

Rakesh Kumar & Shri Shakti Kumar vs Hindustan Everest Tool Ltd on 7 March, 1988

Equivalent citations: 1988 AIR 976, 1988 SCR (3) 88, AIR 1988 SUPREME COURT 976, 1988 (2) SCC 165, (1988) 1 JT 619 (SC), (1988) 34 DLT 382

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:

RAKESH KUMAR & SHRI SHAKTI KUMAR

Vs.

RESPONDENT:

HINDUSTAN EVEREST TOOL LTD.

DATE OF JUDGMENT 07/03/1988

BENCH:

MUKHARJI, SABYASACHI (J)

BENCH:

MUKHARJI, SABYASACHI (J)

RANGNATHAN, S.

CITATION:

1988 AIR 976 1988 SCR (3) 88

1988 SCC (2) 165 JT 1988 (1) 619

1988 SCALE (1) 556

ACT:

Delhi Rent Control Act, 1958 : s. 14(1)(a)-Eviction-
Notice of demand by landlord for arrears of rent-Validity
of-To be construed as understood by common man.

HEADNOTE:

%

Section 14(1)(a) of the Delhi Rent Control Act, 1958 provides for recovery of possession of the demised premises, where the tenant has failed to pay the arrears of rent recoverable from him within two months of the date on which notice of demand had been served on him in the manner provided in s. 106 of the Transfer of Property Act, 1882.

Under the lease agreement the respondent-tenant was required to pay rent in advance by the 5th of each calendar

month. The appellant-landlords by their notice dated 8th March, 1982 reminded the respondent that the rent for the months of February and March, 1982 was due as per the lease agreement and requested for immediate payment. The appellants again served a notice on the respondent on 19th April, 1982 that it had not paid the rent for the months of February, March and April, 1982 for the two shops and it having committed violation of the terms of the lease agreement they do not wish to keep it as their tenant any longer and thereby terminated the tenancy requesting the tenant to handover peaceful vacant possession of the premises by 31st May, 1982. The respondent by their letter dated 1st June, 1982 acknowledged the arrears of rent as on that date.

On a petition filed by the appellants under s. 14(1)(a) of the Act, the Rent Controller passed an order of eviction, which was upheld by the Rent Control Tribunal. The High Court, however, set aside that order on the ground that there was no proper notice of demand to pay arrears of rent in terms of proviso to s. 14(1)(a) of the Act.

Allowing the appeals,

^

HELD: 1. The High Court was in error in setting aside the judgement of the Rent Control Tribunal. [96F]

89

2.1 For obtaining recovery of possession under the Act there must be relationship of landlord and tenant between the parties, the tenant must have been in arrears of legally recoverable rent on the date of the notice of demand, and a notice of demand had been served upon the tenant in the manner provided under s. 106 of the Transfer of Property Act, but the tenant neither pays nor tenders the rent within two months of the notice of demand. [93E-F]

2.2 The notice of the landlord stating therein about the arrears of rent must be read in common sense point of view bearing in mind how such notices are understood by ordinary people. [93G]

In the instant case if the two notices dated 8th March, 1982 and 19th April, 1982 are read alongwith the letter dated 1st June, 1982 it is clear that the respondent was in arrears of rent for the months mentioned therein and there was a demand to pay rent. There were intimations that in default of payment of rent an eviction petition as consequence thereof would follow. That is how the appellants understood the notices. If that was so, there was clear notice of demand and the relevant requirement of the proviso to s. 14(i)(a) of the Act was fulfilled. [93G; H; 94G]

Shri Ram Sarup v. Shri Sultan Singh etc., [1977] All India Rent Control Journal, Vol. II 522, approved.

Mangoo Singh v. The Election Tribunal, Bareilly & Ors., [1958] SCR 418; Chimanlal v. Mishrilal, [1985] SCC 14 and Mangat Ram Anr. v. Sardar Meharban Singh, A.I.R. ;987 SC 1656, distinguished.

(The decree for eviction not to be executed till 30th September, 1988 provided the respondent files the usual undertaking in this Court within four weeks.) [96G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 933-934 of 1988 From the Judgment and order dated 8.10.1985 of the Delhi High Court in S.A.O. No. 142 of 1985 Soli J. Sorabji, S. Kumar and Mrs. Rani Chhabra for the Appellants.

Shankar Ghosh, Rajiv Endlow, Sandeep Narain and Praveen Kumar for the Respondent.

