

## Sahir Husain Khan vs Sirajul Haq on 3 August, 1950

**Equivalent citations: AIR1951ALL853, AIR 1951 ALLAHABAD 853**

### JUDGMENT

Agarwala, J.

1. This is a plffs application in revision Under section 25, Small Cause Courts Act. The deft, was a tenant of a house owned by the plff. on a rental of Rs. 10 per mensem. The plff. gave the deft, a notice to quit by a certain date & informed him that if he continued to occupy the house after that date, he would have to pay damages for use & occupation at the rate of Rs. 15 per month. The deft, did not reply nor vacated the house. Hence, the plff. sued the deft, for his ejectment & for arrears of rent at the rate of Rs. 10 per mensem & also demanded damages for use & occupation at the rate of Rs. 15 per mensem.

2. The suit was decreed on 1-2-1945 for ejectment & for arrears of rent at the rate of Rs. 10 per mensem & also for damages at the rate of Rs. 10 per mensem. After the decree the deft, vacated the house on 21-1-1946.

3. The plff. brought the present suit for recovery of damages for use & occupation of the house for the period from 1-2-1945, to 21-1-1946, the date on which he actually vacated the premises. He claimed damages at the rate of Rs. 15 per mensem. The lower Court held that the actual damages amounted to Rs. 10 per mensem at which the plff. could have possibly let out the house to somebody else. He, therefore, awarded a decree at the rate of Rs. 10 per mensem.

4. In this revision the plff. claims damages at the rate of Rs. 15 per mensem on the ground that since the deft, had held over after the date fixed in the notice, he should be deemed to have agreed to pay Rs. 15 per month as rent or damages. In support of his contention learned counsel, appearing for the plff., has relied upon the following decisions: Munna Lal v. Buchchu Lal, A. I. R. (1) 1914 ALL. 1, S. Burge v. M. Md. Inamullah, A. I. R. (12) 1925 Oudh 189, Sunder Singh v. Ram Saran Das, A. I. R. (20) 1933 Lahore 61, Madan Mohan v. Bohra Ram Lal A. I. R. (21) 1934 ALL. 115 : 1934 A. L. J. 421, and Parekh Nandlal v. Anant Govind, A. I. R. (27) 1940 Nag. 140.

5. In Munna Lal v Buchchu Lal A. I. R. (1) 1914 ALL. 1, Banerji J. held that the question as to the rate of rent to be paid Subsequently "is a pure question of fact & that the Court has to consider what a fair & reasonable rent would be". The rent claimed in the notice was not held to be the measure of the fair rent.

6. In S. Burge v. M. Mohd. Inamullah, A.I.R. (12) 1925 Oudh 189 it was held that when the plff. gave a notice to the lessee that he would be charged enhanced rent from a certain date & that if he did not accept the enhancement he was free to vacate the house by that date, it should be deemed that the

lessee had agreed to pay the enhanced rent. That case was, therefore, a case in which a landlord wanted to keep the tenant as a tenant after a certain date, but on an enhanced rent & the tenant did not repudiate the notice & continued to remain as a tenant.

7. In *Sunder Singh v. Ram Saran Das*, A. I. R. (20) 1933 Lah. 61, it was held that "ordinarily the proper measure of damages in cases where a tenant contumaciously holds over is twice the amount of the rent payable by the tenant". In that case, the rent was Rs. 2,500 per mensem & the plff. had demanded enhanced rent at the rate of Rs. 10,000 per mensem. The Court held that he could not be awarded damages at the rate demanded in the notice but held that as in the province of the Punjab the practice had been that double the normal rent was taken as suitable measure of damages in such cases, the double amount should be awarded. It was observed that the rule was borrowed from the English Law where the matter was regulated by statute (4 George II Ch. 28), but that the rule was not inflexible & less or more may be awarded as damages according to the circumstances. There is no such practice or rule of decreeing double the amount of the normal rent in this province.

