

Mahendra Raghunathdas Gupta

Vs

Vishvanath Bhikaji Mogul

(K. Ramaswamy, D. P. Wadhwa JJ)

10.04.1997

ORDER

1. This appeal by special leave arises from the judgment of the Bombay High Court, made on July 17, 1996 in Writ Petition No. 1814 of 1996.
2. The admitted facts are that one Jagmohandas was the original tenant and the appellant is his brother. The landlords were Jayabai G. Ashar, Bachubhai alias Brijkuvar Bhagwandas, Krishnakumar alias Krishnadas Bhagwandas and Harikrishna C. Shantabai alias Malabai. After the demise of his brother, the appellant became the tenant and paid the rent to the landlords. On March 10, 1981, the landlords wrote letter directing the appellant to pay rent jointly to one Shivajibhai Patel and one Ratilal Patel w.e.f. November 1, 1980. The appellant acted upon the letter and sent to the aforesaid two persons on May 6, 1981 the rents payable from November 1, 1980 to April 30, 1980. The said cheque was returned to the appellant as being not acceptable. Subsequently, he was in the dark as to whom the rent was to be paid. It would appear that the landlords earlier to their letter dated March 10, 1981, had entered into an agreement with the respondent on September 27, 1980 and pursuant thereto, the sale deed came to be executed and registered on July 10, 1984 in favour of the respondents but no attornment was made.
3. For the first time, Shri N.G. Gaikwad , Advocate, Nasik on instructions of respondent No.1 sent a notice dated September 29, 1986 to the appellant to pay the arrears of rents from November 1, 1982 to the respondents. The appellant on receipt thereof has sent on October 15, 1986 , the rent in the form of a cheque for Rs. 2,952/- in the name of Shri Gaikwad, which was rejected by him and thereafter the suit for ejectment came to be filed. The defence taken by the appellant is that he paid the rent within 30 days from the date of the receipt of the notice demanding the payment of rent and , therefore, he was not in default. The question, therefore is whether the appellant has committed any default in the payment of the rent? Section 12(3)(a) of the Bombay Rents, hotel and Lodging House Rates Control Act, 1947 envisages thus:-

"12.(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenants pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3)(a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make the payment thereof until 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." A reading thereof would indicate that the landlord shall not be entitled to the recovery of possession of the demised premises as long as the tenant pays or is ready and willing to pay the amount of standard rent and permitted increases, if any, and observes and performs the other conditions of tenancy is so far as they are consistent with the Act. Where the rent is payable by every month and if there is no dispute regarding the amount of the standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiry of the period of one month after the notice referred to in sub-section (2), the Court shall pass a decree for eviction in any suit for recovery of possession. Sub-section (2) postulates that no suit for recovery of possession shall be instituted by a landlord against tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiry of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act.

4. Thus, it could be seen that two conditions must be satisfied for eviction a tenant on the ground of default in the payment of rent or permitted increases. Firstly, there must be a default in the payment of rent. The default may continue for six months or more. Secondly, before filing a petition for eviction, a notice in writing under Section 106 of the Transfer of Property Act shall be given to the tenant giving one month's time. Then, it shows that tenant was not ready and willing to pay rent, if he neglects to pay the rent within 30 days from the date of the receipt of the notice, on expiry of one month next after notice in writing and the payment of the standard rent or the permitted increases has been served upon the tenant, the landlord is entitled to file the suit for ejection. In such event, the Court is empowered to order eviction.

