Harcharan Singh

Vs

Smt. Shivrani and Others

Civil Appeal No. 1402 of 1979

(V.D. Tulzapurkar, D.A. Desai, A.P. Sen JJ)

20.02.1981

JUDGMENT

TULZAPURKAR, J. (for himself and A. P. Sen, J.) -

1. This is a tenants appeal by special leave directed against the judgment and decree passed by the Allahabad High Court on February 16, 1979 in Second Appeal 430 of 1970 whereby the High Court decreed the Respondent (landlords) suit for ejectment against the appellant (tenant) and the only question of substance raised in the appeal is whether when the landlords notice demanding areas and seeking eviction is sent by registered post and is refused by the tenants upon his failure to comply with the notice the tenant could be said to have committed willful default in payment of rent?

2. The question arises in these circumstances : The appellant occupied shop No. 5 in Ivanhoe Estate, situated at Landure Cantonment, Mussoorie, originally owned by one Parvij Waris Rasool, on an yearly rental of Rs. 250 payable by December 31, every year. The property at all material times was admitted governed by the U. P. Cantonments (Control of the Rent and Eviction) Act 10 of 1952 - a Central Act and, in my view, all the courts below rightly dealt with the matter as being governed by that Act and not by U. P. (Temporary) Control of Rent and Eviction Act, 1947 much less by the later U. P. (Rent and Eviction) Act, 1972. The respondents purchased the aforesaid estate from its previous owner on November 27, 1964 and the previous owner attorned the tenancy of the appellant to the respondents along with the rental due from him for the year 1964. The appellant continued to be the tenant of the shop during the yeas 1965 and 1966 as well but since he did not pay the rent the respondents on November 9, 1966 gave a combined notice demanding payment of arrears and seeking ejectment on termination of tenancy which was refused by him on November 10, 1966. On his failure to comply with the requisitions contained in the notice the respondents filed a suit against the appellant seeking eviction as well as recovery of rents and mesne profits.

3. The suit was resisted by the appellant, inter alia, on the ground that the rent of the accommodation payable to the previous owner was Rs. 250 the per annum less 10 per cent rebate on account of repairs : that in 1964 at the intervention of some common friends he agreed to vacate and did surrender the residential portion of the shop comprising two rooms, one kitchen, one bathroom and one verandah at the back of the shop in consideration of respondents relinquishing the rental of Rs. 250 due from him for the years 1964 that for the years 1965 and 1966 the rental for the remaining shop was reduced by agreement to Rs. 50 per annum less rebate for repairs and that he had sent a cheque for the amount due to the respondents. He denied that he had committed default in payment of rents and averred that that no notice of demand and ejectment was served on him and consequently prayed for dismissal of the suit.

4. On an appreciation of the evidence led by the parties before it the trial court came to the conclusion that initially the rent fixed was Rs. 250 per year but after the respondents purchase of the property the appellant vacated the residential portion of the shop under an agreement arrived at between the parties whereunder there was relinquishment of rent due for 1964 and that the rent for the main shop was fixed at Rs. 100 per annum and that no rebate of any kind had been agreed to at any time on account of repairs. Regarding the areas of rent outstanding against the appellate the trial Court held that rent for the years 1965 and 1966 had not been paid and was due from him but it held that the notice dated November 9, 1966 was not served on the appellant and hence he could not be held to have committed willful default in payment of arrears of rent. In this view of the matter the trial Court dismissed the suit insofar as the relief of eviction was concerned but decreed it for arrears of rent at the rate of Rs. 100 per annum. Aggrieved by that judgment and decree the respondent filed an appeal to the District Court, Dehra Dun. The learned District Judge concurred with the findings of the trial Court that the rental for the year 1964 had been relinquished and that the rental of the front portion of the shop had been fixed at Rs. 100 per annum. He further held that the notice was tendered to the appellant on November 10, 1966 but he declined to accept it and hence there was service by refusal, but in his opinion despite such service it could not be presumed that the appellant had knowledge about the contents of that notice and consequently he could not be said to have committed any willful default in the payment of rent. In the result the appeal was dismissed. The respondents preferred Second Appeal 430 of 1970 to the High Court. In that appeal the tenant sought to reagitate the question whether or not the notice was tendered to him and was refused by him on the ground that the finding had been recorded by the District Court without application of mind to the statement on oath made by him to the effect that no postman had everyone to him with a registered letter either on November 9 or 10, 1966 and he had not declined to receive any registered letter but the High Court refused to entertain the contention inasmuch as it found that the learned District Judge had referred to this part of the appellant's evidence as also the postman's evidence on the point and that on an appreciation of such rival evidence on record he had recorded a finding that the notice was tendered to the appellant but it was refused by him; in other words in the absence of animus being attributed to the postmen the District Judge had preferred the postman's evidence to that of the appellants. The High Court therefore accepted the finding of fact recorded by the District the further question as to whether when such refusal had been established, the appellant could be imputed with the knowledge of the contents of the notice, the High Court, following its two previous decision sin Shri Nath. v. Saraswati Devi Jaiswal and Fanni Lal v. Chironja, held that when notice was tendered to the tenant and when the latter refused to accept the same, knowledge of the contends of the notice must be imputed to him. The District Judges view in this behalf was thus reversed and since there was failure on the part of the appellant to pay the rent within one month of the service of notice upon him, the High Court held that he had committed willful default within the meaning of Section 14(a) of the Act. Accordingly the High Court allowed the appeal and the respondents prayer for ejectment was granted but the appellant was given three months time to vacate the accommodation. The tenant has come up in appeal to this Court.

