# Behari Lal vs Radhye Shyam on 23 November, 1951

## Equivalent citations: AIR1953ALL745, AIR 1953 ALLAHABAD 745

ORDER

Bind Basni Prasad, J.

1. The defendant-applicant is a tenant of the plaintiff opposite party in bungalow No. 15, Clive Road, Allahabad, on a rent of Rs. 50/-per month and a conservancy charge of -/12/-per month. The plaintiff brought a suit against him for the recovery of Rs. 477-1-9 being the arrears of rent for the period commencing from the 1st April 1947, and ending with February 20, 1949. The total rent for this period amounted to Rs. 1,167/4/- and it was admitted by the plaintiff that the defendant had paid Rs. 690/2/3.

2. The defendant contended that the plaintiff was utterly negligent about the repairs of the bungalow and he (the defendant) was compelled to incur an expenditure of Rs. 477/1/9 to keep the bungalow in reasonable repairs, He claimed that he was entitled under the law to a credit of this amount towards the rent due from him. On this ground, he pleaded that the suit should be dismissed.

3. Learned Judge of the Small Causes came to the conclusion that the plaintiff was negligent in keeping the house in repairs, but the defendant should not have spent a sum of Rs. 477/1/9. In the opinion of the learned Judge, the defendant, should have spent an amount of Rs. 100/- every year on the repairs. No reasons are given in the judgment as to how he arrived at this figure. Probably he thought that not more than two months' rent in a year should be spent by a tenant in repairs. He therefore, gave a credit of Rs. 200/- to the defendant and decreed the claim for a sum of Rs. 277/1/9.

4. The defendant comes up in revision and contends that no part of the claim should have been decreed. It appears that when the plaintiff did not carry out the repairs at, the defendant's request he used to have the repairs made. Every time that he did so, he sent the accounts to the plaintiff and after deducting the amount spent in repairs, he sent a cheque for the balance. For example, I may refer to the letter of February 3, 1949, sent by the defendant to the plaintiff. It runs as follows:

> "I have to pay you 8 months rent till December 1948, viz., May to December, 48.
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> Having my demand for repairs of roof sent to you on 11th May last, ignored as usual I had to do them. This has saved you a lot of money and me a good deal of danger. The roof of one room was ready to fall down on my head. I have had very necessary repairs done.

> After the heavy monsoon, requires whitewashing which has not been done by you, as you have done to the contiguous houses belonging to you. I have to get whitewashing done unless you take up the work forthwith.
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> The account of room repairs is as follows:
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> Bamboos & cartage Rs. 53-2-3 Badh Rs. 5-2-0 Labour charges Rs. 66-1.2-0 Total Rs. 125-0-3 Postage for this Rs. 0-7-6 Rs. 125-7-9 Eight months rent due Rs. 400-0-0 Deduct repairing charges Rs. 125-7-9 Balance Rs. 274-8-3 For which a cheque is enclosed herewith."

5. Letters like this, were sent by the defendant tenant to the plaintiff landlord whenever he sent a cheque after deducting the cost of repairs. The plaintiff accepted these cheques without any objection and did not at any time inform, the defendant that he was accepting them in part payment.

6. It is argued on behalf of the applicant that having regard to the provisions of Section 8 of the Contract Act and the decided cases, where a party accepts a payment in these circumstances, it should be deemed that he has accepted it on the condition on which it was offered and it is not open to him to say subsequently that he accepted the payment in part satisfaction of his claim. Section 8 of the Contract Act provides:

> "Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal."

The word 'proposal' is defined in Clause (a) of Section 2 as follows:

> "When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal."

7. According to Clause (b) of Section 2 when a proposal is accepted, it becomes a promise and according to Clause (f) :

> "Promises which form the consideration or part of the consideration for each other are called reciprocal promises."

