, 1962 All. L. J 1086 Kamta Prasad Jain v. Om Parkash and others, 1966 Allahabad Law Journal 1108. Pravinchandra Samaldas Patel v. Saraswatiben Ranchhodbhai, 1977(1) R.C.R. 522 and Mohinder Singh v. Siri Chand, 1981(1) Rent L R. 686 in support of his submission that tender of the amount was sufficient to wipe out the arrears. In these cases, the amount was tendered in accordance with law and no refusal by the landlord or the creditor the amount was deposited in court. In the instant case it is admitted that an amount was deposited in any court and that no tender or deposit was made within the meaning of Sections 26 and 27 of the Act. Section 14(l)(a) of the Act requires payment or tender after the receipt of the notice of demand but before the expiry of two months. This is a statutory provision. If the rent has been paid prior to the notice of demand the tenant would not be required to pay the same again but if he has not paid, the tenant is bound to pay or tender the rent due according to him after notice of demand, to seek protection from eviction.

(13) The word "arrears" has been defined as "outstanding debts" (The New Oxford Illustrated Dictionary) "an unpaid and overdue debt" (Webster's Third New International Dictionary) "that which remains unpaid or undone" (Chambers Twentieth Century Dictionary). Learned counsel submits that the amount of rent would be in arrears only if the rent remains unpaid on account of any default on the part of tenant. It is not correct to say so, in view of Section 14(l)(a) of the Act. If a tenant tenders rent after receipt of notice of demand within two months and the landlord refuses to accept, then only it can be said that landlord was at fault and he would not be entitled to an order of eviction on ground of non-payment of rent.

(14) Section 3(l)(a) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 was as under : "3. Restrictions on eviction-(l) Subject to any order passed under sub-section (3) on 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 : (a) that the tenant is in arrears of rent for more than three months and has failed to pay the same to the landlord within one month of the service upon him of a notice of demand". It is similar to Section 14(1)(a) of the Delhi Rent Control Act, 1958. In [Ram Babu Vs. Pershadi Lal](#),

the tenant sent the rent by money order but it was refused by the landlord. Subsequently the landlord served a notice upon the tenant demanding arrears of rent. No payment was made by the tenant. The landlord filed the suit for eviction on the ground of arrears of rent etc. against the tenant. The Division Bench observed as under : "The words "in arrears of rent" refer to an outstanding liability in respect of rent, and it is plain that if rent for more than three months has not in fact been paid, it must be held that this rent is in arrears. In our judgment, it is immaterial that the tenant has attempted to pay the rent but the rent has not been accepted by the landlord. An unsuccessful attempt on the part of the tenant to pay the rent cannot lead to the conclusion that the rent has been paid and is not in arrears, even if the failure of the attempt can be attributed to the landlord. The statute is concerned with the simple fact that there is an outstanding liability respecting rent, whatever the reason for it may be. In view of the fact that a notice was served by the plaintiff upon the defendant demanding the arrears of rent and there being no dispute that no payment was attempted by the defendant after service of such notice, we must hold that the plaintiff became entitled to sue the defendant for ejectment by virtue of the provisions of Section 3(l)(a)." I respectfully agree with this statement of law. The notice of demand Ex. A. 5 dated 27th March, 1978 is a valid notice of demand.

(15) Learned counsel for the appellants also submits that the cheques dated 27th May, 1977 and 16th March, 1978 sent to the respondent No. 1 were legal tender. Respondent No. 1 on the other hand submits that the cheque was not a legal tender, that there has been previous litigation and he never accepted the cheque from the appellants. He further submits that in this case also when the cheque dated 16th March, 1978 was received by him Along with letter dated 20th March, 1978 it was returned to the appellants Along with letter dated 27th March, 1978 (Ex. A. 5) wherein he has informed that it was not a legal tender and it was not acceptable to him. In other words the landlord never accepted any cheque from the appellants towards payment of rent. It is admitted that the appellants were in arrears from 1st June, 1971 and the landlord had previously filed an eviction application against them on ground of non-payment of rent where an order u/s 15(1) of the Act was passed and the eviction petition was dismissed giving benefit of Section 14(2) of the Act to the appellants. There is no evidence on record that at any time the respondent-landlord accepted any cheque towards payment of rent. Thus it would mean that the cheque was never accepted as a legal tender by him. Learned counsel for the appellants refers to [Damadilal and Others Vs. Parashram and Others](#), where in it has been observed that in the absence of an agreement to the contrary a cheque sent by the tenant to a landlord towards payment of arrears of rent is a valid tender. There is no dispute about the proposition of law laid down but in the present case the landlord was never inclined to accept the cheque for payment of rent and it was for this reason that the cheque received by him was returned on 27th March, 1978 (Ex. A. 5). Thus in the present case it must be held that the cheque sent in March, 1978 was not a legal tender and it did not cover the whole

of the arrears of rent. It is admitted on record that the rent from 1st November, 1976 has not been paid by the appellants.

