**SUPREME COURT OF INDIA**

Fakir Mohd.

Vs.

Sita Ram

C.A.No.3454 of 1998

(R.C.Lahoti and Brijesh Kumar,JJ.)

10.12.2001

**JUDGMENT**

**R.C.Lahoti, J.**

1. A suit for ejectment of the tenant from a shop on the ground available under clause (a) of sub-Section (1) of Section 13 of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter the "Act", for short), filed by the respondent, was dismissed by the trial Court. In an appeal preferred by the respondent, the first appellate Court reversed the decision of trial court and decreed the suit. The High Court has dismissed the second appeal preferred by the tenant and upheld the decree of eviction passed by the appellate court. The legal representatives of the tenant, who has died during litigation, have filed this appeal by Special Leave. For the sake of convenience we will refer to the appellants as 'tenant' and the respondent as 'landlord'.

2. The relevant facts, to the extent not in controversy, may briefly be stated. The landlord owns a house in which there are four shops on the ground floor, one of which is in occupation of the tenant on a monthly rent of Rs.55/-. Earlier a suit seeking eviction of tenant for his failure to pay or tender the amount of rent due from him was filed but the same was dismissed on account of the tenant having earned protection from eviction by making payment/deposit under sub- Section (4) and (6) of Section 13. Once again the tenant fell into arrears of rent for the period from 1.3.1985 to 30.6.1986. The present suit was filed on the ground of second default. On 4.5.1985, the tenant had deposited in Court 6 months' rent vide challan No.36 in Civil Misc. Case No.27/85 and subsequently, on 30.10.1985, another 12 months' rent vide tender No.2230 in Civil Misc. Case No.89/85. Both these deposits were made under Section 19A of the Act. The Trial Court held the deposits to be valid deposits under Section 19A while the First Appellate Court and the High Court have held the deposits not to be valid and hence the tenant to be a defaulter. The controversy centers around the interpretation of Section 19A. Sections 13 and 19A, which are relevant, are extracted and reproduced hereunder:

"Sec.13 Eviction of tenants.- (1) Notwithstanding anything contained in any law or contract, no court shall pass any decree, or make any order, in favour of a landlord, whether in execution of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent therefore to the full extent allowable by this Act, unless it is satisfied

(a) that the tenant has neither paid nor tendered the amount of rent due from him for six months; or

3. In a suit for eviction on the ground set forth in clause (a) of sub-section (1) with or without any of the other grounds referred to in that sub-section, the court shall, on the first date of hearing or on any other date as the court may fix in this behalf which shall not be more than three months after filing of the written statement and shall be before the framing of the issues, after hearing the parties and on the basis of material on record provisionally determine the amount of rent to be deposited in court or paid to the landlord by the tenant. Such amount shall be calculated at the rate of rent at which it was last paid or was payable for the period for which the tenant may have made default including the period subsequent thereto upto the end of the month previous to that in which such determination is made together with interest on such amount calculated at the rate of six percent per annum from the date when any such amount was payable up to the date of determination. Provided that while determining the amount under this sub-section, the court shall not take into account the amount of rent which was barred by limitation on the date of the filing of the suit.

4. The tenant shall deposit in court or pay to the landlord the amount determined by the court under sub-section (3) within fifteen days from the date of such determination, or within such further time, not exceeding three months, as may be extended by the court. The tenant shall also continue to deposit in court or pay to the landlord, month by month the monthly rent subsequent to the period up to which determination has been made, by the fifteenth of each succeeding month or within such further time, not exceeding fifteen days, as may be extended by the court, at the monthly rate at which the rent was determined by the court under sub-section (3).

5. If a tenant fails to deposit or pay any amount referred to in sub-section (4) on the date or within the time specified therein, the court shall order the defense against eviction to be struck out and shall proceed with the hearing of the suit.

6. If a tenant makes deposit or payment as required by sub-section (4) no decree for eviction on the ground specified in clause (a) of sub-sec.(1) shall be passed by the court against him:

7. Provided that a tenant shall not be entitled to any relief under this sub-section, if having obtained such benefit or benefits under section 13- A in respect of any such accommodation if he again makes a default in the payment of Rent of that accommodation for six months. Sec.19-A. Payment, remittance and deposit of Rent by tenant. Subject to the provisions of this section every tenant shall pay rent within the time fixed by contract or in the absence of

such contract, by the fifteenth day of the month next following the month for which it is payable.