Now, in the present case, the proposal which the defendant made to the plaintiff by his letter with which he sent a cheque was that he was offering the money under the cheque to the plaintiff in full satisfaction of the rent for the period and on the condition that the plaintiff gave him a credit for the sum which according to him was spent in the repairs of the bungalow. I have not been referred to any document on the record to show that the plaintiff raised any objection to the amount spent by the defendant on the repairs of the bungalow. It should, therefore, be deemed that he accepted the correctness of the sum which the defendant stated he had spent towards the repairs. Having

accepted the correctness of the account for repairs given by the defendant and having accepted the cheque sent by him in payment of rent, it is not open now for the plaintiff to turn round and Say that he accepted the cheque in part satisfaction and that he disputed the amount spent by the plaintiff on repairs. The acceptance of the cheque was the acceptance of a consideration within the meaning of Section 8. The reciprocal promises in the present case were:

> 1. the promise on the part of the defendant to pay the amount under the cheque on the condition that the account of repairs submitted by him is accepted by the plaintiff and the amount of the cheque is accepted in full satisfaction of the rent for the period in question, and
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> 2. the implied promise on the part of the plaintiff to accept the condition at once.

8. There are two decided cases which support the view taken above.

9. The first one is -- 'Gaddar Mal v. Tata Industrial Bank Ltd., Bombay', AIR 1927 All 407 (A). In that case, the Bank agreed to advance certain sums of money to the plaintiff on the security of cotton bales at Rs. 8/8/-per cent. per annum. There was a provision in the agreement for the variation of the rate of interest by agreement between the parties. Later, the Bank sent a notice to the plaintiff that in future the interest would be 9 per cent. per annum. The plaintiff sent no reply to it and took further advances. This conduct on his part was treated as an acceptance of the proposal made by the Bank that the interest after the date of the notice would be 9 per cent. per annum.

10. There is also an unreported decision of this Court, -- 'Pt. Ram Kirpal v. Shiromani Sugar Mills', F. A. No. 444 of 1942, D/- 3-8-1948 (All) (B). In that case Ram Kirpal was an engineer of the sugar mills and he claimed a sum of Rs. 11,797/15/2, The Mill contended that a sum of Rs. 4930/2/3 only was due to the plaintiff and sent a cross cheque for the same in full satisfaction of the plaintiff's claim. The plaintiff accepted the cross cheque, but only in part satisfaction of his claim. The Sugar Mills then wrote a letter that as the plaintiff was not accepting the cheque in full satisfaction he was bound to return it, but before the receipt of this letter, the plaintiff had cashed the cheque. The plaintiff then sued for the recovery of the balance. Their Lordships, Malik C. J. and Bhargava J. observed:

> "..... We are satisfied that the plaintiff cannot after having accepted the cheque claim the rest of the amount. The cheque was sent to the plaintiff in full satisfaction of plaintiff's claim. That was the condition attached to the payment. The plaintiff could not accept the payment and repudiate the condition. He had no right to write on the 4th of May 1940 that he was accepting the cheque, but only in part satisfaction. Learned counsel for the plaintiff has urged that the decision of their Lord-ships of the Judicial Committee in -- 'Nemi Chand v. Radha Kishen', AIR 1922 PC 26 (C) is distinguishable as that was a case of appropriation under Section 59, Contract Act. The observations of their Lordships are, however, general enough to cover a case of the kind that is before us. Their Lordships have said in their judgment that:

> "A debtor might in making a payment stipulate that it was to be applied only to principal. If he did so, the creditor need not accept the payment on these terms, but then he must give back the money or the cheque by which the money is proffered. If he accepts it he would then be bound by the appropriation proposed by the debtor."

If the plaintiff was not willing to accept on the terms proposed by the defendants he should have returned the cheque. He cannot keep the money, go back on the condition imposed and claim that he would keep the money on his own terms."

This decision is almost on all fours with the present case. I hold that the plaintiff by his conduct accepted the condition which the defendant imposed when sending the cheques towards the payment of the rent and it is not open to the plaintiff now to go back upon those conditions and claim the same for which he had sued.

11. The revision is allowed, the decree of the lower court is set aside and the suit is dismissed with costs throughout.