

Raj Rani Vs. Gian Chand

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Court : Delhi

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Judge : J.D. Jain, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1)

Appeal No. : Second Appeal No. 121 of 1981

Appellant : Raj Rani

Respondent : Gian Chand

Advocate for Pet/Ap. : R.L. Roshan,; V.K. Bahl and; L.N. Batra, Advs

Judgement :

J.D. Jain, J.

(1) This is a second appeal under Section 39 of the Delhi 'Rent Control Act (hereinafter referred to as 'the Act') filed by the tenant-Smt. Raj Rani against the order of eviction dated 29th October, 1977 passed by an Additional Rent Controller and confirmed by the Rent Control Tribunal in appeal vide judgment dated 27th February, 1981.

(2) The facts leading to this appeal in brief are that the appellant-Smt, Raj Rani is a tenant in respect of a portion of property bearing No. 149-151, Block No. I, VishwasNagar,KarkariRoad,SarwariaMarket,Shahdara, Delhi under the respondent Shri Gian Chand. The landlord moved an application for eviction of the appellant on 7th November, 1975 on the ground of (i) non-payment of rent ; (ii) bonafide personal requirement a& residence ; and (iii) causing substantial damage to the demised premises falling under Clauses (a), (e) and (j) respectively of the proviso to Section 14(1) of the Act. The eviction petition was resisted by the appellant on various grounds but it was eventually allowed by the Additional Rent Controller on the grounds of non-payment of rent and bonafide personal reequirement. however, the appellant having complied with an order made by the Additional Rent Controller under Section 15(1) of the Act, she was held entitled to benefit of Section 14(2) of the Act, it being a case of first default. The eviction petition was, however, dismissed as regards the ground of causing damage to the demised premises.

(3) Feeling aggrieved the tenant preferred an appeal from the order of eviction in the Court of the Rent Control Tribunal but met with no success. Hence this second appeal.

(4) The learned counsel for the appellant has assailed the impugned order on various grounds. He has at the outset contended that there was no proper and valid service of the notice of demand which is a condition precedent to the maintainability of eviction petition on the ground of non payment of rent. The prides contention sought to be raised is that the appellant was out of Delhi during the period 4th June, 1975 to 4th July 1975 when the impugned notice of demand, dated 21st June, 1975 Ex. A. I was allegedly tendered and delivered to her by the postman. Hence, according to her, the question of any refusal to receive the notice on her part did not arise. In order to prove the factum of service of notice the respondent-land- lord besides tendering the postal receipt Ex. A3, the original envelope containing the notice of demand Ex. A4 and the certificate of posting Ex. A2, examined the postman of the area Shri Satinder Kumar as AW4. The latter deposed that he knew the appellant as he was visiting that area every day. In June 1975 he tendered the registered letter to the appellant but she refused the same

and, therefore, he recorded the remark Ex. AW4/a 'refused' in his own hand and signed the same. During cross-examination he explained that he tried to deliver the aforesaid letter to the appellant every day during 23rd June to 27th June, 1975 but he was unable to meet the appellant. However, he met the appellant ultimately on 28th June 1975 when she refused to have the letter. He denied the suggestion that she was away to Bombay on 28th June, 1975. As against this, there is the testimony of the appellant herself and her daughter Miss Veena to the effect that she had gone to Bombay at the relevant time. According to the appellant, she used to visit Bombay quite often as her relations live there. She explained that she left all her children in the premises in dispute while going to Bombay. According to Miss Veena, it was she to whom the registered letter in question was tendered by the postman but she declined to receive the same because her mother was out of station. The courts below have believed the testimony of the postman on this point saying that both the appellant and her daughter are highly interested witnesses and no reliance could be placed on their word of mouth in the absence of any cogent evidence that the appellant was, in fact, at Bombay during the said period. The Tribunal has further observed that even if the notice was tendered to Miss Veena it was a valid tender as under Section 106, Transfer of Property Act, the service could be effected by tendering the letter sent by post to one of the family members or servants at the residence of the addressee. Hence, refusal on the part of Miss Veena to refuse the notice would tantamount to refusal on the part of the appellant herself. It is this observation of the learned Rent Control Tribunal to which strong exception has been taken by the learned counsel for the appellant. According to him, Miss Veena although a daughter of the appellant was not an agent or attorney of the appellant and had no power or authority from the appellant to accept notice on her behalf. So, refusal on the part of Miss Veena to accept the notice cannot be considered as tantamount to a valid and proper service of the notice on the appellant in the eyes of law. In my view, the learned Rent Control Tribunal slipped into a grave error in giving a finding on the legal aspect of the matter about refusal of Miss Veena to receive the notice Ex. A I. It was not at all required in the facts and circumstances of the case. Significantly no suggestion was made either to the respondent or to the postman when he was in the witness box that the tender of the notice was to the daughter of the appellant Miss Veena

