

Hindustan Petroleum Corporation Limited, Bangalore Vs Mrs. Lucy Banilda Rebello (Nee Pais)

Court: Karnataka High Court

Date of Decision: Aug. 10, 1998

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 115
Karnataka Rent Control Act, 1961 â€” Section 21 (1) (a), 50 (2)

Citation: (1999) 2 KarLJ 370

Hon'ble Judges: R.V. Raveendran, J

Bench: Single Bench

Advocate: Sri C.M. Desai, for the Appellant; Sri K.I. Bhatta for Sri M. Sudhakar Pai, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This is a tenant's revision petition u/s 115 of Code of Civil Procedure.

2. The respondent is the landlord and the petitioner is the tenant (Hindustan Petroleum Corporation Limited) in regard to the petition schedule

premises in House Rent Case No. 326 of 1984 filed by the landlord against the tenant under clause (a) of the proviso to Section 21(1) of the

Karnataka Rent Control Act, 1961 ("Act" for short) in the Court of the learned Munsiff, Mangalore.

3. The case of the landlord is briefly as follows : There was a term lease of the premises upto the end of 30-9-1983 in favour of the tenant. The

tenant continued as a statutory tenant from 1-10-1983. The rent for the premises is Rs. 468.75 per month. The tenant did not pay the rents from

1-10-1983. Therefore, a registered notice dated 5-8-1984 was sent by the landlord to the tenant demanding payment of rent. The said notice was

sent to the Registered Office (Bombay), Regional Office (Bangalore) and the Sales Office (Mangalore) of the tenant. The notice was served on the

Bombay Office on 13-8-1984 and on the Bangalore Office on 10-8-1984. The tenant tendered the entire arrears of rent for the period 1-10-

1983 to 31-10-1984 by cheque dated 13-10-1984, sent by post on 17-10-1984 and delivered to the landlord at Mangalore only on 20-10-

1984. According to the landlord, the tenant ought to have tendered the rents on or before 10-10-1984 (that is two months from the date of service

of notice on the Bangalore Office of the tenant); and as it was not so tendered, the tenant is liable to be evicted u/s 21(1)(a) of the Act. The

eviction petition was filed on 20-11-1984.

4. The tenant contended that cheques were being regularly sent from its Head Office at Bombay. It has hundreds of leasehold premises throughout

the country and to facilitate payment of rents to all its landlords, it had computerised the processing and issue of cheques; that on account of

computer failure, there was some delay in payment; and that as the landlord has failed to report the non-receipt of the rents cheques, there was

also no occasion for manual verification as to whether the rents had been sent to the landlord every month. The tenant submitted that the failure to

pay the rents for about a year was on account of a bona fide mistake and prayed that the delay may be condoned by the Court, as having been

satisfactorily explained. The tenant further contended that when the cheque dated 13-10-1984 was accepted and encashed, the payment should

be related back to the date of the cheque; and as the cheque was issued on 13-10-1984, within two months of the date of service on its

Registered Office (13-8-1984) there is no default; and even if there is any slight delay, it is neither deliberate nor on account of any negligence and

therefore the eviction petition should be rejected. The tenant also contended that the landlord had not made out any ground u/s 21(1) proviso (a)

to seek eviction.

5. The landlord examined her son and Attorney as P.W. 1. One of the officials of the local office of the tenant at Mangalore was examined as

R.W. 1. The landlord exhibited the registered lease dated 14-10-1963 (Ex. P. 1), letter of renewal of lease dated 11-7-1973 (Ex. P. 2), copy of

the registered notice dated 5-8-1984 (Ex. P. 3), the postal acknowledgement for having served the said notices at tenant's Bombay Office on 13-

8-1984 (Ex. P. 4) and the Tenants Remittance Advice attached to the rent cheque for Rs. 6,093.75 ps. (Ex. P. 5). The landlord exhibited the

copies of eviction petition filed against the tenant by some other landlord in HRC 86 of 1985 and the objections filed in that petition by the tenant

as Ex. P. 6 and Ex. P. 7. The tenant did not produce any documents.

6. The only point formulated by the Trial Court for consideration was whether the tenant proved that it had sufficient cause for non-payment of the

rents within two months from the date of receipt of the notice dated 5-8-1984. The said point was answered in the negative and consequently, the

petition was allowed. Feeling aggrieved, the tenant filed a revision u/s 50(2) of the Act before the District Court, Dakshina Kannada. The District

Court by its order dated 29-7-1997 dismissed the revision petition confirming the finding of fact recorded by the Trial Court. Feeling aggrieved,

the tenant has filed this second revision petition.

