# Rattan Lal vs Vardesh Chander & Ors on 9 December, 1975

## Equivalent citations: 1976 AIR 588, 1976 SCR (2) 906, AIR 1976 SUPREME COURT 588, 1976 2 SCR 906, 1976 RENCR 355, 1976 2 SCC 103

## Author: V.R. Krishnaiyer

## Bench: V.R. Krishnaiyer, Y.V. Chandrachud, A.C. Gupta

PETITIONER:
RATTAN LAL

Vs.

RESPONDENT:
VARDESH CHANDER & ORS

DATE OF JUDGMENT09/12/1975

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
CHANDRACHUD, Y.V.
GUPTA, A.C.

CITATION:
1976 AIR 588 1976 SCR (2) 906
1976 SCC (2) 103
CITATOR INFO :
D 1978 SC1518 (12,13,17)
O 1979 SC1745 (16)
RF 1980 SC1214 (12)

ACT:
Transfer of Property Act-Secs. 106 and 111(a) and 111(g)-Eviction under Rent Control Law-Whether de hors Transfer of Property Act-Rules of Justice equity and good conscience-Whether institution of legal proceedings operates as determination of lease-Art. 133 of Constitution-If certificate limited to a particular point-Whether other points can be argued-Whether English concepts to be blindly followed.

HEADNOTE:
The respondent landlord let out the building in question to the appellant tenant in the year 1954, when the

Transfer of Property Act was not applicable to Delhi where the property is situated. The Transfer of Property Act was made applicable to Delhi in the year 1962. In 1967, the respondent filed a suit for eviction against the appellant without terminating the tenancy under the Transfer of Property Act on the grounds of unauthorised subletting and acquisition of alternative accommodation by the tenant. A decree for eviction was passed by the Rent Controller which was affirmed by the Appellate Tribunal.

In the High Court it was contended by the appellant that neither notice to quit nor notice of forfeiture determining the tenancy was given by the landlord as required by sections 106 and 111 of the Transfer of Property Act. The respondent contended that the lease had expired by efflux of time under section 111(a) and no notice terminating the tenancy was necessary and that forfeiture of the tenancy caused by the subletting contrary to the terms of the agreement can be availed of by the landlord even in the absence of a notice as contemplated by section 111(g). The High Court dismissed the petition filed by the appellant but granted a certificate of fitness under Article 133 restricting it to one ground urged before the High Court. The respondent raised a preliminary objection that since the certificate was granted only on one point the appellant could not be permitted to make any other submissions.

The appellant contended that the lease is one where the time is not limited and, therefore, is terminable only by 15 days notice as required by section 106 of Transfer of Property Act.

The respondent contended that the lease was for a fixed period and expired by efflux of time. In any evnt a notice in writing is not necessary to terminate the lease. Institution of legal proceedings serves that purpose.
^

HELD: (1) Once a certificate of fitness has been granted under Article 133, the appeal, in all its amplitude, is before the Court and every point may be urged by the appellant provided this Court permits it having regard to the circumstances. It is however, within the court's discretion not to allow a new point to be taken up. [909D-E]

(2) The scheme of the Rent Control Law, is to put further fetters on landlords seeking eviction where in the absence of such acute barriers the landlords would be entitled to ejectment. Even where under a particular Rent Control Statute the landlord makes out grounds for eviction he can institute proceedings in this behalf only if de hors the said grounds he has cause of action under the Transfer of Property Act. The landlord cannot secure an order for eviction without first establishing that he has validly determined the lease under the transfer of Property Act [909G-H,911C]

(3) A lease merely stating that it is for a period less than one year is ex-facie for an indefinite period and as

such cannot expire by efflux of time.
907
Nor are we convinced that the acceptance of rent for the period of 11 years does not amount assenting to the holding over of the tenancy by the landlord. [911E-F]

(4) The Rent Act contemplates no elaborate proceedings but filing out of the particulars in a proforma which takes the place of a plaint. No specific averment of forfeiture and consequent determination of the lease is found in the petition. The question arises whether a written notice of forfeiture for the breach of the condition of the lease is obligatory in terms of section 111(g) or whether written notice of forfeiture can be dispensed with as being no part of the equity or justice but a technical or formal statutory requirement. Before the amendment of Transfer of Property Act in 1929 all that was necessary for the lessor to determine the demise on forfeiture was to do some act showing his intention to determine the lease. The rule of English Law'before the enactment of the law of Property Act, 1925, appears to be that a suit for ejectment is equivalent to a re-entry. The appellant did not urge in the High Court that the Transfer of Property Act was applicable in its own force. We decline our discretion to allow the appellant to travel into the new statutory territory of section 111 (g). [911G-H, 913A, D-E, 916C]