and not to the appellant herself. Obviously the testimony of the postman was allowed to go unchallenged on this point. Hence, the stand taken by the appellant that it was her daughter to whom the notice in question was tendered is just an after thought and it has been rightly disbelieved by the courts below. That apart, notice was also sent to the appellant under certificate of posting and there is a presumption of its having been delivered to the addressee in due course of official duties. Nothing has come on record to rebut this presumption by showing that the normal course of official business was interrupted in any way. In *Madan Lal Sethi v. Amur Singh Bhalla*, 1980(2) Rcj 543, it was observed by Sultan Singh, J. :-

'MERE denial by the tenant does not rebut the presumption raised under Section 114 Illustration (f) of the Indian Evidence Act. The tenant must have produced some evidence to show that the usual course of the post was interrupted by disturbances. He must have proved other circumstances to show that the notice never reached the addressee. There is no ev. credence except the bare statement of the tenant. In *Om Parkash Bahal v. A.K. Shroff*, 1973 R.C.J. 149, V.S. Deshpande, J. (a(r) he then was) held that notice sent under a certificate of posting is presumed to have been served and tenant's denial has no value unless he proves some extraordinary happening or event which prevented the following of usual course of business'.

(5) Further, the contention of the learned counsel for the appellant that service of the notice could not be effected by ordinary post i.e. under certificate of posting, and the only mode available to the respondent was to send it by registered post too is not at all tenable in view of the plain language of Section 106, Transfer of Property Act (for short 'T.P. Act'), which provides that every notice under the said section may be sent either by post to the party who is intended to be bound by it or be tendered or delivered personally to such party or to one of his family members or servants at his residence. It nowhere states that the notice must be sent by registered post. Hence there is absolutely no substance in the contention of the appellant that there was no valid service of the notice of demand on her.

(6) The next submission of the learned counsel for the appellant is that the notice of demand Ex. A 1 was even otherwise bad in law inasmuch as it raised a demand

for arrears of rent @ Rs. 165 per mensem even through the agreed rate of rent was Rs. 120.00 per mensem as held earlier by an Additional Rent Controller in the eviction petition, being Suit No. E-357/75 decided on 20th May 1975, copy Ex. A6. His submission precisely is that not only the finding given in the earlier eviction petition would operate as *res judicata* but even in the present eviction petition the Additional Rent Controller has come to the same conclusion. Hence, the notice of demand was vitiated on account of this vice. Reliance in this context is placed by him on *Hari Mohan Nehru v. Ramshwar Dyal*, 1980 Rlr 249. In the said case the notice had merely stated that Rs. 12,350.00 were due on account of arrears of rent calculated up to October 1975. No particulars of rate of rent or the period for which the rent was in arrears were given. On these facts it was observed by Avadh Behari, J. that :

'UNDER clause (a) the liability to ejection is created after a demand for rent is made and the rent is not paid for two months. Now logically, I think, it must follow that if liability under the statute is created by demand, the demand must be a proper demand. It is not easy to determine what are the essential requirements of a demand. But I have no doubt, at any rate, as to two of them. Firstly, that a demand must come from the proper quarter ; that means that it must come from the landlord or his counsel. The second requirement as to which I have no doubt, is that a demand must be a demand for a definite sum alleged to be due on account of arrears of rent from the tenant to the landlord. The period for which the rent has fallen due must be stated.'

(7) It is not intelligible how this judgment is of any assistance to the appellant, for the notice in question specifically states not only the rate of rent but also the period for which it was in arrears. Even the total amount which had thus fallen due is clearly stated in the notice as Rs. 5,445.00 . Certainly the notice does not become vague or illegal merely because the landlord has claimed rent at a rate higher than what has been found or is later on found by the Controller. At any rate, it does not absolve the tenant from paying the amount of arrears of rent at the rate and for the period for which it is due to the landlord, if at all, according to the tenant himself. Surely, he cannot take refuge under the plea of demand having been made at a higher rate or for a longer period without himself not complying with the notice

even according to his own case. However, whatever amount he pays and for whatever period is paid, b(r) runs the risk of final adjudication by the court going against him. I am fortified in the view I have taken by a number of reported decisions. In *Parkash Nath Vatsa v. Uttam Chand Chadha*, 1963 Plr 1116, H.R. Khanna, J. (as he then was) exercised the view that :

'THE fact that the landlord had in his notice demanded excessive amount as arrears of rent from the tenant does not absolve the tenant from paying the arrears of rent which were in fact due from him. There is no justification for the tenant to remain silent and not to pay even the amount which, according to him, was due after the notice of demand had been given to him.'

