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**Deep Chand Vs. Babu Ram**

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**SooperKanoon Citation** : sooperkanoon.com/458966

**Court** : Allahabad

**Decided On :** May-21-1976

**Reported in** : AIR1976All478

**Judge** : O.P. Trivedi, J.

**Acts** : Transfer of Property Act, 1882 - Sections 116; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 39 and 40; Limitation Act, 1963 - Sections 5

**Appeal No.** : Second Appeal No. 358 of 1973

**Appellant** : Deep Chand

**Respondent** : Babu Ram

**Advocate for Def.** : Sri. Hargovind Dayal Srivastava

**Advocate for Pet/Ap.** : Sri. M. K. Seth

**Disposition** : Appeal allowed

**Judgement** :

**O.P. Trivedi, J.**

1. This a defendant's appeal and arises from a suit for ejectment from a shop and for damages for use and occupation which was filed against him by the

respondent Babu Ram. The plaintiff-respondent's case was that the shop was let out to the appellant for a fixed period of one year on an annual rental of Rs. 1000/- which was paid in advance. The appellant's tenancy came to an end on 1st September, 1970 and yet the appellant did not vacate the shop and continued to remain in possession wrongfully. There was thus a claim for damages for use and occupation from 2-9-1970 to 15-11-71 at the rate of Rs. 1000/- per year. It may be mentioned here that the suit was filed on 16-11-71. The shop lies in a Notified Area to which the provisions of U. P. Act III of 1947 did not apply. The defence was that the provisions of U. P. Act III of 1947 were applicable and that in any case the defendant could not be evicted except on grounds mentioned in Section 20 of U. P. Act 13 of 1972, hereinafter referred to as the Act. All the pleas were rejected by the trial Court on the finding that U. P. Act 13 of 1972 was not applicable and that the appellant was not entitled to the protection afforded by Section 39 of U. P. Act 13 of 1972 also because theamount required by Section 39 was not deposited by the appellant within one month of coming into force of that Act and its extension to the Notified Area in question, and the respondent was consequently awarded a decree for ejectment and damages for use and occupation. The defendant appealed but met with no success and the decree of the trial court was affirmed. In the trial court one additional plea was raised for the appellant namely that during the pendency of the appeal in that court on 31-10-1972 the landlord-respondent had accepted Rupees 2,200/- as rent for the shop from the appellant for 26 months prior to the said date and issued a receipt Ext. A-1. It was urged that by acceptance of rent for the period subsequent to the expiry of the tenancy a new lease had been created in favour of the appellant and he had become a tenant by holding over. In support of this submission reliance was placed for the appellant on the case of Bhawanji Lakhamshi v. Himatlal Jamnadas Dani, (AIR 1972 SC 819) but the lower appellate court rejected the plea.

2. I have heard Sri M. K. Seth appearing for the appellant and Sri Hargovind Dayal Srivastava appearing for the respondent. The first submission of the learned counsel is that although the courts below found that the money, as required by Section 39, read with Section 40 of the Act was deposited by the appellant beyond one month from the date of commencement of this Act, the lower appellate court erroneously held that this statutory period could not be extended by the court

under Section 35 of the Act. I find no force in the submission that the statutory period of one month for making deposits laid down under Section 39 of the Act can be extended by the court under Section 5 of the Limitation Act having regard to the provisions contained in Section 35 of the Act. This question came up directly for consideration before this Court in Sri Chand Gupta v. Madan Lal, (1973 All LJ 635) where it was held that Section 5 cannot be pressed into service to get the delay in making the requisite deposits under Sections 39 and 40 of the Act condoned. This decision is based on the Full Bench decision of this Court in J. C. and M. Mart v. Assistant Commr., 1968 All LJ 547 = (AIR 1969 All 200) (FB), I am in respectful agreement with the view taken in the aforesaid case and, therefore, hold that the statutory period of one month laid down in Section 39 cannot be extended by the court with theaid of Section 5 of the Limitation Act having regard to the provisions contained in Section 35 of the Act. This submission is rejected.

3. The next submission of the learned counsel is that a new tenancy had been created in favour of the appellant by holding over under Section 116 of the Transfer of Property Act as a result of acceptance of rent by the respondent-landlord from him during the pendency of the suit. Ext. A-1 is receipt dated 31-10-72 for Rs. 2,200/ issued by the respondent. By this receipt the respondent expressly received payment of Rs. 2,200/-on account of rent for 26 months upto 31-10-72. The tenancy expired on 1-9-70. Therefore the sum of Rs. 2,200/-, payment of which was received by the landlord from the appellant on 31-10-1972 clearly related to the rent of this shop after expiry of the tenancy. Section 116 of the Transfer of Property Act provides that 'if a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106.'