5. Counsel for the appellant vehemently contended before us that the High Court was in error in taking the view that when service by refusal had been effect the tenant must be deemed to have knowledge but the contents of the notice, for not such presumption could be drawn especially when it was clear on evidence that neither the registered envelope was open either by the tenant or by the postman nor the contents thereof read before the same was returned to the postman. He further urged that the envelop bore the seal of Shri S. P. Singh Advocate and the appellant could not, therefore know that the notice was from his landlords; he also pointed out that the appellant was illiterate and did not know English and Since the address on the envelope as well as the seal of the

lawyer were in English the appellant could not even know who the sender of the notice was. Counsel therefore, urged that in the peculiar circumstances of the case the learned District judge had rightly recorded a finding that the knowledge of the contents of the notice could not be imputed to the appellant and therefore the appellant could not be regarded as a willful defaulter in the matter of payment of rent. In support of this contention strong reliance was placed by him on the decision of the Bombay High Court in the case of Vaman Vithal Kulkarni v. Khanderao Ram Rao Sholapurkar where the following observations of Beaumont, C. J. appear at page 251 :

> In the case of defendant 4 and 5 a registered letter containing the notice was sent to them duly addressed, and service is alleged to have been refused. In fact the refusal was not proved, as the postmen who took the letter and brought it back was not called. But in any case, even if the refusal had been proved, I should not be prepared to hold that a registered letter tendered to the addressee and refused and brought back unopened, was well served. There are, I know, some authorities in this Court to the contrary, but it seems to me impossible to say that a letter has been served so as to bring the contents to the notice of the person to whom the letter is addressed, if the agent for service states that in fact the notice was to reserved, although the reason may have been that the addressee declined to accept it. One cannot assume that because an addressee declines to accept a particular sealed envelope he had guessed correctly as to its contents.

Counsel also referred to some other decisions including that of the Andhra Pradesh High Court in Mahboob Bi v. Alvala Lachmiah but these other decisions do not touch the aforesaid aspect of visiting the addressee with the knowledge of the contents of the refused notice but have expressed the view that mere refusal of registered notice without more may not amount to proper service and hence it is unnecessary to consider them. But placing strong reliance upon the observations of Chief Justice Beaumont quoted above the finding of the learned District Judge that the appellant could not be presumed to have known the contends of the notice or that the notice was one demanding arrears of rent simply because he refused to accept the same.

6. On the other hand, counsel for the respondents contended before us that both under Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act presumption of due service could arise if the notice was sent to the tenant by properly addressing the same, prepaying and sending the same by registered post and it was pointed out that in the instant case as against the denial by the appellant there was positive oath of postman (Kund Ram PW 2) who was examined by the respondents to prove the fact that the registered letter containing the notice was tendered to the appellant and when he declined to accept it the postmen had made endorsement in his hand on the envelope "Refused. Returned to the sender". Counsel, therefore, urged that in view of such positive evidence of postmen led by the respondents which had been accepted by the learned District Judge, the High Court was justified in holding that the appellant must be imputed with the knowledge of the contents of the notice. In this behalf counsel for the respondents placed reliance on the Privy Council decision in Harihar Banerji v. Ramshashi Roy and Madras decision in Kodali Bapayya v. Yadavalli Venkataratnam and the two decision of the Allahabad High Court relied upon by the High Court. Counsel pointed out that the Madras High Court in Kodali Bapayya case and the Allahabad High Court in its Full Bench decision in Ganga Ram v. Phulwati have dealt with the Bombay decision and have expressed their disagreement with the view expressed therein.

7. Section 27 of the General Clauses Act, 1897 deals with the topic - 'Meaning of service by post ' and says that where any Central Act or Regulation authorises or requires any document to be served

by post, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting it by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The section thus raises a presumption of due service or proper service if the document sought to be served is sent by properly addressing prepaying and document sought to be served is sent by properly addressing prepaying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgment due is received from the addressee or not. It is obvious that when the section raises the presumption that the service shall be deemed to have been effect it means the addressee to whom the communication is sent must be taken to have known the contents of the document sought to be served upon him without anything more. Similar presumption is raised under illustration (f) to Section 114 of the Indian Evidence Act whereunder it is stated that the court may presume that the common course of business has been followed in a particular case, that is to say, when a letter is sent by post by prepaying and properly addressing it the same has been received by the addressee. Undoubtedly, the presumptions both under Section 27 of the General Clauses Act as well as under Section 114 of the Evidence Act are rebuttable but in the absence of proof to the contrary the presumption of proper service or effective service on the addressee would arise. In the instant case, additionally, there was positive evidence of the postman to the effect that the registered envelope was actually tendered by him to the appellant on November 10, 1966 but the appellant refused to accept. In other words, there was due service effected upon the appellant by refusal. In such circumstances, we are clearly of the view, that the High Court was right in coming to the Conclusion that the appellant must be imputed with the Knowledge of the contents of the notice which he refused to accept. It is impossible to accept the contention that when factually there was refusal to accept the notice on the part of the appellant he could not be visited with the knowledge of the contents of the registered notice because, in our view the presumption raised under Section 27 of the General Clause Act as well as under Section 114 of the Indian Evidence Act is one of proper or effective service which must mean service of everything that is contained in the notice. It is impossible to countenance the suggestion that before knowledge of the contents of the notice could be imputed the sealed envelope must be opened and read by the addressee or when the addressee happens to be an illiterate person the contends should be read over to him by the postman or someone else. Such things do not occur when the addressee is determined to decline to accept the sealed envelop. It would, therefore, be reasonable to hold that when service is effect by refusal of a postal communication the addressee must be imputed with the knowledge of the contents thereof and, in our view, this follows upon the presumptions that are raised under Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act.

