CASE NO.:
Appeal (civil) 5300 of 2001

PETITIONER:
RAJINDER PERSHAD (DEAD) BY LRS.

RESPONDENT:
SMT. DARSHANA DEVI

DATE OF JUDGMENT: 10/08/2001

BENCH:
SYED SHAH MOHAMMED QUADRI & S.N. PHUKAN

JUDGMENT:
JUDGMENT

2001 Supp(1) SCR 442

The following Order of the Court was delivered :

Leave is granted.

This is tenant's appeal, by Special Leave, against the judgment and order dated 2.8.1999 of the High Court of Judicature at New Delhi dismissing Second Appeal No. 41 of 1998 filed by the appellants-tenants and confirming the order of eviction from the suit premises passed against him in landlady's eviction case.

In this order the parties will be referred to as the tenant and the landlady. The case of the landlady is that the tenant did not pay the rent of the suit premises from I 7.85 in spite of service of notice of demand Exhibit AW 1/6 dated 5.8.86 and committed three consecutive defaults in payment of rent. The tenant contested the case. He denied service of demand notice. The Rent Controller. Delhi, on the basis of the evidence on record found that the tenant refused to receive notice and there was default in payment of rent and, therefore, ordered eviction of the tenant from the suit premises on 1.7.1996. The tenant's appeal presented to the Rent Control Tribunal, was dismissed. He then carried the case in Second Appeal before the High Court which was also dismissed by the judgment and order under challenge in this appeal.

The only point urged albeit strenuously on behalf of the appellant, by Mr. P S. Mishra, the learned senior counsel, is that as there has been no valid service of notice so all proceedings taken on the assumption of service of notice are illegal and void. He has invited our attention to the judgment of the learned Rent Control Tribunal wherein it is recorded that Exhibit AW1/6 dated 5.8.86 was sent by registered post: and the same taken by the postman to the address of the tenant on 6.8.86, 8.8.86, 19.8.86 and 20.8.86 but on those days the tenant was not available; on 21.8.86 he met the tenant who refused to receive the notice. This finding remained undisturbed by both the Tribunal as well as the High Court. Learned counsel attacks this finding on the ground that the postman was on leave on those days and submits that the records called for from the post office to prove that fact, were reported as not available. On those facts submits the learned counsel, it follows that there was no refusal by the tenant and no service of notice. We are afraid we cannot accept these contentions of the learned counsel. In the Court of the Rent Controller, the postman was examined as A.W.2. We have gone through his cross-examination. It was not suggested to him that he was not on duty during the period in question and the endorsement "refused" on the envelope was incorrect. In the absence of cross-examination of the postman on this crucial aspect his statement in the chief-examination has been rightly relied upon. There is an age old rule that if you dispute the correctness of the statement of a witness you must give him opportunity to explain his statement by drawing his attention

to that part of it which is objected to as untrue, otherwise you can not impeach his credit. In State of U.P. v. Nahar Sing (dead) and Ors., [1998] 3 SCC 561, a Bench of this Court (to which 1 was a party) stated the principle that Section 138 of the Evidence Act confers a valuable right to cross-examination a witness tendered in evidence by opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by permitting a witness to be questioned, inter alia, to test his veracity. It was observed.

"The oft-quoted observation of Lord Herschell, L.C. in Browne v. Dunn clearly elucidates the principle underlying those provisions. It reads thus:

"I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses."

For the afore-mentioned reason no exception can be taken to the impugned judgment and order of the High Court. The appeal fails and it is accordingly dismissed. No costs.