PETITIONER:
MADAN & CO.

Vs.

RESPONDENT:
WAZIR JAIVIR CHAND

DATE OF JUDGMENT28/11/1988

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
MUKHARJI, SABYASACHI (J)

CITATION:
1989 AIR 630 1988 SCR Supl. (3) 983
1989 SCC (1) 264 JT 1988 (4) 520
1988 SCALE (2)1408

ACT:
Jammu and Kashmir Houses and Shops Rent Control Act, 1966: Section 11--'Serves a notice in writing through post'--Inter-pretation of--Posting a pre-paid registered letter containing tenant's correct address--Sufficiency of.

HEADNOTE:
In November 1976, the respondent issued a notice to the appellant under section 11 of the Jammu & Kashmir Houses & Shops Rent Control Act, 1966 calling upon it to pay the arrears of rent. The notice also terminated the tenancy and called upon the appellant to vacate the demised premises. The notice sent by registered post was received back by the respondent with the endorsement "left without address, returned to sender". Thereupon the respondent caused a copy of the notice to be fixed to one of the doors of the premises in question. No payment of rent was however made by the appellant subsequently. The respondent, therefore, filed a suit in June 1977 seeking ejectment of the appellant on the ground of default in the payment of rent. The Trial Court ordered eviction. and the appellant's appeals before the District .Judge and the High Court against the order of eviction failed.

Before this Court the appellant contends that (1) the safeguards in ss. 11 and 12 of the Act are intended for the benefit and protection of the tenant and therefore, where the Act provides for the service of the notice, by post. this requirement has to be strictly complied with; (2) such postal service can neither be presumed nor considered to be good service where The latter is returned to the sender due to non-availability of the addressee; (3) in the absence of any enabling provision, service by some other mode, such as affixture, cannot be treated as sufficient compliance with the statute; and (4) where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden.

Dismissing the appeal, it was,

HELD: (1) The proviso to clause (i) of section 11(1) and the proviso to section 12(3) are intended for the protection

PG NO 984

of the tenant. A Nevertheless, it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. [988H; 989Al

(2) The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through post. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgment due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under s. 27 of the General Clauses Act. [989A-B]

(3) To interpret the provision as requiring that the letter must have been actually delivered to the addressee, would be virtually rendering it a dead letter. [989F]

(4) If a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities. [989H; 990A]

(5) The more reasonable, effective, equitable and practical interpretation would be to read the words "served" as "sent by post". correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by the tenant. [990B-C]

(6) The statute prescribes only one method of service for the notice and none other. To require service by some other method to be effected over and above the postal service would be to travel outside the statute. [99OF]

(7) Where the statute does not specify any additional or alternative mode of service, there can be no warrant for importing into the statute a method of service on the lines of the provisions of C.P.C. This Court would therefore not like to hold that a substituted'' service. such as the one effected by the landlord in the present case, is a necessary or permissible requirement of the statute. [990G]

(8) The provision in regard to the notice contemplated by the statute is unsatisfactory and it is hoped that the

PG NO 985

legislature would soon set it right. On the provision as it stands, a landlord must be held to have complied with the statutory requirement by sending a notice correctly addressed to the tenant by registered post. [991H; 992A]

Hare Krishna Das v. Hahnemann Publishing Co. Ltd. 1965-66, 70 C.W.N. 252; Surajmull Ghanashamdas v. Samardarshan Sur, ILR 1969 1 Cal 379; Taylor v. Taylor, 11875] 1 Ch. D. 426.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4146 of 1985.

From the Judgment and Order dated 18.12.1984 of the Jammu & Kashmir High Court in C.S.A. No. S of 1981.

Soli J. Sorabjee, Harjinder Singh and Ranjan Mahapatra for the Appellant.

Anil Dev Singh, Dr. Meera Agarwal and R.C.Misra for the Respondent.

The Judgment of the Court was delivered by

RANGANATHAN, J. 1. This appeal involves the interpretation of s. 11 of the Jammu & Kashmir Houses & Shops Rent Control Act, 1966 (hereinafter referred to as 'the Act').

2. The petitioner is a firm of which Sohan Singh Madan is the managing partner. The firm was the tenant of the respondent in respect of a portion of a building situated in Raghunath Bazar. Jammu, on a rent of Rs.200 p.m. According to the respondent, the petitioner had been irregular in paying the rent of the premises and had altogether stopped making payment of any rent from 1st April, 1976 onwards. On 26.11.1976, the respondent issued a notice to the petitioner calling upon it to pay the arrears of rent (Rs. 1,600). The notice also terminated the tenancy and called upon the petitioner to vacate the demised premises on or before 31.12. 1976. This notice was first sent by post. The postman called at the address on 7.12.1976 and 8.12.1976 but, having failed to find there either the addressee or any person authorised to receive the notice on its behalf, returned it with the endorsement "left without address, returned to sender". There- upon, the respondent caused a copy of the notice to be affixed to one of the doors of the premises in question in the presence of two inhabitants of the locality

PG NO 986

on 9.12.1976. No payment of rent was made subsequently by the petitioner. The respondent, therefore, filed a suit on 16.6.1977 seeking ejectment of the petitioner on the ground that he had committed three defaults, each in payment of two months' rent within a period of 18 months. This plea was disputed, and eviction of the petitioner decreed, by the Sub Judge. This was affirmed by the B District Judge. A second appeal to the High Court was also unsuccessful. Hence this appeal by special leave.