The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J. Special leave granted in both the matters and the appeals are disposed of hereunder.

The facts in both these cases are identical. These appeals are directed against the judgment and orders of the High Court of Delhi, dated. the 8th October, 1985 setting aside the order of eviction affirmed by the Rent Control Tribunal. In order to appreciate the controversy it may be mentioned here briefly that the appellant is the owner of a flat in Dohil Chambers, 46 Nehru Place, New Delhi. It is the case of the appellant that the appellant had duly appointed Shri Hardev Dohil as the general attorney for and on his behalf to do all the acts and deeds including renting out the premises in question. Shri H. Dohil entered into an agreement of lease with respondent No. 1 Hindustan Everest Tools Ltd., to take the premises situated at Nehru Place. Clause 21 of the said agreement amongst others specifically provided that the respondent herein would not be in arrears of rent and there was a specific obligation imposed upon the respondent by virtue of the agreement between the parties to regularly pay the rent of the premises without default and without notice from the appellant. The respondent started defaulting, according to the appellant, not only towards the arrears of rent but also towards payment of maintenance and other charges. It is the case of the appellant that the respondent was occupying a number of flats in the said building and the appellant further alleges that on one pretext or the other, respondent had been avoiding to pay their admitted liability under the terms of the agreement. It is alleged by the appellants that the respondent was using a number of air-conditioners which had put the builder in great difficulties and it had come to a situation where the electric supply to the building was disconnected. It was under the orders of the High Court of Delhi and trial courts that the electricity could be got restored and the respondent was directed to make certain payments. It is alleged by the appellants that the respondent had not made payment of rent despite various notices issued.

The appellant had filed a petition under Section 14(1)(a) and (j) of the Delhi Rent Control Act, hereinafter called as 'the Act'. The respondent filed a written statement to the said petition and took up the stand that rent was attached by M.C.D. and had also raised certain frivolous objections. It is the case of the appellant that the appellant had verified from the Corporation and found that the respondent had been wrongfully with-holding the payment of the rent of the appel-

lant. The learned Additional Rent Controller during the pendency of main petition under Section 15(c) of the Act, had directed the respondent to deposit the arrears within one month from the date of order and to continue depositing the monthly rent by 15th of each succeeding month. The respondent did not deposit the arrears of rent and filed an appeal before the Rent Control Tribunal. The Rent Control Tribunal dismissed the appeal and even after passing of the said order, did not deposit the arrears of rent and filed an appeal before the High Court of Delhi. The High Court dismissed the said appeal. In the meantime, it may be mentioned that the petition for eviction under Section 14(1)(a) of the Act proceeded and the Rent Controller duly passed an order of eviction on that which was upheld by the Rent Control Tribunal. In appeal the High Court has set aside the said order on the ground that there was no proper notice of demand to pay arrears of rent in terms of proviso to Section 14(1)(a) of the Act. It is from this order of the High Court these matters have come to this Court. But, in order to complete the narration of events it must be mentioned that against the striking off of the defence of the respondent in default of payment of arrears of rent which was duly confirmed by the High Court the appellant had come up in Special Leave Petition to this Court being SLP (C) No. 8120/84 and this Court dismissed the Special Leave Petition on 18.11.1984. It is important in the background of the facts of this case to emphasise that so far as striking off the defence is concerned by the order of dismissal that order stands confirmed i.e., the striking off the defence was validly done because of the failure to pay the arrears of rent. This is an important aspect of the matter.

In the special leave petition preferred by the appellant, it had specifically raised the question of legality and validity of a notice dated 19th April, 1982 issued by the appellant. While the receipt of the said notice was duly admitted, ground (C) of that special leave petition read as follows:

"C. Because no valid notice demanding arrears of rent as required under Section 14(1)(a) of the D.R.C. Act had been received by the petitioner (Annexure P-3) the question of issuing any order under Section 15(1) of the said Act did not arise and the orders issued by the lower court, as such, were ultra vires."

It appears from these words that the precise point that there was no valid notice demanding the arrears in view of the facts and circumstances of these cases, is concluded by the dismissal of the Special Leave Petition as mentioned hereinbefore.