8. In *Madan Mohan Garg v. Bohra Ram. Lal*, A. I. R. (21) 1934 ALL. 115: 1934 ALL. L. Jour 421, a landlord gave the tenant a notice that he should either vacate the premises on a date named in the notice or stay on at a certain enhanced rate of rent. The tenant merely announced his intention of vacating the premises but failed to do so. The landlord sued him for the arrears of rent at the enhanced rate for the period he remained in possession of the premises after the date named in the notice. It was held that the tenant having failed to vacate & remained in possession, he must be deemed to have agreed, by implication, to hold over and to have accepted the proposal to pay rent at the enhanced rate proposed by the landlord in his notice. In our opinion the tenant, in that case, having notified his intention of vacating the premises instead of hanging on to the premises, could not be said to have impliedly agreed to the proposal of the landlord. With all respect to the learned Judge, we do not think that the decision in that case was correct. The learned Judge relied on an English case of *Roberts v. Hayward*, (1828) 3 Car. & P. 432. That was a case in which a tenant remained silent after the notice for enhanced rent was given to him. The Chief Justice remarked, 'The tenancy under the agreement expired at midsummer 1826. Immediately after that time, the plff. was a trespasser; but the landlord was not obliged to treat him as such but might make proposals to him, to renew the relation of landlord & tenant between them. This he did, & the plff. did not say, 'I will go out directly. His silence on the Subject is tantamount to his saying, I will continue in on the terms of your proposal'.

The facts of Roberts' case were different from the facts of the case before the learned Judge.

9. *Parekh Nandlal Bhimji Bhoy Choksi v. Anant Govind Jog*, A. I. R. (27) 1940 Nag. 140, a landlord gave a notice to his tenant that he would be charged at an enhanced rate from a certain date & should vacate if he did not accept the enhancement. The tenant refused to pay enhanced rent & also refused to vacate. It was held that he should be deemed to have accepted the enhanced rent in spite of his refusal. It was added :

"Of course, the Court has a discretion in the matter & where the enhanced rate demanded is obviously penal & impossible, the Court would not grant it."

The learned Judge, who decided that case, relied upon the decisions in *S. Burge v. M. Mohd. Inamullah*, A. I. R. (12) 1925 Oudh 189 & *Madan Mohan Garg v. Bohra Ram Lal*, A. I. R. (21) 1934 ALL. 115 with the latter case we have dissented.

10. In our opinion, where a tenant does not reply to the notice of the landlord demanding payment of enhanced rent from a certain date after the expiry of the term of the tenancy, it should be deemed that the tenant agreed to the payment of the enhanced rent. But where the tenant indicates his intention not to accept the enhanced rent either by directly saying so or by saying that he would vacate the premises by a certain date, even though he does not vacate the premises on the date fixed, he cannot be held to have impliedly agreed to the payment of the enhanced rent. In such a case, the measure of damages for use and occupation of the house cannot be the enhanced rent demanded in the notice, but has to be found out by the Court upon the materials on the record. Where, however, the notice demands not the enhanced rent but damages for use and occupation at the enhanced rate, there can be no tenancy by implication at the enhanced rent.

11. In the present case, the plaintiff never treated the defendant as a tenant for the period after the expiry of the date fixed in the notice. He could not claim enhanced rent as having been agreed to by implication. The Court having found that the reasonable amount of damages for use and occupation is at the rate of Rs. 10 per mensem, it was justified in granting a decree at that rate.

12. There is no force in this revision and I dismiss it with costs.

P.L. Bhargava J.

13. On the merits this revision has no force and I agree, it ought to be dismissed with costs. There was no express or implied agreement, nor could there be any such agreement, between the parties to pay, after the determination of the lease by notice, for the period in suit, any particular amount for the use and occupation of the house. In the circumstances of the case, the applicant was entitled to and could claim reasonable compensation from the opposite party for continuing in occupation after the termination of the lease; and the Court below has allowed him such compensation. In order to determine the amount of compensation, to which the applicant was entitled, the Court was not bound to accept the rate of rent mentioned in the notice, although it could be taken into consideration along with other materials on the record.

14. The revision has been referred to a Bench for reconsideration of the proposition of law laid down by a learned single Judge of this Court in *Madan Mohan Garg v. Bohra Ram Lal*, A. I. R. (21) 1934 ALL. 115. The facts of that case were these: A occupied a portion of the premises owned by B on lease terminable by a month's notice. The rate of rent was Rs. 55 per mensem. Later on, A obtained more accommodation in the premises from B on payment of an additional rent of Rs. 25 per month. On 24-8-1931, B sent a notice to A giving him the alternative of quitting the premises by 27-9-1931, or, if he failed to vacate the premises, to continue in occupation thereof on payment of Rs. 125 per month. A sent a reply on 20-10-1931, that he would leave the premises on 1-11-1931. He made no reference in his reply to the proposal for payment of higher rent. A vacated the premises on 25-12-1931. In January 1932, B sued A for arrears of rent and for the period between 27th September to 25th

December 1931, he claimed rent at Rs. 125 per month. The trial Court found that the lease was determined on 27-9-1931, and passed a decree for arrears of rent for the period prior to that date at the rate of Rs. 80 per month and allowed damages for the Subsequent period at Rs. 90 per month. The matter came up to this Court in revision; and it was contended on behalf of B that the claim for the period Subsequent to 27-9-1931, ought to have been decreed at the rate of Rs. 125 per mensem.

