Allahabad High Court
Dharmendra Nath And Ors. vs Jagdish Prakash on 6 October, 1975
Equivalent citations: AIR 1976 All 107
Author: G Nath
Bench: G Nath
JUDGMENT Gopi Nath, J.

1. This is a plaintiffs' appeal arising out of a suit for ejectment and arrears of rent. The plaintiffs claimed a sum of Rs. 2924.00 on account of rent and damages in respect of the accommodation in dispute and they further prayed for the ejectment of the defendant on the ground that he had defaulted in the payment of the rent and did not pay the arrears even after the notice of demand dated 1-1-66. This notice was followed by a notice under Section 106 of the T. P. Act dated 26-2-1966. Both the notices were given by all the four plaintiffs appellants. The trial court decreed the suit in its entirety. The lower appellate Court has dismissed the claim for ejectment but decreed the recovery of arrears.

2. The facts leading up to the present appeal are as follows:

One Triloki Nath was the owner of the accommodation in dispute. He sold it in favour of one Mahabir Pra-sad. Mahabir Prasad by a deed of sale dated 16-6-1961 transferred the property to Smt. Prabha, Km. Veena, Km. Reshmi and Km. Nirja. Km. Veena, Km. Reshmi and Km. Nirja are the daughters of Smt. Prabha and were minors on the date of the sale. By a sale deed dated 1-11-1965 Smt. Prabha and her three daughters sold the property to the plaintiffs. The deed was executed by Smt. Prabha and one Dr. Bhagwat Dutt, the father of Smt. Prabha, and the maternal grandfather of the three minor daughters of Smt Prabha as their de facto guardian. On 16-12-68 the three minors having attained majority ratified the sale deed dated 1-11-1965 and executed a deed of ratification in favour of the plaintiffs. On the basis of these two deeds the plaintiffs claimed to be the owners of the property in dispute. The plaintiffs however shortly after the sale deed dated 1-11-1965 issued the notice of demand against the defendant for the payment of rent. The defendant had been occupying the premises it appears, since 1961, and had been paying rent to the successive owners by cheque. The notice of demand was served on the defendant on 3-1-1966. By a registered letter dated 29-1-1966 the defendant sent a reply to the plaintiffs enclosing a cheque for the rent demanded in full satisfaction of the dues. In this letter the defendant clearly admitted the plaintiffs as his landlords and stated that the cheque was being sent in compliance to the demand for arrears of rent and in full satisfaction thereof. This letter however was not delivered to the plaintiffs It was alleged by the plaintiffs that this was due to the negligence of the postman who endorsed on the envelop that the letter could not be delivered being addressed in the names of four persons. The rent having thus not been received by the plaintiffs within the prescribed time they issued the notice dated 16-2-1966 under Section 106 of the T. P. Act terminating the defendants tenancy and requiring him to hand over possession of the premises. This notice was served on 3-3-1966. The defendant having failed to vacate the premises the suit giving rise to this appeal was filed, for ejectment and arrears of rent and damages.

3. The defence delivered was that the defendant had sent the rent through cheque within the time prescribed by the notice dated 1-1-1966. The cheque was enclosed with a letter under registered cover addressed in the name of the four plaintiffs. In the letter it was stated that since all the four plaintiffs were the landlords and the rent was demanded by all of them a cheque drawn in favour of all, was being sent. It was thus pleaded that the defendant had not defaulted in the payment of rent and had sent the same within the prescribed period. The suit on the basis of default therefore could not be maintained. It was further pleaded that the notice to quit was defective, in that the original sale deed dated 1-11-1965 executed by Smt. Prabha and Sri Bhagwat Dutt on behalf of the three minor daughters of Smt. Prabha could not pass a valid title to the entire property, the transfer by a de facto guardian of a minor being invalid in law. The sale deed to the extent of the interest of the minors was thus void. The deed of ratification could also not validate the transaction the same being ab initio void. The plaintiffs consequently were owners of the property to the extent of one-fourth share only and they thus could not terminate the defendant's tenancy from the entire premises. The notice to quit the entire premises was thus invalid, since the case has been argued with reference only to these two points it is unnecessary to refer to the other pleas raised.