7. Learned Counsel for the petitioner-tenant urged the following three contentions:

(a) There is no valid notice demanding payment of arrears of rents as required u/s 21(1)(a) of the Act.

(b) When the cheque dated 13-10-1984 issued by the tenant towards payment of rent is accepted and encashed by the landlord, even if the

cheque was received by post by the landlord only on 20-10-1984, the payment relates back to the date of cheque, that is 13-10-1984. Therefore,

the payment is within two months of the date of service (13-8-1984) and consequently, there is no default u/s 21(1)(a) of the Act.

(c) Even if the date of payment is taken as 17-10-1984 (the date of posting) or 20-10-1984 (the date of receipt of cheque by the landlord),

sufficient cause has been shown in regard to the delay of few days and therefore no order for eviction could be made, having regard to Section

21(2).

8. The learned Counsel for the landlord contended that Ex. P. 3 dated 5-8-1984 complies with the requirements of a notice required u/s 21(1)(a)

of the Act. The date of payment or tender of arrears, is the date on which the cheque was actually received by the landlord, that is 20-10-1984

and not the date of despatch of the cheque and therefore there is no payment within two months of service of notice. The tenant has not shown

sufficient cause for the delay and both the Courts below have concurrently found that there is no sufficient cause and this Court should not disturb

the said finding of fact. Lastly, he contended that in the absence of jurisdictional error, there is no case for interference u/s 115 of the CPC.

9. The following points arise for consideration from the rival contentions:

1. Whether there is any jurisdictional error in the orders of the Courts below.

2. If the answer to Point No. (1) is in the affirmative, whether there is default in payment of rent, furnishing a cause of action for eviction u/s 21(1)

(a).

3. If the answer to Point No. (2) is in the affirmative, whether tenant has shown sufficient cause for the default in paying or tendering the rent within

the period specified in clause (a) of the proviso to Section 21(1).

Re: Point No. (1):

10. Before considering the first question, it is necessary to notice the relevant portions of the Act.

10.1 The relevant portions of Section 21 is extracted below:

21. Protection of tenants against eviction:

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any

premises shall be made by any Court or other authority in favour of the landlord against the tenant:

Provided that the Court may on an application made to it, make an order for the recovery of possession of a premises 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 payment for the arrears of rent has been served on him by the landlord by tender or delivery either personally to the tenant or to

a member or servant of his family at his residence (or if such tender or delivery is not practicable) by affixture to a conspicuous part of the

premises;

(b) to (p) omitted as not relevant to this case.

(2) No order for recovery of possession of any premises shall be made on the ground specified in clause (a) of the proviso to subsection (1), if the

tenant-

(i) complies with the provisions of Section 29;

(ii) satisfies the Court that he had sufficient cause for the default to pay or tender the rent within the period referred to in the said clause (a); and

(iii) pays to the landlord or deposits in the Court such further amount, as may be determined by the Court to be due, along with a sum not

exceeding ten per cent of the rent thereof as may be fixed by the Court, within one month from the date of the order of the Court"".

10.2 Section 29 requires a tenant against whom an application for eviction has been made by a landlord u/s 21, to pay to the landlord or deposit

with the Court, all arrears of rent due in respect of the premises upto the date of payment or deposit, and continue to pay or to deposit the rents

which subsequently become due during the pendency of the petition.

11. The object and scope of clause (a) of the proviso to sub-section (1) of Section 21 of the Act is often misunderstood and misapplied as has

been done in this case. A mere default in payment of rent is not a ground of eviction u/s 21(1)(a). The ground of eviction arises only when the

tenant has not paid the rents, and the landlord serves on the tenant a notice calling upon him to pay the arrears of rent, and the tenant fails to pay or

tender the whole of the arrears of rent, within two months of the date of service. The ""default"" in the payment of rents to furnish a ground of

eviction under clause (a) is not a "default simpliciter" that is non-payment of the rent on the due date every month, but the default in paying the

arrears in spite of service of a notice by a landlord, for a period of two months from the date of service of such notice. What gives the jurisdiction

to a Court under the Act, to pass an order of eviction, is the existence of one of the grounds of eviction mentioned in the Act. The Supreme Court

in Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, , has held that the existence of one of the statutory grounds for eviction

mentioned in the Rent Control Act is a sine qua non for the exercise of jurisdiction by the Court under the Act.

