Shri Rattan Lal

Vs

Shri Vardesh Chander and Others

Civil Appeal No. 1297 of 1975

Y. V. Chandrachud, V. R. Krishna Iyer, A. C. Gupta JJ)

09.12. 1975

JUDGMENT

KRISHNA IYER, J. -

1. This fifth deck appeal, by certificate under Article 133 of the Constitution, stems from a humdrum but protracted litigation under the rent control law by a tenant who has lost all along the way. If we may prologise, this special law hopefully set up a quasi-judicial machinery for summary trial and speedy disposal and proscribed eviction save upon simple grounds safeguarding the security of tenants, of buildings against being inequitably ejected. But this very case discloses the chronic distortion in processual justice, caused by a slow-motion spiral of appeals and plethora of technical pleas defeating the statutory design.

2. The obvious legislative policy and project in this class of simplistic landlord-tenant litigation demands a radically non-traditional judicial structuring and legal engineering, by-passing sophistications and formalisms and tier-upon-tier of judicial reviews. Both these imperatives are conspicuously absent in current rent control litigation - a dismal failure which the legislature will, we hope, awaken to rectify. Post-audit of socio-economic laws in action, with a view to oversee if legal institutions and jural postulates actually achieve legislatively mandated objectives in special class of dispute-processing, makes for competent and credible implementation of laws and saves the time of the higher courts and the money of the public at present consumed exasperatingly but avoidably. The price of legislative inaction in these areas is popular disenchantment with laws and tribunals.

Factual matrix

3. The appellant is the tenant of a building in Delhi having been inducted into possession by the respondent-landlord under a letting of May 19, 1954, evidenced by a deed which fixed the term merely as less than a year (a circumstance out of which a minor ripple of legal argument has arisen). At the time of the lease the Transfer of Property Act, 1882 (for short, the T.P. Act), had not been extended to Delhi although, later, on December 1, 1962, the said Act was made applicable to this area. The landlord had been receiving rent from the tenant until the time he filed a petition for eviction (1967), the statute which regulated the right to eviction being the Delhi Rent Control Act, 1958 (59 of 1958) (for short, the Rent Act). The eviction petition set out two grounds out of the many specified in Section 14 of the Rent Act, viz., unauthorised sub-letting of a portion of the premises and possession, by the tenant, of alternative accommodation. Both these grounds having been made out, the evictibility under the Rent Act became inevitable. But, in the High Court, the appellant-tenant fell back on certain defences grounded on Sections 106 and 111 of the T.P. Act on

the score that no notice to quit had been given, nor notice of forfeiture, as prescribed by those sections. There is no dispute that neither notice to quit nor notice of forfeiture determining the tenancy had been given by the landlord. The core of the controversy thus turns on the need to comply with the requirements of Sections 106 and/or 111 of the T.P. Act and the fatal effect of failure in this behalf. The landlord seeks to break through these defences by urging that the lease has expired by efflux of time limited thereby under Section 111(a) and no notice terminating the tenancy under Section 106 is needed and further that the forfeiture of the tenancy caused by subletting contrary to the terms of the deed of demise can be availed of by the landlord even in the absence of a notice as contemplated by Section 111(g) because the T.P. Act, as amended by the Amending Act of 1929, did not, in terms, apply to the present lease and the principles of justice, equity and good conscience, which alone applied, did not desiderate the technical requirement of a notice in writing of an intention to determine the lease.