4. The trial Court held that the remittance of the rent by cheque was no payment in the eyes of law. The defendant consequently was in default of payment of rent and liable to ejectment on that ground. It further held that the notice to quit was valid. The suit was accordingly decreed for ejectment as also for the arrears claimed.

5. On appeal the lower appellate court allowed the appeal in part, dismissing the claim for ejectment while affirming the decree for the recovery of arrears on the findings that the remittance of rent by cheque was no payment in the eyes of law and since it never reached the plaintiffs the defendant was a defaulter. The defendant consequently was held in default of the payment of rent.

6. The claim for ejectment was however dismissed on the ground that the sale deed dated 1-11-1966 being void in so far as it concerned the three minor girls, the deed of ratification dated 16-12-1968 could not have the effect of validating the same. The plaintiffs consequently were owners of only one-fourth of the property and could not terminate the defendant's tenancy from the entire premises. The notice to quit was thus held invalid, and the relief of ejectment refused on that ground. The claim for arrears was decreed on the finding that the landlords never received the rent and were entitled to recover the same from the defendant.

7. The plaintiffs have filed this appeal against the decree refusing ejectment while the defendant has filed a cross-objection against the decree directing recovery of arrears.

8. As regards the plaintiffs title to the property it seems to me that the defendant had by his letter dated 29-1-1966 clearly admitted the plaintiffs as his landlords in respect of the entire premises. Even if there was some defect in the original deed of sale dated 1-11-1966 the defendant has attorned to the plaintiffs in unequivocal terms by his letter dated 29-1-1966. He sent the entire arrears claimed and said that it was in satisfaction of the dues. In view of the recitals in the letter dated 29-1-1966 I am clearly of the opinion that the defendant is now estopped from challenging the title of the plaintiffs in respect of the premises. It is unnecessary in the circumstances to decide the

question of the validity of the sale deed dated 1-11-1965 and the effect of the ratification made on 16-12-1968.

9. The only question surviving for decision is whether the remittance of the rent by cheque with the covering letter dated 29-1-1966 constituted a valid tender in the eyes of law. Triloki Nath, father of the plaintiffs appellants was the original owner of the permises in dispute. It has come in the statement of the plaintiff Dharmendra Nath that he used to accept rent by cheques. The court below has disbelieved him as regards his statement that after the purchase of the property the plaintiffs stopped the defendant from paying rent by cheques. Payment by cheque was thus an acceptable mode of payment of rent and the plaintiffs had not forbidden the defendant from continuing that mode. It may be observed here that on the transfer of the property by Triloki Nath to Mahabir Pra-sad, Triloki Nath was appointed a Theka-dar for collection of rent. He continued to receive the rent by cheque. After the sale of the premises by Mahabir Prasad to Smt. Prabha and her three daughters it is again accepted that Triloki Nath continued as a Thekedar and realised the rent on their 'behalf. It is further established that Triloki Nath received' rent through cheques even during this period. Exh. A-2 is a list of counter-foils filed by the defendant to prove payment of rent by cheques to the landlords. It shows a payment of Rs. 2,130,00 by cheque dated 24-8-1964 to Triloki Nath. This refers to the period when Mahabir was owner of the property. Another counter-foil of a cheque in favour of Triloki Nath is for a sum of Rs. 1,732.50 and this refers to the period when Smt. Prabha and her three daughters were the owners. The defendant has further produced his Cash Book which is Exh,. A-10 to show that cheque was an accepted mode of payment of rent. It is true that after the property had been purchased by the present plaintiffs no tender of rent was made by cheque prior to 29-1-1966. The property was purchased by the plaintiffs on 1-11-1965. The demand for rent was made shortly thereafter by the notice dated 1-1-1966. Compliance to the demand was made by sending a cheque for Rs. 1,102.50 in the name of the four plaintiffs under a registered cover. The registered letter was however returned with an endorsement that it could not be delivered being in the name of four persons. Learned counsel for the respondent has produced Post and Telegraph Manual Vol. V, First Edition which contains Rule 117 to the following effect:

"Letters addressed to more than one person should be forwarded to destination. They may be delivered to any one of the persons whose names they bear, but should ordinarily be offered to them in the order in which the names appear on the cover. In the case of a registered letter, the receipt should be drawn out in the names of the addressees."