(8) The learned Judge alluded to two Division Bench decisions of the Allahabad High Court viz. *Ram Pratap v. Sri Panna Lal*, 1956 All LJ 787 and *Manohar Lal and another v. Bimal Kumar*, 1955 All I J 435, etc. in this context. These decisions were later considered by B.C. Misra, J. in *The Life Insurance Corporation of India v. The Standard Button Agency*, 1972 Rcj 199 and he found himself in perfect agreement with the statement of law laid down by H.R. Khanna, J. The learned judge also adverted to a decision of the Supreme Court in *Raghunath Ravji Dandekar v. Anant Narayan Apte*, Civil Appeal No. 387 of 1964 decided on 5th April, 1966, in which their Lordships had held that the mere fact that the amount given in the notice was incorrect was no ground for holding that the notice was bad and so the suit was not maintainable. His Lordship then added that:

'THE amount of arrears due is within special knowledge of the tenant and he has a duty to pay or deposit the rent monthly under Sections 26 and 27 of the Rent Act. However, on receipt of a formal notice of demand, he must at his risk pay or tender the amount due in order to escape eviction upon breach of clause (a) of the proviso to sub Section (1) of Section 14 of the Act. There is always a scope for genuine difference between the amounts claimed by the landlord and admitted by the tenant and the difference will have to be resolved by the Court but the mere fact that the amount mentioned in the notice is found to be incorrect is no ground for holding that the notice or legal proceedings following upon it are invalid.'

(9) I am in respectful agreement with this statement of law. Indeed, another learned Judge of this Court (Sultan Singh, J.) has taken an extreme view of the matter saying that :

'ACCORDING to Section 14(1)(a) of the Act a landlord is only required to send a notice demanding arrears of rent and the tenant on receipt of notice is under a duty to pay or tender the whole of the arrears of rent legally recoverable from him within two months. The only duty cast upon the landlord is to send a notice demanding arrears of rent. The clause (a) of the proviso to Section 14(1) of the Act does not require that the notice of demand shall state the amount due from the tenant. A notice of demand may not mention the amount at all. It may simply ask the tenant to pay the arrears which he has not paid. As soon as a notice of demand is served, it is the duty of the tenant to pay such amount as he thinks is due from him and if ultimately it i(r) found that the amount paid by the tenant was the correct amount, the landlord's petition for eviction will be dismissed. There can be no justification or the tenant to remain silent and not pay even the amount, which according to him is due and then to claim that the notice was invalid and he was not liable to eviction.'

(10) On the facts of the instant case I need not express any opinion regarding these observations. However, it is crystal clear that the contention raised by the learned counsel for the appellant with regard to the illegality of notice on the ground of higher amount of rent being demanded is totally devoid of merit.

(11) The next submission of the learned counsel for the appellant is that the eviction petition in question is barred by principles of rest judicata in view of the previous eviction petition having been dismissed vide order dated 20th May, 1975, copy Ex. A6, of the Additional Rent Controller. It is pointed out that the previous eviction petition had also been filed on the grounds of non-payment of rent with effect from 3rd September, 1972 and bonafide personal requirement for residence of the respondent-landlord and a finding was given by the Additional Rent Controller that the rate of rent was Rs. 120.00 per month only on account of subsequent surrender of the barsati by the appellant in favor of the respondent. A perusal of the said order shows that the learned Additional Rent Controller did find

that the contractual rate of rent was originally Rs. 165.00 per month but it was subsequently reduced to Rs. 120.00 per month on account of tenant surrendering the barsati portion of the demised premises to the landlord. However, he dismissed the eviction petition holding that the ground of non-payment of rent was not available to the landlord because the notice of termination of tenancy was invalid and ineffective. The reason given for this finding was that it was a case of monthly tenancy commencing on 1st of each English calendar month and ending with the last day of the said month. However, the notice under Section 106, T P. Act. determining the tenancy did not expire with the last day of the month of tenancy, rather it stated that the tenancy started from 3rd day of each English calendar month and ended on 2nd day of the subsequent month. He also held that even the notice of demand was vitiated and rendered illegal for the same reason.

