# Gauri Shanker vs Hindustan Trust (Pvt.) Ltd. And Ors. on 27 April, 1972

## Equivalent citations: AIR1972SC2091, (1973)2SCC127, AIR 1972 SUPREME COURT 2091, 1973 2 SCC 127, 1972 CURLJ 628, 1972 RENCJ 850, 1972 RENCR 488

## Author: A.N. Grover

## Bench: A.N. Grover, K.S. Hegde

JUDGMENT

A.N. Grover, J.

1. These two appeals by special leave are from a judgment of the Delhi High Court.

2. It appears that one Manohar Lal was the owner of the premises in dispute situate in Kishangunj, Delhi. He died leaving behind him his brother Krishan Lal and two sons Hari Shanker and Gauri Shanker. In June 1943, Krishan Lal let out the premises to Hindustan Trust Pvt. Ltd of which he was the Managing Director from 1943 to 1952. In 1947 Krishan Lal filed a suit for partition in Agra Court against his nephews Hari Shanker and Gauri Shanker. In 1952 Krishan Lal became the Chairman of the Board of Directors of the respondent company. His son-in-law D. Sanghi became the Managing Director. On March 21, 1952 a compromise was effected in the suit for partition. By virtue of that compromise Gauri Shanker- the present appellant was declared to be the owner of the property in dispute and he was held entitled to realize its rent with effect from January 1, 1958. The deed of compromise was signed by Krishan Lal and all the other parties concerned. On May 26, 1958 a decree was passed in accordance with the compromise. On June 12, 1958 the appellant gave notice to the respondent company to pay rent to him with effect from January 1, 1958. A copy of this notice was sent to Krishan Lal as well. On July 7, 1958 the appellant sent a reminder to the respondent to expedite the sending of the reply or to discuss the matter with him personally. On July 17, 1958 the appellant demanded by means of a letter the rent due apart from the supply of certain information with regard to the measurements of the building and land in possession of the respondent. A reply was sent by D. Sanghi Managing Director of the respondent company dated July 18, 1958. He wrote, inter alia that regarding the rent for the month ending on 30th June 1958 the matter had been referred to Krishan Lal and on receipt of his instructions in writing the rent shall be paid accordingly. By means of a letter dated July 23, 1958 Krishan Lal wrote to two tenants including the respondent that the factory in which they were tenants had gone to the share of the appellant Gauri Shanker as a result of the partition among the co owners, and all arrears of rent due after January 1, should be paid to him. According to the appellant he was not being allowed to enter the premises

and take measurements and, therefore, he filed the suit on October 28, 1958 for a mandatory injunction for being allowed to do so. In the written statement dated December 7, 1958, filed by the respondent the position taken up by the respondent was that it had not been supplied any copy of the partition decree proving that the property had fallen to the share of the appellant in partition nor had Krishan Lal the previous landlord sent any instructions for attornment in favour of the appellant. It was denied that the appellant was the owner of the property in dispute. On March 23, 1959 the appellant applied for fixation of standard rent against the respondent company impleading Krishan Lal and Hari Shanker as pro forma respondents. By a written statement filed on May 20, the respondent denied the relationship of landlord tenant between the company and the appellant and claimed to be a tenant only under Krishan Lal. By means of a notice dated August 17, 1959 sent by Shri Triyugl Narain Advocate on behalf of the appellant the respondent was informed that it was the tenant of the appellant in the property known as "Bagh Baraf khana" at a monthly rent of Rs.300/- that the appellant was entitled to receive rent with effect from January 1, 1958. The following portion from that notice may usefully be extracted:

> That you have fallen in arrear of rent and a sum of Rs.5700/- is due from you as rent from 1st January 1958 to 21st July 1959 which you have failed to pay in spite of repeated requests and demands.
>
> It is therefore to serve you with this notice of demand asking you to pay the said sum of Rs.5700/- and future rent within the statutory period failing which you will render yourself liable to ejectment and legal proceedings will be initiated against you at your risk as to costs and consequences.