Ss. 11 and 12 of the Act, which are relevant in this context, may now be referred to. They read, in so far as is relevant for our present purposes, as follows:

"Section 11:

"Protection of a tenant against eviction--(I) Notwithstanding anything to the contrary in any other Act or law, no order or decree for the recovery of possession of any house or shop shall be made by any court in favour of the landlord against a tenant xxx xxx xxx

Provided that nothing in this sub-section shall apply to any suit for decree for such recovery of possession

xxx xxx xxx

(i) subject to the provisions of section 12. where the amount of two months rent legally payable by the tenant and due from him is in arrears by not having been paid within the time fixed by contract or in the absence of such contract by the fifteenth day of the month next following that for which the rent is payable for by not having been validly deposited in accordance with section 14:

Provided that no such amount shall be deemed to be in arrears unless the landlord on the rent becoming due serves a notice in writing through post office under a registered cover on the tenant to pay or deposit the arrears within a period of fifteen days from the date of the receipt of such a notice and the tenant fails to pay or deposit the said arrears within the specified period.

PG NO 987

Section 12:

When a tenant can get the benefit of protection against eviction--

(1) If in a suit for recovery of possession of any house

or shop from the tenant the landlord would not get a decree for possession but for clause (i) of the proviso to subsection (1) of section 11, the Court shall determine the amount of rent legally payable by the tenant and which is in arrears taking into consideration any order made subsection (4) and effect thereof upto the date of the order mentioned hereafter, as also the amount of interest on such arrears of rent calculated at the rate of nine and three eights per centum per annum from the day when the rents became arrears upto such date, together with the amount of such costs of the suit as if fairly allowable to the plaintiff landlord, and shall make an order on the tenant for paying the aggregate of the amounts (specifying in the order such aggregate sum) on or before a date fixed in the order.

(2) Such date fixed for payment shall be the fifteenth day from the date of the order excluding the day of the order.

(3) If, within the time fixed in the order under sub-section (1) the tenant deposits in the Court .he sum specified in the said order, the suit so far as it is a suit for recovery of possession of the house or shop, shall be dismissed by the court. In default of such payment the Court shall proceed with the hearing of the suit.

Provided that the tenant shall not be entitled to the benefit of protection against eviction under this section, if, notwithstanding the receipt of notice under proviso to clause (i) of the proviso to sub-section (1) of section 11, he makes a default in the payment of rent referred to in clause (i) of the proviso to sub-section (1) of section 11 on three occasions within a period of eighteen months.

xxx xxx xxx

On the terms of the above sections, the controversy in this case turned on the question whether the notice sent by the respondent by registered post on 26.11.1976 can be said to have been served and the petitioner can be said to have

PG NO 988

been in receipt of the said notice. If the answer to this question is in the affirmative, as held by all the courts concurrently, there is nothing further to be said. The contention of the appellant--tenant however, is that the statute postulates a factual service of the notice on, and the actual receipt of it by, the tenant and that this admittedly not being the position in the present case, no eviction could have been decreed.

Shri Soli Sorabjee, learned counsel appearing for the tenant submitted that the safeguards in Ss. 11 and 12 of the Act are intended for the benefit and protection of the tenant and that, therefore, where the Act provides for the service of the notice, by post, this requirement has to be strictly complied with. He referred to the decisions in Hare Krishna Das v. Hahnemann Publishing Co. Ltd ., [1965-66] 70 C.W.N. 262 and Surajmull Ghanshyamdas v. Samadarshan Sur, ILR 1969--1 Cal. 379 to contend that such postal service can neither be presumed nor considered to be good service where the letter is returned to the sender due to the non-availability of the addressee. He urges that, in the absence of any enabling provision such as the one provided for in s.106 of the Transfer of Property Act, service by some other mode, such as affixture, cannot be treated as sufficient compliance with the statute. In this context, he referred to the frequently applied rule in Taylor v. Taylor, [1875] 1 Ch. D. 426 that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. He urged that even if service by

affixture can be considered to be permissible, there are stringent pre-requisites for service by affixture, such as those outlined in Order V rules 17 to 19, of the Code of Civil Procedure (C.P.C.) and that these pre-requisites were not fulfilled in the present case. He pointed out that even under the CPC. service by such affixture can be recognised as valid only if sincere and vigilant attempts to serve the notice on the addressee personally are unsuccessful. In the present case, it is submitted, the evidence shows that the postman made no serious efforts to ascertain the whereabouts of the addressee even though the evidence showed that a servant of the petitioner firm was known to the postman and was present in the neighbourhood. He, therefore, submitted that the High Court should have dismissed the suit for eviction filed by the landlord on the ground that the requirements of S. 11 and 12 of the Act were not satisfied.