Learned counsel has informed me that this rule has not undergone any change so far. No contrary rule has been cited on behalf of the appellants, A registered letter addressed in the name of more than one person, should according to this rule be delivered to the addressee. The letter in the circumstances was wrongly returned. Whether it was at the instance of the plaintiffs appellants or on behalf of the post office the defendant was not to suffer on that account. The cheque in the circumstances was a normal postal remittance, which ought to have reached the addressee in due course. The question is whether it was a valid tender.

10. Section 3 of the U. P. Temporary Control of Rent and Eviction Act (hereinafter referred to as the Act) does not prescribe any particular mode of payment of rent. See Jagannath Prasad v. Smt.

Chandrawati, 1969 All LJ 881 = (AIR 1970 All 309) (PB). Any mode of payment permissible under law would thus be a valid mode for the purposes of Section 3 of the Act. That provision is intended to give a protection to the tenant to save his tenancy ,by tendering the arrears of rent within a month of the notice of demand. The provision has to be construed in a manner to advance the intention of the legislature and not to penalise the tenant. See Bhikha Lal v. Munna Lal, 1973 All LJ 236= (AIR 1973 All 128). A tenant is thus saved from ejectment if he remits rent in a manner permissible under law within a reasonable period of the notice of demand. He would not be liable to ejectment if it does not reach in time or has been returned to him. Sec. 3 is attracted only when a tenant is in default and not when the rent is in arrears. There is a clear distinction between a tenant being in arrears (of rent and being in arrears.) See Mst Indrasani v. Din Ali (1968 All WR (HC) 167) (FB). Thus if the defendant had bona fide remitted the rent by cheque and had believed that in the normal course it would reach the landlord he had discharged his part so for as Section 3 was concerned. Bhikha Lal v. Munna Lal, 1974 All LJ 470 = (AIR 1974 AH 366) (FB) it was held that where a tenant sends rent through money order within the time prescribed by the notice of demand, he would not be liable to ejectment even though the money order reaches the payee beyond the prescribed period. It was further held that the post office is an agent of the payee and in certain circumstances of both the payee and the remitter. In Mrs. Indrasani v. Din Ali (supra) it w,as held that a remittance once refused by the landlord did not oblige the tenant to send it afresh, and he could not be treated as in arrears for eviction for the period for which the remittance had been made. The Full Bench in this connection observed that there was a distinction between a tenant being in arrears of rent and the rent being in arrears. The observation was as follows:

"There is a clear distinction between a case in which a tenant is in arrears of rent and a case in which the rent is in arrears."

The defendant in this case sent the cheque for a sum of Rs. 1,102.50 in full satisfaction of the demand under a bona fide belief that remittance by cheque being one of the accepted modes of payment, the same would be acceptable to the plaintiffs in discharge of the liability. Particularly when the landlords were no other than the sons of Triloki Nath who had been accepting rent through cheques. The demand was made by a registered letter. The cheque consequently was also sent by registered post.

11. In Parasram v. Damadi Lal (1971 Ren CJ 117) (Madh. Pra.) it was held that in a developed society payment by cheque has become a more convenient mode of discharging one's obligation. In that case the arrears of rent were sent by cheque and the same was held a valid tender, R. J. Bhave, J. observed "It is no doubt true that issuance of a cheque does not operate as discharge of the obligation unless it is encashed, and it is treated as a conditional payment. Yet, in my view, this is a sufficient tender of arrears if the cheque is not dishonoured. In the present day society I am of the view, implied agreement should be inferred that if the payment is made by a cheque that payment of cheque would be accepted". In Commr. of Income-tax Bombay South, Bombay v. Ogale Glass Works Ltd., Ogale Wadi (AIR 1954 SC 429 at p. 432) it was observed :

"That a sum of money may be received in more ways than one cannot be doubted. It may be received by the transfer of coins or currency notes or a negotiable instrument which represents and produces

cash and is treated as such by businessmen."

Payment by cheque was thus held a valid mode of discharging one's liability. Sending the same through post was considered a normal mode of remittance.