(12) On a consideration of the matter, however, I do not find any substance in this contention too. The amended provisions embodied in Order XIV Rule 2 of the Code of Civil Procedure (hereinafter referred to as 'the Code'), contain a mandate to the court that notwithstanding that a case may be disposed of on a preliminary issue the Court has to pronounce judgment on all the issues ; the only exception to the said rule being the one embodied in Sub-rule (2) of Order XIV Rule 2 which relaxes the mandate to a limited extent by conferring discretion upon the Court if it is of opinion that the case or any part thereof may be disposed of on an issue of law only it may try that issue first provided the said issue relates to (a) jurisdiction of the court, or (b) bar to the suit created by any law for the time being in force. However, this amendment came into force subsequent to the afore said order of the Additional Rent Controller. It was, therefore, open to the learned Additional Rent Controller then to try a question of law as a preliminary issue. However, as held by a learned Judge of this court in *Champa Devi v. Sat Narain* : AIR1973 Delhi35 , that :

'If an issue involved a mixed question of law and fact then it had necessarily to be decided at the end of the case. Even otherwise it is generally considered desirable to record findings on all issue of fact in order to avoid a remand and not to try the suit piece-meal for expeditious disposal.'

(13) So, there was nothing wrong on the part of the learned Additional Rent Controller in recording a finding on the quantum of rent also because validity of the notice of termination of tenancy and demand involved a mixed question of law and fact. However, that would not mean that the laid order would operate as rest judicata.

(14) The doctrine of rest judicata comes into play only when the matter directly and substantially in issue in the subsequent suit has been heard and finally decided by the Court in the former suit. In other words, what operates as rest judicata is the ratio or what is fundamental to the decision. In *Vithal Yeshwant Jathar v. Shikandarkhan Makhtumkhan Sardesai* : [1963]2SCR285 , the Supreme Court observed :

'IT is well settled that if the final decision in any matter at issue between the parties is based by a Court on its decisions on more than one point-each of which by itself would be sufficient for the ultimate decisions-the decision on each of these points operates as rest judicata between the parties.'

(15) In my view, the words underlined by me above are crucial, in that it has to be seen in each case where plea of rest judicata is sought to be invoked whether the decision on each of the issues was by itself sufficient for the ultimate decision. This proposition of law was reaffirmed and further elucidated by the Supreme Court in its later decision in *Gangappa Gurupadappa Gugwad v. Rachawwa and Ors.* : [1971]2SCR691 . Said the Supreme Court:

'NO doubt, it would be open to a Court not to decide all the issues which may arise on the pleadings before it if it finds that the plaint on the face of it is barred by any law. If for instance the: plaintiff's cause of action is against a Government and the plaint does not show that notice under Section 80 of the Code of Civil Procedure claiming relief was served in terms of the said Section it would be the duty of the Court to reject the plaint recording an order to that effect with reasons for the order. In such a case the Court should not embark upon a trial of all the issues involved and such rejection would not preclude the plaintiff from presetting a fresh plaint in respect of the same cause of action. But, where the plaint on the face of it does not show that any relief envisaged by Section 90 of the Code is being

claimed, it would be the duty of the Court to go into all the issues which may arise on the pleadings including the question as to whether notice under Section 80 was necessary if the Court decides the various issues raised on the pleadings, it is difficult to see why the adjudication of the rights of the parties, apart from the question as to the applicability of Section 80 of the Code and absences of notice there under should not operate as *res judicata* in a subsequent suit where the identical question arise for determination between the same parties'

(16) Applying this test to the facts of the instant case, it is crystal clear that the previous eviction petition was not dismissed because the appellant was not found to be in arrears but because the notice of termination of tenancy and demand which was a condition precedent to the maintainability of the eviction petition was found to be invalid. Indeed, no finding was given by the learned Additional Rent Controller on the question of arrears of rent or the period for which the rent was over due. So, the finding with regard to the rate of rent can by no stretch of reasoning be said to be the basis of the decision. The eviction petition could not have been dismissed on this finding alone without more i.e. the further finding that the appellant-tenant was not in arrears of rent. Indeed, the Additional Rent Controller declined to pass an order even under Section 15(1) for want of service of a valid and legal notice of termination of tenancy and demand. In other words, the eviction petition was dismissed solely on an issue of preliminary nature and not on merits. Hence, the decision on the remaining issues cannot operate as *res judicata*.