(5) In India and in other colonies throughout the Imperial Era a tacit assumption had persuaded the courts to embrace English Law (the civilizing mission of the masters) as justice, equity and good conscience. Unfortunately, even after liberation, this neo colonial jurisprudence was not shaken off. Free India has to find its conscience in our rugged realities and no more in alien legal thought. So viewed, the basic question is what is the essence of equity in the matter of determination of a lease on the grounds of forfeiture caused by the breach of a condition. The substance of the matter-the justice of the situation-is whether a condition in the lease has been breached and whether the lessor has by some overt act brought home to the lessee his election to eject on the strength of the breach. The touchstone is simply whether the formal requirement of the law is part of what is necessarily just and reasonable. In this perspective the conclusion is clear that a notice in writing formally determining the tenancy is not a rule of justice or cannon of commonsense. Realism married to equity being the true test, we are persuaded that pre-amending Act provision of section 111 (g) is in consonance with justice. The mere institution of the legal proceeding for eviction fulfills the requirements of law for determination of the lease. The conscience of the Court needs nothing more and nothing less. The essential principles, not the technical rules, of the Transfer of Property Act form part of justice, equity and good conscience. [916D, 917A, D, E-F,919B-C, 920A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1297 of 1975.

From the judgment and order/decree dated the 30th May, 1975 of the Delhi High Court in S.A.O. 43 of 1973.

A. K. Sen, R. L. Kohli, S. K. Bagga, Mrs. S. Bagga and Miss Yash Bagga for the Appellant.

Y. S. Chitaley, R. P. Singh, R. K. Jain and M. Mudgal for Respondent No. 1.

The Judgment of the Court was delivered by KRISHNA IYER,J. This fifth deck appeal, by certificate under Art. 133 of the Constitution, stems from a humdrum but protected litigation under the rent control law by a tenant who has lost all alone the way. If we may prologise, this special law hopefully set up a quasi-judicial machinery for summary trial and speedy disposal and prescribed eviction save upon simple grounds safeguarding the security of tenants of buildings against being inequitably ejected. But this very case discloses the chronic distortion in processual justice, caused by a slow-motion spiral of appeals and plethora of technical pleas defeating the statutory design.

The obvious legislative policy and project in this class of simplistic landlord-tenant litigation demands a radically non-traditional judicial structuring and legal engineering, by-passing sophistications and formalisms and tier-upon-tier of judicial reviews. Both these imperatives are conspicuously absent in current rent control litigation- a dismal failure which the legislature will, we hope, awaken to rectify. Post-audit of socio-economic laws in action, with a view to over-see if legal institutions and jural postulates actually achieve legislatively mandated objectives in special classes of dispute-proceessing, makes for competent and credible implementation of laws and saves the time of the higher courts and the money of the public at present consumed exasperatingly but avoidably. The price of legislative inaction in these areas is popular disenchantment with laws and tribunals.

Factual matrix The appellant is the tenant of a building in Delhi having been inducted into possession by the respondent- landlord under a letting of May 19, 1954, evidenced by a deed which fixed the term merely as less than a year (a circumstance out of which a minor ripple of legal argument has arisen). At the time of the lease the Transfer of Property Act, 1882 (for short, the TP Act), had not been extended to Delhi although, later, on December 1, 1962, the said Act was made applicable to this area. The landlord had been receiving rent from the tenant until the time he filed a petition for eviction (1967), the statute which regulated the right to eviction being the Delhi Rent Control Act, 1958 (59 of 1958) (for short, the Rent Act). The eviction petition set out two grounds out of the many specified in s. 14 of the Rent Act, viz.,unauthorized sub-letting of a portion of the premises and possession, by the tenant, of alternative accommodation. Both these grounds having been made out, the evictibility under the Rent Act became inevitable. But, in the High Court, the appellant-tenant fell back on certain defences grounded on ss.106 and 111 of the TP Act on the score

that no notice to quit had been given, nor notice of forfeiture, as prescribed by those sections. There is no dispute that neither notice to quit nor notice of forfeiture determining the tenancy had been given by the landlord. The core of the controversy thus turns on the need to comply with the requirements of ss. 106 and/or 111 of the TP Act and the fatal effect of failure in this behalf. The landlord seeks to break through these defences by urging that the lease has expired by efflux of time limited thereby under s. 111(a) and no notice terminating the tenancy under s. 106 is needed and further that the forfeiture of the tenancy caused by sub-letting contrary to the terms of the deed of demise can be availed of by the landlord even in the absence of a notice as contemplated by s. 111 (g) because the TP Act, as amended by the Amending Act of 1929, did not, in terms, apply to the present lease and the principles of justice, equity and good conscience, which alone applied, did not desiderate the technical requirement of a notice in writing of an intention to determine the lease.