4. The Rent Controller, at the floor level, ordered eviction and the appellate Tribunal affirmed it, upholding the vice of subletting without consent of the landlord in manner specified in Section 14(1)(b) as also the disability spelt out in Section 14(1)(h) on acquiring vacant possession of alternative residence. The resistance founded on the T.P. Act was also overruled by the appellate Tribunal. But, when the case reached the High Court in second appeal, under Section 39 of the Rent Act, the learned Single Judge felt that certain points of law spun out of the T.P. Act deserved consideration by a Division Bench and referred the appeal for determination accordingly to a larger Bench. The Division Bench which heard the appeal dismissed it but granted a certificate of fitness for appeal to the Supreme Court under Article 133 of the Constitution, restricting it, however, to but one ground urged before it. Shri A. K. Sen, for the appellant, made a gentle hint that the High Court had heard long arguments in March, 1974, but could resolve its doubts to deliver a judgment only in May 1975 so much so the freshness of Counsel's submissions might have faded somewhat and so we should have a closer look at his points de hors the judgment under appeal. If this fact of a long hiatus between hearing and decision were true, it must have inflicted a heavy strain on the memory of the learned Judges which it is a healthy practice to avoid. However, after listening to Shri A. K. Sen, we feel that his fears are unfounded.

5. A preliminary pre-emptive objection was urged by the respondent that the High Court having circumscribed the certificate to a single point no other submissions should be permitted. We see no force in this untenable insistence on tying down the appellant. Once a certificate of fitness has been granted under Article 133, the appeal, in all its amplitude, is before this Court and every point may be urged by the appellant provided this Court permits it, having regard to the circumstances. Perhaps, a certificate under Article 132, or special leave under Article 136 may stand on a different footing if the court limits the grounds in any manner. Of course, conceding the court's plenary power in appeals on certificate under Article 133, it is still within the court's discretion not to allow a new point to be taken up [The rulings in (1963) 2 SCR 440 (V. T. S. Chandrasekhara Mudaliar v. Kulandaivelu Mudaliar, AIR 1963 SC 185) and (1964) 2 SCR 933 (Addagada Raghavamma v. Addagada Chenchamma, AIR 1964 SC 136) lay down the law on this point].

The contentions

6. We have already indicated that, under the Rent Act two grounds for eviction have been made good by the landlord. Indisputably, sub-letting has been substantiated. Even so, it is argued that only where a lease has been duly determined giving rise to a right to present possession under the T.P. Act can the landlord sue for recovery of the building. The scheme of the rent control law, speaking generally, is to put further fetters on landlords seeking eviction from urban buildings where, in the

absence of such new barriers, they will be entitled to ejectment. The acute scarcity of accommodation is the raison d'etre of the law. It is not as if the rent control statutes are a bonanza for the landlords and confer a relaxed right to eject where, under the general law, they do not have such a right in presenti. To hold otherwise is to pervert the purpose and substitute an added danger for an extra dyke. It follows that even where under a [particular rent control statute the landlord makes out grounds for eviction, he can institute proceedings in this behalf only if de hors the said grounds he has cause of action under the T.P. Act.

7. We agree that if the rent control legislation specifically provides grounds for eviction in supersession, not in supplementation, of what is contained in the T.P. Act, the situation may conceivably be different. But, in the Delhi Rent Act, as in many other like statutes, what is intended to be done is not to supplant but to supplement, not to eliminate the statutory requirements of determination of tenancy but to superimpose a ban on eviction which otherwise may be available in conformity with the T.P. Act without fulfilment of additional grounds.

No order . . . for the recovery of possession of any premises shall be made . . . in favour of the landlord against a tenant

is a blanket ban in Section 14(1) of the Rent Act. It is followed by enumeration of specific grounds proof of which may authorize the Controller to make an order for the recovery of possession of the premises. It follows that before a landlord can institute proceedings for recovery of possession, he has to make out his right (a) under the T.P. Act; and (b) under the Rent Act.

8. In Manujendra Dutt (Manujendra Dutt v. Purendu Prosad Roy Chowdhury, (1967) 1 SCR 475 : AIR 1967 SC 1419) this Court considered the question elaborately and observed :

The Thika Tenancy Act like similar Rent Acts passed in different States is intended to prevent indiscriminate eviction of tenants and is intended to be a protective statute to safeguard security of possession of tenants and therefore should be construed in the light of its being a social legislation. What Section 3 therefore does is to provide that even where a landlord has terminated the contractual tenancy by a proper notice such landlord can succeed in evicting his tenant provide that he falls under one or more of the clauses of that section. The word 'notwithstanding' in Section 3 on a true construction therefore means that even where the contractual tenancy is properly terminated, notwithstanding the landlord's right to possession under the Transfer of Property Act or the contract of lease he cannot evict the tenant unless he satisfied any one of the grounds set out in Section 3. Rent Acts are not ordinarily intended to interfere with contractual leases and are Acts for the protection of tenants and are consequently restrictive and not enabling, conferring no new rights of action but restricting the existing either under the contract or under the general law.

