

## **Radhey Mohan vs Har Narain Das on 15 January, 1952**

**Equivalent citations: AIR1952ALL504, AIR 1952 ALLAHABAD 504**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### **JUDGMENT**

Malik, C.J.

1. In this appeal under Section 12(2), Oudh Courts Acts, a nice point of law is raised. The plaintiff is the landlord and the defendant is the tenant. The plaintiff was demanding rent at the rate of Rs. 27 per month. The defendant honestly believed that the amount payable by him was Rs. 22-8-0 per month. In spite of several demands made by the plaintiff for payment at the rate of Rs. 27 per month the defendant stoutly refused to pay at that rate and insisted on paying the amount at Rs. 22-8-0 per month only. The plaintiff refused to accept rent at Rs. 22-8-0 per month with the result that the defendant started sending money orders to the plaintiff which he refused. The question was whether in the circumstances it could be said that the tenant had wilfully failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a notice of demand by the landlord. It is not denied that notices of demand were sent to the defendant. It is also not denied that the defendant refused to pay in accordance with the demand. It is also now found as a fact that the landlord's claim was proper and the rent was payable at Rs. 27 per month.

2. Learned counsel has urged that wilful failure to pay must mean a dishonest refusal where the defendant knows that something is due and yet is not willing to pay. The words in the Act are not 'dishonest or mala fide default.' The words are 'wilfully failed' and to our minds they must mean not an unintentional failure or a failure by inadvertence but a deliberate failure, where the mind has been brought into play and a man has, after taking the facts into consideration, refused to make the payment. Almost similar words came up for consideration before their Lordships of the Judicial Committee in the case of *Ardeshir Bhikaji v. G.I.P. Rly. Co., Bombay, A.I.R. (15) 1928 P.C. 24*. The words there were 'wilful neglect' which, if anything, are stronger than 'wilful failure' and their Lordships held that the expression 'wilful neglect' meant that the act was done deliberately and intentionally and not by accident or inadvertence so that the mind of the person who did the act went with it and they relied on the observations in the cases of *R. v. Downes, (1875) 1 Q. B. D. 25* and *R. v. Senior, (1899) 1 Q. B. 283*. We think the learned Single Judge was right in his decision that on the facts stated above, the defendant must be held to have wilfully failed to make the payment.

3. It was urged by learned counsel that the learned Single Judge had interfered with a finding of fact.

We have looked into the judgment of the lower Appellate Court and we do not think it could be said that the lower appellate Court had recorded a finding of fact. The lower appellate Court had found the facts as have been summarised by us above but it thought that unless the defendant had dishonestly refused to pay Rs. 27 per month, knowing full well that Rs. 27 was due, it could not be said that the defendant had wilfully failed to make the payment. The learned Single Judge corrected this error and we agree with his decision and hold that the defendant had wilfully failed to make the payment.

4. The appeal has no force and is dismissed.