The Rent Controller, at the floor level, ordered eviction and the Appellate Tribunal affirmed it, upholding the vice of sub-letting without consent of the landlord in the manner specified in s. 14(1)(b) as also the disability spelt out in s. 14(1) (h) on acquiring vacant possession of alternative residence. The resistence founded on the TP Act was also over-ruled by the appellate Tribunal. But, when the case reached the High Court in second appeal, under s. 39 of the Rent Act, the learned Single Judge felt that certain points of law spun out of the TP Act deserved consideration by a Division Bench and referred the appeal for determination accordingly to a larger Bench. The Division Bench which heard the appeal dismissed it but granted a certificate of fitness for appeal to the Supreme Court under Art. 133 of the Constitution, restricting it, however, to but one ground urged before it. Shri A. K. Sen, for the appellant, made a gentle hint that the High Court had heard long arguments in March 1974 but could resolve its doubts to deliver a judgment only in May 1975 so much so the freshness of counsel's submissions might have faded somewhat and so we should have a closer look at his points de hors the judgment under appeal. If this fact of a long hiatus between hearing and decision were true, it must have inflicted a heavy strain on the memory of the learned Judges which it is a healthy practice to avoid. However, after listening to Shri A. K. Sen, we feel that his fears are unfounded.

A preliminary pre-emptive objection was urged by the respondent that the High Court having circumscribed the certificate to a single point no other submissions should be permitted. We see no force in this untenable insistence on tying down the appellant. Once a certificate of fitness has been granted under Art. 133, the appeal, in all its amplitude, is before this Court and every point may be urged by the appellant provided this Court permits it, having regard to the circumstances. Perhaps, a certificate under Art. 132, or special leave under Art, 136 may stand on a different footing if the Court limits the grounds in any manner. Of course, conceding the Court's plenary power in appeals on certificate under Art. 133, it is still within the Court's discretion not to allow a new point to be taken up [The rulings in 1963 (2) SCR 440 and 1964(2) SCR 930 lay down the law on this point].

The contentions We have already indicated that, under the Rent Act two grounds for eviction have been good by the landlord. Indisputably, sub-letting has been substantiated. Even so, it is argued that only where a lease has been duly determined giving rise to a right to present possession under the TP Act can the landlord sue for recovery of the building. The scheme of the Rent Control law, speaking generally, is to put further fetters on landlords seeking eviction from urban buildings

where, in the absence of such new barriers, they will be entitled to ejectment. The acute scracity of accommodation is the raison de'etre of the law. It is not as if the rent control statutes are a bonanza for the landlords and confer a relaxed right to eject where, under the general law, they do not have such a right in praesenti. To hold otherwise is to pervert the purpose and substitute an added danger for an extra dyke. It follows that even where under a particular rent control statute the landlord makes out grounds for eviction, he can institute proceedings in this behalf only if de hors the said grounds he has cause of action under the TP Act.

We agree that, if the rent control legislation specifically provides grounds for eviction in supersession, not in supplementation, of what is contained in the T.P. Act, the situation may conceivably be different. But, in the Delhi Rent Act,as in many other like Statutes, what is intended to be done is not to supplant but to supplement, not to eliminate the statutory requirements of determination of tenancy but to superimpose a ban on eviction which otherwise may be available in conformity with the TP Act without fulfilment of additional grounds. 'No order ..... for the recovery of possession of any premises shall be made..... in favour of the landlord against a tenant' is a blanket ban in s. 14(1) of the Rent Act. It is followed by enumeration of specific grounds proof of which may authorize the Controller to make an order for the recovery of possession of the premises. It follows that before a landlord can institute proceedings for recovery of possession, he has to make out his right (a) under the TP Act; and (b) under the Rent Act.