The relevant provisions of Section 14(1)(a) of the Act are as follow:

"14.(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 Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the 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 land lord in the manner provided in section 106 of the Transfer of Property Act, 1882;"

The notice upon which the eviction was sought for was the notice dated the 19th April, 1982. The relevant portion of the said notice read as follows:

"That for both these shops, FF-I and FF-2, you have not paid the rent for the months of February, March and April, 1982. Therefore, a sum of Rs. 7,800 is due from you as rent for the said shop No. FF-2 and a sum of Rs.12,214.50 is due as rent in respect of shop No. FF-I. However I have the instruction to say that you have demolished the internal wall of the premises under your tenancy without the consent of my client in writing or otherwise and have therefore, committed the violation of the terms of the lease and the agreement executed between my client and M/s. H. Dohil Construction Co. Pvt. Ltd., Dohil Chambers, Nehru Place, New Delhi, the promoters of the buildings.

5. That in view of the above facts and circumstances my clients do not wish to keep you a tenant in its premises any longer and they clearly show their intention by means of this notice to terminate your tenancy which is hereby terminated by means of this notice. You are no longer tenant of my client. You are requested to hand over the peaceful vacant possession of the two shops i.e., FF-1 and FF-2, Dohil Chambers, 46-Nehru Place, New Delhi, under your tenancy/occupation on 31st May, 1982. You are also requested to place the premises under your tenancy in the same condition as they were at the time when the possession was given to you.

Further my client reserves its right to claim damages for causing damage, to the property of my client."

In reply to the aforesaid notice the respondent wrote a letter dated 1st June, 1982 wherein the respondent stated inter alia as follows:

"Without prejudice to the above, we have to state that a sum of Rs. 10,400 and a sum of Rs.16,286 is due from us to Sarvashri Shakti Kumar and Rakesh Kumar as on date in respect of rent of Flat Nos. F-1 and F-2 at Dohil Chambers, 46-Nehru Place, New Delhi, and we are arranging to send the rent directly to them."

In view of the statutory provision which has been set out before it appears that for obtaining recovery of possession under the Act there must be relationship of landlord and tenant between the parties, and that the tenant must have been in arrears of legally recoverable rent on the date of the notice of demand, and that a notice of demand had been served upon the tenant in the manner provided under section 106 of the Transfer of Property Act, but the tenant neither pays nor tenders the rent within two months from the service of demand.

On reading the notice along with the letter dated 1st June, 1982 it appears that the respondent was in arrears of rent for the months mentioned hereinbefore and was intimated that in default of payment of rent the eviction would follow in accordance with law. This is the proper way of reading the notice and in our view the appropriate logical way in which notices of such type should be read. These notices must be read in common sense point of view bearing in mind how such notices are understood by ordinary people. That is how the appellant, it appears from the reply and the background of the previous letter to be mentioned hereinafter understood the notice.

More or less, a similar notice was considered by the Delhi High Court in *Shri Ram Sarup v. Shri Sultan Singh etc.*, (1977) All India Rent Control Journal, Vol. II 552 where Mr. Justice V.S. Deshpande, as the learned Chief Justice then was, held that the notice of the landlord stating therein about the arrears of rent and threatening to file a petition for eviction against the tenant was sufficient and the learned Judge held that the notice of demand could be expressed or implied and the conduct of the landlord showed that the demand was implied. We are in respectful agreement with the approach to such type of notices taken by the High Court in that case.

It may be mentioned in these cases that there was another notice prior thereto dated the 8th March, 1982 wherein it was clearly stated as follows:

"This is to bring to your attention that you are again behind with the payment of your monthly rent of FF-1 & FF-2 premises occupied by you on the first floor at Dohil Chambers, 46-Nehru Place, New Delhi- 110 019. As per the lease agreement with you, you are to pay your rent in advance by the 5th of each calendar month. Rent for February was due and you kept on delaying this payment on one pretence or another. Finally, you agreed about a fortnight ago that you will pay the rent for February and March, 1982 by 5th March, 1982. You still have not paid.

You are, therefore, requested to please pay your rent arrears immediately and in future to make your payment promptly and regularly as per the lease agreement."

If these two notices are read together, in our opinion, as it must be, it is clear that the respondent was in arrears for payment of rent and there was a demand to pay rent. There were intimations that in default of payment of rent an eviction petition as consequence thereof would follow. If that was so in our opinion, the relevant requirement of the proviso to section 14(1)(a) of the Act was fulfilled in this case.