A reply dated August 27, 1959 was sent to Shri Triyugi Narain Advocate by Shri Iqbal Krishna Advocate on behalf of the respondent. It was denied therein that the respondent company was a tenant of the appellant. It was asserted that it was only a tenant under Krishan Lal at a rent of Rs.100/- which had been paid to him regularly. On October 27, 1959 the appellant filed an application for eviction of the respondent on the ground of non-payment of rent. Krishan Lal and Hari Shanker were Impleaded as pro forma respondents to the petition. On Nov. 30, 1959 a written statement was filed on behalf of the respondent-company by D. Sanghi in his capacity as the Managing Director. The relationship of landlord-tenant was denied between the appellant and the company but no plea was taken that the notice to quit had not been served or that it was defective. It appears that the proceedings before the Rent Controller dragged on for several years. On October 23, 1967 for the first time the respondent applied under Order 6, Rule 17, Civil Procedure Code, for permission to amend the written statement so as to introduce the plea of want of notice to quit. That application was allowed by the Rent Controller on the ground that only a question of law was involved although the appellant seriously contested the grant of the prayer relating to the amendment at that stage.

3. It may be mentioned that the appellant had applied under Section 15 of the Delhi Rent Control Act 1958 for deposit of rent but the respondent company filed objections denying the relationship of

landlord and tenant. On January 15, 1960 the Rent Controller Ordered the deposit to be made at the rate of Rs.175/- per month with effect from July 1, 1959. On December 1, 1962, Section 106 of the Transfer of Property Act was extended to Delhi by means of a notification made under Section 1 of that Act. On July 14, 1965 the appellant moved the Rent Controller under Sub-section (5) and (7) of Section 15 of the Rent Act. It was submitted, inter, alia, that the tenant had failed to deposit the admitted arrears of rent with effect from July 10, 1959 and future rent every month in accordance with law and he had been disputing the title of the landlord. It was prayed that his defence be struck off. On November 19, 1965 detailed Order was made by the Rent Controller. By that time certain amounts had been deposited by the respondent. The Rent Controller condoned the default on the part of the tenant on payment of Rs.300/- as costs. The appellant filed an appeal to the Rent Control Tribunal against the Order of the Rent Controller but the same was dismissed against which a second appeal was preferred by him to the High Court on January 19, 1967. Finally on August 28, 1968 the Rent Controller Ordered the eviction of the respondent. An appeal was filed against that Order to the Rent Control Tribunal.

4. After setting out all the relevant facts the Rent Control Tribunal stated in para 7 as follows:

> It is conceded on both sides that in case of a finding of this Court in favour of respondent No. 1, Gauri, Shanker Gupta, of there being a relationship of landlord and tenant between him and the appellants in respect of the premises in dispute, the latter are liable to eviction from the same on the ground of non payment of arrears of rent. The only question for determination, under the circumstances, is as to whether Gauri Shanker Gupta, respondent No. 1, is proved to be the landlord of the premises in dispute with a right to recover the arrears of rent from the appellant.
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> The Tribunal examined fully and with care the entire material on the sole point that was argued before it and came to the conclusion that the appellant was the exclusive owner of the premises in dispute and that he was entitled to recover arrears of rent from the tenant, namely, the present respondent. The Tribunal affirmed the finding of the Rent Controller on that point. The other question which appears to have been argued before the Tribunal was the effect of non-compliance with the Order made under Section 15(4) of the Rent Act. It was conceded before the Tribunal that the tenant did not deposit the arrears of rent within the period of two months of the receipt of the notice of demand sent by the landlord. It was urged on behalf of the present appellant before the Tribunal that the protection granted to the tenant from eviction from the demised premises could be availed of by him only if he complied strictly with the Order made under Section 15(4) read with Section 15(1) of the. Rent Act in respect of his liability to deposit the arrears of rent and rent accruing after the date of the making of the Order under Section 15(4). The Tribunal followed a judgment of the Delhi High Court and upheld the contention raised on behalf of the present appellant. In paragraph 15 of the Order the Rent Control Tribunal stated as follows:
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> No other point having been urged before me, the result is that the appeal fails....