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The right to hold over, that is, the right of irremovability, thus is a right which comes into existence after the expiration of the lease and until the lease is terminated or expires by efflux of time the tenant need not seek protection under the Rent Act. For, he is protected by his lease in breach of which he cannot be evicted. (See Maghji Lakshamshi and Bros. v. Furniture Workshop (1954 AC 80, 90)) In Abasbhai v. Gulamnabi (AIR 1964 SC 1341 : (1964) 5 SCR 157), this Court clearly stated that the Rent Act did not give a right to the landlord to evict a contractual tenant without first determining the contractual tenancy. In Mangilal v. Sugam Chand (AIR 1965 SC 101 : (1964) 5 SCR 239) while construing Section 4 of the Madhya Pradesh Accommodation Control Act (XXIII if

1965), a section similar to Section 3 of the present Act, this Court held that the provisions of Section 4 of that Act were in addition to those of the Transfer of Property Act and therefore before a tenant could be evicted by a landlord, he must comply with both the provisions of Section 106 of the Transfer of Property Act and those of Section 4. The Court further observed that notice under Section 106 was essential to bring to an end the relationship of landlord and tenant and unless that relationship was validly terminated by giving a proper notice under Section 106 of the Transfer of Property Act, the landlord could not get the right to obtain possession of the premises by evicting the tenant. (See also Haji Mohammad v. Rebati Bhushan (53 CWN 859))

We are inclined to hold that the landlord in the present case cannot secure an order for eviction without first establishing that he has validly determined the lease under the T.P. Act.

9. We are therefore thrown back to an examination of the argument pressed by the appellant-tenant that independently of the rent control law, the respondent has no subsisting cause of action. The contention is two-fold. Firstly, the lease is one where the time is not limited and therefore Section 111(a) will not apply and is terminable on the part of the lessor only in the manner provided by Section 106, i.e., by 15 days' notice expiring with the end of the month of the tenancy. Admittedly, no such notice was given. The Counter-contention of the landlord, apart from the plea of statutory tenancy requiring no further notice to determine, is that the lease is for a specified period even though it expresses itself as for a term less than one year and under Section 111(a) has expired by efflux of time. We cannot agree to this feebly asserted argument. A lease merely stating that it is for a period less than one year is ex facie for an indefinite period and, as such, cannot expire by efflux of time. Nor are we convinced that, notwithstanding the acceptance of rent for the period of 11 years the landlord had not assented to the holding over of the tenancy and that what emerged was a statutory tenancy which did not require notice in law for valid determination. Possibly so, not necessarily. However, we need not explore this aspect further in the view that we take of the other submission of the landlord that the lease has been determined by forfeiture, not in term of Section 111(g) of the T.P. Act, but on the application of the principles of justice, equity and good conscience. We will examine this latter contention in some detail, as it is decisive of the fate of the case.

10. The Rent Act contemplates no elaborate pleadings but filling out of p particulars in a proforma which takes the place of a plaint. No specific averment of forfeiture and consequent determination of the lease is found in the petition. Having regard to the comparative informality of these proceedings and the quasi-judicial nature of the whole process, such an omission cannot be exaggerated into a lethal infirmity. What is perhaps more pertinent is that the petitioner was innocent of the plea of forfeiture throughout the stages of the trial before the Rent Controller. When the case reached the appellate stage, it was specifically urged that the tenancy 'stood terminated by forfeiture under Section 111(g) of the T.P. Act'. The tribunal studied the terms of the rent deed, Exhibit AW 3/1 and held that there was an express condition against subletting and a provision that on breach thereof the lessor had the right to move for eviction - something equivalent to a right to re-enter. The tenant remonstrated against this new plea being permitted in appeal but the Court construed the statement in the proforma in Column 18-B, that no notice is necessary, to mean that there was a determination by forfeiture even without the issuance of a notice. Moreover, the Court noticed the fact that the question was only one of law and should be permitted in the interest of justice. After some consideration of the issue the tribunal reached the result 'that the tenancy stood determined by forfeiture and therefore no notice was required. We need not tarry further on the tenability of this conclusion since the matter has been more fully examined at the High Court level.