8. Turning to the Bombay decision in Vaman Vithal case, we would like point out two aspects that emerge clearly from the very observations which have been strongly relied upon by counsel for the appellant. In the first place, the observations clearly show that the refusal to aspect the notice was not satisfactorily proved in the case inasmuch as the postmen who took the latter and brought it back had not been examined' consequently the further observations made by the learned Chief Justice were unnecessary for decision on the point and such such will have to be regarded as obiter. Secondly, while making those observations the learned Chief Justice was himself conscious of the fact that there were so__me authorities of that Court taking the contrary view. Having regard to these aspects it is difficult to hold that the concerned observations lay down the correct legal position in the matter. In any event we approve of the view taken by the Allahabad High Court in its three decisions, namely, Sri Nath case, Fanni Lal case and Ganga Ram case and would confirm the High Court courtsinding on the point in favour of the respondents.

9. Counsel for the appellant then faintly argued that the respondent suit was not maintainable under Section 14(1) of the Act inasmuch as no permission of the District Magistrate had been abstained by the respondents before filing the suit as required by Section 14 and in this behalf reliance was paled on Section 14(10 of the Act which ran thus :

> 14. Restrictions of eviction - No suit shall, without the permission of the District Magistrate, be filed in any civil court against a tenant for this eviction from any accommodation except on one or more of the following grounds namely :-
>
> (a) that the tenant has 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 from the landlord.

According to counsel for the appellant the aforesaid provision clearly shows that under the Act two safeguards were available to a tenant - (i) eviction could not be had any any landlord except on one or more of the grounds specified in clause (a) to (f) of section 14 and (ii) no suit for eviction even on those grounds specified in clauses (a) and (f) could be instituted without the permission of the District Magistrate, and admittedly the landlords in the instant case had filed the suit against the appellant without obtaining the permission of the District Magistrate. He, therefore, urged that the civil court had no jurisdiction to entertain the suit and the decree was without jurisdiction.

10. It must be observed that no such contention was raised by the appellant in any to the court below presumably because the appellant as well as his lawyer knew his an identical provision contained in Section 3(1) of the U. P. (Temporary) Control of Rent and Eviction Act, 1947, - an allied enactment, had been judicially interpreted by this court in Bhagwan Das v. Paras Nath, Section 3 of the U. P. Act 3 of 1947 ran thus :

> 3. Restrictions on evictions. - (1) Subject to any order passed under sub-section (3) no suit shall without the permission of the District Magistrate, be filed in any civil court against a tenant for his eviction from any accommodation, except on one or more of the following grounds :
>
> (a) that the tenant is in arrears of rent for more than three months and has failed to pay the same to the landlord within one month of the service upon him of a notice of demand.

This Court in Bhagwan Das case has explained at page 305 of the report the legal position arising on a grammatical construction of Section 3(1) thus :

> Section 3(1) does not restrict the landlords right to evict his tenant on any of the grounds mentioned in clauses (a) to (g) of the at sub-section. But if he wants to use his tenant for eviction on any ground other than those mentioned in those clause then he has to obtain the permission of the District Magistrate whose discretion is subject to any order passed under Sub-sections (3) of Section 3 by the Commissioner. These are the only restrictions placed on the power of a landlord to institute a suit for eviction of his tenant.

It would be conductive to judicial discipline to interpret an identical provision contained in Section 14(1) of the U. P. Cantonment (Control of Rent and Eviction) Act, 1952 in a similar manner. In other words, under Section 14(1) of the concerned Central Act permission of the District Magistrate

was required if the landlord sought eviction of his tenant on any ground other than those specified in clause (a) to (f) and not when it as sought on any of the grounds specified in clauses (a) to (f). (It may be stated that both the enactments have since been repealed. It is, therefore not possible to accept the contention of the counsel for the appellants that the instant suit filed by the respondents against the appellant could not be entertained by the civil court.

11. In the result the appeal fails and is dismissed. However having regard to all the facts and circumstances of the case there will be no order as to costs and we grant the appellant six months time to vacate.

Desai, J. (dissenting) -

I have very carefully gone through the judgment prepared by my learned brother Mr. Justice V. D. Tulzapurkar, but I regret my inability to agree with the same.

13. The relevant facts leading to the appeal by special leave have been succinctly set out in the main judgment and therefore, I would straightway proceed to deal with the three important questions raised on this appeal.

14. The first and the principal question which goes to the root of the matter is about the construction of Section 20(2) (a) of the Uttar Pradesh Urban Building (Regulation of Letting Rent and Eviction) Act, 1972 (Rent Act for short). It reads as under :

> 20. Bar of suit for eviction of tenant except on specified grounds.-...
>
> (2) A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely :
>
> (a) that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand :

15. There is a proviso to this clause which is not material for the purpose of this appeal.

16. A brief resume of concurrently found facts which would highlight the question of construction would be advantageous. Appellant was inducted as a tenant of the premises by its former owner on a rent of Rs. 250 per annum in the years 1964; on a request by the then landlord, appellant tenant surrendered a portion of the premises, comprising two rooms a kitchen, a bathroom and a verandah at the back of the shop, retaining only possession of at shop, consequently reducing the rent by agreement between the parties at the rate of Rs. 100 per annum. It is thus an agreed and incontrovertible fact that the appellant tenant is a tenant of a shop on an yearly rent of Rs. 100, payable at the end of every year.