In Manujendra Dutt this Court considered the question elaborately and observed:

> "The Thika Tenancy Act like similar Rent Acts passed in different States is intended to prevent indiscriminate eviction of tenants and is intended to be a protective statute to safeguard security of possession of tenants and therefore should be construed in the light of its being a social legislation. What section 3 therefore does is to provide that even where a landlord has terminated the contractual tenancy by a proper notice such landlord can succeed in evicting his tenant provided that he falls under one or more of the clauses of that section. The word 'notwithstanding' in section 3 on a true construction therefore means that even where the contractual tenancy is properly terminated, notwithstanding the landlord's right to possession under the Transfer of Property Act or the contract of lease he cannot evict the tenant unless he satisfied any one of the grounds set out in section 3. Rent Acts are not ordinarily intended to interfere and with contractual leases and are Acts for the protection of tenants and are consequently restrictive and not enabling, conferring no new rights of action but restricting the existing rights either under the contract or under the general law.
>
> * * * * * The right to hold over, that is, the right of irremovability thus is a right which comes into existence after the expiration of the lease and until the lease is terminated or expires by efflux of time the tenant need not seek protection under the Rent Act. For he is protected by his lease in breach of which he cannot be evicted. (See Maghji Lakshamshi and Bros v. Furniture Workshop-[1954] AC 80, 90). In Abasbhai v. Gulamnabi (AIR 1964 SC 1341), this Court clearly stated that the Rent Act did not give a right to the landlord to evict a contractual tenant without first determining the

> contractual tenancy. In Mangilal v. Sugan Chand (AIR 1965 SC 101) while construing section 4 of the Madhya Pradesh Accommodation Control Act (XXIII of 1965), a section similar to section 3 of the present Act, this Court held that the provisions of section 4 of that Act were in addition to those of the Transfer of Property Act and therefore before a tenant could be evicted by a landlord, he must comply with both the provisions of section 106 of the Transfer of Property Act and those of section 4. The Court further observed that notice under section 106 was essential to bring to an end the relationship of landlord and tenant and unless that relationship was validly terminated by giving a proper notice under s. 106 of the Transfer of Property Act, the landlord could not get the right to obtain possession of the premises by evicting the tenant (See also Haji Mohammad v. Rebati Bhushan-53 C.W.N. 859)."

We are inclined to hold that the landlord in the present case cannot secure an order for eviction without first establishing that he has validly determined the lease under the TP Act.

We are therefore thrown back to an examination of the argument pressed by the appellant-tenant that independently of the rent control law, the respondent has no subsisting cause of action. The contention is two-fold. Firstly, the lease is one where the time is not limited and therefore s. 111(a) will not apply and is terminable on the part of the lessor only in the manner provided by s. 106, i.e., by 15 days' notice expiring with the end of the month of the tenancy. Admittedly, no such notice was given. The counter- contention of the landlord, apart from the plea of statutory tenancy requiring no further notice to determine, is that the lease is for a specified period even though it expresses itself as for a term less than one year and under s. 111 (a) has expired by efflux of time. We cannot agree to this feebly asserted argument. A lease merely stating that it is for a period less than one year is ex facie for an indefinite period and, as such, cannot expire by efflux of time. Nor are we convinced that, notwithstanding the acceptance of rent for the period of 11 years the landlord had not assented to the holding over of the tenancy and that what emerged was a statutory tenancy which did not require notice in law for valid determination. Possibly so; not necessarily. However, we need not explore this aspect further in the view that we take of the other submission of the landlord that the lease has been determined by forfeiture, not in terms of s. 111 (g) of the TP Act, but on the application of the principles of justice, equity and good conscience. We will examine this latter contention in some detail, as it is decisive of the fate of the case.

The Rent Act contemplates no elaborate pleadings but filling out of particulars in a pro forma which takes the place of a plaint. No specific averment of forfeiture and consequent determination of the lease is found in the petition. Having regard to the comparative informality of these proceedings and the quasi-judicial nature of the whole process, such an omission cannot be exaggerated into a lethal infirmity. What is perhaps more pertinent is that the petitioner was innocent of the plea of forfeiture throughout the stages of the trial before the Rent Controller. When the case reached the appellate stage, it was specifically urged that the tenancy 'stood terminated by forfeiture under s. 111 (g) of the TP Act. The Tribunal studied the terms of the rent deed, Exhibit AW 3/1 and held that there was an express condition against sub-letting and a provision that on breach thereof the lessor had the right to move for eviction- something equivalent to a right to re-enter. The tenant remonstrated against this new plea being permitted in appeal but the Court construed the statement in the pro-forma in

column 18-B, that no notice is necessary, to mean that there was a determination by forfeiture even without the issuance of a notice. More over, the Court noticed the fact that the question was only one of law and should be permitted in the interests of justice. After some consideration of the issue the Tribunal reached the result 'that the tenancy stood determined by forfeiture and therefore no notice was required'. We need not tarry further on the tenability of this conclusion since the matter has been more fully examined at the High Court level.

