

SUPREME COURT OF INDIA

Sarup Singh Gupta

Vs

S. Jagdish Singh and Others

C.A. No. 8177 of 2003

(B. P. Singh and Altamas Kabir, JJ)

29.03.2006

JUDGMENT

B. P. SINGH, J.

1. This Appeal by special leave is directed against the judgment and order of the High Court of Delhi at New Delhi dated 27th May, 2003 in Review Application No. 443 of 2002 passed in Regular Second Appeal No. 82 of 1997. The only facts required to be noticed are that the respondent herein, after serving a notice upon the appellant terminating the lease under Section 106 of the Transfer of Property Act, instituted a suit for his eviction on June 2, 1979. It appears that before filing the suit two notices were given to the appellant, namely notices dated 10th February, 1979 and 17th March, 1979. According to the appellant, despite notice terminating the tenancy, the respondent accepted rent for the months of April and May, 1979 and thereafter.

2. The suit was decreed by the learned Sub-Judge, Delhi by judgment and decree of 22nd October, 1983. The First Appeal filed by the appellant was also dismissed, whereafter he preferred a Second Appeal which was also dismissed by the High Court by its judgment and order dated August 1, 2002.

3. The petitioner then preferred a Special Leave Petition before this Court, which was also dismissed subject to the liberty granted to the appellant to seek a review from the High Court by

moving an application within a period of two weeks from the date of the order. Such an order was passed since it was submitted before this Court that although the plea of waiver of notice on the ground of rent having been continuously accepted by the landlord subsequent to the notice to quit was specifically raised in the High Court, it was neither noticed nor dealt with in the impugned judgment.

4. Pursuant to the liberty given, the appellant moved the High Court by filing a Review Petition, which has been dismissed by the impugned order.

5. Shri S.P. Goyal, learned Senior Counsel appearing on behalf of the appellant, drew our notice to Section 113 of the Transfer of Property Act, 1882, which reads as follows:

"113. Waiver of notice to quit.- A notice given under Section 111, Clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting."

He submitted that the acceptance of rent by the respondent-landlord even after effecting notice under Section 111, Clause (h), amounted to waiver of notice to quit within the meaning of Section 113 of the Transfer of Property Act. He submitted that waiver in the instant case was on account of implied consent of the landlord, who accepted the rent despite the notice, thereby evincing an intention to treat the lease as subsisting. He emphasised that even after filing the suit, the landlord continued to accept the rent tendered by the tenant.

6. Learned Senior Counsel also relied upon a decision of a learned Single Judge of the Calcutta High Court in 1926 AIR(Cal) 763, wherein it was held that where rent is accepted after the notice to quit, whether before or after the suit has been filed, the landlord thereby shows an intention to treat the lease as subsisting and, therefore, where rent deposited with the Rent Controller under the Calcutta Rent Act is withdrawn even after the ejectment suit is filed, the notice to quit is waived. In our view, the principle laid down in the aforesaid judgment of the High Court is too widely stated, and cannot be said to be an accurate statement of law. A mere perusal of Section 113 leaves no room for doubt that in a given case, a notice given under Section 111, Clause (h), may be treated as having been waived, but the necessary condition is that there must be some act on the part of the person giving the notice evincing an intention to treat the lease as subsisting. Of course, the express or implied consent of the person to whom such notice is given must also be established. The question as to whether the person giving the notice has by his act shown an intention to treat the lease as subsisting is essentially a question of fact. In reaching a conclusion on this aspect of the matter, the Court must consider all relevant facts and circumstances, and the mere fact that rent has been tendered and accepted, cannot be determinative.

7. A somewhat similar situation arose in the case in *Shanti Prasad Devi and another v. Shankar Mahto and others*, 2005 (3) CTC 550 : . That was a case where the landlord accepted rent even on expiry of the period of lease. A submission was urged on behalf of the tenant in that case that Section 116, Transfer of Property Act was attracted and there was a deemed renewal of the lease.

Negating the contention, this Court observed that mere acceptance of rent for the subsequent months in which the lessee continued to occupy the premise even after the expiry of the period of the lease, cannot be said to be a conduct signifying his assent to the continuing of the lease even after the expiry of the lease period. Their Lordships noticed the conditions incorporated in the agreement itself, which provided for renewal of the lease and held that those conditions having not been fulfilled, the mere acceptance of rent after expiry of period of lease did not signify assent to the continuance of the lease.

8. In the instant case, as we have noticed earlier, two notices to quit were given on 10th February, 1979 and 17th March, 1979. The suit was filed on June 2, 1979. The tenant offered and the landlord accepted the rent for the months of April, May and thereafter. The question is whether this by itself constitute an act on the part of the landlord showing an intention to treat the lease as subsisting. In our view, mere acceptance of rent did not by itself constituted an act of the nature envisaged by Section 113, Transfer of Property Act showing an intention to treat the lease as subsisting. The fact remains that even after accepting the rent tendered, the landlord did file a suit for eviction, and even while prosecuting the suit accepted rent which was being paid to him by the tenant. It cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting. We cannot ignore the fact that in any event, even if rent was neither tendered nor accepted, the landlord in the event of success would be entitled to the payment of the arrears of rent. To avoid any controversy, in the event of termination of lease the practice followed by courts is to permit the landlord to receive each month by way of compensation for the use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so intended. In the instant case, we find no other fact or circumstance to support the plea of waiver. On the contrary the filing of and prosecution of the eviction proceeding by the landlord suggests otherwise.

9. We are, therefore, satisfied that the High Court was right in dismissing the Review Petition filed by the appellant. This Appeal has no merit and the same is accordingly dismissed.

J