17. The focus should immediately be turned to the provision of law under which the landlord seeks to evict this tenant. According to respondent landlord she served notice dated November 10, 1966, terminating the tenancy of the appellant as the appellant tenant was a defaulter within the meaning of Section 20(2) (a) and therefor she was entitled to a decree for eviction as she has satisfactorily proved all the requirements or ingredients of Section 20(2) (a). Accepting the finding of fact that the appellant is a tenant liable to pay rent at the rate of Rs. 100 per annum, the crux of the matter is whether his case is covered by Section 20(2) (a).

18. What does Section 20(2) (a) postulate and what are its components which when satisfied, the landlord would be entitled to evict the tenant? On analysis following ingredients of Section 20(2) (a) would emerge each of which will have to be satisfied before the landlord would be eligible to obtain a decree for eviction, viz. :

(i) Tenant must be a tenant of premises governed by the Rent Act;

(ii) That the tenant is in arrears of rent for not less than four months;

(iii) That such a tenant has to pay rent in arrears within a period of one month from the date of service upon him of a notice of demand.

19. In this case, the tenant is a tenant of premises governed by the Rent Act.

20. The crucial question is whether the second ingredient, as extracted above, is satisfied by the landlord. The attention has to be focussed on the expression 'in arrears of rent for not less than four months'. What does this expression signify? As contended on behalf of the respondent that whatever be the default in payment of rent the notice can be served after the default has continued for a period of four months, and failure to comply with the requisition in the notice would disentitle the tenant to the protection of Rent Act. Alternatively it was contended that the expression "in arrears of rent for not less than four months on a literal grammatical construction would signify that rent is payable by the month and that the tenant has committed a default in payment of four months rent and further failed to comply with the requisition made in the notice within the stipulated period of one month and only then the protective umbrella of the Rent Act would be removed and the tenant would be exposed to a decree for eviction.

21. The two rival constructions raised a question of construction of a sub-section in a statute primarily enacted as can be culled out from the long and short title of the Rent Act, being regulation of letting and rent and arbitrary eviction of tenant from the premises to which the Rent Act would apply. It is a socially beneficent statute and in construing such statute certain well recognised canons of construction have to be borne in mind. Undoubtedly, the dominant purpose in construing the statute is to ascertain the intention of the legislature. This intention and, therefore, the meaning of the statute is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand, however strongly it may be suspected that the result does not represent the real intention of legislature (see Inland Revenue Commissioners v. Hinchy). In approaching the matter from this angle, it is a duty of this court to give fair and full effect to statute which is plain and unambiguous without regard to the particular consequence in a special case. Even while giving liberal construction to socially beneficent legislation, if the language is plain and simple, the making of a law being a matter for the legislature and not courts, the court must adopt the plain grammatical construction (see River Wear Commissioner v. Adamson). The Court must take the law as it is And, accordingly it is not entitled to pass judgment on the propriety or wisdom of making a law in the particular form and further the court is not entitled to adopt the construction of a statute on its view of what Parliament ought to have done. However, when two constructions are possible and legitimate and ambiguity arises from the language employed, it is plain social beneficent statute rather than one which restricts it. In Mohd. Shafi v. Additional District @ Sessions Judge (VII) Allahabad this Court while interpreting the explanation (iv) to Section 21 of the Rent Act observed that where the language is susceptible of two interpretations the court would prefer that which enlarges the protection of the tenants rather than one which restricts it. It was further observed that the construction that the court adopted would be more consistent with

the policy and attainment of the legislation which is to protect the possession of the tenant unless the landlord establishes a ground for eviction. Similarly in Gurucharan Singh v. Kamla Singh while interpreting the provision of Section 6 of the Bihar Land Reforms Act, 1950, its Court observed that the court was called upon to interpret a land reforms law and not just an ordinary state and therefore the socio-economic thrust of the law in these areas should not be retarded by judicial construction but filliped by the legal process without parting from the socio-economic thrust of the law in these areas should not be retarded by judicial construction but filliped by the legal process without parting from the object of the Act. It must also be emphasised that where two constructions are possible, the one that must be preferred is one which would accord with reason and justice (see Madhav Rao Jivaji Rao Scindia. Union of India).

22. Bearing in mind this interpretative approach let us hark back to the expression used in Section 20(2) (a) and ascertain whether the expression is susceptible of one construction only or more than one construction and whether there is ambiguity and if so, in which direction the interpretative jurisprudence must move.

