**Chandrappa Vs. Subramanya**

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**SooperKanoon Citation** : sooperkanoon.com/383435

**Court** : Karnataka

**Decided On :** Mar-13-1995

**Reported in** : ILR1995KAR1555

**Judge** : Shiva Prakash, J.

**Acts** : Karnataka Rent Control Act, 1961 - Sections 21(1)

**Appeal No.** : HRRP No. 6209 of 1988

**Appellant** : Chandrappa

**Respondent** : Subramanya

**Advocate for Def.** : M.R. Rajagopal, Adv.

**Advocate for Pet/Ap.** : H.K. Shetty, Adv.

**Disposition** : Revision petition allowed

**Judgement** :
ORDER

**Shiva Prakash, J.**

1. This second Revision under Section 115 of the C.P.C., is presented by the tenant aggrieved by the order passed by the first Revisional Court allowing the petition of the landlord under Section 21(1)(a) of the Karnataka Rent Control Act,

1961 ('Act' for short).

2. The facts of the case in brief are as follows: The eviction petition was instituted by the landlord under Section 21(1)(a) and (h) of the Act. The trial Court rejected the claim made by the landlord under Section 21(1)(h) of the Act. But in so far as the claim made under Section 21(1)(a) of the Act, the trial Court found that the actual rate of rent was Rs. 15/- per month and the tenant was in arrears of rent to the extent of Rs. 140/-. The trial Court gave one month's time to the tenant to make payment. Aggrieved by the said order of the trial Court, the landlord preferred revision under Section 50 of the Act to the District Court at Shimoga.

3. Before the first revisional Court the landlord gave up his claim under Section 21(1)(h), but confined his claim only under Section 21(1)(a) and questioned the correctness of the order passed by the trial Court in granting one month's time to the tenant to pay arrears of rent of Rs. 140/-.

4. The contention of the landlord before the first, revisional Court was that when once the Court found that the tenant was in arrears of rent and that he did not make payment of the same despite issue of statutory notice in terms of Section 21(1) (a) of the Act, grant of further time by the trial Court to pay the arrears is not in terms of the aforesaid provision. This submission made on behalf of the landlord has been accepted by the first revisional Court and the petition filed by the landlord under Section 21 (1)(a) has been allowed.

5. It appears from the order of the first revisional Court, that in the first instance, the notice in terms of Section 21 (1)(a) had been sent to the tenant by the first respondent herein. In response to the said notice the tenant sent a reply stating that he had taken the premises on lease from the second respondent and not from the first respondent. Subsequently, both the respondents who are brothers, appear to have sent another notice by registered post to the tenant. According to them the tenant avoided service of notice sent by registered post. While sending the notice by registered post both the respondents had also sent a copy of the said notice under Certificate of Posting. It was contended before the first revisional Court that even though the notice sent under registered post had been returned unserved, the notice sent under Certificate of Posting must have been received by the

tenant.

6. Sri M.R. Rajagopal, learned Counsel appearing for respondent-1, submitted that in terms of Section 114(f) of the Indian Evidence Act there is always a presumption that notice posted under Certificate of Posting has been received by the addressee. This submission which was made before the first revisional Court has been accepted, and the first revisional Court has concluded that the notice sent under Certificate of Posting must have been received by the tenant, and despite receipt of such notice if the tenant has not paid the arrears of rent within the time stipulated under Section 21(1)(a), question of granting further time did not arise.

7. Sri H.K. Shetty, learned Counsel for the petitioner, on the other hand, contended that Certificate of Posting does not establish that the notice sent has been received by the tenant. He submitted that Certificate of Posting merely evidences the fact of posting of a certain postal article and it is no proof of the fact that the notice sent under Certificate of Posting has been received by the addressee. In this regard, the learned Counsel for the tenant relied on two Decisions of this Court.

8. In BASHETTIYAVAR BROS, v. IV I.T.C. HUBLI, 1982 (1) KLJ 447, this Court has ruled that a Certificate of Posting is only meant for proving the act of posting and not as to what the cover contained. In the said Decision the question that arose for consideration was, whether a postal article sent under Certificate of Posting contained what it purported to contain. This Court has held that:

'it is common knowledge that postal authorities do not certify the contents of the cover. It is only an act of posting of a class of article which is certified and not as to what the article posted contains. Unless by a different procedure the postal matter is insured stating as to what the cover contains and for what value it is estimated and what insurance premium is required to be paid, it is impossible to know the contents. Similarly, in the case of letters sent by registered post for acknowledgement due, it only ensures the delivery of the posted matter, its acknowledgement by the addressee and does not ensure or certify as to what the cover contained.'

