

Taley Ram Vs. Jagminder Das

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Court : Delhi

Decided On : Dec-08-1971

Reported in : 9(1973)DLT6

Judge : D.K. Kapur, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1); [Transfer of Property Act, 1882](#) - Sections 106

Appeal No. : Second Appeal No. 272 of 1967

Appellant : Taley Ram

Respondent : Jagminder Das

Judgement :

D.K. Kapur, J.

(1) This is a second appeal at the instance of the landlord. The ground of ejectment was non-payment of rent and, it being a case of second default, the defendant was not entitled to get the benefit of making a deposit of rent under section 15 of the [Delhi Rent Control Act, 1958](#). A notice of demand dated 22nd April, 1962, was sent to the tenant claiming that the tenant had not paid rent from 1st November, 1961. It was claimed that as more than three months rent was due, the landlord was entitled to institute proceedings because of the provisions of

section 14(2) of the Act. The Rent Control Tribunal held that there was a default of more than three months and the claim of the tenant to adjust three months rent on account of repairs could not be allowed. The Controller and the Tribunal both found that the notice of demand which was sent by registered post and marked 'refused' could not be deemed to have been served on the tenant. In this respect, the reason given by the Rent Control Tribunal was that, though there was a presumption of service when a registered letter came back marked 'refused' this presumption could be rebutted and reliance was placed on *Emperor v. Sibnath Banerjee and others*, *Jagdish Chandra Deo Dhabal Deb v. Biseswar Lal Agarwalla and others*, *Karnal Distillery Co. Ltd, and others v Lalli Pershad Jaiswal and another*, *Raja Udrum Devi Das v. Khanbeg Amirbeg*, and *Shrimati Bhagwanti v. Waryam Singh* to hold that in certain cases the court may refuse to draw a presumption in a particular case.

(2) The Rent Control Tribunal held that the fate of a tenant could not be made dependent on the unverified or unattested report of an official who did not belong to a well-placed class of Government servants. In other words, the Tribunal held that a postman could wrongly mark a registered letter as 'refused' either on account of negligence or for other reasons. It was also held that the landlord might be tempted because of the stakes involved in ejectment cases in Delhi to take advantage of the situation by getting a doubtful report about service. Reliance was placed on the judgment in *Shrimati Bhagwanti v. Waryam Singh* decided by *Falshaw C.J.* Holding that a report in such a case could not be accepted without the examination of the postman concerned, regarding the correctness of his report. I think considering all the circumstances, that this is a proper approach in law. There is admittedly a presumption of service but the same can be rebutted by evidence, but if the postman is not examined in court, the presumption is very slight. I, therefore, hold that the Tribunal has rightly held that the service of the notice of demand in this case has not been proved. In view of the fact that in all cases of second default based on non-payment of rent, the tenant's only defense is to pay or tender the rent, it is most essential that the factum of service should be positively established. Mr. Gopal Narain has submitted on behalf of the respondents, that the registered envelope shows the sender's name as Mr. S.D. Sehgal, Advocate and, I have already held that where the letter does not bear the

name of the landlord, no presumption of service should be raised because the tenant is not able to determine that the notice sent to him is a notice of demand, and hence no presumption of service of such a demand should be raised. I do not wish to say anything on this question, as it is a question of fact in each case, as to whether the notice has come from the landlord or not. The first step in such a case is to establish that there was in fact a refusal of the notice by the tenant and the second step will be for the tenant: to show that the refusal was be. cause of lack of knowledge that it was a notice from the landlord. In this respect it is necessary to refer to the provisions of section 14(1) of the [Delhi Rent Control Act, 1958](#). The said provision runs as follows :-

'THAT the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in section 106 of the [Transfer of Property Act, 1882](#) :'

In order to establish this ground of eviction, the landlord has to show that he had served a notice of demand on the tenant which was not complied with, within two months either by payment or a tender of the arrears of rent. If service of the notice of demand is refused, it can be treated as a deemed service of the notice in certain cases. But, this depends on the nature of the refusal, If the refusal is under a mistake, then the presumption would be very weak. If the refusal is deliberate then the presumption will apply with full force and the notice will be deemed to have been served on the tenant. In the present case the refusal itself has not been established because the correctness of the report has not been proved. I may note that this view of the law does no harm to the landlord's rights because he can always serve a notice of demand personally or by affixation as provided by section 106 of the [Transfer of Property Act, 1882](#). The fact that the envelope containing the notice, which has been refused, does not bear the name of the landlord himself and the report is also by some unknown postman make it unwise to raise any presumption that there was a deliberate refusal by the tenant knowing that there was a notice of demand from the landlord.

(3) Another very interesting contention raised by Mr. Sehgal on behalf of the landlord, is that the service of the notice was pleaded in para 18(2) of the application for ejectment and not denied in the amended written statement. Under the normal rules of pleadings, this would mean that there was no specific denial of the allegation of the landlord that a notice of demand was sent to the tenant and refused. This would mean that the Court could not come to the conclusion that the notice had in fact not been sent to the tenant and. or that it had, not been refused by him. This contention has great force. However, this point was not raised before the Controller or Tribunal, and does not find place in the grounds of appeal in this court. It is quite possible that being faced with this contention the tenant might have given some other Explanationn. For example, in the instant case. the Rent Controller found that three months rent was not due at the time of making the demand and also that no notice of demand was served. Reliance was placed on the statement of Dhan Kanwar, a partner of the firm that he was never tendered any registered cover or refused the same. This evidence was recorded without objection by the Controller and, I, thereforee, think that this new contention concerning the absence of pleading by the tenant on the point should not be permitted to be taken at this late stage. There is another difficulty which arises from the language used inthe reply to para 18 In the written statement it is stated that this para is denied. But, there is no specific pleading about para 18(2). It is quite possible that the general denial in paragraph 18 of the written statement also covers para 18(2) of the ejectment petition This view seems to have prevailed below. I, thereforee, reject this contention of the landlord onthe ground that it was not taken up earlier.

(4) The appeal is thereforee dismissed, but in the circumstances,