11. Arguments before us have proceeded on the footing that a sub-tenancy has been created and this amounts to a breach of condition with a provision for re-entry. The tribunal in appeal held that no notice was necessary since the lease was created prior to the extension of the T.P. Act to Delhi. Although there is some confusion in this order about the determination of the lease being under Section 111(g) or outside it, the thrust of the holding is found in these concluding words :

However, as held by the Supreme Court in Namdeo Lokman Lodhi v. Narmadabai (AIR 1953 SC 228 : 1953 SCR 1009) the provisions in Section 111(g) as to notice in writing as a preliminary to a suit for ejectment based on forfeiture of a lease is not based on the principles of justice, equity or good conscience and would not govern the leases made prior to the coming into force of the T.P. Act or to a lease executed prior to the coming into force of the T.P. Act. The lease in question was admittedly created before December 1, 1962 and, therefore, the requirement of the notice in writing could not be insisted upon.

In short, the clincher was 'justice, equity and good conscience'.

12. The critical phase of the case thus beckons us, the last court of law and justice, to the final valley of the forensic battle. Does the T.P. Act apply to a lease executed prior to the extension of that Act to the area, even though the event that determines the tenancy viz., forfeiture, occurs after such extension ? Secondly, if the T.P. Act does not apply proprio vigore to such demises and their determination, can the principles of justice, equity and good conscience be invoked to transplant the twin rules in Section 111(g) of the said Act ? Thirdly, - and this is the crux of the matter - if such transfusion is permissible, is the synergetic operation of breach of a condition of the lease providing for re-entry and a written notice of forfeiture on that score obligatory in terms of Section 111(g) or can written notice of forfeiture be dispensed with as being no part of equity or justice but a technical or formal statutory requirement ? What, in short, is the status of the formula of justice, equity and good conscience, in the legal pharmacopoeia of India ?

13. Shri A. K. Sen urges that the procedural interdict against raising the objection based on Section 111(g) is of no consequence. While the law goes to the root of the case and is perfectly plain and the facts indubitably manifest on the record, the refusal to examine and uphold the objection, if valid, is to surrender the judicial function of doing justice according to law at the illegitimate altar of technical inhibition. Moreover, he argues, the plea based on Section 111(g) in some form or other, is writ large in the tribunal's order and the High Court's judgment. New nuances and clearer focus may be allowed where the point of law has been broadly touched upon. Face to face with the issue of forfeiture under Section 111(g), the appellant presses the position that since admittedly no notice in writing, as laid down in the section, has been issued, the eviction proceeding can be shot down be that legal missile alone.

14. Before the amending Act of 1929, all that was necessary for the lessor to determine the demise on forfeiture was to do 'some act showing his intention to determine the lease.' The rule of English law before the enactment of the Law of Property Act, 1925 appears to be that a suit for ejectment is equivalent to a re-entry. It has been held in India that an act showing the lessor's intention to determine the lease can take the form of the institution of an action in ejectment. The statutory law, as it now stands, however is that the happening of any of the events specified in Section 111(g) does not, ipso facto, extinguish the lease but only exposes the lessee to the risk of forfeiture and clothes the lessor with the right, if he so chooses, to determine the lease, by giving notice in that behalf. Mulla states the law correctly thus :

> Forfeiture of lease requires the operation of two factors : (1) A breach by the lessee of an express condition of the lease which provides for re-entry on such breach, and (2) a notice by the lessor expressing his intention to determine the lease. (Mulla on T.P. Act, pp. 746-747, 6th Ed.)

