

Prakash Mehra

Vs

K. L. Malhotra

Civil Appeal No. 3119 of 1984

(CJI R. S. Pathak, M. H. Kania JJ)

27.04.1989

JUDGMENT

PATHAK, C. J. –

1. This is a landlady's appeal by special leave arising out of proceedings for the ejection of the respondent-tenant.
2. The appellant let out the premises in suit to the respondent on September 1, 1962, the rent being stipulated as payable in advance. With effect from January 1, 1972 the rent payable was Rs. 515 per month. On November 29, 1972, the contractual tenancy was determined by notice. The respondent received a notice on May 7, 1976 calling upon him to pay the arrears of rent. The rent in fact had been received up to March 31, 1976 and, therefore, when the notice of demand was served on the appellant, rent for the months of April and May 1976 had fallen due. The rent was payable in advance.
3. On May 13, 1976, the respondent offered a bank draft of Rs. 515 to the appellant. The appellant refused to accept it. Two days later, the respondent sent the same back draft by registered post. The appellant received the bank draft and retained it. On June 7, 1976, the appellant wrote to the respondent informing him that his tender was not valid. On June 11, 1976, the appellant sent another bank draft for Rs. 515 to the landlady, and this draft again was neither encashed nor returned.
4. On August 2, 1976, the appellant filed an application for ejection out of which the present appeal arises. After filing the application for ejection, the appellant informed the respondent that both the bank drafts sent by him were lying unencashed.
5. The Additional Controller, Delhi, dismissed the eviction petition holding that the tenant was not in default. The Rent Control Tribunal, Delhi noted that the rent was payable in advance in accordance with the agreement between the parties, that the respondent had earlier enjoyed the benefit of Section 14(2) of the Act, that when the notice of demand was served on May 7, 1976 the arrears of rent for the months of April and May 1976 had arisen, that the bank draft sent on May 13, 1976 related to the rent of April 1976 only, that as the rent for the month of May 1976 had also become due but had not been tendered, the landlady was justified in not accepting the tender, and that when the respondent again sent a draft on June 11, 1976 to cover the rent for the month of May 1976 the rent for the month of June 1976 had also fallen due but was not tendered. Holding that the respondent had not tendered the arrears of rent due up-to-date within two months of the notice of demand, the Tribunal held that the ground of non-payment of rent stood established. The Tribunal noted that the rent had been paid for the months of April, May and June 1976 in advance for each

month and, therefore, the respondent had committed three consecutive defaults. That being so, the Tribunal observed, the respondent was not entitled to the benefit of Section 14(2) again.

6. In second appeal, the High Court reversed the decision of the Rent Control Tribunal and dismissed the application for ejection upon the finding that the notice demanding the arrears of rent related to the months of April and May 1976, and as one draft had been sent on May 13, 1976 and another on June 11, 1976 representing a total of two months' rent, and as this rent had paid within two months of the service of notice of demand, it must be taken that the rent due at the time of the service of notice demand had been tendered by the respondent to the appellant. The High Court proceeded on the view that Section 14(1)(a) of the Act made out a ground for eviction only where the tenant had neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent was served on him by the landlord, the arrears being the rent due on the date of the notice. In this case, the High Court said, as the notice called for payment of the arrears due for the months of April and May 1976 and the bank drafts were tendered within the period indicated in the notice, the notice was satisfied and no default could be said to have been committed in terms of Section 14(1)(a) of the Act. Accordingly, the High Court allowed the appeal and dismissed the application for ejection.

7. It is urged us by learned counsel for the appellant that Section 14(1)(a) of the Act contemplates the payment of tender of the whole of the arrears of rent legally recoverable from the tenant on the date when the demand notice is sent including the rent which has accrued after service of the demand notice. When the notice was sent on May 7, 1976, rent for the months of April and May 1976 had become due, and as two months were given for payment of the arrears, it would include also the rent which had accrued during the said period of two months. We are satisfied that there is substance in the contention. The arrears of rent envisaged by Section 14 (1)(a) of the Act are the arrears demanded by the notice for payment of arrears of rent. The arrears due cannot be extended to rent which has fallen due after service of the notice of demand. In this case, the two bank drafts representing the arrears of rent covered by the notice of demand had been tendered within two months of the date of service of the notice of demand. The High Court is right in the view taken by it. We are not satisfied that the construction placed by B. C. Misra, J. in *Jag Ram Nathu Ram v. Surinder Kumar* (S.A.O. No. 52 of 1975, decided on April 28, 1976) and in *S. L. Kapur v. Dr. Mrs. P. D. Lal* (1975 RCJ 322) lays down the correct law on the point.

8. In the result, the appeal fails and is dismissed but there is no order as to costs.

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