The Indian Law Reports

REVISIONAL CIVIL

Before C. G. Suri, J.

MANOHAR LAL,—*Petitioner.*

versus.

SADHU RAM,—*Respondent.*

Civil Revision No. 646 of 1969.

April 1, 1970.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 13 and 15(5)—Transfer of Property Act (IV of 1882)—Sections 106 & 116—Notice of termination of tenancy in terms of section 106 Transfer of Property Act before filing an ejectment application under section 13 of Rent Restriction Act—When necessary—Absence of overt act on the part of landlord showing intention of determining the lease—Inference regarding the subsistence of the lease—Whether can be drawn—Plea of want of notice—Whether can be raised at the appellate stage.

Held, that the question of serving a notice in terms of section 106 of the Transfer of Property Act arises only where the provisions or principles of that section are applicable or the contractual tenancy or the tenancy which is deemed to have come into existence under section 116 is a monthly tenancy or such a monthly tenancy is subsisting and has not already come to an end by efflux of time or by forfeiture or by having been determined by appropriate notice under the just and equitable principles of section 106 of the Act. Where however the contractual tenancy is shown to have already come to an end and the tenant continues in possession under a statutory tenancy giving him the status of irremovability conferred on him by statute, then no notice under section 106 of the Act is necessary (Para 5)

Held, that where no notice under section 106 of the Act is given the landlord must do something to show his unequivocal intention of determining the lease. In the absence of any overt act showing the clear or unequivocal intention of the landlord to enforce the forfeiture or disclaimer, there can be a waiver of the termination of the lease by the landlord and an intention on his part to treat the lease as subsisting can be inferred in the absence of any such overt act. (Para 6)

Held, that when an application for ejectment under section 13 of the East Punjab Urban Rent Restriction Act is filed and it is understood by all concerned that notice of termination of tenancy in terms of section 106 of Transfer of Property Act is not necessary, there can be no averment in the application

that such a notice had been served on the tenant. Hence there is no occasion for the tenant to admit or deny the plea. There is therefore no deliberate and conscious act on the part of the tenant so as to amount to waiver. The plea of want of notice can be rightly allowed to be raised by the Appellate Authority even if it can be said that it was rather at a belated stage of the proceedings. (Para 7)

Petition under section 15(5) of the East Punjab Urban Rent Restriction Act for revision of the order of Shri S. C. Goyal, Appellate Authority (District Judge), Hissar, dated 21st March, 1969, reversing that of Shri J. B. Garg, Rent Controller, Bhiwani, dated the 22nd June, 1968, dismissing the application of the respondent Manohar Lal.

PRITAM SINGH JAIN AND V. M. JAIN, ADVOCATES, for the petitioner.

H. L. SARIN AND H. S. AWASTHY, ADVOCATES, for the respondents.

JUDGMENT

C. G. SURI, J.—This revision petition has been filed by a landlord under section 15(5) of the East Punjab Urban Rent Restriction Act, No. 3 of 1949 (hereinafter briefly referred to as the 'Rent Act') against the order of the Appellate Authority, Hissar, allowing the respondent-tenant to take up the objection, for the first time at the appellate stage, that the petitioner landlord had failed to serve a notice of termination of the tenancy in terms of section 106 of the Transfer of Property Act, No. IV of 1882 (hereinafter briefly referred to as the 'Property Act'). The Appellate Authority, relying on the recent Full Bench decision of this Court in *Bhaiya Ram* v. *Mahavir Parshad* (1), upheld this objection of the respondent-tenant and accepted his appeal to set aside an order of eviction granted by the Rent Controller on the ground of non-payment of rent, on the petitioner-landlord's application under section 13(2)(i) of the Rent Act. The ejectment application filed by the petitioner-landlord has, therefore, been dismissed by the Appellate Authority leaving the parties to bear their own costs.

(2) There have been recent changes in the case law on the subject of service of notice of eviction on the tenant before the filing of an ejectment application by the landlord and the position when the pleadings were filed by the parties before the Rent Controller was very much different with the result that these pleadings were not

(1) I.L.R. (1969) I Pb. & Hr. 132=1968 P.L.R. 1011.