The notice has to be in writing. In Namdeo Lokman Lodhi (Namdeo Lokman Lodhi v. Narmadabai, 1953 SCR 1009, 1015 : AIR 1953 SC 228) this Court laid down the law to the same effect. Mahajan, J. observed :

> Section 111(g) in terms makes the further act an integral condition of the forfeiture. In other words, without this act there is no completed forfeiture at all. Under the old section an overt act evidencing the requisite intention was essential. As the law stands today, under the Act notice in writing by the landlord is a condition precedent to a forfeiture and the right of re-entry.

It cannot be gainsaid that a notice, as envisioned in Section 111(g) not having been given to the lessee in the present case, determination of the demise under Section 111(g) cannot be claimed by the lessor. Thus, if the fortune of the landlord were to turn on the application of the T.P. Act as it stands now, the ejectment proceeding must be rebuffed.

15. Counsel for the respondent seeks to sustain his case on the submission that the T.P. Act does not apply to the lease in question and therefore a forfeiture giving rise to a determination of the lease follows upon breach of a condition in the lease, to wit, sublease of a portion of the building, plus an act indicative of the landlord's intention to terminate the tenancy. According to Counsel, in the absence of a specific statuary provision, the rules of justice, equity and good conscience govern the situation and this element is amply fulfilled by the filing of the eviction petition itself. We are, therefore, called upon to consider whether the provisions of the T.P. Act apply to the lease of 1952 executed in Delhi and, secondly, if it does not, whether its present provision, as amended in 1929, has to be treated as a rule of justice, equity and good conscience, or the mere institution of legal proceedings for ejectment would be tantamount to an act evidencing the intention of the lessor to avail himself of the forfeiture clause and sufficient to satisfy justice, equity and good conscience.

16. A little legal history helps to appreciate this part of the controversy. The T.P. Act came into force on July 1, 1882; but it extended in the first instance to the whole of India except certain saved territories including Delhi. It was actually extended to Delhi only in 1962. Section 2(c) of the Act provides that

nothing herein contained shall be deemed to affect any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability.

There is some dispute as to what 'nothing herein contained' connotes. Shri A. K. Sen submitted that the Act had come into force as early as 1882 and while transactions created before that date (July 1, 1882) would not be affected by its provisions, subsequent transaction would be governed by that Act even though they may have been executed before the extension of the Act to a particular area. His brief contention was, to start with, that even if the Act was extended to Delhi in 1962, once it was so extended the whole Act came into force in its totality in that area and only those transactions which were expressly saved by Section 2 viz., 'legal relations constituted before this Act comes into force' escaped from its operation. So much so the present lease being of 1954 would be covered by

Section 111(g). Our attention was drawn by his to Section 63 of the amending Act in this connection.

17. Shri Chitaley, for the respondent, countered this intention by another extreme stand. According to him, the Act came into force in Delhi only when it was extended to that place, viz., in 1962. Therefore, transactions prior to that date swam out of its operation altogether. A third possibility, a sort of via media or golden mean, also came up for consideration as a close-up of the relevant provisions was taken. This view was that while transactions which came into existence in an area before the Act was extended to that area, would be tested for their validity by the law extant when the transaction was entered into, the remedies and other incidents would be conditioned by the T.P. Act if it had been extended to the area when the remedy was sought to be enforced. Shri Chitaley wanted us to accept Namdeo (supra) as an authority for his proposition and relied on certain passages therein. The problem presented before us cannot be disposed of in an easy fashion and deserves serious examination. In the present case we are relieved of that obligation for the weighty reason that the appellant has all along staked his case on the application of the rules of justice, equity and good conscience and not on the textual rigour of Section 111(g) applied proprio vigore.