23. The expression "the tenant is in arrears of rent for not less than four months" may suggest that the tenant is in arrears of rent of one or any number of the months and that the arrears have fallen due four months back meaning thereby that within four months there was no attempt on the part of the tenant to pay up the arrears and cure the default. This construction would imply that if the tenant is in arrears of rent for one month only, an action under the relevant clause can be commenced against him if this default has continued for a period of four months even if the tenant has paid rent for subsequent months and on the expiry of the period of four months from the date on which the date on which the rent had become due and payable for one month a notice of demand can be served and on the failure of the tenant to comply with the requisition made in the notice he would be liable to be evicted. In other words, a period of four months must elapse between the date of default and the service of notice irrespective of the fact whether the default is in payment of one months rent of more than one months rent. In this construction it is implicit that failure to pay rent for four different months is not a sine qua non for commencing action under Section 20(2) (a). What is of the essence of matter is that a period of court months must elapse between the date of default complained of and service of notice under Section 20(2) (a). It was said that the legislature had given locus poenitentiae to the tenant to repaired the default within the period of four months. This approach over looks the obvious that before action can be commenced under Section 20(2) (A) a notice had to be served and tenant is given locus poenitentiae to repaired the default within one month. It appears that by Section 43 of the Rent Act the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 (Repealed Act for Shot) was repealed. Section 3 of the Repealed Act enumerated grounds on which a tenant could be evicted. Clause (a) of Section 3(1) provided that the landlord would be entitled to eviction of a tenant if the tenant was in arrears of rent for more than three months and had failed to pay the same to the landlord within one month the service upon him of the notice of demand. The language employed in the repeated provision led the court to hold that whatever be the default in payment of rent a period of three months should have expired from the date of default whereafter alone the landlord would be entitled to serve a notice as provided in the relevant clause. It was so held by the Allahabad High Court in Ram Saran v. L. Bir Sen, but this decision was overruled in Jitendra Prasad v. Mathura Prasad. In order to avoid any such controversy, in the repealing statute the expression arrears of rent for more than three months has been substituted by the expression arrears of rent for not less than four months. This is contemporaneous legislative exposition which clearly brings out the legislative intention that the landlord would be entitled to evict the tenant if the rent is in arrears for not less than four months. Therefore, it would clearly imply that before the landlord can commence action under clause (a) the tenant must have

committed default in payment of rent for a period of four months. Therefore, the first suggested construction is not borne out by the language employed in the Section.

24. The question still remains : What does the expression in arrears of rent for not less than four months signify? It is implicit in the expression that the rent must be payable by month. Irrespective of the fact whether the tenancy is a yearly tenancy or a monthly tenancy, it is implicit in clause (a) that either by the contract of lease or by oral agreement or by long usage the tenant is liable to pay rent at the end of every month. IN other words, the unit for computation of rent is one month, that is, rent become due and payable every month. It is only such a tenant who may fall in arrears for a period of four months. Every month the tenant would be liable to pay the rent in the absence of a contract to the contrary. Thus the rent becomes due and payable at the end of every month. As sons as the month is over the rent becomes due and payable and failure on the part of the tenant to pay the same would dub him as a tenant in arrear of rent for one month. If this process goes on meaning thereby that a period of four months having expired and for each of the four months the rent when it became due and payable was not paid, then along the tenant could be said to be a tenant in arrears of rent for not less than four months. Two definite ingredients emerge from the expression the tenant is in arrears of rent for not less than four months : (i) that the rent is payable by month; and (ii) the tenant has committed default in payment of rent for four different months and that this default subsists and continues on the date when the landlord invokes the provision of clause (a) and proceeds to serve a notice of demand. Again, if within a period of one month from the date of receipt of the notice the tenant pays up the arrears of rent the does not lose the protection of the Rent Act. The legislature clearly intended to cover those cases of default in payment of rent under clause (a) where the contract of lease provided for payment of rent every month meaning thereby that the unit for liability to pay rent this one month and secondly the tenant has committed default on four different occasions of four different months or four different units agreed upon for payment of rent and that too after the liability to pay the same has accrued. As stated earlier, this is implicit in the expression the tenant is in arrears of rent for not less than four months.

25. In this connection one can profitable refer to Section 12(3) (a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which reads as under :

> Where the rent is payable by the months and there is no dispute regarding the amount of standard rent or permitted increase, if such rent or increase are in arrears for a period of six months or more and the tenant neglects to make payment thereof unit the expiration of the period of one month after notice referred to in sub-section (2), the court shall pass a decree for eviction in any such suit for recovery of possession.

26. The expression used there is that the rent is payable by month and the tenant is in arrears for a period of six months. In the Rent Act under discussion, a conjoint expression is used that a tenant is in arrears of rent for a period of not less than four months. It only means that where the rent is payable by month and the tenant is in arrears of rent for not less then four months, and that is the clearest intention discernible from the language used in the relevant clause.

27. It was, however, contended that this construction would give an undeserved advantage to the defaulting tenant where the rent is not payable by month. The contention is that a landlord who had agreed to accept rent on an yearly basis would be at the mercy of the tenant because even if the default is contumacious the landlord would not be entitled to evict the tenant and that such could not be the intention of the legislature. It was, therefore, said that the expression 'the tenant is in arrears of rent for not less than four month's is also susceptible of the meaning that where the rent is