11.1 Therefore, when passing an order in an eviction petition filed by a landlord u/s 21(1)(a) of the Act, the Court should determine whether there

is a default, as contemplated under clause (a). This necessarily involves consideration of three aspects: (1) whether there is non-payment of rent

leading to accumulation of arrears; (2) whether a notice has been served by the landlord calling upon the tenant to pay the arrears of rent; and (3)

whether the tenant had failed to pay the said arrears of rent within two months from the date of service of such notice. Unless the said three

conditions are satisfied, there will be no ground for eviction under clause (a) and the Court does not get jurisdiction to pass an order of eviction.

11.2 In Ramaiah Vs. Narasaiah, , this Court held that under clause (a), the landlord has a duty to issue a written notice to the tenant demanding the

arrears of rent and have the same served and only if there is failure to pay the arrears demanded, within the stipulated period of two months, the

Court will get the jurisdiction to pass an order of eviction.

11.3 If a Court without examining whether the requirements of clause (a) are fulfilled, merely examines the question whether there was a default in

payment of rents, or the question whether sufficient cause for default is shown, as has been done in this case, such exercise of jurisdiction is

improper and illegal. As stated above, it is not the mere non-payment which furnishes the cause of action, but the failure to pay the arrears within

two months from the date of service of a notice, which furnishes the cause of eviction. As both the Courts below have failed to examine whether

the requirements of clause (a) are fulfilled, they have committed a jurisdictional error which requires interference u/s 115 of the CPC.

Re: Point No. (2):

12. The effect of Section 21(1)(a) and Section 21(2) was considered by this Court in Ramaiah's case, referred to above. This Court held that the

language of Section 21(1)(a) and (2) made it clear that the Court is not required to enquire whether the tenant is a chronic defaulter or whether he

had sufficient cause or not for accumulating and not-paying the arrears of rents. The Courts is required to consider only whether there is a default in

paying the arrears of rent within a period of two months of service of notice demanding the rents, as contemplated in Section 21(1)(a). If the

arrears are not paid within the stipulated period without justifiable cause, then the Court has no choice, but to pass an order of eviction. But the

Court will however have discretion in recording a finding as to whether there was sufficient cause for the default to pay or tender the rent within

two months of service of notice, for the purpose of passing a conditional order u/s 21(2)(iii).

13. Even if the tenant fails to pay the arrears of rent within 60 days of service of a notice u/s 21(1)(a) and thus commits a default in terms of

Section 21(1)(a), an order of eviction does not automatically follow. When the Court records a finding that there is a default to pay the arrears as

contemplated u/s 21(1)(a), clauses (i) and (ii) of sub-section (2) of Section 21 come into play and it becomes necessary for the Court to examine

whether the tenant has complied with the provisions of Section 29 and whether he had sufficient cause for the default to pay or tender the arrears

of rent within the period of two months referred to in clause (a) of the proviso to Section 21(1).

13.1 If the Court comes to the conclusion that there is no compliance with the provisions of Section 29, and that the tenant has not shown sufficient

cause for the default to pay or tender the arrears of rent within the two months period (from the date of service of notice), then, it will have to

proceed to pass an order of eviction u/s 21(1)(a).

13.2 If, on the other hand, the tenant complies with Section 29, and also satisfies the Court that he had sufficient cause for not paying or tendering

the arrears of rent within the period of two months from the date of service of notice, then, the Court cannot pass an order of eviction u/s 21(1)(a),

but will have to pass a conditional order under clause (iii) of Section 21(2).

13.3 The compliance with provisions of Section 29 referred to in Section 21(2)(i) is not compliance with an order if and when passed by the Court

u/s 29(4) on an application by the landlord for stopping further proceedings. The compliance with provisions of Section 29, means compliance with

the primary obligation of the tenant not to contest any eviction proceedings without regular payment of rents. Therefore to comply with Section

21(2)(i), the tenant has to pay to the landlord or deposit in the Court, the arrears of rent upto date, (either as demanded by the landlord or as

admitted by the tenant) on entering appearance in the eviction petition, or within a reasonable time of entering appearance, and continue to pay or

deposit the rent (at the admitted rate) as and when they become due. For the purpose of Section 21(2)(i), what the Court will have to see is

whether there is substantial compliance and not mathematical precision in paying the rents on the due dates.