(17) On merits there is a concurrent finding of both the courts below that the appellant had not paid the arrears of rent with effect from 1st September, 1972 upto 31st May, 1975 pursuant to the notice of demand dated 21st June 1975, copy Ex. A1. The contention of the appellant is that she paid arrears of rent for eight months up to 31st May, 1975 on the said date but no rent receipt was ever issued by the respondent-landlord. However, as has been rightly pointed out by the Tribunal the parties were locked in litigation for a long period. It does not, therefore, stand to reason that the appellant would have paid rent without obtaining any receipt despite protracted litigation between them upto 31st May, 1975. On going through the evidence of the appellant and her daughter etc. on this

point, I find that they have been rightly disbelieved and the concurrent finding of the courts below on this point does not call for any interference.

(18) That brings me to the second ground of eviction, , bonafide personal requirement of the respondent for residence of himself and members of his family. Here again the learned counsel for the .appellant canvassed at the outset that the eviction petition ought to have been rejected by the Additional Rent Controller under Order Vii Rule li of the Code because the eviction petition lacked in essential particulars and material facts necessary for constituting the cause of action under clause (b) of the proviso to Section 14(1). The essential postulates of the said clause entitling a landlord to an order of eviction are (a) that the premises in question were let for residential purposes ; (b) that he is a landlord and an owner of the demised premises ; (c) that the premises are required bonafide by him for occupation as a residence for himself or for any other member of bids family dependent upon him ; and (d) that the landlord has no other reasonably suitable residential accommodation. The learned counsel for the appellant points out that there is no plea in the eviction petition either with regard to the letting purpose or with regard to benefited requirement of the respondent for his residence. In order to appreciate the true scope of the pleadings in proper perspective it would be appropriate to extract the same. The relevant para is as under :-

'18(A)(I).The petitioner is the landlord/owner of the premises and he needs the same bona fide for himself and for his dependant family members. At present the petitioner has been residing in one room of 12' X 10' size in H. No. 9144, Gali No. 3, Multani Dhandha, New Delhi, as tenant which is quite insufficient and in convenient for residential purposes of the petitioner and his family members consisting of nine dependant members. The petitioner's 3 children are of marriageable age and for want of proper accommodation their respective marriage is not arranged. The petitioner and his family members dependant upon him have no other reasonably suitable residential accommodation.'

(19) It may also be noticed that in para 4 of the eviction petition the premises were described as residential. Apparently the eviction petition contains no plea with

regard to the letting purpose. However, on a perusal of the eviction petition as a whole there can be no manner of doubt that it purports to convey the letting purpose to be residential. Such a plea would be implicit in the very fact that eviction is sought under clause (e) of the proviso to Section 14(1). As for bona fide requirement of the respondent it is so stated specifically and he even states that he has no other reasonably suitable residential accommodation. That apart, the appellant did not fail to discern these essential ingredients embodied in clause (c). therefore, she specifically averred in the written statement that the 'premises in dispute had been let out for residential-cum-commercial purposes'. She further contended that the respondent-landlord 'had sufficient accommodation to meet the need of himself and dependant members of his family' In the replication filed by him, the respondent vehemently refuted that the premises were let to the appellant for residential-cum-commercial purpose and asserted that as already submitted by him the premises had been let to the appellant for residential purpose. Obviously, the latter part of his assertion is incorrect and not clearly borne out by his pleadings in the eviction petition. However, it would appear that the learned Tribunal did not notice this lacuna when he remarked that 'in the present case in hand the respondent hid specifically pleaded that he is the owner and had let the property for residential purpose'. This does not appear to be a correct statement of fact.

(20) There can be no two opinions that a landlord must plead all the essential ingredients constituting his cause of action in order to claim eviction of the tenant on a particular ground and failure on his part to do so may , in a given case, disentitle him to proceed with the eviction petition. However, the real question for determination is whether omission on the part of the respondent to specifically plead the letting purpose in the instant case would itself be fatal to the eviction petition or not In AbdulHamid v Nur Mohammod, 1976 Rlr 514. Rangara)an, J., expressed the view that the landlord was bound to urge all the conditions necessary to get an eviction and to prove the same and it was not sufficient for the landlord to merely state that he required the premises for his own occupation. Said he :

'HAVING regard to the avowed object of the enactment, namely, to safeguard the tenant against arbitrary and unjust eviction the statutory safeguards against eviction are conditions precedent which have to be strictly camped with before courts can exercise jurisdiction to order eviction.'