payable by year and after the year is over and the rent has become due and payable by clause (a). If a tenant is under a contract with the landlord to pay rent at the end of a specific year agreed to between the parties, could he be said to be a tenant in arrears for not less than four months even if he has defaulted in payment of rent at the end of one year? How can a tenant who is to pay rent on the expiry of a specified year be in arrears of rent for not less than four months? and if that construction is adopted, a tenant who has committed default in payment of rent for one month and the default has continued without repair for a period of four months even though he has paid rent for subsequent months he would be liable to be evicted, a construction which ought to be rejected on legislative exposition by change in expression adopted in the repealed Act and substituted in the present Act discussed hereinabove. In that construction is rejected it would be difficult to accept the construction that even if the rent is payable by year once the year is over and a period of four months has elapsed he could be said to be a tenant in arrears of rent for not less than four months. The language does not admit of this construction. Therefore, where the rent is payable by the year clause (as) is not attracted. Now the wild apprehension expressed on behalf of the landlord that such a construction would give an unfair advantage to a tenant who is liable to pay yearly rent need not detain us because the wisdom of enacting a law in certain manner is for the legislature to decided and not for the court to impose. It may be that the legislature would have intended that such landlords who relied on the income from rent month after month must have a sanction which can be applied if the tenant commits default in payment of rent of four different months but a landlord who apparently does not depend upon the rental income by agreeing to accept yearly rent need not have that sanction and it would be still open to such a landlord to file a fit merely for recovery of rent and not for eviction. Such a thing is not unknown to law because in permanent tenancy and in tenancies of long duration the landlords can only sue for rent and not for eviction on the tenant committing default in payment of rent. Therefore, on examining both the rival constructions one which extends the protection deserves to be accepted in view of the fact that the legislature never intended to provide a ground for eviction four failure to pay rent in case of leases where yearly rent was reserved. Rent Act was enacted to fetter the right of re-entry of landlord and this construction accords with the avowed object of the Rent Act.

28. In the instant case the parties are ad idem that the rent is payable by year at the rate of Rs. 100 per annum. In such a case it could not be said that this tenant was in arrears of rent for not less than four months. His case would not be covered by Section 20(2) (a) of the Rent Act and, therefore, the landlord would not be entitled to a decree for eviction on this ground and that was the sole ground on which eviction has been ordered.

29. The second contention is that the High Court was in error in interfering with the concurrent finding of facts while hearing second appeal in February 1979 and that too without framing the point of law which arose in the appeal. The disputed finding of fact is about the service of notice. If a landlord seeks eviction on the ground of tenant's default in payment of rent under Section 20(2) (a) it is obligatory upon him to serve a notice of demand of the respondent-landlord that notice dated November 9, 1966, was served upon the appellant-tenant on November 10, 1966, but he refused to accept the same and the refutation thereof by the tenant that no notice was offered to him by the postman nor was any notice refused by him, a triable issue arose between the parties. The learned trial Judge framed issue No. 7 on the question of service of notice. He recorded a finding that the appellant-tenant was not served a notice of demand and of ejectment and answered the issue in favour of the appellant-tenant. On appeal by the respondent-landlord the appellate Court framed point No. 2 on the question of service of notice and answered it by observing that the defendant-tenant refused to accept the registered notice but no knowledge can be attributed to him of the contents of the registered enveloped and, therefore, the tenant could not be said to be guilty of

willful default on the expiry of one month after the service of notice. He accordingly confirmed the fining of the trial Court that the plaintiff-landlord is not liable to a decree of eviction on the ground mentioned in Section 20(2) (a). The landlord approached the High Court in second appeal.

30. When this appeal was heard, Section 100 of the Civil Procedure Code after its amendment of 1976 was in force. It restricted the jurisdiction of the High Court to entertain a second appeal only if the High Court was satisfied that the case involved a substantial question of law. Sub-section (4) cast a duty on the court to formulate such a substantial question of law and the appeal has to be heard on the question so formulated. It would also be open to the respondent at the hearing of the appeal to contend that the case does not involve such a question. Even prior to the amendment of Section 100, the High Court ordinarily did not interfere with the concurrent findings of fact. The position has been repeatedly asserted and one need not go in search of precedent to support the proposition. However one can profitably refer to R. Ramachandran Ayyar v. Ramalingam Chettiar. After examining the earlier decisions and the decision of the Privy Council in Durga Choudhrain v. Jawahir Choudhary Gajendragadkar, J. speaking for this Court in term spelt out the jurisdiction of the High Court in second appeal as under :

> But the High Court cannot interfere with the conclusion on fact recorded by lower appellate Court however erroneous that same conclusions may appear to be to the High Court, because, as the Privy Council observed, however gross or inexcusable the error may seem to be, there is no jurisdiction under Section 100 to correct that error.

This view was reaffirmed in Goppulal v. Thakurji Shriji Shriji Dwarkadhishji wherein after reproducing the concurrent finding of fact this Court observed that this concurrent finding of fact was blinding of the High Court in second appeal and the High Court was in error in holding that there was one integrated tenancy of six shops.

31. In the facts of this case, there was a concurrent finding that the statutory notice as required by Section 20(2) (a) was not served upon the tenant and, therefore, the High Court was in error in interfering with this finding of fact. However, it is not necessary to base the judgment on this conclusion because it was rightly said on behalf of the respondent that whether the notice was offered to the petitioner-tenant and he refused to accept the same the fining is not concurrent because the appellate Court has held that the notice was offered but the tenant refused to accept the same and, therefore, on the refusal to accept the notice there was no concurrent finding. This contention is legitimate because the appellate Court held that notice as required by law was not served because even if the tenant refused to accept the notice the knowledge of the content of the registered envelope not opened by him cannot be imputed to him, and, therefore, there was no service of notice as required by Section 20(2) (a). The first appellate Court was of the view that in the absence of knowledge of the demand of rent in arrears as alleged in the notice the tenant cannot be said to be guilty of willful default so as to be denied the protection of the Rent Act.