5. The question is : whether the appellant was in arrears in the payment of the rent? After the receipt of the notice when he tendered the rent to the advocate whether he has committed default. Here is the case where the previous landlords, admittedly , had not given any notice to the appellant informing him of the sale of the property to the respondents at any time before the notice issued except for the first time through the advocate intimating to the appellant of the purchase so made on July 6, 1984; nor a copy of the sale deed was given to him. When at the instance of the original landlords the tenant sent rent to Shivajibhai Patel and Ratilal Patel, it was refused by them. Under these circumstances, the appellant was in the dark as to whether the respondents were really landlords of the appellant. When the notice, under these circumstances, came to be given by the advocate on behalf of the appellant, necessarily as a prudent man, the appellant, instead of taking a risk, has sent the amount in the name of the advocate and the advocate refused to receive it. When the advocate had sent the notice on behalf of the respondent, obviously he acted as an agent on behalf of the respondents/. We may in this connection refer to Section 106 of the Transfer of Property Act. Requirement of the notice under this section is that it must be in writing signed by or on behalf of the person giving it. The notice sent by the lawyer on behalf of his client landlord would meet the requirement of section 106 of the Act. Then under clause (1) of Section 108 of the Transfer of Property Act a lessee is bound to pay or tender, at the proper time and place, premium or rent to the lessor or his agent in this behalf. In the present case, the lawyer has acted as agent of the

landlords. It is corrected that the lawyer Gaikwad did indicate in his notice that the rent be sent to one of this landlords who had purchased the premises and when the tenant sent the rent by means of cheque in the name of the lawyer he returned the same setting that he was not the rent collector for his clients. The tenant thereupon sent a fresh cheque of the entire amount of the rent in the name of the landlord indicated in the notice. Respondent No.1 refused to accept the cheque and when the amount of rent again tendered by money order, it was once again refused by the respondent. Thereafter, the suit for eviction came to be filed. It is well settled that a transferee of the landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. The section does not require the transfer of the right of the landlord can take effect only if the tenant's attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of the landlord's rights. Since attornment by the tenant is not required a notice under Section 106 in terms of the old terms of lease by the transferor landlord would be proper and so also the suit for ejection.

6. Attornment would, however, be desirable as it means the acknowledgement of relation of a tenant to a new landlord. It also implies continuity of tenancy.

7. Two things arise for consideration (1) if the tenant was justified in sending the rent to the lawyer in spite of his notice to send the rent to his client and (2) if the tender of rent by cheque is a valid tender. Taking the second point first merely because the tenant has made payment of rent by cheque, it cannot be assumed that the tenant was not ready or willing to pay arrears of rent. As expression "ready and willing to pay arrears of rent" in sub-section (1) of Section 12 of the Act does not mean that when rent is paid only by cash then it can only be said the tenant is ready and willing to pay the rent. Tendering of rent by cheque is legal. In *K. Saraswathy vs. Somasundaram* [(1989) 4 SCC 527 = AIR 1989 SC 1553], the Court held that the payment by cheque is an ordinary incident of present-day life, whether commercial or private, and unless it is specifically mentioned that payment must be in cash payment by cheque shall be taken to be due payment if the cheque is subsequently encashed in the ordinary course.

8. On the first point, though it was mentioned in the notice that rent be sent to the landlord meaning thereby that the lawyer was not authorised to receive the payment of rent but in the light of the above facts, necessarily, as a prudent man, the appellant instead of taking risk to send the rent to third party, chose to send the arrears of the rent in the name of the advocate, who issued notice. Under these circumstances, tendering the amount within 30 days to the agent on behalf of the principal, is a legal tender of the amount of arrears of rent. Thereby, by operation of sub-section (3)(a) of Section 12, the appellant has tendered the amount. Thereby, he has not committed any default in the payment of rent on account of which he is not liable to be ejected from the demised premises. The respondent having purchased the property had not acted as a prudent man by issuing a notice at the earliest to the appellant calling upon him to pay the rents to him. Instead, he waited for two years obviously to create a condition of default and then got the notice issued. His conduct is not worth reckoning.

9. Considering the whole aspect of the matter, it cannot be said that the tenant was not ready and willing to pay arrears of rent or that he neglected to make payment thereof in terms of the notice.

10. The appeal is accordingly allowed. The judgment of the High Court as well as the courts below stand set aside.