(21) In *Dr. (Mrs.) N.D. Khanna v M/s. Hindustan Industrial Corporation* : AIR1981 Delhi305 , on which reliance is placed by the learned counsel for the appellant. Sultan Singh, J. observed that :

'IN the present case the eviction application was filed which did not contain the necessary facts constituting the cause of action to claim eviction under Section 14(1)(e) of the Act. This was a mandatory requirement within the meaning of Order 7, Rule 1 of the Code. When this requirement is not specified, the consequences would be as provided in Order 7, Rule 11 (a) of the Code. In other words if the eviction application does not disclose a cause of action and an objection is taken by the tenant in the written statement, the Controller or the Court has to reject the same.'

(22) Reliance is also placed by the learned counsel for the appellant on *H.D.Vashishta v. M/s. Glaxo Laboratories (1)(P) Ltd.* : AIR 1979 SC134 and *Onkar Nath v. Ved Vyas*, (1980) 92 P&H; L R 638.

(23) A perusal of these authorities would show that with the solitary exception of *Abdul Hamid's* case none of them is of any help to the appellant. In *Dr. (Mrs.) N.D. Khanna's* case an objection with regard to nondisclosure of cause of action was raised by the tenant at the earliest i.e. in bids written statement and the same was dismissed by the Additional Controller. However, in revision the learned Judge thought it fit to modify the said order by converting it from one of dismissal of the eviction petition to that of rejection of the same in view of the provisions contained in Order VII Rule 13 of the Code that rejection of the plaint does not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. It will be noticed that no such plea was ever raised by the appellant in her written statement, rather she made a specific averment that the letting purpose was both residential and commercial. As for *Onkar Nath (supra)*, the Supreme Court had found that not merely there was inadequacy of pleading sufficient to make out a

cause of action but there was total absence of proof of two vital requirements. H.D Vashishta (supra) was a case of dismissal from service. It contained no averment to the effect that the past record of the worker had not been considered while making the order of dismissal. The Supreme Court observed that :

'THIS is the basic contention relied upon by the appellant to demolish the dismissal order.....We are satisfied that this plea that the past record of the employee has not been considered while dismissing the appeal has not been averred at all. On this alone the suit must fail.'

(24) The Supreme Court concluded with the observation that :

'THE lack of a material fact in the averments in the plaint is sufficient to dismiss the suit as not disclosing a cause of action.'

(25) For obvious reasons, these authorities are of no avail to the appellant excepting, of course, decision of Rangarajan, J. in Abdul Hamid (supra). As seen above, the appellant herself raised the specific plea regarding the letting purpose. Not only that she also adduced evidence to prove that the letting purpose was residential-cum-commercial and that she had been running a small factory for manufacturing electric main switches in a portion of premises in question. Hence, it cannot be said by any stretch of reasoning that she was taken by surprise in this respect. It is a different thing that the evidence adduced by her was not accepted by the courts below as worthy of credence. The submission of the learned counsel for the appellant is obviously founded on the rule that no amount of evidence can be looked into upon a plea which was not put forward (Siddik Mahomed Shah v. Mt. Saran . The scope of the said rule was explained by the Supreme Court in Nagubai Ammal & others v. B. Shama Rao & Ors. : [1956]1SCR451 , as under :

'THE true scope of this rule is that evidence let in on issues on which the parties actually went to trial should not be made the foundation for decision of another and different issue, which was not present to the minds of the parties and on which they had no opportunity of adducing evidence. But that rule has no application to a case where parties go to trial with knowledge that a particular question is in issue, though no specific issue has been framed thereon, and adduce evidence relating

thereto.'

(26) Their Lordships quoted with approval the following observations of Lord Atkinson in *Rani Chandra Kunwar v. Narpat Singh*, 34 Indian Appeals 27, that :-

'AS both the parties had gone to trial on the question of adoption, and as the plaintiff had not been taken by surprise, the pleas to adoption was open to the defendants, and indeed, the defendants succeeded on that very issue.'

(27) So, the objection raised by the opposite party that no such plea had been raised in the written statement nor was any issue framed thereon was over-ruled by the Judicial Committee. Reference in this context may also be made with advantage to *Bhagwati Prasad v. Chandramaul* : [1966]2SCR286 , and *Kedar Lal Seal & another v. Hari Lal Seal* : [1952]1SCR179 . In the former case it was held by the Supreme Court that :

'CONSIDERATIONS of form cannot over-ride the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence.'

