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Mohammadoo Khan Vs. Ghulam Rasul

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Court : Allahabad

Decided On : Feb-11-1972

Reported in : AIR1972All441

Judge : N.D. Ojha, J.

Acts : Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Sections 3(1)

Appeal No. : Second Appeal No. 1914 of 1965

Appellant : Mohammadoo Khan

Respondent : Ghulam Rasul

Advocate for Def. : B.D. Mandhyan, Adv.

Advocate for Pet/Ap. : G.P. Bhargava and ;S.N. Bhargava, Advs.

Judgement :

N.D. Ojha, J.

1. This is a defendant's appeal arising out of a suit for ejectment from a portion of house No. 99/335, Kan-ghi Mohal, Kanpur and for recovery of Rs. 83/- as arrears of rent and Rs. 7.50 Paise as mesne profits.

2. The suit was filed on the allegation that the plaintiff was the landlord of the house aforesaid, that the defendant was his tenant in a portion of the said house on the ground floor at a monthly rent of Rs. 3.75 P. and that he had not paid rent from August 24, 1961 to May 24, 1963 in spite of the notice of demand dated June 5, 1963 having been served upon him on June 12, 1963. The appellant contested the suit inter alia on the allegations that the notice of demand had not been served upon him, that he had already deposited the rent claimed in proceedings under Section 7-C of the U. P. (Temporary) Control of Rent and Eviction Act (hereinafter referred to as Section 7-C) on July 11, 1963 and that he was not a defaulter in the payment of rent. The trial Court came to the conclusion that the notice of demand had been duly served on the defendant appellant and that the deposit of Rs. 37.50 P. representing rent from 24-8-1962 to 23-6-1963 made under Section 7-C on July 11, 1963 could not save him from being a defaulter inasmuch as the said deposit was made after the service of notice of demand upon him on June 12, 1963. On these findings the trial Court decreed the suit for ejectment and arrears of rent amounting to Rupees 39.40 P. and pendente lite and future mesne profits at the rate of Rs. 3.75 P. per mensem. The aforesaid decree of the trial Court was affirmed on appeal by the Additional District Judge, Kanpur on May, 4, 1965.

3. The defendant has now come up in second appeal. The learned counsel for the appellant has made three submissions firstly it was contended that the notice of demand was not served upon the appellant. It was then contended that even if the said notice was deemed to have been served upon him he could not be fastened with the knowledge of the contents of the notice inasmuch as the inland letter containing the notice did not mention the name of the landlord in the column of the person who sent it but mentioned the name of one Sri Manzoor Ahmad, Advocate, Court Compound, Kanpur. It was lastly contended mat in any view of the matter, since the rent that was due had been deposited under Section 7-C on July 11, 1963 the said deposit in view of Sub-section (6) of Section 7-C would be deemed to be a valid payment to the landlord and consequently the appellant could not be held to be a defaulter in the pay-ment of rent

4. In regard to the first submission made by the learned counsel for the appellant it may be pointed out that both the Courts below have concurrently held that the

notice of demand dated June 5, 1963, which was sent by registered post, was tendered to the appellant on June 12, 1963 but was refused by him as was clear from the endorsement made by the postal authorities and consequently the notice would be deemed to have been sufficiently served upon the appellant. In Ganga Ram v. Smt. Phulwati, 1970 All LJ 336 = (AIR 1970 All 446), a Full Bench of this Court took the view that where a notice was sent by registered post and came back with the endorsement of 'refused' made by the postal authorities, the mere endorsement is sufficient in the eye of law to justify the presumption of ser-vice of the notice on the addressee. In this view of the matter there seems to be no error in the finding recorded by the Courts below that the notice of demand dated June 5, 1963 was duly served upon the appellant on June 12, 1963.

5. In regard to the second submission made by the learned counsel for the appellant it would be useful to refer to the observations made by Mr. Justice S. D. Singh, with which I respectfully agree, in the case of Shri Nath v. Smt. Saraswati Devi Jaiswal, AIR 1964 All 52. In the aforesaid case Mr. Justice S. D. Singh made the following observation: 'where a closed envelope is tendered to a person and he refused to accept delivery of the same, he, of course, has no knowledge of the contents of that envelope; but when he does not care to accept delivery of the envelope, the law should impute knowledge of the contents thereof to him, and it is on that basis that refusal to accept delivery of a registered or unregistered notice is regarded as sufficient notice of the contents of the envelope to the addressee.' In the case of Ganga Ram v. Smt. Phulwati, 1970 All LJ 336 = (AIR 1970 All 446) (FB) and Amina Khatoon v. Tohra Bibi, AIR 1971 All 372, it has been held that it was not the duty of the landlord to prove that the tenant after having received notice, had actually read it and understood its contents. In both theae cases service of notice was by refusal.

6. A contrary view will lead to the result of giving the addressee of a registered letter benefit of his own wrongful act of deliberately refusing to accept it. Under these circumstances when the appellant refused to accept the notice of demand on June 12, 1963 the contents of the aforesaid notice will be deemed to have come to his knowledge. On a perusal of the said notice it is apparent that the notice was given by Sri Manzoor Ahmad, Advocate, under title instructions of the

plaintiff respondent and was a notice demanding arrears of rent. Learned counsel for the appellant contended that since the inland letter did not contain the name of the plaintiff respondent in the space meant for writing the sender's name and address the appellant could not know that the said notice was a notice sent by the plaintiff respondent and was a notice demanding arrears of rent. I am unable to accept this argument for the simple reason that when the refusal of a notice sent by registered post amounts to service of the notice it means service of the contents of the notice and not the envelope containing it and once it is held that the con-tents of the notice came within the knowledge of the appellant there is no escape from the conclusion that the appellant knew that the notice had been sent by his landlord making a demand of the arrears of rent. In this view of the matter even the second contention made by the learned counsel for the appellant has no substance.