Arguments before us have proceeded on the footing that a sub-tenancy has been created and this amounts to a breach of condition with a provision for re-entry. The tribunal in appeal held that no notice was necessary since the lease was created prior to the extension of the TP Act to Delhi. Although there is some confusion in this order about the determination of the lease being under s. 111(g) or outside it, the thrust of the holding is found in these concluding words:

> "However, as held by the Supreme Court in Narender, Lokmanya Lodhi v. Narmada Bai & Ors. 1953 SC 228 the provisions in s. 111 (g) as to notice in writing as a preliminary to a suit for ejectment based on forfeiture of a lease is not based on the principles of justice, equity or good conscience and would not govern the bases made prior to the coming into the force of the TP Act or to a lease executed prior to the coming into force of the TP Act. The lease in question was admittedly created before December 1, 1962 and, therefore, the requirement of the notice in writing could not be insisted upon."

In short, the clincher was 'justice, equity and good conscience'.

The critical phase of the case thus beckons us, the last court of law and justice, to the final valley of the forensic battle. Does the TP Act apply to a lease executed prior to the extension of that Act to the area, even though the event that determines the tenancy viz., forfeiture, occurs after such extension ? Secondly, if the TP Act does not apply proprio vigore to such demises and their determination, can the principles of justice, equity and good conscience be invoked to transplant the twin rules in s. 111(g) of the said Act? Thirdly, and this is the crux of the matter-if such transfusion is permissible, is the synergetic operation of breach of a condition of the lease providing for re-entry and a written notice of forfeiture on that score obligatory in terms of s. 111(g) or can written notice of forfeiture be dispensed with as being no part of equity or justice but a technical or formal statutory requirement? What, in short, is the status of the formula of justice, equity and good conscience, in the legal pharmacopoeia of India?

Shri A. K. Sen urges that the procedural interdict against raising the objection based on s. 111(g) is of no consequence. While the law goes to the root of the case and is perfectly plain and the facts indubitably manifest on the record, the refusal to examine and uphold the objection, if valid, is to surrender the judicial function of doing justice according to law at the illegitimate altar of technical inhibition. Moreover, he argues, the plea based on s. 111(g) in some form or other, is writ large in the Tribunal's order and the High Court's judgment. New nuances and clearer focus may be allowed where the point of law has been broadly touched upon. Face to face with the issue of forfeiture under s. 111(g), the appellant presses the position that since admittedly no notice in writing, as laid down

in the section, has been issued, the eviction proceeding can be shot down by that legal missile alone.

Before the amending Act of 1929, all that was necessary for the lessor to determine the demise on forfeiture was to do 'some act showing his intention to determine the lease'. The rule of English law before the enactment of the Law of Property Act, 1925 appears to be that a suit for ejectment is equivalent to re-entry. It has been held in India that an act showing the lessor's intention to determine the lease can take the form of the institution of an action in ejectment. The statutory law, as it now stands, however is that the happening of any of the events specified in s. 111(g) does not, ipso facto, extinguish the lease but only exposes the lessee to the risk of forfeiture and clothes the lessor with the right, if he so chooses, to determine the lease, by giving notice in that behalf. Mulla states the law correctly thus:

> "Forfeiture of a lease requires the operation of two factors: (1) A breach by the lessee of an express condition of the lease which provides for re-entry on such breach and (2) a notice by the lessor expressing his intention to determine the lease."

(Mulla on TP Act, p. 746-747, 6th Ed.) The notice has to be in writing. In Namdeo Lokman Lodhi(1) this Court laid down the law to the same effect. Mahajan J., observed:

> "Section 111(g) in the terms makes the further act an integral condition of the forfeiture. In other words, without this act there is no completed forfeiture at all. Under the old section an overt act evidencing the requisite intention was essential. As the law stands today, under the Act, notice in writing by the landlord is a condition precedent to a forfeiture and the right of re-entry."

It cannot be gainsaid that a notice, as envisioned in s. 111(g) not having been given to the lessee in the present case, determination of the demise under s. 111(g) cannot be claimed by the lessor. Thus, if the fortune of the landlord were to turn on the application of the TP Act as it stands now, the ejectment proceeding must be rebuffed.

Counsel for the respondent seeks to sustain his case on the submission that the TP Act does not apply to the lease in question and therefore a forfeiture giving rise to a determination of the lease follows upon breach of a condition in the lease, to wit, sub-lease of a portion of the building, plus an act indicative of the landlord's intention to terminate the tenancy. According to counsel, in the absence of a specific statutory provision, the rules of justice, equity and good conscience govern the situation and this element is amply fulfilled by the filing of the eviction petition itself. We are, therefore, called upon to consider whether the provisions of the TP Act apply to the lease of 1952 executed in Delhi and, secondly, if it does not whether its present provision, as amended in 1929, has to be treated as a rule of justice, equity and good conscience, or the mere institution of legal proceedings for ejectment would be tantamount to an act evidencing the intention of the lessor to avail himself of the forfeiture clause and sufficient to satisfy justice, equity and good conscience.