drafted to suit the present state of law as it has emerged after two recent Bench decisions of this Court in *Sawaraj Pal* v. *Janak Raj* (2) and *Bhaiya Ram* v. *Mahavir Parshad* (1). A different view had been taken in two Single Bench decisions in *Raj Kumar* v. *Major Gurmitinder Singh* (3), *and Jagjit Rai Sharma* v. *Bihari Lal Guliani* (4), but the Bench decisions in *Sawaraj Pal's case* (2), and *Bhaiya Ram's case* (1), were followed by the same Judge in a later ruling in *Smt. Gargi Devi* v. *Som Datt* (5). The decisions in the cases of *Raj Kumar* (3), and *Sawaraj Pal* (2), were given almost simultaneously during the same month and either of these cases could not be noticed in the other, but the Full Bench decision in *Bhaiya Ram's case* (1), was brought to the notice of the Hon'ble Judge when he decided *Jagjit Rai Sharma's case* (4), and he was pleased to observed that his decision in *Raj Kumar's case* (3), had been approved by the Full Bench in *Bhaiya Ram's case* (1), and that the Appellate Authority had, therefore, rightly disallowed the prayer of the tenant to amend the written statement at the appellate stage to take up the objection about the absence of service of notice of eviction by the landlord before the filing of the ejectment application against the tenant. A different view was, however, taken by the Hon'bleJudge in *Gargi Devi's* case (5), where the Appellate Authority's order rejecting the tenant's application for amendment of his written statement to take up the plea of absence of a notice of termination of the contractual tenancy was set aside on the ground that there was no waiver on the part of the tenant in spite of the late stage at which his application for the amendment of the written statement had been made. Reliance had been placed on the Division Bench ruling in *Sawaraj Pal's case* (2), and the Full Bench decision in *Bhaiya Ram's case* (1). The main contention of the learned counsel for the petitioner, Shri Jain, in this case is that the contractual tenancy had already been terminated by forfeiture when the present ejectment application on the ground of non-payment of rent was filed against the respondent-tenant and that no notice of eviction was necessary because the respondent was continuing in possession of the premises only as a statutory tenant. Reliance is placed on a certain compromise arrived at between the parties in a similar ejectment application filed earlier during the course of the same year.

(2) I.L.R. (1969)1 Pb. & Hr. 440—1968 P.L.R. 720.
(3) 1968 P.L.R. 672.
(4) 1969 Rent Control Journal 139.
(5) 1969 Curr. L.J. 926.

(3) Exhibit P.W. 5/A, is a copy of the deed of compromise, dated 29th April, 1966. The previous ejectment application in which this compromise was arrived at had been filed on 29th March, 1966, and one of the grounds of eviction was non-payment of rent. The parties agreed that up to 29th April, 1966, the arrears amounted to a sum of Rs. 1,000. A sum of Rs. 600 was paid by the respondent-tenant to the petitioner landlord on the date of compromise (29th April, 1966) leaving a balance of Rs. 400. It was agreed that the tenant would pay this balance within one month that is on or before 29th May, 1966. If there was default in the payment of the balance by this date, then the tenant undertook to put the landlord in possession of the premises. The final order that was passed on the basis of this compromise has not been proved, but it was stated at the bar that the ejectment application was dismissed on 29th April, 1966, and that the landlord was not given the right in that case to take out execution for the eviction of the tenant in case of default in the payment of balance of arrears by the stipulated date.

(4) It is the common ground of the parties that the respondent-tenant failed to pay up the balance of the arrears in accordance with the terms and conditions of this compromise. The present ejectment application on the ground of non-payment of rent was, therefore, filed on 2nd December, 1966. Reliance was placed on a condition of the original rent note to claim advance rent for a period of 6 months and a breach of the terms and conditions of this rent note has been alleged in paragraph 2 of the ejectment application. There is no allegation in the ejectment application that any forfeiture of the tenancy had taken place on 29th May, 1966, because of the tenant's default in the payment of the balance of the arrears in accordance with the compromise deed, Exhibit P.W. 5/A, or that the landlord had determined the lease on the ground of any such forfeiture. The rent note, Exhibit P 1, dated 15th May, 1960, was initially for a period of 6 months, but gave the tenant an option to continue in possession on the old terms after the expiry of that initial period. As already observed, this ejectment application had not been framed so as to suit the position as brought about by the recent changes in the case law. The cause of action according to paragraph 4 of the ejectment application had accrued to the landlord from 29th April, 1966 and not on 29th May, 1966, which was the date of default leading to the alleged forfeiture of the tenancy which is now set up as a ground for the termination of the contractual tenancy prior to the filing of the ejectment application.

(5) According to the Full Bench decision in *Bhaiya Ram's* case (1), the question of serving a notice in terms of section 106 of the Property Act arises only where the provisions or principles of that section are applicable or the contractual tenancy or the tenancy which is deemed to have come into existence under section 116 *ibid* is a monthly tenancy or such a monthly tenancy is subsisting and has not already come to an end by efflux of time or by forfeiture or by having been determined by appropriate notice under the just and equitable principles of section 116 of the Property Act, which has not been extended to the State of Punjab and Haryana by any notification under section 1 of that Act. Where the contractual tenancy is shown to have already come to an end and the tenant continues in possession under a statutory tenancy giving him the status of irremovability conferred on him by statute, then no notice under section 106 of the Property Act would be necessary.