(28) In *Kedar Lal Seal* (supra), Bose, J., speaking for the court observed :

'I would be slow to throw out a claim on a mere technicality of pleas ding when the substance of the thing is there and no prejudice is caused to the other side, however clumsily or inartistically the plaint may be worded.'

(29) The principle object of pleadings and the requirement of Rule 2 of Order VI of the Code obviously is that the opposite party may know what are the facts on which the other party relies in order that he may be prepared to meet the case. So, law insists that the pleadings should be precise and clear but where all the necessary facts are before the Court and the parties have fully argued on them, a contention in the appeal Court that a plea has not been set out in the pleadings and hence, it should not have been gone into, would not be entertained. As for

proceedings under the Act, the strict law of pleadings and for that matter other procedural provisions embodied in the Code are not applicable. However, Rule 23 of the Delhi Rent Control Rules, 1959, which were framed pursuant to the power conferred by Section 56 of the Act on the Central Government provides that in deciding any question relating to procedure not specially provided by the Act and the Rules, the Controller and the Rent Control Tribunal shall as far as possible be guided by the provisions contained in the Code. Hence, insistence on strict and scrupulous compliance with the law of pleadings as contained in the Code is misconceived. Only substantial compliance with the law of pleadings would be enough. I am fortified in this view of the matter by the following observations of the Supreme Court in *Rattan Lal v. Vardesh Chander & Ors.* : [1976]2SCR906 :

'THE Rent Act contemplates no elaborate pleadings but filling out of particulars in a perform which takes the place of a plaint. No specific averment of forfeiture and consequent determination of the lease is found in the petition. Having regard to the comparative informality of these proceedings and the quasi-judicial nature of the whole process, such an omission cannot be exaggerated into a lethal infirmity.'

(30) Coming to the decisions of this Court it may be noticed that various learned Judges of this Court have not subscribed to the view expressed by Rangarajan, J. in *Abdul Hamid (supra)* and Sultan Singh, J. in *Dr. (Mrs.) D.N. Khanna (supra)*. In *Gurdial Nagdev v. Smt. Devi Bai*, 1979 (1) Rcr 119, the landlady had mentioned that the premises let out to the tenant were residential and were being used by him for residential purpose. Observed the learned Judge (M.L. Jain, J.) :

'THAT in other words clearly means that the premises were let out for residential purpose. Though, it is not mentioned that she has no other accommodation but the very fact that the present premises are not sufficient for all the members of the family implies that other accommodation is really not available. There has thus been a sufficient compliance of the requirements of Section 14(1)(e). The tenant had sufficient notice of the case set up by the landlady and both the parties knew well the points of controversy between them and no one was taken by surprise.'

(31) His Lordship adhered to this view consistently in his various decisions. (*Sec Ram Gopal v. Washeshwar Nath* : 16(1979)DLT215 , *Manmohan Mehra v. J. S.*

Butalia : AIR1984 Delhi32 and Kanwal Narain v. I.f. Tellis, 1984 Rlr 10. The gist of these authorities is that (a) the rule that no Amount of evidence can be looked into upon a plea which was not put forward is not absolute and the general application of this rule may result in Lordship if not injustice ; and (b) to insist upon the reproduction of what the provisions of the statute are, is to ask the applicant to plead law. At any rate, such an omission can be allowed to be rectified by replication, by better particulars or by an amendment and in any event, an application cannot be thrown out if there is a partial disclosure of cause of action.

(32) Yogeshwar Dayal, J. too has expressed the same view in V.B. Raju v. R.L. Mahindroo, 1982 Rlr 650. According to His Lordship it is the substance of allegations contained in the eviction petition rather than the form which is more important. G.C. Jain, J. said in Smt. Tressa Nair v. SobhaRam, 1985 (2) Rcj 62, that pleadings should be construed liberally. In the said case the landlady had omitted to state in the eviction petition that she had no other reasonably suitable accommodation. Repelling the contention that the petition suffered from non-disclosure of cause of action. His Lordship observed that :

'THE landlady in the grounds reproduced above, has specifically averred that she had only one small room in her occupation and had no adequate accommodation in her possession. 'Adequate' means sufficient. Thus, it has been pleaded that the landlady had only one room which accommodation was not sufficient. These pleadings, in my view, meet the requirement of pleading. the material facts, at least in substance..When the landlady says that she was in occupation of only one room and had no sufficient accommodation it was implicit that she had no other accommodation any where else.'