A little legal history helps to appreciate this part of the controversy. The TP Act came into force on July 1, 1882; but it extended in the first instance to the whole of India except certain saved

territories including Delhi. It was actually extended to Delhi only in 1962. Section 2(c) of the Act provides that 'nothing herein contained shall be deemed to affect any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability'. There is some dispute as to what 'nothing herein contained' connotes. Shri A. K. Sen submitted that the Act had come into force as early as 1882 and while transactions created before that date (July 1, 1882) would not be affected by its provisions, subsequent transactions would be governed by that Act even though they may have been executed before the extension of the Act to a particular area. His brief contention was, to start with, that even if the Act was extended to Delhi in 1962, once it was so extended the whole Act came into force in its totality in that area and only those transactions which were expressly saved by s. 2 viz., 'legal relations constituted before this Act comes into force' escaped from its operation. So much so the present lease being of 1954 would be covered by s. 111 (g). Our attention was drawn by him to s. 63 of the Amending Act in this connection.

Shri Chitaley, for the respondent, countered this contention by another extreme stand. According to him, the Act came into force in Delhi only when it was extended to that place, viz., in 1962. Therefore, transactions prior to that date swam out of its operation altogether. A third possibility, a sort of via media or golden mean, also came up for consideration as a close-up of the relevant provisions was taken. This view was that while transactions which came into existence in an area before the Act was extended to that area, would be tested for their validity by the law extant when the transaction was entered into, the remedies and other incidents would be conditioned by the TP Act if it had been extended to the area when the remedy was sought to be enforced. Shri Chitaley wanted us to accept Namdeo (supra) as an authority for his proposition and relied on certain passages therein. The problem presented before us cannot be disposed of in an easy fashion and deserves serious examination. In the present case, we are relieved of that obligation for the weighty reason that the appellant has all along staked his case on the application of the rules of justice, equity and good conscience and not on the textual rigour of s. 111(g) applied proprio vigore.

We have already indicated that although this question was not canvassed before the trial Court, the appellate tribunal did consider it as a point of law. In doing so, the learned Tribunal applied what he considered to be the principles of justice, equity and good conscience and dispensed with the drastic insistence on notice in writing. In the High Court, the position taken up by the appellant did not disturb the application of justice, equity and good conscience. On the contrary, the Division Bench emphatically asserted that the appellant never disputed this proposition. Indeed, both in regard to notice to quit and notice of forfeiture, the appellant accepted the application, not of the TP Act as such, but of the rules of justice, equity and good conscience. We may as well except the relevant statement in the judgment of the High Court:

> "In the present case, the provisions of the TP Act had not been extended to Delhi during the material period and these provisions would therefore, not be applicable to the tenancy in question. It was not disputed before us that in view of this only such of the principles embodied in the provisions of ss. 106 and 111 of the TP Act would regulate the matter as could be held to be consistent with the rules of equity, justice and good conscience. It was also not disputed before us that even though the

> provision of section 106 of the TP Act laying down the manner in which a tenancy may be terminated are technical in character, in that they require such termination 'by fifteen days' notice expiring with the end of the month of the tenancy'. It would be consistent with the requirements of equity, justice and good conscience that a tenant has reasonable notice of termination even though it does not expire with the end of the month of a tenancy. It was also not disputed that in the present case, no notice whatever was sent to the tenant of the application for eviction when the notice was sought to be justified on the ground that no such notice was necessary because the tenancy stood determined either by efflux of time limited thereby in terms of the principle embodied in s. 111(a) of the TP Act or by forfeiture following the breach by the tenant of the express condition regarding sub-letting in terms of the principles embodied in s. 111(g) of the said Act."

If the appellant's case was that the TP Act applied of its own force, he would have urged so in the High Court, especially because the appellate tribunal had dealt an eviction blow on him by applying the rules of justice, equity and good conscience. Moreover, the categorical statement in the judgment of the High Court confirms the view that the appellant stuck to his stance of justice, equity and good conscience. Nay more. Even in the grounds of appeal to this Court" he has only harped on justice, equity and good conscience and invoked s. 111(g) as embodying equity and good conscience. For the first time he has, by a volta face, switched to the TP Act as against the rules of justice, equity and good conscience. It is too late in the day to set up a new case like that. There are many reasons why. Even though we have power to permit a new plea, we should not exercise it here. We decline our discretion to allow the appellant to travel into the new statutory territory of s. 111(g). He has to stand or fall by his submission that justice, equity and good conscience is the alter ego of s. 111 (g) of the TP Act in its dual requirements of (a) the breach of a condition providing for re-entry and (b) notice in writing to the lessee of an intention to determine the lease.