(6) The question then is whether the contractual tenancy had been determined by forfeiture or otherwise before the filing of the present ejectment application by the petitioner-landlord. Reliance has been placed by his counsel, Shri Jain, on clauses (b) and (g) of section 111 of the Property Act and it is argued that according to the compromise in the earlier ejectment application it had been agreed that in the event of a default by the tenant in the payment of balance of rent unless the landlord had shown his intention of enforcing the forfeiture by serving a notice in writing on the lessee or by doing some other overt act expressing unequivocally such an intention on his part. It was argued by the learned counsel for the petitioner-landlord on the basis of *Namdeo Lokman Lodhi* v. *Narmadabai and others* (6), that the later portion of section 111(g) of the Property Act in so far as it makes it necessary for the landlord to serve a notice in writing on the lessee of his intention to determine the lease is not in consonance with the ideas of justice, equity and good conscience and that this provision of the Property Act cannot, therefore, be applied in Punjab where this Act, except for certain sections, has not been specifically extended or enforced. This clause was amended by section 57 of Act 20 of 1929 and the last phrase providing for notice in writing was substituted for the words which required that the landlord should do some overt act showing his unequivocal intention of determining the lease. It was held by the Supreme Court in *Namdeo's case* (6), that the condition with regard to the service of notice in

(6) A.I.R. 1953 S.C. 228.

writing was not in consonance with the ideas of justice, equity and good conscience, but the old condition requiring that the landlord should do something to show his unequivocal intention of determining the lease was found to be quite just and equitable for obvious reasons. In the absence of any overt act showing the clear or unequivocal intention of the landlord to enforce the forfeiture or disclaimer there could be a waiver of the termination of the lease by the landlord and an intention on his part to treat the lease as subsisting could be inferred in the absence of any such overt act. By the amendments made in 1929, this overt act on the part of the landlord was specifically made to take the shape of a notice in writing. Moreover, there are some recent Supreme Court and Full Bench decisions which show that there was nothing inconsistent with ideas of justice, equity and good conscience in a statutory provision of the Property Act requiring the service of a notice in writing on the lessee of the landlord's intention to determine a lease. In *Raja Mohammad Amir Ahmad Khan* v. *Municipal Board of Sitapur and others* (7), it was observed that the principles embodied in section 111(g) of the Property Act are equally applicable to tenancies in the territories to which the said Act did not apply because these provisions were in consonance with ideas of justice, equity and good conscience. No distinction was made in the old or the amended portions of clause (g) and *Maharaja of Jeypore* v. *Rukmini Pattamahadevi* (8) which had been relied on in *Nam Deo's case* (6) was also relied on by the Supreme Court in *Raja Mohammad Amir Ahmad Khan's case* (7). The provisions with regard to service of notice under section 106 of the Property Act have also been found to be just and equitable by the Full Bench in *Bhaiya Ram's case* (1), even though there could be two opinions as to whether the period of 15 days laid down by that section was adequate or not. The provision with regard to the service of notice of the landlord's intention under section 111(g) does not lay down any arbitrary period of notice and this provision could, therefore, be described as more just and equitable. These rulings illustrate that conceptions of justice, equity or good conscience are only relative and can change from time to time or from place to place or from one set of circumstances or environment to another. In any case, the ejectment application as framed by the petitioner-landlord is not based on the alleged termination of the lease by forfeiture because of the tenant's default in the payment of the balance of the arrears by the stipulated date and the averments in the ejectment

(7) A.I.R. 1965 S.C. 1923.

(8) A.I.R. 1919 P.C. 1.

application clearly show an intention on the part of the landlord to treat the original contractual lease to be subsisting. There may, therefore, appear to have been a waiver of the landlord's intention to enforce the forfeiture leading to the alleged termination of the contractual tenancy and sections 106, 111(g) and 112 of the Property Act are clearly applicable inasmuch as they lay down just and equitable principles of law.

(7) The written statement was filed by the respondent-tenant in January, 1967, when it was commonly understood that a notice of termination of the tenancy in terms of section 106 of the Property Act was not necessary. There was no averment in the ejectment application filed by the petitioner-landlord that any such notice had been served on the tenant and there was, therefore, no occasion for the latter to admit or deny the plea. There was, therefore, no deliberate and conscious act on the part of the tenant so as to amount to waiver and in view of the Bench decisions in the cases of *Bhaiya Ram* (1), and *Sawaraj Pal* (2), the plea of want of notice was rightly allowed to be raised by the Appellate Authority even if it could be said that it was rather at a belated stage of the proceedings.

(8) No useful purpose would be served by a remand as it was no body's case that a notice of termination of the tenancy had been served by the petitioner-landlord on the respondent-tenant before the filing of the present ejectment application.

(9) I, therefore, dismiss the revision petition, but leave the parties to bear their own costs.

N. K. S.

REVISIONAL CRIMINAL

Before Man Mohan Singh Gujral, J.

GIAN CHAND ETC.—*Petitioners.*

versus.

AMAR NATH,—*Respondent.*

Criminal Revision No. 504 of 1968.

April 3, 1970.

Companies Act (I of 1956)—Section 446—Winding up orders passed against a Company—Criminal proceedings against employees of the