5. The present respondent, namely, the tenant filed an appeal to the High Court under Section 39 of the Rent Act. Sub-section (2) of that Section provides that no appeal shall lie unless the appeal involves some substantial question of law. It is difficult to understand how any substantial question of law arose when the Order of the Rent Control Tribunal is properly considered and examined. As is apparent from paragraphs 7 and 15 of the Tribunal's judgment extracted above the sole point on which the controversy has centered related to the existence of relationship of landlord and tenant between the parties. It was expressly stated that no other point was raised with the exception of the question relating to non compliance with the provision of the Order under Section 15(4). The determination of the question whether a relationship of landlord and tenant existed between the present appellant and respondent depended mostly on the evidence produced at the trial and the Rent Controller as well as the Tribunal had, on a complete examination of the same, given a concurrent finding that the respondent had become the tenant of the appellant.

6. The High Court did not entertain and decide the appeal on the sole question which was argued before the Rent Control Tribunal. Indeed four contentions were sought to be raised before the High Court, one of which was that there was no notice terminating the contractual tenancy and the notice of demand Exh. A57/1 was illegal and insufficient for the purpose. The learned Judge discussed the facts and the law on that point and held that the notice was not intended to and did not determine the contractual tenancy. It was only a demand for arrears of rent contemplated by Clause (a) of the proviso to Section 14 of the Rent Act. The notice was, therefore, invalid. It was stated in the judgment that the respondent before the High Court did not seriously dispute the aforesaid construction and the effect of the notice but on his behalf it had been urged that the tenant had by denial of his rights as a landlord renounced his character as a tenant within the meaning of Clause (g) of Section III of the Transfer of Property Act thereby causing forfeiture of lease. As such the contractual tenancy came to an end under Section III of the aforesaid Act and there was no necessity of any notice being served. In any case it was urged that the commencement of the legal proceedings for eviction constituted sufficient notice. All these contentions were repelled by the learned Judge. He set aside the Order of the Rent Controller and the Rent Control Tribunal directing eviction of the tenant on the ground that there was no legal and valid notice terminating the contractual tenancy.

7. It seems to us that the learned Judge did not bear in mind certain salient facts and circumstances as also the well settled legal principles in entertaining and deciding points in appeal which had not been raised or which had been expressly abandoned before the lower Court. It is true that a question not agitated before the lower appellate Court or expressly given up there can be allowed to be raised if it is a pure question of law but in permitting the same to be done the has to consider whether in exercise of proper and judicial discretion such a point should be permitted to be agitated when it has been conceded or abandoned before the Court below. While giving permission to argue that point the Court has to look at all the facts and circumstances, the conduct of the parties seeking to raise that point is of great importance. In the present case as soon as the premises in dispute fell to the share of the appellant in 1958 by virtue of the compromise decree in the suit for partition the appellant, as was quite natural, asked the respondent to pay the rent to him. We have had occasion to refer to the correspondence which went on for a long time between the appellant and the Managing Director of the respondent company and at every step the latter was taking up a very unreasonable and equivocal attitude. It cannot be overlooked that D. Sanghi the Managing Director