In the said Decision this Court has held that a Certificate of Posting is only meant for proving the fact of posting and no more.

9. In D.V. HARIDEV v. B. NARAYANAMURTHY, 1990 (1) KLJ 138, this Court has held that no presumption can be raised regarding delivery of a postal article on the basis of Certificate of Posting. Certificate of Posting even if it is held to be genuine only discloses the fact of posting.

10. In view of the aforesaid Decisions of this Court, it is not possible to accept the submission of Sri M.R. Rajagopal, learned Counsel for the respondent-landlord, deriving support from certain Decisions of other High Courts, that a presumption should be raised that the postal article sent under Certificate of Posting must be deemed to have been received by the addressee. Sri H.K. Shetty, learned Counsel for the petitioner-tenant also relied on several Decisions of other High Courts in support of his submission that a Certificate of Posting is no proof of delivery of the postal article to the addressee. It is not necessary to refer to all those Decisions in view of the Ruling of this Court,

11. I hold that Certificate of Posting merely evidences the fact of posting of a postal article, but it does not evidence the fact of delivery of postal article to the addressee even though the address given on the postal article is correct.

12. Besides, Section 21(1)(a) of the Act under which the notice in question was said to have been issued by the respondent-landlord provides for manner of service of notice. Section 21(1)(a) provides that the Court may on an application made to it, make an order for the recovery of possession of a premises if the tenant has 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 payment for the arrears of rent has been served on him by the landlord 'by tender or delivery either personally to the tenant or to a member or servant of his family at his residence (or if such tender or delivery is not practicable) by affixture to a conspicuous part of the premises.'

13. In the instant case, the landlord has not served the notice in the manner contemplated under Section 21 (1)(a). In fact, the learned Counsel for the

respondent-landlord did concede that since service of notice was not possible by other means, the same was not affixed 'to a conspicuous part of the premises' in question. Therefore, even on this count, it has to be held that the statutory notice under Section 21 (1)(a) cannot be held to have been served on the tenant to sustain the finding under Section 21 (1)(a) of the Act.

14. Sri M.R. Rajagopal, learned Counsel for the respondents next contended that the order under revision could be sustained on the second ground, namely, that the tenant had received the first notice dated 6.7.1980, marked as Ex.P.1 in which a demand was made on behalf of the first respondent, for arrears of rent. The petitioner tenant has received this notice and in his reply dated 3.8,1980 has denied that he is a tenant under the first respondent. The tenant has contended that he is a tenant under the second respondent and that he has been paying rent to him and at no point of time he had paid rents to the first respondent. In view of this reply, another notice, copy of which is marked as Ex.P.5 dated 4.9.1990 has been set;, on behalf of both the respondents. The petitioner-tenant denied having received this notice and there is no proof service, as already noticed while considering the first point urged by the learned Counsel for the respondents. The first revisional Court while considering the impact of both the notices has held that even assuming that the second notice had not been served on the petitioner-tenant, the fact that the first notice was served on him has not been denied, and therefore the first notice could be construed as notice in terms of Section 21 (1)(a) of the Act.

15. The case or the petitioner-tenant is that the first respondent K. Subramanya is not his landlord, but it is the second respondent K. Sridhar who is his landlord. In fact in the copy of the second notice, Fx.P.5, it is stated that the second notice is sent on behalf of Sridhar as well. It is admitted therein that Sridhar was collecting rents from the petitioner tenant. It appears from a reading of the said notice that the petitioner tenant was told that both respondents 1 and 2 are entitled to receive rents from him and therefore, the statement made by the tenant in the reply to the first notice that Sridhar alone is the landlord is not factually correct.

16. Sri H,K. Shetty, learned Counsel appearing for the petitioner submitted that since the second notice has not been received by the tenant, the claim by the landlords in terms of Section 21(1)(a) and which has been upheld by the first revisional Court cannot be sustained. In my opinion, in view of the issuance of the second notice, it has to be held that the first notice was superseded by the second notice and, therefore, the finding of the first revisional Court that the first notice itself could be taken as notice under Section 21(1)(a) cannot be sustained.

17. In the result, this Revision Petition succeeds. The order of the first revisional Court is set aside. It appears the petitioner-tenant has since paid the entire arrears of rent as directed by the trial Court within the time stipulated. Hence, the petition filed by the respondents under Section 21 (1 )(a) of the Act stands rejected.

18. Revision Petition allowed.