7. In regard to the third contention it is pertinent to point out that a tenant is entitled to make a deposit of rent under Section 7-C only in either of the following two contingencies: firstly when a landlord refuses to accept any rent lawfully paid to him by a tenant in respect of the accommodation let out to him and secondly where any bona fide doubt or dispute has arisen as to the person who is entitled to receive any rent referred to in Sub-section (1) of Section 7-C in respect of such accommodation. In the instant case an application was made by the tenant on August 29, 1961 for permission to deposit the rent under Section 7-C on the allegation that the landlord had refused to accept the rent duly tendered to him. The application in this way fulfilled one of the requirements of Section 7-C and was allowed by the learned City Munsif Kanpur, by his order dated October 27, 1961. The said order contained an observation to the effect that the applicant (viz. tenant), was allowed to deposit rent regularly under Section 7-C (1) at his risk. At this stage it will be pertinent to notice the provisions contained in Sub-section (1) of Section 7-C aforesaid. They run as follows:

'When a landlord refuses to accept any rent lawfully paid to him by a tenant in respect of any accommodation the tenant may in the prescribed manner deposit such rent and continue to deposit any subsequent rent which becomes due in respect of such accommodation unless the landlord in the meantime signifies by

notice in writing to the tenant his willingness to accept.'

The words 'unless the landlord in the meantime signifies by notice in writing to the tenant his willingness to accept' are important.

8. By means of the notice dated June 5, 1963 mentioned above the landlord made a demand of arrears of rent amounting to Rs. 78.75 P. with effect from August, 24, 1961 to May 23, 1963. The said notice as found earlier was served upon the appellant on June 12, 1963 and the finding of fact recorded by the Courts below is that the rent claimed in the said notice or any portion of it was not paid or offered to the landlord within the period prescribed by law. It was, however, contended on behalf of the appellant that on June 12, 1963 when the notice of demand is said to have been served upon him rent from August 24, 1962 onwards only was due and not from August 24, 1961 and that he deposited the rent due under Section 7-C on July 11, 1963. It was urged that in view of the deposit made on July 11, 1963 the arrears of rent claimed by means of the notice of demand would be deemed to have been paid to the landlord by virtue of the provisions contained in Sub-section (6) of Section 7-C. Reliance in this behalf was placed upon the case of Israr Ahmad v. Sant Ram, 1971 All WR (HC) 401 = (AIR 1971 All 559). The said case is, however, distinguishable. The facts of that case were that the tenants had not paid rent after September 1965. The landlord sent a notice dated June 23, 1967 which was served on the tenants on June 24, 1967 demanding the arrears of rent. The tenants sent the rent due by money-order but deducted from it a small sum as money-order commission. The landlord refused to accept the money-order and caused another notice dated August 21, 1967 to be served on the tenant which was received by the tenants on August 22, 1967. This was a notice terminating the tenancy on the ground that the tenants had failed to comply with the previous notice of demand. The said notice further mentioned that the arrears of rent due should also be paid. The tenants sent the entire amount of arrears by money-order on August 31, 1967 which was refused by the landlord on September 13, 1967. Thereafter the tenants made an application under Section 7-C on September 18, 1967 and deposited the amount of arrears of rent uptp date on the same day. After due notice to the landlord the learned Munsif by his order dated February 10, 1968 confirmed the deposit under Section 7-C. In the meantime, however, a suit had

been filed by the landlord for ejectment on the ground that the tenants were defaulters not aving paid the arrears of rent in spite of a notice of demand having been served upon them. It is obvious that when after hearing both the parties after the service of the notice of demand an order was passed permitting the tenant to deposit the same amount of rent which was claimed in the notice of demand the rent so deposited could legally be deemed to have been paid to the landlord in view of the provisions of Sub-section (6) of Section 7-C.

9. In the instant case, however, on the authority of the order passed under Section 7-C on October 27, 1961 the tenant was entitled to deposit rent under the said section only till the landlord had signified by notice in writing to him his willingness to accept the rent. The notice of demand dated June 5, 1963 served on the appellant on June 12, 1963 was a notice in writing and signified the willingness of the landlord to accept rent from the tenant. In this view of the matter neither of the two ingredients of Section 7-C which could entitle the tenant to make a deposit under the said section were present after June 12, 1963 and the deposit made under the said section on July 11, 1963 could not save the appellant from being defaulter in the payment of rent. In this view of the matter the finding recorded by the Courts below that the appellant was a defaulter in the payment of rent and was liable to be ejected on this ground does not call for any interference.

10. No other point has been pressed. The appeal accordingly fails and is dismissed with costs. Learned counsel for the appellant prays for three months time being granted to the appellant to vacate the accommodation in dispute. Keeping in view the facts that the appellant had deposited the arrears of rent under Section 7-C on July 11, 1963 which happens to be within one month from June 12, 1963 e. g. the date of the service upon him of the notice of demand and that he is being ejected for a technical breach of the provisions of Section 3 (a) of the U. P. (Temporary) Control of Rent and Eviction Act the aforesaid prayer is granted subject to the condition that the appellant deposits a sum of Rs. 11.25 P. representing the mesne profits for these three months in the trial Court and also the upto date rent or mesne profits, as the case may be, together with the amount decreed by the Courts below, if not already deposited, within a period of one month from today. If these deposits are made the decree for ejectment will not be

executed for three months from today's date.

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