(2) Every tenant who makes a payment on account of rent shall be entitled to obtain a receipt for the amount paid duly signed by the landlord or his authorized agent.

(3) A tenant may, apart from personal payment of rent to the landlord, remit or deposit rent by any of the following methods-

(a) he may remit the amount of any rent due from him by postal money order at the ordinary address of the landlord; or

(b) he may, by notice in writing, require the landlord to specify within ten days from the date of receipt of the notice by the latter, a bank and account number into which the rent may be deposited by the tenant to the credit of the landlord. If the landlord specifies a bank and account number, the tenant shall deposit the rent in such bank and account number and shall continue to deposit in it any rent which may subsequently become due in respect of the premises: Provided that such bank shall be one situated in the city or town in which the premises is situated; Provided further it shall be open to the landlord to specify from time to time by a written notice to the tenant and subject to the proviso aforesaid, a bank different from the one already specified by him under this clause;

(c) Where he has remitted the rent by postal money order under clause (a) and the money order is received back by him under a postal endorsement of refusal or unfound and where the landlord does not specify a bank and account number under clause (b) or where there is bonafide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the court within fifteen days of the expiry of the period of ten days referred to in clause (b) and in the case of such bonafide doubt as aforesaid, within fifteen days of the time referred to in sub- sec.(1) and further continue to deposit with the court any rent which may subsequently become due in respect of the premises."

(4) For the purpose of clause (a) of sub-sec.(1) of Section 13; a tenant shall be deemed to have paid or tendered the amount of any rent due from him, if he has paid, remitted or deposited the amount of rent by any of the methods specified in sub-section (3).

(5) The deposit with the court shall be accompanied by an application by tenant containing the following particulars, namely

(a) The accommodation for which the rent is deposit with a description sufficient for identifying the premises;

(b) the period for which the rent is deposited;

(c) the name and address of the landlord or the person or persons claiming to be entitled to such rent;

(d) the reason and circumstances for which the application for depositing the rent is made."

8. According to the learned counsel for the tenant, the landlord was avoiding to accept the amount of rent tendered by him, and therefore, on 12.2.1985 through his local counsel he had given a notice to the landlord calling upon him to disclose his bank, bank account number and nature of bank account so that the tenant could deposit the amount of rent in the landlord's bank account. The landlord gave no response to the notice, and therefore, the tenant deposited the amount of rent in arrears in the court consistently with clause (c) of sub-section (3) of Section 19-A of the Act which deposit shall be deemed to be a payment or tender, to the landlord under sub- section (4) of Section 19-A. The first Appellate Court and the High Court have held that in order to be a valid deposit under Section 19-A, the deposit in the court must be preceded by a remittance by postal money order at the ordinary address of the landlord and in the event of such money order being received back then by a notice in writing to the landlord calling for the particulars contemplated by Section 19-A (3)(b) and it is only after having taken both the steps consecutively that the tenant becomes entitled to make a deposit in the court. In as much as it is not the case of the tenant that he tendered the rent due by postal money order to the landlord, the deposit was not valid as one of the pre-conditions for making a deposit in the court was missing. Aggrieved by the judgment of the High Court, the tenant has preferred this appeal by special leave. Section 19-A is intended to take care of recalcitrant tenants who either do not pay the rent when due or raise false pleas of payment or tender so as to harass the landlord and indulge in litigation by raising frivolous pleas much to the chagrin of landlords. Sub-section (1) obliges the tenant to pay the rent in accordance with the contract and in the absence of contract by the fifteenth day of the month next following the month for which the rent is payable. The landlord is obliged by sub-section (2) to issue a receipt or acknowledgement for any payment on account of rent. Sub-section (3) takes care of a situation where there may be a controversy as to whether the tenant fulfilled his obligation to make payment. Apart from personal payment of rent by the tenant to the landlord, two other methods are prescribed for payment or tender of rent available to be utilized at the option of the tenant. He may remit the amount of any rent due and payable by him, by postal money order and it would suffice if the money order bears an address which is the ordinary address of the landlord. The other alternative is that he may by notice require the landlord to specify, within 10 days from the date of the receipt of the notice by the landlord, the name of a bank and bank account number wherein the tenant may deposit the rent due. On service of such notice, it is the obligation of the landlord to inform the tenant of the requisite particulars whereupon the tenant may avail the facility of payment of rent by depositing it in the bank account specified by the landlord. Deposit in such bank account discharges the tenant of his obligation to pay or tender the rent.