13.4 If there is compliance with Section 21(2)(i) and (ii), instead of passing an order of eviction, the Court shall pass a condition order u/s 21(2)

(iii) directing the tenant to pay such further amount, as may be determined by the Court to be due, along with a sum not exceeding 10% of the rent

thereof as may be fixed by the Court. The words "such further amount" used in Section 21(2)(iii) has been explained in Ramaiah's case, supra, as

follows:

Similarly clause (iii) of sub-section (2) of Section 21 of the Act speaks of further amount. That further amount relates to cases where the admitted

rent has been paid after notice of demand under clause (a) of sub-section (1) of Section 21 of the Act, but a dispute has been raised in regard to

the balance of the difference in the claim and a petition filed on that basis. In such cases an enquiry has to be held as to the quantum of rent payable

and only on payment of such further amount as decided by the Court, the order of eviction made subject to the condition that payment of amounts

so decided should be paid within one month".

Thus, if there is any dispute in regard to the rate of rent and/or the period for which the rents are due, and the tenant pays only the admitted rent,

the Court shall enquire and find out, the actual amount to be paid (that is rate of rent and the period for which it is due) and also direct the balance

if any, due on such determination, to be paid. The words "'Ten per cent of the rent thereof'" means ten per cent of the amount in arrears which was

belatedly paid, that is the amount which ought to have been paid within two months of service of notice, but which is belatedly paid, either after the

expiry of two months or after determination by the Court in the event of dispute. The Court shall, on passing such an order u/s 21(2)(iii), give a

month's time to the tenant to pay such amounts. The Court shall also fix a date of hearing beyond one month, from the date of its order u/s 21(2)

(iii), for reporting compliance. If the amounts ordered to be paid under clause (iii) of Section 21(2) are paid within the said period of one month,

then, the petition under clause (a) of the Section 21(1) shall have to be dismissed. If the tenant fails to pay the amount within the said one month,

then, an order of eviction shall follow u/s 21(1)(a).

14. Having regard to the scheme u/s 21(1)(a) and Section 21(2), if the Court comes to the conclusion that there is no default within the meaning of

Section 21(1) (a), i.e., where there are no arrears at all or where there is no service of notice as required by Section 21(1)(a) or where the arrears

are paid within two months from the date of service of notice, then there is no need to proceed further and consider the matter u/s 21(2). Only if

the default is proved under clause (a), it becomes necessary for the Court to examine the question as to whether an order of eviction should be

made or not, with reference to Section 21(2) arises.

15. The Scheme u/s 21(1)(a) and Section 21(2) is some what similar to the Scheme u/s 21(1)(h) and Section 21(4). Clause (h) provides that the

need should be proved to be bona fide and reasonable. If that is proved, then the Court is required to consider the question of comparative

hardship and partial eviction u/s 21(4). If the need is not proved to be bona fide or reasonable, the Court will not examine the question of

comparative hardship and partial eviction u/s 21(4). Similarly, only if the ground of eviction is made out u/s 21(1)(a), the Court will have to

proceed to examine as to whether there are circumstances in favour of the tenant, to deny relief to the landlord, as provided u/s 21(2).

16. Let me now examine the facts of this case, with reference to the scheme and principles relating to eviction on the ground of arrears of rent,

contained in Section 21(1)(a) and 21(2) of the Act. The Courts below were required to find out:

(a) whether the petitioner herein was in arrears of rent, (b) whether there was a notice demanding payment of the arrears of rent, (c) whether the

amount was not paid within two months from the date of such service. The fact that the rent was in arrears from 1-10-1983 is not in dispute. The

next stage is to find out whether there was a notice, as required u/s 21(1)(a). What should be the requirement of a notice u/s 21(1)(a) has been the

subject matter of some decisions.

16.1 In Rakesh Kumar and Anr Vs. Hindustan Everest Tool Ltd., , the Supreme Court held that a notice of demand of arrears of rent preceding

an eviction proceedings, must be read in a common-sense point of view bearing in mind how such notices are understood by ordinary people. In

that case, the Supreme Court held that, the notice issued by the landlord describing the property and stating the arrears of rent and terminating the

tenancy and calling upon the tenant to hand over possession, and threatening to file a petition for eviction was sufficient compliance with the

requirements relating to such notice and failure to make a specific demand for payment of the rents will not invalidate the notice, as such a demand

was implied on reading the notice.