of the respondent company was the son-in-law of Krishan Lal who was the Chairman of that company. He was also a close relation of the appellant. It would therefore, be legitimate to assume that he could not have been ignorant of the compromise decree and the fact that the premises in dispute had fallen to the share of the appellant who would, by operation of law, become the landlord of the respondent company. In spite of all this the appellant was driven to one proceeding after the other and on each occasion his title was denied. Ultimately when the suit for eviction was filed in 1959 it dragged on for several years. In the written statement which was originally filed no plea was taken that a valid notice to terminate the contractual tenancy had not been served and therefore the petition for eviction was not maintainable. The respondent waited for 8 years before seeking an amendment to include a plea on the absence of such a notice. The trial Court did allow the amendment but in our opinion no such amendment should have been allowed on account of the gross delay and laches on the part of the respondent in raising such a plea. In such matters it must be remembered that if a technical plea of the nature sought to be raised had been raised at an earlier stage the appellant could have withdrawn the petition for eviction with liberty to file another petition after serving the requisite notice. By not raising that plea for nearly 8 years a great deal of prejudice was caused to the appellant. It has been pointed out by Mr. Chagla on behalf of the respondent that an appeal was competent against the Order allowing amendment under Section 38(1) of the Rent Act and since no such appeal was filed the Order allowing amendment became final. Without expressing any opinion whether such an Order could be appealed against and on the assumption that an appeal was competent the question still remains whether the learned Judge of the High Court while allowing a point to be raised after it had been abandoned before the Rent Control Tribunal should or ought to have taken this fact into consideration and in combination with other facts should have disallowed any argument on the question of the invalidity of the notice. In our judgment the course the litigation between the parties had taken and the manner in which the plea was sought to be raised by an amendment after eight years of the institution of the eviction petition and further the abandonment of any contention based on that plea before the Rent Control Tribunal were more than sufficient to persuade the Court that any argument based on the absence of a valid notice should not have been allowed.

8. Mr. Chagla has, pointed out that after the judgment under appeal was delivered an application for review was filed by the appellant. In the judgment dated March 17, 1971 it has been pointed out by the learned Judge in paragraph 6 that grounds 18 and 19 of the Memorandum of Appeal filed before the Tribunal contained contentions relating to the validity of the notice. This is what the learned Judge proceeded to say:

> I have noticed the fact in my judgment that the consideration of the question of the legality and validity of the notice is not mentioned in the judgment of the Tribunal, though it had been raised in grounds 18 and 19. I do not find that there has been any concession on the part of the Counsel for the tenant before the Tribunal on this point.

9. We are altogether unable to concur with the reading of the judgment of the Rent Control Tribunal by the learned Judge of the High Court Even at the cost of repetition we have no hesitation in observing that the sole ground on which the arguments were addressed to the Rent Control Tribunal were those which have already been mentioned and the question of the factum and validity of a

notice to terminate the contractual tenancy was not at all raised, let alone, pressed before the Tribunal. On the other hand the judgment shows that all other contentions which would include an argument relating to the validity of the notice were expressly abandoned. It may be pointed out that raising grounds in the Memorandum of Appeal is not sufficient to show whether a particular point was actually argued or pressed before the Court. If the Court expressly says that only certain points have been argued and no other point has been argued the statement in the judgment has prima facie to be accepted as correct. It was open to the present respondent to file a proper affidavit preferably of his Counsel who had argued the case along with the Memorandum of Appeal that such a point had been raised but the Court recording the concession had done so either wrongly or under some misapprehension. No such affidavit was filed with the Memorandum of Appeal and therefore we find no force in the submission of Mr. Chagla that the question of notice had been raised at the time of arguments before the Rent Control Tribunal. None of the other points proposed to be raised before the High Court was urged before us.

10. In the above view of the matter the judgment of the High Court has to be set aside and that of the Rent Control Tribunal and the Rent Controller restored in the appeal arising out of S.A.No. 278/69. The other appeal arose out of S.A. 57/67 which had been filed by the appellant against the judgment refusing to strike out the defence of the respondent company. This was dismissed by the High Court without any hearing in view of the decision in the other appeal. As the main appeal of the appellant arising out of the suit for eviction is being allowed it is unnecessary to make any Order in the other appeal as the same has become infructuous. The appellant will be entitled to costs in this Court as also in the High Court. The respondent company will have six months to vacate the premises and hand over the possession to the appellant.