Dr. Shanker Ghosh, Counsel for the respondent had contended before us that the notice dated the 8th March, 1982 as referred to hereinbefore, was not a notice upon which the eviction order was passed. That is true. He has further submitted that the notice was not proper in as much as notice regarding rent for the month of February could not be issued on 8th March, 1982. It may be so. We are not concerned with the facts of this case whether the notice was legal but how the parties have understood. There is clear notice of demand as it appears from the terms set out hereinabove. We have been shown the chart at Page No. 77 of the present records which indicate how belated attempts were made to pay certain arrears.

Dr. Shanker Ghosh, however, placed strong reliance on the three decisions of this Court and contended that the notice in this question was not valid and the High Court was, therefore, right in dismissing the eviction petition while setting aside the order of eviction affirmed by the Rent Control Tribunal.

The first decision to which our attention was drawn is *Mangoo Singh v. The Election Tribunal, Bareilly & Ors.*, [1958] SCR 418. That decision, however, was not on the Rent Act but was a decision on an election dispute. The appellant therein was elected by the Municipal Board under the U.P. Municipalities Act, 1916. He was in arrears in the payment of Municipal Tax in excess of one year's demand to which section 166 of the Act applied, at the time of filing of nomination, but made the payment before the date of the poll. Under section 13D, clause (g) of the Act "a person shall be disqualified for being chosen as, and for being, a member of a Board if he is in arrears in the payment of Municipal tax or other dues in excess of one year's demand to which Section 166 applies, provided that the disqualification shall cease as soon as the arrears are paid." on an election petition filed by a defeated candidate, the election was set aside by the Election Tribunal on the ground that the appellant was not entitled to the benefit of the proviso to s. 13-D, Cl. (g) of the Act. It was contended for the appellant that the relevant date for the operation of the disqualification was the date of the poll and that in any case, he did not come within the mischief of the disqualification clause in that section, as a bill for payment of the tax was not presented to him, nor a notice of demand served on him under section 168. It was held so far as relevant for the present purpose that the word "demand" in S. 13-D, Cl. (g) of the Act meant "claim" or "due" and only referred to the amount of arrears or dues on which the disqualification depended did not attract the operation of Section 168 of the Act.

In the facts of that case this Court observed at page 427 of the report that the word 'demand' in that context and in the collocation of the words in which it had been used, could only mean 'in excess of one year's municipal tax or other dues'. The Court referred to several meanings of the word 'demand' in standard English dictionaries and law lexicons. When the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers. It was sufficient for the Court to state that even in standard dictionaries and law lexicons, it was well recognised that the word 'demand' might mean simply a 'claim' or 'due' without importing any further meaning of calling upon the person liable to pay the claim or due. The said observations are against the appellant, in the light of the actual demand mentioned in the letters as aforesaid.

The next decision to which reference was made is *Chimanlal v. Mishrilal*, [1985] 1 SCC 14, wherein it was found by this Court that the notice of demand did not relate to the premises in question. In the background of the facts of that case the said decision cannot also be of much assistance to the appellant and the observations made therein must be understood in that background. This Court at page 18 of the report reiterated in the background of the relevant statutory provision with which the Court was concerned, that there must be notice demanding rent and the arrears must be legally recoverable. In the light we have read the notice in these cases the two ingredients have been fulfilled.

The last decision upon which reliance was placed is Mangat Ram & Anr. v. Sardar Meharban Singh, A.I.R. 1987 SC 1656-1987 4 SCC 319 where the facts were entirely different. Indeed the Court recorded that the tenant had to pay more rent than what was due. The Court, however, recorded that there was no prior notice of demand. But the notice in this case was differently worded.

In the context and facts of this case we are of the opinion that the High Court was in error in setting aside the judgment of the Rent Control Tribunal. In the premises these appeals are allowed and the judgment and orders of the High Court are set aside. The parties, however, will pay and bear their respective costs.

Since, however, the respondent is in possession of the premises for sometime, in the interests of justice we direct that the decree for eviction will not be executed till 30th September, 1988 provided the respondent files the usual undertaking in this Court within four weeks from today to the following effect:

1. That the respondent will hand-over vacant and peaceful possession of the suit premises to the appellant on or before 30th September, 1988.
2. That the respondent will pay to the appellants arrears of rent, if any, within one month from today.
3. That the respondent will pay to the appellant future compensation for use and occupation of the suit premises month by month before 10th of every month.
4. That the respondent will not induct any other person in the suit premises.

We further direct that in default of compliance with any one or more of these conditions or if the undertaking is not filed as required within the stipulated time, the decree shall become executable forthwith.

P.S.S.

Appeals allowed.