

**Phalwant Singh Vs. Jai Narain**

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**Court :** Delhi

**Decided On :** Jul-11-1980

**Reported in :** 18(1980)DLT360; 1980RLR558

**Judge :** M.L. Jain, J.

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

**Appeal No. :** Second Appeal No. 47 of 1980

**Appellant :** Phalwant Singh

**Respondent :** Jai Narain

**Advocate for Pet/Ap. :** B.K. Mehra and; D.R. Mahajan, Advs

**Judgement :**

**M.L. Jain, J.**

(1) The Respondent who is the landlord filed an eviction petition against the appellant who is the tenant before the Controller under Clause (a) of the proviso to Sub-section (1) of S. 14 of the [Delhi Rent Control Act, 1958](#) (hereinafter the Act). The petitioner lamented that the occupant was introduced into the premises as a licensee but later on he refused to vacate the premises and claimed that he was a tenant at Rs. 200.00 per month, since March 1, 1974. The respondent succumbed to this stand and filed a petition for eviction on the ground of non-payment of rent

and an order under Sub-section (1) of S. 15 of the Act was passed on March 7, 1977, directing the appellant to deposit arrears of rent within one month. The respondent complied, though he also filed an appeal which he lost on March 1, 1978.

(2) The tenant defaulted again in the payment of rent since May 1, 1977. He only sent a letter on April 11, 1978 telling the landlord that he will be sending a crossed cheque of Rs. 2400.00 on April 20, 1978. It was not done. The landlord gave a notice of demand on May 17, 1978, which was received by the respondent on May 18, 1978. In this notice the landlord called upon the tenant to pay all rents remaining unpaid since May 1, 1977. He also pointed out that since he had defaulted in the payment of rent for three consecutive months at least from February 1, 1978, to April 30, 1978, he was now no more entitled to an order under S. 15 of the Act in view of the proviso to Sub-section (2) of S. 14 thereof. Upon receipt of this notice, the tenant sent on May 23, 1978, a registered cover containing a Demand Draft on the Bank of India of Rs. 2,400.00 on the home address of the landlord. It was redirected to his office. Finally, the cover was received back on June 2, 1978, bearing a remark 'out of station for unknown period, returned to sender, 31/5'. On June 8, 1978, the advocate of the tenant wrote a letter to his counterpart that according to his client's information, the landlord was in Delhi and was attending his office but was up to some device. He requested him to advise his client to collect the pay order from his residence or if so desired, the pay order may be sent to his address. Thereafter, the tenant sent two more amounts as follows :

(1) Rs. 200.00 by money order on June 9, 1978, which was refused, and (2) Rs. 400.00 by money order on June 19, 1978, which too was refused.

(3) The landlord filed the present petition for eviction on July 20, 1978, on the ground that in spite of the said notice, the tenant failed to pay or tender the arrears within two months of the relief of the said notice and he was therefore, liable to eviction.

(4) On July 18, 1978, the tenant sent a cheque of Rs.600.00 which was returned by the landlord under a registered cover to the tenant. He then filed his written

statement on August 30, 1978, Later on, in virtue of an order made by the Addl. Controller on November 28, 1978, all the arrears are said to have been paid.

(5) January 30, 1979, was fixed for admission of documents. By the consent of the parties the documents were exhibited. No evidence was recorded. After hearing arguments, the learned Addl. Controller by her order of January 31, 1979, passed an order of eviction. An appeal to the Tribunal failed on January 29, 1980. Hence, this second appeal.

(6) This appeal was filed on February 11, 1980, but with an uncertified copy of the impugned judgment, through bearing court-lee stamp of Rs. 2.75 p. An application was moved the same day for exemption from filing of the certified copies. On February 13, 1980, it was directed that the certified copies be filed within time. This was the only order that could be made in view of Malik Chand v. Zubeda begum and others . The certified copy was filed on April 14, 1980, but without the requisite court-fee and without any application for condensation of delay. It was contended that the appeal was barred by time. The learned counsel for the appellant pointed out that if the appeal is deemed to have been presented on April 14, 1980, then there is a delay of 16 days only which he, under the law, is entitled to have excluded in computation of time. He explained that the appellant applied on February 1, 1980, for a copy of the impugned judgment which is a decree as held in Ram Mehar v. Raghbir Singh (1969) 71 P. L. R. 171. Though the copy appears to have been ready on February 12 1980, but he had been called to collect the copy on February 14, 1980, which he did on that day. After exclusion of these 14 days taken in obtaining the copy, he should have filed the appeal on April, 12, but April 12 was a second Saturday and April 13 was a Sunday on both of which days the court remained closed. So, the copy could be and was filed only on April 14. I agree. But the court-fee paid on the uncertified copy cannot be treated as court-fee paid on the certified copy. The appeal was not competent even on that day and is, therefore, barred by time. I hold so. Section 4 of the Court Fees Act and the Custodian Evacuee Property v. Prabhu Dayal Chhajan Lal awl others, , fully support me in this view.

(7) Now, merites as well. It was urged before the Addl. Controller that in the circumstances of the case stated above, no default had occurred because the tenant had tendered the arrears of rent. As far as the subsequent offer by money orders and by cheque are concerned they cannot be taken into account because they did not represent the full amount of the arrears. I can also not accept the submission that the notice served by the landlord under Clause (a) of the proviso to Sub-section (1) of S. 14 of the Act was only for arrears of rent for three months and, therefore, even if the entire arrears of rent were not offered, the said Clause (a) will not be attracted. Thus the sole question involved in this second appeal is whether the dispatch of a draft of Rs. 2400.00 was valid offer of payment.

