

## Khumani vs Saktey Lal on 27 October, 1950

**Equivalent citations: AIR1952ALL579, AIR 1952 ALLAHABAD 579**

### JUDGMENT

Kidwai, J.

Khumani appellant occupied a house belonging to Saktey Lal on rent. A sum of Rs. 3/4/- was the monthly rent reserved & the period of tenancy began from the 6th of every month. It appears that rent fell into arrears & on 16-1-1947, the plff. sent a notice as required by Section 3 (a), Control of Rent & Eviction Act, calling upon the tenant to pay the rent due within one month of the service upon him of the notice of demand. The rent stated in the notice was Rs. 19/8/-, being the rent due from the period commencing on 6-7 1946. In reply to this notice the tenant sent only a sum of Rs. 16/4/- which the landlord refused to accept. Subsequently, on 20-3-1947, the landlord sent a notice which has wrongly been described in the judgment of the lower appellate Court as a notice of demand but is in fact only a notice terminating the tenancy & asking the deft, to vacate the house within 15 days. After this notice had been sent, the tenant again remitted Rs. 22/4/- for the rent but this was also not accepted by the landlord, who then brought a suit on 14-4-1947, for arrears of rent amounting to Rs. 29/4/- & for ejectment.

2. This suit was contested but it was decreed by the trial Court. The appeal of the tenant was dismissed by the Civil Judge of Hardoi & the tenant has now come up in second appeal.

3. The learned Advocate has contended firstly that before the date of the suit the amount covered by the notice of demand, dated the 16th of January, had been fully paid & therefore, the suit was not maintainable. This position is not correct. The general law permits the ejectment of a tenant after giving him 15 days' notice terminable with the month of the tenancy. The Special Law, namely the Control of Event & Eviction Act restricts that right & provides that the landlord cannot evict a tenant unless, among other things, the tenant makes a wilful default in the payment of rent within one month of the service of notice of demand upon him. In the present case such a notice was issued & the tenant failed to make payment within the time allowed. Thereafter, the parties were relegated to the general law & according to the general law, the plff. landlord was entitled to evict after giving the requisite notice. This he proceeded to do & therefore, the suit was competent even though the deft, had thereafter tendered the whole amount of the rent due. 4. It was then contended that the notice terminating the tenancy was invalid because it allowed time up to the 6th of April for the deft. to vacate the house. According to the contention of the appellant the tenancy should have been terminated with effect from the 5th of April. This plea was not taken in either of the Courts below & it is to be noticed that the actual words used by the person who sent the notice on 20.8-1947 were that 15 days' notice was being given & that the deft. should vacate the house by the 6th of April. Having regard to the entire contents of the notice it cannot be said that the notice was defective.

5. It was then contended that the Court had discretion under Section 114, T. P. Act, not to evict a tenant. In the present case the Court has not exercised that discretion in favour of the tenant. It had good cause for not doing so, because the tenant had been very irregular in payment of rent. Even though a regular notice of demand was served upon him, he failed to pay the whole rent. Similarly, when he was about to be sued, he sent some rent which was again not the whole rent. In these circumstances it cannot be said that the Courts below have not exercised a proper discretion in refusing to evict the tenant.

6. Finally it was contended that the landlord has accepted rent during the continuance of this appeal. By an order dated 17-8-1948 passed by this Court proceedings in execution were stayed. The landlord was entitled to receive compensation for use & occupation of the house during this period. He had received this money according to the allegation of the appellant month by month. He may even have used the word "rent" in some of the receipts which he issued. Having regard, however, to the fact that the person issuing those receipts was not a lawyer & did not receive legal training, the use of the word "rent" instead of "damages" for use & occupation is immaterial, & no importance can be attached to it. The only effect of such a receipt would be a waiver of the right of ejectment. It has, however, been held by me in *Kamlapat v. Mt. Manho Bibi*, 1947 O.W.N. 522 disagreeing with the decision in *Manicklal v. Kadambini*, A. I. R. (13) 1926 Cal. 763, that if the landlord actively continues the prosecution of the case or appeal with regard to the ejectment of the tenant mere acceptance of rent by him cannot be treated as waiver so as to deprive him of the right of ejectment in pursuance of the decree which he had obtained. This plea also, therefore, cannot be accepted. This appeal fails & is dismissed with costs. The stay order dated 17-8-1948 is vacated.