We are of opinion that the conclusion arrived at by the courts below is correct and should be upheld. It is true that the proviso to (i) of section 11(1) and the proviso to

PG NO 989

section 12(3) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through posts. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under s. 27 of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee. The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter on the premises because of the assessee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a Court under Order V of the C.P.C. The statutory provision has to be interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. If we interpret the provision as requiring that the letter must have been actually delivered to the addressee, we would be virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to

the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal

PG NO 990

course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has B gone or to deliver them to some other person authorised by him. In this situation, we have to chose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant.

Much emphasis has been placed by the courts below and counsel for the landlord on the attempt made by the landlord to serve the notice on the premises in the presence of the witnesses. While the counsel for the landlord would have it that the steps show the landlord's bona fides. counsel for the tenant submits that the haste with which the 'substituted service' was effected and the lack of any real attempt to find out the whereabouts of the tenant (who had, according to him, been compelled to be away at Amritsar for medical treatment) throw consideration doubts on the claim of bona fides. We do not think that any statutory significance can at all be attached to the service by affixture claimed to have been effected by the landlord. The statute prescribes only one method of service for the notice and none other. If, as we have held, the despatch of the notice by registered post was sufficient compliance with this requirement, the landlord has fulfilled it. But, if that is not so, it is no compliance with the statute for the landlord to say that he has served the notice by some other method. To require any such service to be effected over and above the postal service would be to travel outside the statute. Where the statute does not specify any such additional or alternative mode of service, there can be no warrant for importing into the statute a method of service on the lines of the provisions of the C.P.C. We would therefore not like to hold that a "substituted" service, such as the one effected by the landlord in the present case, is a necessary or permissible requirement of the statute. It may be even an impracticable, if not impossible, requirement to expect some such service to be effected in cases where the landlord lives outside the town, or the State in which the premises are situated. If, in the present case, the landlord attempted such service because he was in the same town, that can only show His bona fides and

PG NO 991

it is only in this view that we proceed to express our findings in this regard.

Having gone through the facts stated in the various

orders, we think that the landlord did his best in the circumstances. We are unable to accept the tenant's contention that the mere circumstances that he had the notice affixed immediately on the day following the date of return of the postal notice is an indication of mala fides. What is material is that his evidence that he took the notice to the premises and had it affixed on the premises, as he could not find the tenant, stands uncontradicted. Indeed there is no doubt or dispute that the tenant was away from Jammu at the relevant time. The plaintiff's father's evidence is clear and categorical that neither the tenant nor his servant was available. There is no suggestion made to him that he made no real effort to ascertain the tenant's address even though a servant was there who could have furnished the same. In the written submissions, now filed, it is admitted that the tenant and his servant were both away at Amritsar though it is said that this was due to his illness. It is however stated that the servant was coming to Jammu every week to collect the dak and that the postman had failed to make proper enquiry. If this was true, the servant must have at least made enquiries and learnt from the postman that a registered letter had come and been returned and informed the tenant who could have taken steps to pay the arrears of rent. On the other hand. the evidence of the plaintiff's father and witnesses to the affixture, of the postman and of the tenant's own witness shows that there was no servant on the premises. The evidence of the postman is categorical that there was no servant at the premises which was locked. He says he had learnt from enquiries in the neighbourhood that the tenant had not been living in the premises for the past few months. He admits that he knew there was a servant but says that the servant was also not there at the relevant time. His reference to the servant working as a pheriwala at the same place is in regard to the time when he was giving evidence (i.e. in Dec. 1978). It is not the case of the tenant that the other partner, son of Sohan Singh, was available for service either. Thus the sum and substance of the evidence on record is that the tenant had gone away from the premises without intimating the landlord or neighbours of his correct address and without leaving behind any servant or agent to accept letters addressed to him. In this situation the landlord did the only thing he could.

We are quite conscious that the provision in regard to the notice contemplated by the statute is unsatisfactory and

PG NO 992

hope that the legislature would soon set it right. But, on the provision as it stands, we cannot but hold that a landlord must be held to have complied with the statutory requirement by sending a notice correctly addressed to the tenant by registered post. Also, in the present case, we are satisfied--as indeed the lower courts were--that the landlord did his best to bring the notice to the knowledge of the tenant. He cannot be expected to do any more. His petition for eviction cannot be dismissed on this score.

We only wish to add that, having regard to the fact that the tenant had deposited the arrears subsequently, we suggested to the parties that they should try to settle the matter amicably between themselves but the submissions filed by the parties after the hearing show that this has not been possible. We have, therefore, no alternative but to dismiss this appeal and we hereby do so without, however, making any order as to costs.

R.S.S. Appeal dismissed.