Smt. Anand Kaur vs Pritam Lal on 14 January, 1982

Equivalent citations: 1982 AIR 777, 1982 SCR (3) 43, AIR 1982 SUPREME COURT 777, 1982 (1) SCC 502, 1982 RAJLR 257, (1982) DRJ 165, (1982) 3 SCR 43 (SC), 1982 MPRCJ 80, 1982 UJ (SC) 152, 1982 ALL CJ 249, (1982) ALL RENTCAS 524, (1982) 1 RENCJ 674, (1982) 1 RENCR 405, (1982) 1 RENTLR 279, (1982) 1 SCJ 198, (1982) 21 DLT 301

Author: A.D. Koshal

Bench: A.D. Koshal, V. Balakrishna Eradi, R.B. Misra

PETITIONER:
SMT. ANAND KAUR

Vs.

RESPONDENT:
PRITAM LAL

DATE OF JUDGMENT14/01/1982

BENCH:
KOSHAL, A.D.
BENCH:
KOSHAL, A.D.
ERADI, V. BALAKRISHNA (J)
MISRA, R.B. (J)

CITATION:
1982 AIR 777 1982 SCR (3) 43
1982 SCC (1) 502 1982 SCALE (1)2

ACT:
Delhi Rent Control Act -Section 14(1), proviso (a) read with proviso to section 14(2)-scope of.

HEADNOTE:
When a tenant has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which the notice of demand for the arrears of rent has been served on him by the landlord proviso (a) to section 14(1) empowers the Controller to make an order for the recovery of possession of the premises. The proviso to section 14(2) states that no tenant shall be entitled to the benefit under the sub-section if having

obtained such benefit once in respect of any premises he again makes a default in the payment of rent of those premises for three consecutive months.

On 14th December, 1973, the land-lady-appellant issued a notice to the tenant stating that he had not paid the damages after May 1973 and called upon him to pay the arrears within two months from the date of notice. The tenant remitted the rent to the land-lady by money-order towards the end of February 1974 but she refused to accept the same.

On the land-lady's application the Controller, and the Tribunal in appeal, held that the notice was valid and that the expression "damages for the use and occupation" meant nothing more nor less than rent. But the High Court on appeal held that the term "rent" and "damages for use and occupation" could not be taken to be synonymous terms and that the notice issued by the land-lady did not satisfy the requirements of clause (a) of the proviso to section 14(1) of the Act in that it did not demand rent from the tenant.

Allowing the appeal and remitting the case to the Court below
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HELD: The notice issued by the land-lady satisfies the requirements of clause (a) of the proviso to section 14(1). [46 D]

The High Court has taken an unnecessarily hypertechnical view of the contents of the notice which specifically stated that on account of the termination of the tenancy by an earlier notice the tenant had become a statutory tenant and it was in this context that a claim was made for damages for use and occupation at a rate equivalent to the agreed rent. The demand so made could not be construed as anything but a demand for rent. [46 B-C]
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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 966 of 1976.

(Appeal by special leave from the judgment and order dated the 6th February, 1976 of the Delhi High Court in S.A.O. No. 148 of 1975) Vinoo Bhagat for the Appellant.

G. D. Gupta for the Respondent (Not Present) The Order of the Court was delivered by KOSHAL, J. The short point arising for determination in this appeal concerns the validity of a notice served by the landlady appellant on the tenant-respondent and purporting to be one issued in accordance with the provisions contained in clause (a) of sub-section (1) of section 14 of the Delhi Rent Control Act (hereinafter called the Act), and we may at the very outset reproduce the relevant provisions of that section:

> "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 landlord in the manner provided in section 106 of the Transfer of Property Act, 1882;

14(2) No order for the recovery of possession of any premises shall be made on the ground specified in clause

(a) of the proviso to sub-section (1), if the tenant makes payment or deposit as required by section 15:

> Provided that no tenant shall be entitled to the benefit under this sub-section, if having obtained such benefit once in respect of any premises, he again makes a default in the payment of rent of those premises for three consecutive months."

2. The tenant respondent has remained absent and unrepresented at the hearing and we have had the advantage of being addressed by Mr. Vinoo Bhagat, learned counsel for the appellant only.

3. It was not disputed before the High Court that in an earlier proceeding the tenant had taken advantage of the provisions contained in sub-section (2) of section 14 of the Act, that he committed another default in the payment of rent which covered the period from 1.6.1973 to 30.11.1973 and that it was then that a notice dated 14.12.1973 was served on him. The notice stated:

> "Your contractual tenancy in respect of House No. A-54 (double-storey) Kalkaji, New Delhi-19 had already been terminated whereafter you are a statutory tenant liable to pay damages for use and occupation at the rate of Rs. 15/- (Rupees fifteen per month) to me. That you have not paid the said damages after May, 1973. In case you do not clear the arrears upto date within two months from the date of this notice, I shall be compelled to issue instructions to my legal adviser to file an application for your eviction ....."

No attempt to pay the rent was made inspite of the notice till the end of February, 1974. Although thereafter rent was remitted to the landlady through money orders but she refused to accept the same and made an application to the Controller for eviction of the tenant on the sole ground of a second default in the payment of rent. Both the Controller and the Tribunal in the appeal held that the notice was a valid one and that the expression "damages for use and occupation" contained

therein meant nothing more or less than rent. In a second appeal, a learned Single Judge differed from the Courts below and was of the opinion that the word 'rent' and the said expression could not be taken to be synonymous and that there was no demand of rent in the notice in question which did not, therefore, satisfy the requirements of the provisions contained in clause (a) above extracted. It is the judgment of the learned Single Judge which is assailed in the present appeal.

4. After hearing Mr. Vinoo Bhagat, learned counsel for the appellant, we are of the opinion that the learned Single Judge has taken an unnecessarily hypertechnical view of the contents of the notice. It is significant that the notice specifically stated that on account of the termination of the tenancy by an earlier notice the tenant had become what is popularly known as a statutory tenant and it was in this context that a claim was made for damages for use and occupation at a rate equivalent to the agreed rent. We are of the opinion that in the circumstances of the case the demand so made could not be construed as anything but a demand for rent. Consequently the notice must be held to satisfy the requirements of clause (a) of sub-section (1) of Section 14 of the Act.

5. For the reasons stated above, we accept the appeal, set aside the impugned judgment and restore the orders of the Controller and the Tribunal. The case is remitted for further proceedings to the Controller who shall dispose of it within three months from the receipt of records from this Court. No costs.

P.B.R. Appeal allowed.