

Budh Ram

Vs

Ralla Ram Deceased Through Lrs

Civil Appeal No. 2638 of 1982

(Sabyasachi Mukharji, G. L. Oza JJ)

19.08.1987

JUDGMENT

OZA, J. -

1. This is an appeal by the tenant against an order of eviction granted by the Rent Controller and maintained by the appellate authority and revision petition against which was dismissed by the High Court. The eviction was sought on the ground of arrears of rent. It was alleged that the shop in dispute was let out to the appellant-tenant @ Rs. 5000 per annum whereas according to the appellant-tenant the rent was Rs. 2500 per annum and not Rs. 5000 per annum. It was pleaded in the application on behalf of the landlord that the rent note was executed on March 25, 1975. This was for one year and the rent fixed was Rs. 5000. According to the tenant, it was pleaded that the rent was Rs. 2500. The signature on the rent note was disputed.

2. After recording evidence the courts below have come to the conclusion that the rent note was executed by the appellant-tenant. The rent note mentions that it is for one year. It appears in evidence that initially Rs. 5000 were paid by the appellant and later on Rs. 2500 were returned. According to the landlord this was returned as it was agreed that the tenant will remain in the premises only for 6 months and not for one year and therefore Rs. 2500 were returned. It is alleged that in the rent note there is also a term that the rent will be paid in advance.

3. The landlord before the Rent Controller claimed that the tenant was in arrears of rent to the extent of Rs. 2500 for the period commencing from October 1, 1975 to March 31, 1976 and was in arrears of Rs. 5000 for the period commencing from April 1, 1976 to March 31, 1977. It is not in dispute that on July 30, 1976, the tenant-appellant tendered a sum of Rs. 2500 saying that it is the advance rent from April 9, 1976 to April 8, 1977. He also tendered Rs. 52 by way of interest and Rs. 30 as costs, and it is on this basis that it was contended that as this amount of rent was tendered on the first date of hearing, the landlord was not entitled to eviction under Section 13 of the East Punjab Rent Restriction Act. The courts below came to the conclusion that the contention of the tenant that the annual rent was Rs. 2500 is not established. It was further held that therefore on July 30 when the tenant tendered Rs. 2500 it was not rent up to date as he was in arrears not only of the amount of Rs. 2500 for the year ending on March 1976 but he was in arrears for the next year.

4. It was also held that if this rent note could not be used as a piece of evidence for lease from year to year and the lease came to an end after one year, the tenant could only be said to be a tenant holding over and thus he could only be treated as a monthly tenant and even in that view of the matter within the language of Section 13, the tenant will be in arrears at least for 2 months rent i.e. April and May even if the term in the rent note of payment of yearly rent in advance is also not

given effect to and in this view of the matter the order of eviction has been maintained.

5. The main contention advanced on behalf of the appellant is that as the rent note is for one year and it fixed yearly rent and talks of yearly rent in advance it clearly is a lease from year to year and therefore as it is not registered in view of Section 17 of the Registration Act and Section 107 of the Transfer of Property Act, this could not be admitted in evidence and therefore the term could not be enforced which talked of payment of yearly rent in advance and it was therefore contended that the tenant at the most could be held to be in arrears to the tune of Rs. 2500 as Rs. 2500 was paid in advance and on this basis it was contended that the decree for eviction could not be maintained.

6. Learned counsel for the appellant placed reliance on Sajid Mia Majumdar v. Abdul Sattar Gani (AIR 1954 Ass 102), Babulal Somalal v. Kantilal Hargovandas (AIR 1979 Guj 50 : 20 Guj LR 36 : (1979) 1 Ren CJ 208 : (1979) 1 Ren CR 347) and Chittilapalli Mathai v. Chittilapalli Kochouseph (1956 (2) Mad LJ 75) to contend that in view of the Transfer of Property Act and Section 17 of the Registration Act, a lease for year to year requires registration and in absence of registration, the document could not be admitted in evidence, and as the document is inadmissible in evidence, it could not be used as piece of evidence in proof of the terms of the lease.

7. It is no doubt true that this document talks of payment of yearly rent in advance but it clearly is a lease for one year and it is therefore clear that this document could not be considered as a piece of evidence for the proof of a lease from year to year, on the basis of yearly rent. But the High Court took the view and rightly that the lease came to an end after the expiry of one year and thereafter even if the tenant is held to be holding over still he is expected to pay rent as contemplated in the provisions of the Rent Act itself and in that view of the matter it could not be disputed that the petitioner appellant is expected to pay rent from month to month and that rent has to be paid in the succeeding month before the end of the month and in this view of the matter it is not disputed that on the day when the appellant tendered the rent in the court in addition to what he had deposited he was in arrears of rent at least for two months which he did not tender and in this view of the matter the courts below were right in coming to the conclusion that the landlord was entitled to a decree for eviction on that ground.

8. In our opinion, the courts below were right in holding that the appellant-tenant was in arrears of rent and on the first day of hearing he did not tender or pay the whole amount of arrears and therefore the courts below were right in granting a decree for eviction. We therefore see no reason to entertain this appeal. It is therefore dismissed with costs. The respondents shall be entitled to the costs of this appeal.

</html