18. We have already indicated that although this question was not canvassed before the trial Court, the appellate tribunal did consider it as a point of law. In doing so, the learned tribunal applied what he considered to be the principles of justice, equity and good conscience and dispensed with the drastic insistence on notice in writing. In the High Court, the position taken up by the appellant tribunal did not disturb the application of justice, equity and good conscience. On the contrary, the Division Bench emphatically asserted that the appellant never disputed this proposition. Indeed, both in regard to notice to quit and notice of forfeiture, the appellant accepted the application, not of the T.P. Act as such, but of the rules of justice, equity and good conscience. We may as well excerpt the relevant statement in the judgment of the High Court :

In the present case, the provisions of the T.P. Act had not been extended to Delhi during the material period and these provisions would, therefore, not be applicable to the tenancy in question. It was not disputed before us that in view of this only such of the principles embodied in the provisions of Sections 106 and 111 of the T.P. Act would regulate the matter as could be held to be consistent with the rules of equity, justice and good conscience. It was also not disputed before us that even though the provisions of Section 106 of the T.P. Act laying down the manner in which a tenancy may be terminated are technical in character, is that they require such termination "by fifteen days' notice expiring with the end of the month of the tenancy" it would be consistent with the requirements of equity, justice and good conscience that a tenant has reasonable notice of termination even though it does not expire with the end of the month of a tenancy. It was also not disputed that in the present case, no notice whatever was sent to the tenant of the application for eviction when the notice was sought to be justified on the ground that no such notice was necessary because the tenancy stood determined either by efflux of time limited thereby in terms of the principle embodied in Section 111(a) of the T.P. Act or by forfeiture following the breach by the tenant of the express condition regarding sub-letting in terms of the principles embodied in Section 111(g) of the said Act.

19. If the appellant's case was that the T.P. Act applied of its own force, he would have urged so in the High Court, especially because the appellate Tribunal had dealt an eviction blow on his by applying the rules of justice, equity and good conscience. Moreover, the categorical statement in the judgment of the High Court confirms the view that the appellant stuck to his stance of justice, equity and good conscience. Nay, more. Even in the grounds of appeal to this Court, he has only harped on justice, equity and good conscience and invoked Section 111(g) as embodying equity and good

conscience. For the first time he has, by a volte face, switched to the T.P. Act as against the rules of justice, equity and god conscience. It is too late in the day to set up a new case like that. There are many reasons why. Even though we have power to permit a new plea, we should not exercise it here. We decline our discretion to allow the appellant to travel into the new statutory territory of Section 111(g). He has to stand or fall by his submission that justice, equity and good conscience is the alter ego of Section 111(g) of the T.P. Act in its dual requirements of (a) the breach of a condition providing for re-entry and (b) notice in writing to the lessee of an intention to determine the lease.

20. Once we assume the inapplicability of the T.P. Act to the lease in question - an assertion of the respondent which we do not feel compelled to consider in this appeal - we are confronted by the concept of justice, equity and good conscience which, admittedly, comes into play in the absence of any specific legislative provision. In India and in other colonies during the Imperial era a tacit assumption had persuaded the courts to embrace English law (the civilizing mission of the masters) as justice, equity and good conscience. Throughout the Empire, in Asia and Africa, there was an inarticulate premise that English law was a blessing for the subject peoples. Robert M. Seidman writes about Sudan :

The courts were simply directed to decide cases on the basis of 'justice, equity and good conscience' [Civil Justice Ordinance, 1929 Ch 9, 10 Laws of the Sudan 13 (1955)]. However, the judges were all English law (sic); and with magnificent insularity it developed that 'justice, equity and good conscience' meant not merely English common law but English statutory law as well. The author has been told by an English barrister who tried a case in the Sudan some years ago that he was amazed to discover that 'justice, equity and good conscience' meant in this case the English Sales of Goods Act, 1862. (Law and Economic Development in Independent, English-Speaking, Sub-Saharan Africa - Wisconsin Law Review Vol. 1966, Number 4, Fall.)