32. This accordingly takes me to the this contention in this appeal. The third contention is that even if this Court agrees with the High court in holding that the notice in question was tendered by the postman to he appellant-tenant and he refused to accept the same, and, therefore, this refusal amounts to service within the meaning of Section 20(2) (a), yet as the knowledge of the contents of the notice would reflect on subsequent conduct as willful or contumacious, it is not sufficient that a notice is served or tendered and refused but it must further be shown that in the even of refusal the tenant did it with the knowledge of the contents of the the registered envelope and his subsequent

conduct is motivated. The question then is : What would be the effect of a notice sent by registered post and refused by a tenant on the question of his knowledge about the contents of the notice and his failure to act? Would it tantamount to an intentional conduct evincing willful default on his part? This aspect cannot be merely examined in the background of some precedents or general observations. One has to examine this aspect in the background of Indian conditions or in the words of Krishna Iyer, J., 'the legal literacy in rural areas and the third world jurisprudence'.

33. Before we blindly adhere to law bodily imported from western countries we must not be oblivious to the fact that the statutes operating in the western countries are meant for a society if not 100 per cent, 99 per cent literate. We must consciously bear in mind that our society especially in the semi-urban and rural areas is entirely different and wholly incomparable to the western society. A literate mind will react to a problem presented to him in a manner other than an illiterate mind because illiteracy breeds fear and fear-oriented action cannot be rationally examined on the touchstone of legal presumptions. To articulate the point as it arises in this case, let one put his feet in the shoes of a rural illiterate person to whom a registered envelope by a postman is presented. Does it require too much of imagination to conclude that he will be griped with fear and he may react in a manner which will be his undoing? He would believe that by refusing got accept the registered envelope he would put off the evil rather than accept the same and approach a person who can advise him and meet the situation. Can this action of fear-gripped mind inflict upon the person an injury flowing from the assumption that he not only refused the registered envelope with the conscious knowledge of the fact that it contained a notice by a lawyer on behalf of his landlord and that it accused him of willful default in payment of rent and that if he would act rationally he would repair the default by tendering the rent within the period of one month granted by the statute? If he is deemed to have acted consciously is it conceivable that he would invite injury by sheet refusal to accept the registered envelope rather than know the contents or make them knowable to him and meet the charge of willful default. As was said, again by Krishna Iyer, J., which bears quotation :

> The Indian courts interpret laws the Anglo-Indian way, the rules of the game having been so inherited. The basic principles of jurisprudence are borrowed from the sophisticated British system, with the result that there is an exotic touch about the adjectival law, the argumentative method and the adversary system, not to speak of the Evidence Act with all its technicalities.

Lord Devlin recently said :

> If our business methods were as antiquated as our legal methods, we would be a bankrupt country..... There is need for a comprehensive enquiry into the rules of our procedure backed by a determination to adopt it to fit the functions of the welfare State.

This is much more apposite in the conditions of our society and this was noticed by Beaumont, C. J. way back in fourth decade of this century in Vaman Vithal Kulkarni v. Khanderao Ram Rao Sholapurkar. An exactly identical question arose before the Division Bench of the Bombay High Court. The facts found were that the registered letter containing the notice was sent to defendants 4 and 5 duly addressed and service was alleged to have been refused. The contention was two-fold that the refusal was not proved but alternatively it was contended that ever if it was proved, the addressee could not be imputed with the knowledge of the contents of the registered envelope. The pertinent observation is as under :

> In the case of defendants 4 and 5 a registered letter containing the notice was sent to them duly addressed, and service is alleged to have been refused. In fact the refusal was not proved, as the postman who took the letter and brought it back was not called. But in any cases, even if the refusal had been proved, I should not be prepared to hold that a registered letter tendered to the addressee and refused and brought back unopened, was well served. There are, I know, some authorities in this Court to the contrary, but it seems too me impossible to say that a latter has been served so an to bring the contents to the notice of the person to whom the letter is addressed, if the agent for service states that in fact the notice was not served, although the reason may have been that the addressee declined to accept it. One cannot assume that because an addressee declines to accept a particular sealed envelope he has guessed correctly as to its contents. Many people in this country make a practice of always refusing to accept registered letters, a practice based, I presume, on their experience that such documents usually contain something unpleasant. So that, it is clear that this notice was not served on three of the defendants.

34. Learned counsel for the respondent tried to distinguish this decision by observing that the court did hold that the refusal was not proved and, therefore, the rest of the observation was obiter. It is not for a moment suggested that the decision of the Division Bench of the Bombay High court is binding on this Court but the reasoning which appealed to the Division Bench in 1935 is all the more apposite at present. The Division Bench noticed that in the society from which the defendants came, there was a feeling that such registered letters usually contained something unpleasant. Is there anything to suggest that this feeling is today displaced or destroyed? The Division Bench further noticed that many people in India make a practice of always refusing to accept registered letters and the practise according to the Division Bench was based on their experience that such documents usually contained something unpleasant. The reaction is to put off the evil by not accepting the envelope. Court such ignorant illiterate persons be subjected to a legal inference that the refusal was conscious knowing the contents of the document contained in the registered envelope? To answer it in the affirmative is to wholly ignore the Indian society. And this concept that the registered envelope properly addressed and returned with an endorsement of refusal must permit a rebuttable presumption that the addressee refused it with the knowledge of the contents is wholly borrowed from the western jurisprudence. I believe it is time that we ignore the illusion and return to reality. Reference was also made to Appabhai Motibhai v. Laxmichand Zaverchand & Co., but that case does not tough the point. In Mahboob Bi v. Alvala Lachmiah, an almost identical question figured before the Andhra Pradesh High Court. In that case the Rent Controller issued a notice in respect of the proceedings initiated before him by the landlord for the eviction of the tenant, to the tenant by registered post and the envelope was returned with the endorsement of refusal and the Rent Controller set down the proceedings for ex parte hearing and passed a decree for eviction. The tenant under the decree of eviction preferred an appeal in the City Small Cause Court. a preliminary objection was raised by the respondent-landlord that the appeal was barred by limitation as it was filed six days after the time allowed for filing the appeal. The appellant-tenant countered this by saying that he had no knowledge of the proceedings before the Rent Controller and that he was never served with the notice of proceedings before the Rent Controller. The relevant rule permitted service of notice by registered post. After examining the relevant rule the court accepted the contention of the tenant observing as under :