(16) The Additional Rent Controller held that the cheque dated 27th May, 1977 for Rs. 247.50 as rent from October, 1976 to June, 1977 with letter dated 27th May, 1977 (Ex. R. 4) as alleged by the appellants was not delivered to respondent No. 1. The Rent Control Tribunal reversed this finding of fact and held that the letter with cheque was sent to the landlord. Respondent No. 1 submits that the said finding depended on oral testimony of the parties that the depositions of the appellants, namely Prem Parkash R.W. 1 and Gursaran Dass R.W. 2 were not believed by the Additional Rent Controller and Therefore the conclusion reached by the Additional Rent Controller ought not to have been interfered with by the Rent Control Tribunal. He submits that the reasons given by the Additional Rent Controller for not accepting the testimony of the appellants have not been dealt with by the Rent Control Tribunal and Therefore the finding of the Rent Control Tribunal is not binding on this court and must be set aside. Respondent No. 1 further submits that the acknowledgement receipt Ex. R. 6 does not bear his signatures and Therefore it was the duty of the appellants to prove his signatures but there is no evidence on record to that effect, I find substance in it. The Additional Rent Controller after discussing the evidence of R.W. 1 and R.W. 2 has observed that the appellants have withheld the documentary evidence available with them and Therefore adverse presumption ought to be drawn against them and the version of the appellants is not to be believed. In cross-examination Prem Parkash, R.W. 1 could not say about the period for which rent was payable to the landlord. He could not say for what period the rent had been deposited in the court of the Additional Rent Controller in the previous litigation. The counter-foil of the alleged cheque was not produced. He was not aware whether the cheques issued by the appellants were encased or not. Similarly Gursaran Dass R.W. 2 only proved the "Day Book" showing the entry regarding the said cheque copy of which is Ex. R.W. 1/1. He also could not say whether the cheque was encased or not. He was not in a position to know whether the cheques were sent to the landlord. He did not produce the ledger on the ground that it was a heavy book. He could not say for what period the rent had been deposited in the previous litigation. The appellants were maintaining the accounts of the landlord in their ledger but the same was not produced. R.W. 1 deposed about the letter dated 27th March, 1978 marked "C" alleged to have been sent by the landlord to the appellants. At one place he has deposed that letter "C" was handed over to the clerk concerned Roshan Lal and at another place he stated that the letter was handed over to the counsel Mr. G.S. Mathur. He has also deposed that there was no correspondence between the appellants and the respondent- landlord. In view of the oral statement of the two witnesses on behalf of the appellants, withholding all the relevant documents admittedly in their possession, the Additional Rent Controller did not believe their version and held that the cheque was not sent. I have gone through the evidence on behalf of the appellants. I do not find

any deposition regarding the proof of alleged signatures of respondent No. 1 on acknowledgment receipt (Ex. R. 6). I am Therefore of the opinion that the trial court had given cogent reasons for disbelieving the appellants. The Rent Control Tribunal has not dealt with any reason given by the Additional Rent Controller but has reversed the finding by mere observing that : "it cannot be believed that the appellant would not send the rent for the earlier period and still send the rent for subsequent period when the amount is so small, in fact it corroborates the earlier fact alleged by the appellant that rent had been sent by a cheque on earlier occasion and keeping in view the facts on the record, I must believe the appellant that earlier also a cheque was sent as rent from October, 1976 to June 1977." The Rent Control Tribunal has not dealt with the reasons given by the Additional Rent Controller for disbelieving the appellant but it has upset the said finding without any reasoning. This is not permissible in law.

(17) In [Sarju Pershad Vs. Raja Jwaleshwari Pratap Narain Singh and Others](#), it has been observed as under : "When there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escape the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the finding of the trial Judge on question of fact".

(18) In [T.D. Gopalan Vs. The Commissioner of Hindu Religious and Charitable Endowments, Madras](#), it has been observed as under; "We apprehend that the uniform practice in the matter of appreciation of evidence has been that if the trial court has given cogent and detailed reasons for not accepting the testimony of a witness the appellate court in all fairness to it ought to deal with those reasons before proceeding to form a contrary opinion about accepting the testimony which has been rejected by the trial court." I may also mention that the evidence in this case was recorded by the same judicial officer who has given the judgment as Additional Rent Controller. I am, Therefore, of the opinion that the Rent Control Tribunal by disregarding the law laid down by the Supreme Court has wrongly held that the cheque dated 27th May, 1977 was sent by the appellants to respondent No. 1.

(19) The appellants admittedly neither paid nor tendered any amount of rent after receipt of demand notice dated 27th March 1978 (Ex. A-5) within two months of its receipts, they have been in arrears since 1 st November, 1976, they had enjoyed benefit of Section 14(2) of the Act earlier, and as such order of eviction u/s 14(l)(a) of the Act was rightly passed against them.

(20) No other ground for interference with the impugned order of eviction against the appellants has been made out.

(21) The appeal is liable to be dismissed and the same is dismissed with no order as to costs .Appeal dismissed