(33) Even Sultan Singh, J. has expressed the same opinion in some of his judgments. In Mrs. Kundan Lal Mehta & others v. Smt. Parkashwati, 1980 (2) Rcj 551, the landlady had not pleaded all the ingredients constituting the cause of action within the meaning of clause (c) of Section 14(1) of the Act. However, as in the instant case, no objection was taken by the appellants-tenants in the written statement that the eviction petition did not disclose any cause of action, instead they pleaded that the premises were let not only for residence but both for

residence and commercial purposes. They also averred that the landlady had sufficient accommodation meaning, thereby that she had reasonably suitable residential accommodation. His Lordship posed the question whether in the said circumstances the respondent -landlady was to be non-suited for not pleading the two material ingredients of clause (e) of the proviso to Section 14(1). After alluding to some authorities including Abdul Humid (supra) his Lordship replied in the negative observing that:

'IF the appellants-tenants had taken the objection in the eviction petition that it does not disclose any cause of action in their written statement, the respondent landlady would have cured the defect. She is now taken by surprise in the second appeal. The objection, not raised in the courts below to which the respondent has had no notice that it is going to be urged cannot be allowed to be urged in the second appeal. Further if such an objection has not been taken in the first instance and evidence has been recorded, without any protest, on facts which were not pleaded, the objection cannot be allowed to be raised in the second appeal. The objection that a plaint does not disclose cause of action must be taken at the earliest.'

(34) To the same effect is the decision of Sultan Singh, J. in Arvind Berry v. Rear Admiral A.P.S.Bimdra, 27 (1985) Dlt 311. In the said case his Lordship distinguished Dr. (Mrs.) N.D. Khanna's case (supra) saying that in that case the tenant had raised the plea that the eviction petition did not disclose a cause of action and on that ground the eviction petition was rejected. However, in the case before his Lordship viz. Arvind Berry, no such plea was raised by the tenant in the lower court in his written statement. So, the question of prejudice, if any, caused to the party on account of failure of proper pleadings was considered to be relevant.

(35) The sum and substance of all these authorities is that while a landlord is required to set out all the essential postulates of a ground of eviction as contemplated in the proviso to Section 14(1) of the Act, mere omission to do so would not be fatal to the eviction proceedings, especially when the averments in substance if not in form spell out the cause of action and no objection with regard to the non-disclosure of cause of action or want of essential plea is taken at the

earliest. Further when the parties go to the trial knowing full well each other's case and adduce evidence in support of their respective contentions, neither of them can be permitted to turn round later on and seek to non-suit the opponent on a mere technicality like this. Hence, there is absolutely no substance in this contention of the appellant.

(36) On merit both the courts below have recorded concurrent finding that the premises were let for residential purpose alone. On a perusal of the evidence on record, I find that they have arrived at the right conclusion. In particular, it may be noticed that a suggestion was made to the respondent -landlord when he was in the witness box that subsequent to the dismissal of the previous eviction petition there was a settlement between the parties under which the appellant was permitted to use the premises for commercial purpose also. He refuted this suggestion vehemently. The learned Rent Control Tribunal has rightly said that it would imply that prior to the dismissal of the previous eviction petition there was no agreement between the parties allowing the premises to be used for commercial purpose. This being a finding of fact, I need not go into details and appraise the evidence of the parties myself. I may, however, add that in view of the protracted litigation between the parties such a plea fails to carry conviction.

(37) The learned Tribunal was also right in dismissing the application of the appellant for producing additional evidence in order to prove user of the premises for both residential and commercial purposes on the ground that a party cannot be permitted to fill up the lacuna unless it is shown that he could not produce the same for some compelling or unavoidable reason. Obviously such a prayer can be allowed only if the conditions envisaged in Order Xli Rule 27 are satisfied.

(38) The learned counsel for the appellant had virtually nothing to address on the question of the sufficiency or suitability of the other accommodation in the possession of the respondent inasmuch as it was found by the courts below that he was having only one living room whereas his family comprised his wife, three sons and six daughters. Nothing has been brought on record by the appellant that he has any other residential accommodation much less reasonably suitable residential accommodation. So, the bona fides of the respondent in requiring

additional residential accommodation cannot be doubted.

(39) To sum up, therefore, this appeal is devoid of merit. It is accordingly dismissed. However, keeping in view the fact that there is acute scarcity of residential accommodation in this metropolis, it is just and proper that she is allowed some time to surrender possession of the . demised premises. Hence, I grant her six months from today to surrender peaceful and vacant possession of the premises in question to the respondent. The costs shall abide the event.

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