> Moreover nothing has been placed before me to show that there is any duty cast upon any person to receive every letter or notice sent by registered post, nor does the refusal to receive has been made the subject-matter of any presumption which may

> arise under Section 114 of the Evidence Act. Then again, there is the practical difficulty of having to import the knowledge of the date of hearing or the precise proceeding with which the registered notice is concerned in the case of a mere refusal to receive a registered notice.

35. The court thus was of the view that even if refusal amounted to service, yet it is not service as required by lay to fasten a liability on the tenant because no presumption can be raised that the refusal was with the conscious knowledge of the contents of the registered envelope. Undoubtedly, our attention was also drawn to a contrary view taken by a Division Bench of the Allahabad High Court in Fannilal v. Chironja. It was contended that even if the registered letter was refused no presumption of knowledge of the contents of the letter could in law be raised against the tenant. In support of the submission reliance was placed on Amarjit Singh Bedi v. Lachchman Das, an unreported decision of a single Judge of the Allahabad High Court, and the decision of Beaumont, C. J. in Vaman Vithal Kulkarni case. The Division Bench of the Allahabad High Court did not accept the view of Beaumont, C. J. The court was of the opinion that a presumption of fact would arise under Section 114 of the Evidence Act that the refusal was with the knowledge of the contents of the registered envelope. The court has not considered the specific Indian conditions, the approach of rural Indians to registered letters and has merely gone by the technical rules of Evidence Act, which, as experience would show, could sometimes cause more harm and lead to injustice through law. The contrary Allahabad decision does not commend to me. On the contrary, the Bombay view is in accord with the conditions of society in rural India and I do not propose to make any distinction even with regard to urban areas where also there are a large number of illiterates. Even in the case of a semi-literate person who is in a position to read and write he could not be accused of legal literacy. Therefore, it is not possible to accept the submission that mere refusal would permit a presumption to be raised that not only the service was legal but the refusal was the conscious act flowing from the knowledge of the contents of the letter.

36. How dangerous this presumption is can be easily demonstrated, and how it would lead to miscarriage of justice can be manifestly established. Once knowledge of the contents of the registered envelope is attributed to a person to whom a registered envelope is sent and who has refused to accept the same, that his was an act accompanied by the conscious knowledge of the contents of the letter he who may be an innocent defaulter or presumably no defaulter at all, would be charges with a contumacious conduct of being a willful defaulter. The Rent Act does not seek to evict a mere defaulter. That is why a provision for notice has been made. If even after notice the default continues, the tenant can be condemned as willful defaulter. Could he be dubbed guilty of conscious, willful, contumacious, intentional conduct even when he did not know what was in the registered envelope? In my opinion, it would be atrocious to impute any such knowledge to a person who has merely been guilty of refusing to accept the registered notice. Where service of notice is a condition precedent, a dubious service held established buy examining the postman who must be delivering hundreds of postal envelopes and who is ready to go to the witness-box after a long interval to say that he offered the envelope to the addressee and he refused to accept the same, would be travesty of justice. And if this condition precedent is not fully satisfied, the subsequent conduct conduct cannot be said to be willful. In a slightly different context in C. I. T. v. Thayaballi Mulla Jeevaji Kapasi, this Court held that service of the notice under Section 34(1) (a) of the Income Tax Act, 1922, within the period of limitation being a condition precedent, to the exercise of jurisdiction, if no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken by the Income Tax Officer without a notice or in pursuance of an invalid notice would be illegal and void.

37. It was, however, contended that if the court accepts the legal contention as canvassed on behalf of the appellant it would be impossible to serve the notice as statutorily prescribed. This wild apprehension is wholly unfounded. The notice is required to be served in the manner prescribed by Section 106 of Transfer of Property Act which, inter alia, provides for affixing a copy of the notice on the premises in possession of the tenant. Therefore, it cannot be said that the approach of the court would render it impossible for the landlord to meet with the statutory requirement of service of notice before commencing the action for eviction.

38. Having, therefore, examined the three vital contentions, in my opinion the suit of the landlord must fail on the ground that the rent was not payable by month and, therefore, Section 20(2) (a) is not attracted. And further, even if it is attracted, as the statutory notice as required by Section 20(2) (a) was not served, a decree for eviction cannot be passed on the only ground of default in payment of rent.

39. I would accordingly allow this appeal and dismiss the suit of the respondent for eviction but with no order as to costs in the circumstances of the case.

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