12. In Bhikha Lal v. Munna Lal (supra) this Court held that there was no material difference or distinction between a payment by cheque and one made by money order. That was a case where payment was made by money order and the Full Bench on the strength of the authorities relating to payment by cheque came to the conclusion that a money order and a cheque stood at par so far as the discharge of a tenant's liability as regards the payment of rent was concerned. Learned counsel for the appellant urged that payment by cheque was a valid discharge only if there existed an agreement between the parties or there was a usage or custom to that effect. In the instant case it has already been seen that payment by cheque was a usual mode of payment between the defendant and the earlier landlords of the premises. This mode was an accepted mode, so far as those landlords were concerned. In Bhag-wan Devi Goel v. Shushila Rani (1961 All LJ 155) it was held that payment by cheque to constitute a valid tender, depended upon the custom of the locality and the previous practice between the parties. So far as the present plaintiffs are concerned the question of practice did not arise as the demand was made immediately after they became owners of the premises. This practice, however, had been clearly established as between the defendant and the earlier landlords. In Commr. of Income-tax, Bombay v. Ogale Glass Works Ltd. (supra) it was observed that the course of business, usage in general and the surrounding circumstances of a particular case determine the intention of the parties as regards discharge of liabilities .by ;payment by cheque. To the same effect are the observations in the Full Bench case of Bhikha Lal v. Munna Lal (1974 All LJ 470) = (AIR 1974 All 366). It has already been seen that the plaintiffs had been disbelieved when they stated that they had forbidden the defendant from sending cheques towards payment of rent. The plaintiffs had not restrained the defendant from doing so. The prevalent practice was to send it that way and the defendant could bona fide adhere to it until specifically forbidden to do so. The payment was thus bona fide made. It has to be noticed that on the return of the registered letter dated 29-1-1966 the defendant again sent another cheque for the same amount of Rupees 1,102.50 np. to the plaintiff appellants on 12-2-1966. The registered letter accompanying this remittance stated that since the "earlier letter had been returned a cheque was being sent again so that no liabilities may remain outstanding. The cheque along with the letter was received by the landlords but they returned the same on the ground that the tender was made beyond time. It is significant to note that in their letter dated 26-2-1966 returning the cheque the plaintiffs did not take any exception the tender being made by cheque or the cheque being drawn in favour of four persons. The only ground taken was that they had received it late. It can therefore be assumed that there w,as no objection to the tender being made by cheque. This fact further receives support from the allegations in the plaint, where the defendant was categorised a defaulter only on the ground of the cheque being sent -beyond time. The plaint again does not take any exception to the payment of rent by cheque. The defendant in the circumstances was fully justified in remitting the rent by cheque and until that mode was specifically forbidden the cheque was ,a valid tender towards payment of rent. Learned counsel for the appellant invited my attention to Mohan-lal v. Kanwar Sen (AIR 1954 All 480). In that case it was held that payment of rent by Bank draft was not a valid discharge of the liability unless there was an express or implied agreement to that effect between the

parties. The facts of that case are clearly distinguishable. Payment by bank draft was not a prevalent practice in that case, nor was there any agreement alleged to that effect. The plaintiff had on an earlier occasion clearly forbidden the defendant from sending a Bank Draft towards payment of rent and had directed him to send the same by money order.

After this specific direction it was not open to the defendant to send the rent by Bank Draft. In these circumstances the Bench took the view that remittance of rent by a Bank Draft was neither a valid tender nor a valid payment.

13. In the instant case, the plaintiffs had never forbidden the defendant from making payment by cheque. Mohan Lal's case thus does not help the plaintiffs, the remittance by cheque, in the circumstances, was a valid tender. The post office was an agent of the payee. The rent was sent on 29-1-1966 in the first instance, well within time. If the landlords did not accept or receive the same, the defendant was not to be penalised for it. He remitted the amount again by another cheque on 11-2-1966. His bona fides are clearly established. He could not be treated as a defaulter and ejected on that ground. The decree of the lower appellate court refusing ejectment has to be affirmed though on a different ground.

14. The cross-objection challenges the recovery of rent of the entire premises by the plaintiffs. According to the defendant they were entitled to a part of the rent only as the sale deed in their favour in respect of the interest of the minors, was invalid.

15. It has already been found that the defendant had accepted the plaintiffs as landlords of the entire premises v:de his letter dated 29-1-1966. The plaintiffs were accordingly entitled to recover the rent of the entire premises. The cross-objection thus has no force and is liable to be dismissed.

16. In the result the appeal and the cross-objection fail and are dismissed. But in the circumstances of the case I make no order as to costs.