The Judicial Committee of the Privy Council struck a similar note in Maharaja of Jeypore v. Rukmani Pattamahadevi (AIR 1919 PC 1 : 46 IA 109) where Lord Phillimore stated :

They are directed by the several charters to proceed where the law is silent, in accordance with justice, equity, and good conscience, and the rules of English law as to forfeiture of tenancy may be held and have been held to be consonant with these principles and to be applicable to India.

21. Unfortunately, even after liberation, many former colonies, including India, did not shake off this neo-colonial jurisprudence (See AIR 1950 Bom 123 (Namdeo Lokman Lodhi v. Narmadabai, 51 Bom LR 987 : ILR 1949 Bom 883)). This is the genesis of the idea that Indian 'good conscience' is English common law during the reign of Empress Victoria. The imperatives of Independence and the jural postulates based on the new value system of a developing country must break off from the borrowed law of England received sweetly as 'justice, equity and good conscience'. We have to part company with the precedents of the British-Indian period tying our non-statutory area of law to vintage English law christening it 'justice, equity and good conscience'. After all, conscience is the finer texture of norms woven from the ethos and lifestyle of a community and since British and Indian ways of life vary so much that the validity of an anglo-philic bias in Bharat's justice, equity and good conscience is questionable today. The great value that bind law to life spell out the text of justice, equity and good conscience and Cardozo has crystallised the concept thus :

Life casts the mould of conduct which will some day become fixed as law.

Free India has to find its conscience in our rugged realities and no more in alien legal thought. In a larger sense, the insignia of creativity in law, as in life, is freedom from subtle alien bondage, not a silent spring nor hothouse flower.

22. So viewed, the basic question is : What is the essence of equity in the matter of determining a lease on the ground of forfeiture caused by the breach of a condition ? Can any technical formality be exalted into a rule of equity or should a sense of realism, read with justice, inform this legal mandate ? If Law and Justice - in the Indian context - must speak to each other, statutory technicality such as 'notice in writing' prescribed in Section 111(g) of the T.P. Act cannot be called a rule of equity. It is no more than a legal form binding on those transactions which are covered by the law by its own force. The substance of the matter - the justice of the situation - is whether a condition in the lease has been breached and whether the lessor has, by some overt act, brought home to the lessee his election to eject on the strength of the said breach.

23. This Court, in Namdeo (supra) has examined the rule of justice, equity and good conscience. It observe at p. 1015 :

> It is axiomatic that the courts must apply the principles of justice, equity and good conscience to transactions which come up before them for determination even though the statutory provisions of the Transfer of Property Act are not made applicable to these transactions. It follows therefore that the provisions of the Act which are but a statutory recognition of the rules of justice, equity and good conscience also govern those transfers. If, therefore, we are satisfied that the particular principle to which the legislature has now given effect by the amendment to Section 111(g) did in fact represent a principle of justice, equity and good conscience, undoubtedly the case will have to be decided in accordance with the rule laid down in the section, although in express terms it has not been made applicable to leases executed prior to the Transfer of Property Act coming into force.

The main point for consideration thus is whether the particular provision introduced in sub-section (g) of Section 111 of the Transfer of Property Act in 1929 is but a statutory recognition of a principle of justice, equity and good conscience, or whether it is merely a procedural and technical rule introduced in the section by the legislature and is not based on any well-established principle of equity. The High Court held, and we think rightly, that this provision in sub-section (g) of Section 111 in regard to notice was not based upon any principle of justice, equity and good conscience. In the first instance it may be observed that it is erroneous to suppose that every provision in the Transfer of Property Act and every amendment effected is necessarily based on principles of justice, equity and good conscience. It has to be seen in every case whether the particular provisions of the Act relied upon restates a known rule of equity or whether it is merely a new rule laid down by the legislature without reference to any rule of equity and what is the true nature and character of the rule. Now, so far as Section 111(g) of the Act is concerned, the insistence therein that the notice should be given in writing is intrinsic evidence of the fact that the formality is merely statutory and it cannot trace its origin to any rule of equity. Equity does not concern itself with mere forms or modes of procedure. If the purpose of the rule as to notice is to indicate the intention of the lessor to determine the lease and to avail himself of the tenant's breach of covenant it could, as effectively, be achieved by an oral intimation as by a written one without in any way disturbing the mind of the chancery judge. The requirement as to written notice in the section therefore cannot be said to be based in any general rule of equity. That it is not so is apparent from the circumstance that the requirement of a notice in writing to complete a forfeiture has been dispensed with by the legislature