16.2 In Chimanlal Vs. Mishrilal, , the Supreme Court was considering the sufficiency of notice u/s 12(1)(a) under Madhya Pradesh

Accommodation Control Act, 1961 (somewhat similar to Section 21(1)(a) of Karnataka Rent Control Act). The Supreme Court held as follows.-

It is apparent, therefore, that there is a substantial difference between the accommodation mentioned in the notice and the accommodation actually

let to the appellant. It must be taken that notice relates to accommodation which cannot be effectively identified with the accommodation

constituting the tenancy. This is not a case of mere misdescription of the accommodation where both parties knew perfectly well that the notice

referred to accommodation let to the tenant. Nor is it a case where the discrepancy between accommodation alleged by the landlord and that

actually let to the tenant is marginal or in substantial.... The notice referred to in Section 12(1)(a) must be a notice demanding the rental arrears in

respect of accommodation actually let to the tenant. It must be a notice (a) demanding the arrears of rent in respect of accommodation let to the

tenant and (b) the arrears of rent must be legally recoverable from the tenant. There can be no admission by a tenant that arrears of rent are due

unless that relates to accommodation let to him. A valid notice demanding arrears of rent relatable to the accommodation let to the tenant from

which he is sought to be evicted, is a vital ingredient of conditions which govern the maintainability of the suit, for unless a valid demand is made, no

compliant can be laid for non- compliance with it, and consequently no suit for ejectment of the tenant in respect of the accommodation will lie on

that ground".

(emphasis supplied)

16.3 This Court had occasion to examine the requirements of notice u/s 21(1)(a) in Ramachandra Bhat Vs. Rao Talithaya, . The landlord therein

relied on a notice of demand which did not give the description of the property except giving the door number. Further, the door number that was

given in the notice, was not correct. The Court held that the mistake in regard to the door number could have been overlooked if the description of

the premises let out was contained in the notice. But, as the notice did not contain the description of the premises apart from the door number

which was also erroneous and as it was not possible to identify the schedule premises from the notice it was held that the notice was not a sufficient

notice u/s 21(1)(a) of the Act.

16.4 A learned Single Judge of the Delhi High Court considered Section 14(1) of the Delhi Rent Control Act, which is in pan materia with Section

21(1)(a) of the Act, in the case of Hari Mohan v Rameshwar Dayal and held that the demand by notice must be a demand for a definite sum due

on account of arrears of rent from the tenant to the landlord; that it should state the period for which the rent has fallen due; and that even though

no particular form of a demand is prescribed, it must be proper and clear.

17. Having regard to the provisions of Section 21(1)(a) of the Act, and the principles laid down by the Courts, it is evident that a notice of demand

issued u/s 21(1)(a) should contain the following particulars:

(a) description of the property sufficient to identify the property;

(b) description of the landlord and tenant;

(c) rate of monthly rent;

(d) the period for which the amount is due; and

(e) a demand for payment of the arrears of rent.

Though these particulars need not be given specifically, it must be possible to discern these particulars from the notice. In the absence of such

particulars it is not possible to hold that there is a demand by the landlord for arrears of rents from the tenant in regard to the premises. Let me

examine whether the notice in this case satisfies the aforesaid requirements relating to a demand notice u/s 21(1)(a) of the Act.

17.1 The notice dated 5-8-1984 (Ex. P. 3) is extract below for ready reference:

Miss Lucy Pais Tel. Res: 25348

Loo Pais Hanging Gardens

Pais Compound, Urwa

MANGALORE - 575 006

5th August, 1984

To

The Regional Manager

Hindustan Petroleum

Corporation Limited

3 Sankey Road

Post Box 123

Bangalore - 560 052

Sir

Sub: Non-payment of rent due

Ref: Lease Deed dated 8-3-1974

Please note that the rental payable at the rate of Rs. 375/- p.m. in respect of the Lady hill Petrol Bunk premises had not been paid in spite of

repeated requests since about six months. The non-payment is deliberate and without just or sufficient cause.

You are hereby called upon to pay the rental due as aforesaid within the time allowed by law, lest I should seek your eviction on the ground of

non-payment of rent.

The lease period which itself was renewed period, expired on 30-9-1983. I require the premises for putting up flats.

Therefore please make alternative arrangements to vacate the petrol bunk within a month.

On your failure to comply with the demands made, I will sue you to recover possession which please take notice.

Yours faithfully

Sd/-

(Lucy Pais)

c.c : 1. Hindustan Petroleum

Corporation Limited

17, Jamsheji Tata Road

Bombay - 400 020

2. Sales Officer,

Hindustan Petroleum Corporation Limited

Bunder, Mangalore - 1

to take steps that may be necessary comply

with the demands made as above.