(8) The learned counsel for the respondent submitted that by the time of the alleged endorsement of non-delivery of the registered cover, some more rent had accrued and, therefore, there will be no valid tender within the meaning of the law unless that amount was also offered. This argument is rejected because it is not supported by the language of the said Clause (a). What that clause means is that if any arrears of rent are due then a notice requiring payment of all the arrears within two months will be served. The requirement of law will be satisfied if all the arrears that are due on the date of the receipt of the notice are paid or offered.

(9) A debt is discharged, in the absence of a contract to the contrary by payment in legal tender, that is, in the coin of the realm as envisaged in S. 13 of the Indian Coinage Act, 1906, and in paper currency as envisaged in Ss. 22 and 26 of the Reserve Bank of India Act, 1934. It is a duty of the tenant to find his landlord and to offer the amount of arrears to him in person or through an agent in legal tender that is cash or bank notes *Abdul Bagi v. Akhlaq Ahmecl*, 1962 A. L.J. 1146; and if he refuses to receive the payment, then in order to escape the consequences of default, to make deposit in the court under S. 26 of the Act or to send it by a postal money order because in that case tender is made by the postal agency in the legal tender of the country. The post office is the agent of the remitter but Where creditor has by express or implied agreement or request agreed to receive payment through post, the post office is also the agent of the creditor, vide *Commissioner of Income Tax v. M/s. Ogale Glass Works Ltd.*, : [1954]25ITR259(SC) , and *Azamzahi Mills Ltd. v. Commissioner of Income Tax*, :

[1976]103ITR449(SC) . But, unless otherwise agreed in advance, or implied by subsequent conduct, the landlord is not bound to accept any other mode of payment, be it a cheque or a demand draft. The objection to the form of the tender may, however, be waived expressly or impliedly by the creditor, and he will be deemed to have so waived the objection, if he rejects any other tender not on the ground of its legality but on the ground of the insufficiency in amount, or on some other ground; see *Jagat Tarini Dasi v. Naba. Gopil Chaki* I. L. R. (1907)34 Cal. 305. However, in *Damadilal and others v. Parashram and others*, : AIR 1976 SC2229 , the Supreme Court observed that in the contemporary society, it is reasonable to suppose that such an agreement is implied but it cannot be done so where circumstances of the case indicate otherwise. It was, therefore, urged that there being an absence of circumstances to the contrary, the bank draft which is on a higher footing than a cheque, sent by post by the tenant to landlord towards payment of arrears of rent was a valid tender of rent. The tenant's counsel even wrote to the counsel of the landlord that it has not been possible for the post office to deliver the registered cover to the landlord and therefore, if the counsel agreed he could send the draft to him or he could forward the draft to the landlord if fresh address was applied to him. In a situation like this, much can be said on either side. A mischievous landlord may refuse that any money was offered to him and the best evidence that the tenant can provide to prove his offer is the record of the post office and the bank. But, here again, in order to defeat the law, the landlord may make himself scarce and make it impossible for the post office to have the article delivered. On the other hand, it is no obligation of the landlord to be available at his place of address all the time in anticipation of the post which may arrive at any moment in the day or to approach the bank to collect the amount. It is, therefore, necessary that payment in cash is made or offered in legal tender, in person, or by money order or through the court, but if there is an express or implied agreement that the liability can as well be discharged by a cheque or a bank draft delivered in person or sent through the postal agency, then in that case such an agreement has to be pleaded and proved: *Haji Sheikh Hasanoo v. S. Natesa Mudliar and Co.* : AIR1959 Bom267 . There is no such pleading and, therefore, no proof in the case before us. In *Mohan Lal v. Kanwar Sen*, A..I.R. 1954 All. 480, where it was not even alleged by the tenant that there was an

agreement between the parties that the landlord will accept the rent by a bank draft in payment of arrears of rent, sending of a bank draft was held not to amount to payment or even a tender thereof. There was here no case of waiver either; because the question of refusing the bank draft on any ground other than the ground that it was not a legal tender, did not arise because the registered letter could not be delivered and the addressee did not even know that the cover contained a demand draft. A grievance was made that the Addl. Controller decided the case without oral evidence. But the record shows that the parties agreed to lead no evidence and the documents exhibited were considered sufficient evidence to decide the case. This was legally permissible.

(10) A demand draft is an order from one bank to the other or to its branch against the payment already deposited with it. There is no agreement in the High Courts whether a demand draft is a negotiable instrument being a cheque, or a bill of exchange or otherwise. But, granting that it is a negotiable bill of exchange, and guarantees payment because it cannot be easily countermanded by the person purchasing it or by the bank to which it is presented, all the same it is a conditional payment and cannot, therefore, by itself constitute a valid, offer in the absence of an agreement and proof of an agreement express, or implied or waiver; see *Mohanlal Jogani Rice & Atta Mills v. Ramlal Onkarmal Firm and others* A. I. R. 1957 Ass 133. So, when the notice was served upon the tenant) it was his duty to offer the payment in prevalent currency and in case of his refusal, it was neither proper nor permissible in the absence of an agreement or conduct to the contrary to make the landlord to approach the bank in order to collect his dues. The very fact that the tenant had allowed the rent to pile up for twelve months shows that his intention was to harass the landlord and his bona fides are seriously in question. The two courts below have found that this is a case in which no valid offer of payment has been made and the tenant was liable to eviction. Upon consideration, I agree with them and hold that the tenant could not prove that he had tendered the arrears in compliance to the notice of demand and hence he could not escape eviction.

(11) I, therefore, find no force in this appeal, and dismiss the same. However, I shall make no order as to costs. The appellant shall however, be allowed two

months time to vacate the premises.

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