9. To this extent, there appears to be no ambiguity in the language employed by the legislature in as much as clauses (a) and (b) of sub- section (3) are separated by the use of

word "or". Controversy arises, and the parties are at issue, on the interpretation of clause (c) wherein, the clause contemplating remittance of rent by postal money order and the clause relating to default by landlord to supply particulars of bank account are joined by conjunction 'and'. A plain reading of the provision may give an impression that the tenant must remit the rent due by postal money order under clause (a) and, on such money order being received back by him under a postal endorsement of refusal or unfound, call upon the landlord by serving a notice in writing to specify the particulars of a bank account for the purpose of depositing therein the rent due. It is on the failure of the landlord in complying with such demand of the tenant that the latter gets a right to deposit the rent in the court. In short, it is the submission of the learned counsel for the landlord that the tenant must comply with the requirement of both the clauses (a) and (b) of sub-Section (3), followed by landlord's failure to respond, whereupon only a right to make a deposit in Court under clause (c) accrues to tenant. If the tenant has taken only one of the two steps contemplated by clauses (a) and (b), then a right to make deposit in the court under clause (c) would not accrue to the tenant and even if made, it will not be a valid deposit and the deeming fiction of payment or tender of the amount of rent due provided by sub-section (4) shall not come into play.

10. We find it difficult to agree with the interpretation so sought to be placed by the learned counsel for landlord. In our opinion, clauses (a) and (b) of sub-section (3) are separated by word 'or' which is disjunctive and failure of payment by any of the two methods for the fault of the landlord would enable the tenant to deposit rent in the court and such deposit shall be a valid deposit so as to be deemed to be a payment or tender of rent due within the meaning of sub-section (4) of Section 19A. The opening part of sub-Section (3) of Section 19A provides for three modes of payment without intervention of Court. These are : (i) personal payment of rent to the landlord, (ii) remitting the amount by postal money order, and (iii) depositing the rent due in the bank. The use of the word 'or' therein manifests the legislative intent that such personal payment, remittance or deposit are three alternative methods of payment. This conclusion is reinforced by the legislative drafting of sub-Section (4) which provides that the obligation of the tenant to pay or tender the rent due, as contemplated by sub-Section (1), shall be deemed to have been fulfilled if the rent due and has been paid, remitted or deposited by any of the methods specified in sub-Section (3), i.e. paid personally or remitted by postal money order or deposited in the bank. However, clause (c) of sub- Section (3), while speaking of the several methods of payment, uses the word 'and' in between methods of remittance by postal money order and of depositing in bank account, which must, in the context, be read as disjunctive. It is well settled that 'and' is capable of being read as 'or', if the context demands it to be so read. The rule of homogenous construction also dictates the said 'and' in clause (c) being read as 'or' failing which there will be an apparent conflict between clauses (a) and (b) of sub-Section (3) read with sub-Section (4) and clause (c) of sub-Section (3) of Section 19A.

11. The word 'or' is normally disjunctive and the word 'and' is normally conjunctive. But at times they are read as vice-versa to give effect to the manifest intent of the legislature as disclosed from the context. It is permissible to read 'or' as 'and' and vice-versa if some other part of the same statute, or the legislative intent clearly spelled out, require that to be done. (See Statutory Interpretation by Justice G.P. Singh, 8th Edition, 2001, p.370).

12. We are, therefore, clearly of the opinion that the tenant's right to deposit the rent due in the Court under clause (c) arises if such deposit is preceded by the tenant having adopted one of the two methods contemplated by clauses (a) and (b) of sub-Section (3) of Section 19A.

13. However still, the question which remains to be examined is whether the tenant had at all asked for the particulars of bank account by giving a notice in writing under clause (b) abovesaid. The tenant has exhibited a copy of notice dated 12.2.1985 allegedly sent on his behalf by his advocate to the landlord. This notice is alleged to have been despatched by post under a certificate of posting. A postal receipt scribed on a piece of paper with postal stamps affixed and bearing postal seal of date 12.2.1985 has been exhibited. The landlord has on oath denied the receipt of any such notice.