15. The learned Judge, before whom the revision came up for hearing, considered that, in awarding damages, the trial Court had apparently acted under the provisions of Section 74, Contract Act, and, after pointing out that the said provisions were inapplicable to the facts of the case, observed :

"No provision of any Indian Law has been shown to me that covers the entire circumstances of the case and I think that I am justified in following the English decision which is based on the Common Law of England The defendant may have been technically trespasser,. but his position really was different from that of a trespasser who has no contract with the landlord. The tenancy was, so to speak, in a state of suspended animation, and the landlord in such circumstances was not in a position to know exactly what his rights and liabilities were. When the tenant refused to vacate and remained in possession he must be held to have agreed by implication to hold over and to have accepted the proposal to payment at the enhanced rate proposed by the landlord in his notice. ...."

16. After the determination of the lease, the position of an erstwhile tenant is more or less analogous to that of a trespasser as the relationship of landlord and tenant comes to an end. The tenancy is terminated; and it does not remain in a state of suspended animation. The landlord in such circumstances, has the right to sue for ejectment and has no liabilities.

17. The English case cited before the learned Judge was Roberts v. Hayward, (1828) 31 Car & p 432, and he quoted the following remarks of the Chief Justice in that case :

"The tenancy under the agreement expired at Midsummer, 1826. Immediately after that time, the plaintiff was a trespasser; but the landlord was not obliged to treat him as such, but might make proposals to him, to renew the relation of landlord and tenant between them. This he did, and the plaintiff did not say, 'I will go out directly'. His silence on the Subject is tantamount to his saying, 'I will continue in on the terms of your proposal "

18. These observations are not at all helpful for determination of the question before us.

19. The learned Judge also referred to a decision of the Oudh Chief Court in Mohammad Noor v. Ashiq Beg, A. I. R. (20) 1933 Oudh 465 where it was held that:

"Where enhanced rate of rent is proposed by a landlord, and the tenant continues to occupy the leasehold property without any protest as to the proposed enhancement of rent, the latter should be deemed to have accepted the proposal; but when the tenant

protests against such enhancement and the landlord does not take ejectment proceedings, he is not entitled to claim rent at the enhanced rate."

20. In the case under consideration, the learned Judge, however, intended to lay down that if the landlord gives notice to his tenant for determination of lease on a particular date and to charge enhanced rate in case the tenant continues in occupation after the specified date, and the tenant expresses his intention to vacate and actually vacates it not by the date specified in the notice but about three months later, he must be deemed to have accepted the landlord's proposal to pay the rent at the enhanced rate, I find it difficult to subscribe to this view. In the first place, in such circumstances, the acceptance to pay higher rate could not be presumed; and, in the second place, the lease having been determined by mutual consent, the landlord could only claim a reasonable compensation for use and occupation of the premises.

21. There may be cases where the landlord desires to terminate the lease and prescribes a penalty in case the tenant continues to occupy the premises even after the termination of the lease. There may be other cases where the landlord notifies his intention to terminate the lease but at the same time gives the tenant an option to continue in occupation of the premises on payment of specified rent. In cases falling in either category the tenant may expressly or impliedly accept or reject the landlord's proposal; and the acceptance or rejection would give rise to different considerations in cases where the lease is determined and those in which it is not determined. If the lease is determined, the relationship of landlord and tenant would come to an end from the date of the termination of the lease; and in other cases that relationship would continue. In the former case, the landlord would be entitled to claim compensation for use and occupation of the premises and the Court would determine and allow a reasonable amount of compensation on the materials placed before it, including the higher rate proposed by the landlord by way of penalty, which would be considered as the maximum limit of compensation claimed. In the latter case, if the tenant has accepted the landlord's proposal there would be no difficulty; but if he has not cared to do so and continues in possession of the premises, the Court may on the basis of implied acceptance hold that the lease is not determined and the tenant is liable to pay enhanced rent.

22. The other cases cited on behalf of the applicant, with the exception of the case reported in *Sundar Singh v. Ram Saran Das*, A. I. R. (20) 1933 Lah. 61, do not help the applicant. The Lahore case being based on some practice or rule prevalent there must be left out of consideration.

23. The revision is dismissed with costs.