Once we assume the inapplicability of the TP Act to the lease in question-an assertion of the respondent which we do not feel compelled to consider in this appeal-we are confronted by the concept of justice, equity and good conscience which, admittedly, comes into play in the absence of any specific legislative provision. In India and in other colonies during the Imperial era a tacit assumption had persuaded the courts to embrace English law (the civilizing mission of the masters) as justice, equity and good conscience. Throughout the Empire in Asia and Africa, there was an inarticulate premise that English law was a blessing for the subject peoples. Robert M. Seldman writes about Sudan:

> "The courts were simply directed to decide cases on the basis of 'justice, equity and good conscience' [Civil Justice Ordinance, 1929, Ch. 9, 10 Laws of the Sudan 13 (1955) ]. However, the judges were all English lawyers;

and with magnificent insularity it developed that 'justice, equity and good conscience' meant not merely English common law but English statutory law as well. The author has been told by an English barrister who tried a case in the Sudan some years ago that he was amazed to discover that 'justice, equity and good conscience' meant in his case the English Sales of Goods Act, 1862."

(Law and Economic Development in Independent, English Speaking, Sub-Saharan Africa-Wisconsin Law Review Vol. 1966, Number 4, Fall) The Judicial Committee of the Privy Council struck a similar note in Maharaja of Jeypore v. Rukmani Pattamahadevi(1) where Lord Phillimore stated:

> "They are directed by the several charters to proceed where the law is silent, in accordance with justice, equity, and good conscience, and the rules of English law as to forfeiture of tenancy may be held and have been held to be consonant with these principles and to be applicable to India."

Unfortunately, even after liberation, many former colonies, including India, did not shake off this neo-colonial jurisprudence (See A.I.R. 1950 Bom. 123). This is the genesis of the idea that Indian 'good conscience' is English Common Law during the reign of Empress Victoria ! The imperatives of Independence and the jural postulates based on the new value system of a developing country must break of from the borrowed law of England received sweetly as 'justice, equity and good conscience'. We have to part company with the precedents of the British-Indian period tying our non-statutory area of law to vintage English law christening it justice, equity and good conscience'. After all, conscience is the finer texture of norms woven from the ethos and life-style of a community and since British and Indian ways of life vary so much that the validity of an anglophilic bias in Bharat's justice, equity and good conscience is questionable today. The great values that bind law to life spell out the text of justice, equity and good conscience and Cardozo has crystallised the concept thus:

> "Life casts the mould of conduct which will some day become fixed as law."

Free India has to find its conscience in our rugged realities and no more in alien legal thought. In a larger sense, the insignia of creativity in law, as in life, is freedom from subtle alien bondage, not a silent spring nor hot-house flower.

So viewed, the basic question is: What is the essence of equity in the matter of determining a lease on the ground of forfeiture caused by the breach of a condition ? Can any technical formality be exalted into a rule of equity or should a sense of realism, read with justice, inform this legal mandate ? If Law and Justice-in the Indian context- must speak to each other, statutory technicality such as 'notice in writing' prescribed in s. 111(g) of the TP Act cannot be called a rule of equity. It is no more than a legal form binding on those transactions which are covered by the law by its own force. The substance of the matter-the justice of the situation-is whether a condition in the lease has been breached and whether the lessor has, by some overt act, brought home to the lessee his election to eject on the strength of the said breach.

This Court, in Namdeo (supra) has explained the rule of justice, equity and good conscience. It observed, at p. 1015:

> "It is axiomatic that the courts must apply the principles of justice, equity and good conscience to transactions which come up before them for determination even though the statutory provisions of the Transfer of Property Act are not made applicable to these transactions. It follows therefore that the provisions of the Act

> which are but a statutory recognition of the rules of justice, equity and good conscience also govern those transfers. If, therefore, we are satisfied that the particular principle to which the legislature has now given effect by the amendment to section 111
>
> (g) did in fact represent a principle of justice, equity and good conscience, undoubtedly the case will have to be decided in accordance with the rule laid down in the section, although in express terms it has not been made applicable to leases executed prior to 1929 or even prior to the Transfer of Property Act coming into force.