14. Clause (b) of sub-section (3) of Section 19-A speaks of a notice in writing but does not prescribe the manner of sending and serving the notice. If a notice is sent through registered post, a presumption as to service arises under Section 30 of the Rajasthan General Clauses Act, 1955 read with Section 114 of the Evidence Act but the notice was not sent through registered post. It is alleged to have been dispatched under a certificate of posting. The learned counsel for the landlord submitted that such a notice brought on record by the tenant was not in fact sent and in any case not received by him. It was obligatory on the part of the tenant to prove the service of notice in view of the statement on oath given by the landlord denying receipt of any such notice.

15. The tenant has adduced no evidence to discharge such onus as did lay on him. In as much as clause (b) abovesaid speaks of 'notice in writing' requiring the landlord 'to specify' his bank and account number to the tenant, service of notice on the landlord is implied in the provision. The most common and usual mode of sending notice is by post. When the notice in writing is to be sent by post and the mode of service is not specified, Section 30 of the General Clauses Act comes into play. The notice should be sent by properly addressing, pre-paying and posting the same by registered post which the tenant has failed to do in the present case. The learned counsel for the tenant-appellant submitted that in the absence of mode of service having been specified in the provision, the tenant was justified in sending the notice in writing under certificate of posting and presumption as to service needs to be drawn under illustration (f) of Section 114 of Evidence Act. Suffice it to observe that the presumption arising under Section 114 of the Evidence Act is a permissive presumption which the Court may or may not raise depending on the facts and circumstances of a particular case. The learned counsel for the respondent has drawn our attention to an observation made by this Court in *Shiv Kumar & Ors. Vs. State of Haryana & Ors*[1]., (para 6), wherein the notices by the management to workmen were sent through certificate of posting which fact was disputed. This court observed __

> "We have not felt safe to decide the controversy at hand on the basis of the certificate produced before us, as it is not difficult to get such postal seals at any point of time". In the background of the dispute between the parties before us, we do not see any reason why the tenant should not have sent the notice to the landlord through

registered post. Moreover we find the address of the landlord on the copy of the notice written as __ 'Sitaram, s/o Hariram by caste Goldsmith, r/o Sunaron-ka-bas, Jodhpur,' while the certificate of posting reads the address as __ 'Sitaram Sunar, S/o Hariramji, Sunaron-ka-bas, Shahpura, Jodhpur.' It is not clear who handed over the notice to the post office. The tenant Fakir Mohammed and his son Mohammed Sharif are the only two witnesses examined by defendant. None speaks of he himself having posted the notice. The notice purports to have been given through an advocate who has not been examined. It is interesting to note that a plea as to any notice in writing under Section 19-A(3)(b) having been sent to the landlord, and that too under a certificate of posting, is not raised in the written statement. The issues were settled on 17.12.1987. Additional issues were framed on 16.11.1988. The defendant-tenant took time for adducing evidence on 13.3.1989 and 6.4.1989. Belatedly on 9.5.1989, through an application under Order 13 Rule 2 of the C.P.C., leave of the Court was sought for, for placing on record the copy of notice and the certificate of posting, which was given. On the totality of the facts and circumstances of the case, we do not think that a presumption under Section 114(f) of Evidence Act would be safe to draw in favour of the tenant and to hold that the requisite notice was sent by the tenant to the landlord.

16. For the foregoing reasons we are of the opinion that the tenant has defaulted in payment of rent and therefore a ground for his eviction under clause (a) of sub-Section (1) of Section 13 of the Act was made out. The appeal is dismissed with costs. The decree of eviction, as passed by the first appellate court and maintained by the High Court, is sustained though for reasons at variance therewith. However, the tenant is allowed time till 31.3.2002 for vacating the premises subject to filing an usual undertaking on affidavit before the executing court within a period of one month from today to clear all the arrears of rent within one month, continuing to pay the rent falling due month by month by the 15th day of that month and handing over vacant and peaceful possession to the landlord on or before 31st March, 2002.

Judgment Referred.

[1]*(1994) 4 SCC 0445*