17.2 The first requirement is that the notice should disclose the premises in regard to which the notice is issued i.e., the description of the property

and where the property is situated should be disclosed. The notice in this case, merely refers to the property as "Lady hill Petrol Bunk Premises",

without giving description. The notice does not even say in which city the property is situated. Nor does it give the address (that is Municipal

number and road name) of the property.

17.3 The second requirement is disclosure of the owner/landlord of the premises; or if it is issued on behalf of some one else, then the name of the

person on whose behalf it is issued. The notice shows two names on top "Mrs. Lucy Pais, Mrs. Loo Pais". The notice is signed by "Lucy Pais". The

notice nowhere states who is the owner of the property. It is significant to notice that the name of the landlord in all official records and

correspondence with the tenant as also in the eviction petition is "Lucy Banilda Rebello (Nee Pais)". Thus, the name of the landlord is not clear

from the notice.

17.4 The third requirement is in regard to rent. It is not in dispute that rent for the premises is Rs. 468-75 ps. per month. But, the notice refers to

the rent as Rs. 375/- per month.

17.5 The fourth requirement is the period for which the amount is due. It is admitted that the rent was due from 1-10-1983 and as on 5-8-1984

when the notice was issued, the rent was due for 10 months. But the notice states that rent is due for about six months.

17.6 Thus, the notice does not refer to the premises in regard to which it is issued, it does not specify the monthly rent correctly, it states the period

for which rent is due wrongly, and it does not even state who is the owner.

18. The above analysis will show that the notice does not meet with the requirements of a valid notice u/s 21(1)(a) of the Act. It is no doubt true

that the notice must be read from a common sense point of view bearing in mind how it is understood by ordinary people. Such a reading will not

also help the petitioner in the absence of relevant particulars.

19. One more aspect requires to be noticed. If a particular landlord has only one premises and one tenant and the tenant has only one rented

premises, it is possible that the tenant who receives the notice from the landlord, may easily identify the premises, even if it is not specified. But a

tenant like the Hindustan Petroleum Ltd., holds on lease several hundreds or thousands of premises all over the country; and the number of

premises are so high that the entire processing of rentals has been computerised. Further, the matters will be handled at different points of time by

different personnel in charge of a particular section. In these circumstances, unless the notice gives the description of the property, name of owner,

amount of rent and the period of arrears, the tenant-Corporation will not be in a position to ascertain the premises to which it relates. It may be

possible that after a detailed search, the tenant-Corporation might have identified the property and paid the rents. But the very purpose of giving

two months time to pay the arrears will be defeated if the tenant is not able to identify the subject matter of the notice on receipt of the notice.

Where even a single requirement of a valid notice is not present, I have no doubt in my mind that the notice does not comply with Section 21(1)(a).

Hence, Point No. (2) is answered in the negative and in favour of the tenant. Hence, Point No. (3) does not survive for consideration.

20. It is necessary to deal with one more contention of the learned Counsel for the landlord in this behalf. He contended that the invalidity of the

notice is not specifically raised in the statement of objections and therefore the tenant should not be permitted to raise it at the stage of revision.

This contention is not sound as the tenant, in its statement of objections, has clearly contended that "the respondent begs to submit that the

petitioner has not at all made out any ground under provisions of Section 21(1)(a) of the Act so as to seek eviction of the respondent". Further, the

Supreme Court has repeatedly held that where the requirement is statutory, the absence of pleading is totally irrelevant. Where an eviction order

can be passed only on compliance with certain statutory requirements, the onus is on the landlord to plead and prove compliance with the

requirements. For example, if an eviction is sought u/s 21(1)(h) of the Act, the Supreme Court has held that the question of partial eviction must be

considered by the Court irrespective of the fact whether there is a pleading in that behalf or not. Similarly, even if the tenant does not specifically

raise a plea, the Court is bound to examine whether requirement of Section 21(1)(a) are complied with or not before passing an order of eviction.

In this case, as pointed out above, the tenant has clearly stated that there is no compliance with Section 21(1)(a) of the Act and therefore, there is

sufficient pleading.

21. In the result, this revision petition is allowed and the order of eviction dated 27-7-1989 passed by the learned Munsiff, Mangalore in HRC No.

326 of 1984 as confirmed in RR No. 302 of 1989 by the District Court, Dakshina Kannada on 29-7-1997 are set aside. The eviction petition

(HRC No. 326 of 1984) u/s 21(1)(a) of the Act is rejected.