in respect to leases executed before April 1, 1930. Those leases are still governed by the unamended sub-section (g) of Section 111. All that was required by that sub-section was that the lessor was to show his intention to determine the lease by some act indicating that intention. The principles of justice, equity and good conscience are not such a variable commodity, that they change and stand altered on a particular date on the mandate of the legislature and that to leases made between 1882 and 1930 the principle of equity applicable is the one contained in sub-section (g) as it stood before 1929, and to leases executed after April 1, 1930, the principle of equity is the one stated in the sub-section as it now stands. Question may also be posed whether according to English law a notice is a necessary requisite to complete a forfeiture.

24. Of course, in that case, Mahajan, J. has dealt at length on the English law of landlord and tenant and the discussion is partially suggestive of the English law of real property being a good guide to the Indian judge's good conscience. But the ratio is clear that processual technicalities and even substantive formalities cannot masquerade as justice and equity. The touchstone is simply whether the formal requirement of the law is part of what is necessarily just and reasonable. In this perspective, the conclusion is clear that a notice in writing formally determining the tenancy is not a rule of justice or canon of commonsense. Realism, married to equity, being the true test, we are persuaded that the pre-amending Act provision of Section 111(g) is in consonance with justice. If so, the mere institution of the legal proceeding for eviction fulfills the requirement of law for determination of the lease. The conscience of the Court needs nothing more and nothing else. The rule in Namdeo (supra) settles the law correctly.

25. Reference was made at the Bar to the ruling in Mohd. Amir (Raja Mohd. Amir Ahmad Khan v. Municipal Board of Sitapur, AIR 1965 SC 1923 : (1966) 1 SCJ 484). To understand that decision we have to make a distinction between the principles embodied in Section 111(g) and the provisions thereof. Not all the stipulations and prescriptions in the section can be called the principles behind it. In this light there is no contradiction between the two cases of this Court - the earlier one of Namdeo (supra) and the later Mohd. Amir (supra). We are satisfied that the situation in the present case is squarely covered by the earlier ruling. The High Court is right in its view.

26. It is a fitting finale to this part of the argument that in the High Court arguments proceeded on the footing that the Supreme Court has ruled in Namdeo (supra) that

there being no requirement in English law of a written notice to the lessee of the intention of the lessor to determine the lease on forfeiture, the provision of a notice would not be considered as being consistent with the rules of equity, justice and good conscience.

We have already made our comments on the anglophonic approach and do not wish to reiterate them here. However, there are certain pregnant observations in the judgment under appeal pertinent to the present discussion. Observed the High Court :

In the case of Namdeo Lokman Lodhi the Supreme Court was directly concerned with the question of the requirement of written notice engrafted into the clause (g) by the amendment of 1929 was of a technical nature or could be said to be consistent with the English rule regarding forfeiture and therefore, in consonance with the principles of justice, equity and good conscience and the question was clearly answered in the negative.

The irrelevance of the English law as such to notions of good conscience in India notwithstanding, we agree that a written notice is no part of equity. The essential principles, not the technical rules, of

the T.P. Act form part of justice, equity and good conscience. The conclusion emerges that the landlord's termination of the tenancy in this case is good even without a written notice.

27. Many other niceties of law were presented to us by Shri A. K. Sen to extricate the tenant from eviction. They are too unsubstantial and intricate for us to be deflected from the sure and concurrent findings, read in the background of an alternative accommodation being available to the tenant.

28. We dismiss the appeal but direct that this order for eviction shall be executed only on or after March 1, 1976. The overall circumstances justify a direction that the parties do bear their costs throughout.

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