The main point for consideration thus is whether the particular provision introduced in sub-section (g) of section 111 of the Transfer of Property Act in 1929 is but a statutory recognition of a principle of justice, equity and good conscience, or whether it is merely a procedural and technical rule introduced in the section by the legislature and is not based on any well-established principles of equity. The High Court held, and we think rightly, that this provision in subsection (g) of section 111 in regard to notice was not based upon any principle of justice, equity and good conscience. In the first instance it may be observed that it is erroneous to suppose that every provision in the Transfer of Property Act and every amendment effected is necessarily based on principles of justice, equity and good conscience. It has to be seen in every case whether the particular provisions of the Act relied upon restates a known rule of equity or whether it is merely a new rule laid down by the legislature without reference to any rule of equity and what is the true nature and character of the rule. Now, so far as section 111 (g) of the Act is concerned, the insistence therein that the notice should be given in writing is intrinsic evidence of the fact that the formality is merely statutory and it cannot trace its origin to any rule of equity. Equity does not concern itself with mere forms or modes of procedure. If the purpose of the rule as to notice is to indicate the intention of the lessor to determine the lease and to avail himself of the tenant's breach of covenant it could, as effectively, be achieved by an oral intimation as by a written one without in any way disturbing the mind of the chancery judge. The requirement as to written notice provided in the section therefore cannot be said to be based on any general rule of equity. That it is not so is apparent from the circumstance that the requirement of a notice in writing to complete a forfeiture has been dispensed with by the legislature in respect to leases executed before 1st April, 1930. Those leases are still governed by the unamended sub-section (g) of section 111. All that was required by that sub-section was that the lessor was to show his intention to determine the lease by some act indicating that intention. The principles of justice, equity and good conscience are not such a variable commodity, that they change and stand altered on a particular date on the mandate of the legislature and that to leases made between 1882 and 1930 the principle of equity applicable is the one contained in subsection (g) as it stood before 1929, and to leases executed after 1st April 1930, the principle of equity is the one stated in the sub-section as it now stands. Question may also be posed, whether according to English law a notice is a necessary requisite to complete a forfeiture."

Of course, in that case, Mahajan, J. has dwelt at length on the English law of landlord and tenant and the discussion is partially suggestive of the English law of real property being a good guide to the Indian Judges' good conscience. But the ratio is clear that processual technicalities and even

substantive formalities cannot masquerade as justice and equity. The touchstone is simply whether the formal requirement of the law is part of what is necessarily just and reasonable. In this perspective, the conclusion is clear that a notice in writing formally determining the tenancy is not a rule of justice or canon of commonsense. Realism, married to equity, being the true test, we are persuaded that the pre-amending Act provision of s. 111 (g) is in consonance with justice. If so, the mere institution of the legal proceeding for eviction fulfils the requirement of law for determination of the lease. The conscience of the Court needs nothing more and nothing else. The rule in Namdeo (supra) settles the law correctly Reference was made at the bar to the ruling in Mohd. Amir(1) To understand that decision we have to make a distinction between the principles embodied in s. 111(g) and the provisions thereof. Not all the stipulations and prescriptions in the section can be called the principles behind it. In this light there is no contradiction between the two cases of this Court-the earlier one of Namdeo (supra) and the later Mohd. Amir(1). We are satisfied that the situation in the present case is squarely covered by the earlier ruling. The High Court is right in its view.

It is a fitting finale to this part of the argument that in the High Court arguments proceeded on the footing that the Supreme Court has ruled in Namdeo (supra) that 'there being no requirement in English law of a written notice to the lessee of the intention of the lessor to determine the lease on forfeiture, the provision of a notice would not be considered as being consistent with the rules of equity, justice and good conscience'. We have already made our comments on the anglophonic approach and do not wish to reiterate them here. However, there are certain pregnant observations in the judgment under appeal pertinent to the present discussion. Observed the High Court:

> "In the case of Namdeo Lokman Lodhi the Supreme Court was directly concerned with the question of the requirement of written notice engrafted into the clause
>
> (g) by the amendment of 1929 was of a technical nature or could be said to be consistent with the English rule regarding forfeiture and therefore, in consonance with the principles of justice, equity and good conscience and the question was clearly answered in the negative."

The irrelevance of the English law as such to notions of good conscience in India notwithstanding, we agree that a written notice is no part of equity. The essential principles, not the technical rules, of the TP Act form part of justice, equity and good conscience. The conclusion emerges that the landlord's termination of the tenancy in this case is good even without a written notice.

Many other niceties of law were presented to us by Shri A. K. Sen to extricate the tenant from eviction. They are too unsubstantial and intricate for us to be deflected from the sure and concurrent findings, read in the background of an alternative accommodation being available to the tenant.

We dismiss the appeal but direct that this order for eviction shall be executed only on or after March 1, 1976. The over-all circumstances justify a direction that the parties do bear their costs throughout.

P.H.P. Appeal dismissed.