4. For the respondent reliance was placed on a Supreme Court decision in Bhawanji Lakhamshi v. Himatlal Jamnadas Dani, (AIR 1972 SC 819). This decision of the Supreme Court was in my judgment not correctly appreciated by

the lower appellate court. In para. 9 of this report the Supreme Court observed: 'What the section contemplated is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise'. Applying this test to the present case it appears that both the conditions formulated by the Supreme Court are present in this case. There was evidence of an offer of taking a new lease on the part of the lessee evidenced by remaining in possession of the property after expiry of the term and on the other side there is evidence of definiteconsent on the part of the respondent-landlord to the appellant's continuance in possession, the same being expressed by acceptance of rent on 31-10-1972. That being so, the conditions posited by Section 116 of the Transfer of Property Act were fully satisfied in this case and the appellant became a tenant of the respondent in the disputed shop by holding over. In column I at page 820 of the same report referring to its observations in the case of Ganga Dutt Murarka v. Kartik Chandra Das, (AIR 1961 SC 1067) the Court cautioned that mere acceptance of amounts equivalent to rent by a landlord from a tenant in possession after the lease had been determined either by efflux of time or by notice to quit cannot be regarded a new agreement of tenancy. In Bhawanji Lakhamshi v. Himatlal Jamna Das, (Supra) also the Supreme Court had referred with approval to observations made in Davies v. Bristow, (1920-3 KB 428) to the following effect 'where a tenant of a house to which the Increase of Rent. & c. (War Restrictions) Act applies, holds over after the expiry of a notice to quit, and pays rent, the landlord is not to be taken by accepting it to assent to a renewal of the tenancy on the old terms, for he has no choice but to accept the rent, he could not sue in trespass for mesne profits for the tenant notwithstanding the notice to quit, shall not be regarded as a trespasser so long as he pays the rent and performs the other conditions of the lease'. In Ganga Dutt Murarka v. Kartik Chandra Das, (supra) the court considered the position of a statutory tenant who was granted protection from eviction by the provisions of some statutory law. In the case of a statutory tenant of this character mere acceptance of amount equivalent to rent by a landlord from the tenant in possession after expiry of the lease cannot be regarded as evidence of creation of

a new tenancy by holding over because such a landlord has no option but to accept the rent because he knows that the tenant has acquired a statutory tenancy and has a right to continue in possession until evicted in accordance with the condition of tenancy. These observations, however, are inapplicable to the present case, firstly because the status of the appellant is not that of a statutory tenant. The suit out of which the present appeal arises was filed at a time when the provisions of U. P. Act III of 1947 did not apply to this building and even though the provisions of U. P. Act 13 of 1972 were extended tothe Notified Area in which the disputed shop lies, no protection against the eviction was extended or enured to the appellant except to the limited extent provided by Sections 39 and 40 of the Act. In other words by the force of Sections 39 and 40 of the Act the tenant could save himself from eviction only if he made deposit of amounts required by Section 39 within time laid down under that provision. If he fails to make deposits within such time, then he is not protected from eviction. The result, therefore, clearly is that the appellant does not become statutory tenant because from the fact that the provisions of the Act are exended to the Notified Area in question, his rights and liabilities must be governed by the law prevailing at the time of institution of the suit out of which this appeal arises. I, therefore, hold that even on the basis of observations made by the Supreme Court in the case of Bhawanji Lakhamshi v. Himatlal Jamnadas Dani, (supra) a new tenancy will be deemed to have been created in favour of the appellant by holding over under Section 116 of the Transfer of Property Act and as upon this view the appellant has again become a tenant of the respondent a decree for eviction cannot be granted against him on the footing that his tenancy has come to an end by efflux of time and the relationship of landlord and tenant has ceased. It is on these conclusions that the appeal is entitled to succeed.

5. I allow the appeal and modify the judgment and decree of the District Judge, Sitapur, dated 27th September, 1973 and dismiss the respondent's suit for ejectment. Rest of the decree of the District Judge is confirmed. The appellant shall get proportionate costs of this appeal from the respondent.

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