

CASE NO.:
Appeal (civil) 5574 of 2000

PETITIONER:
Jaswant Raj Soni

RESPONDENT:
Prakash Mal

DATE OF JUDGMENT: 19/09/2005

BENCH:
Arun Kumar & A.K. Mathur

JUDGMENT:
JUDGMENT
WITH

CIVIL APPEAL NO.5575 OF 2000

Jabar Lal

\005.Appellant

Versus

Kan Mal

\005.Respondent

ARUN KUMAR, J.

By the impugned judgment the High Court of Rajasthan decided two Civil Revision Petitions. Facts in both the cases are quite similar. The only question involved is about the maintainability of the eviction suits filed by the landlord appellants herein against the respondents tenants in the absence of one months' notice to vacate the suit premises. The landlords instituted eviction petitions against their tenants on the ground of misuse of tenancy premises which had materially affected the premises and in the second case on the ground of bonafide requirement of the landlord for business of his son. The rent receipts issued by the landlord in both the cases have a printed condition as per which one months' notice either oral or written is required to be given by the landlord to the tenant and the tenant is obliged to vacate the premises on such notice being given. Relying on the said condition the respondents in both the cases took objection that since required one months' notice was not given by the landlord the eviction petition was not maintainable. As a matter of fact, in Jaswant Raj Soni's case, a notice dated 9th October, 1991 was admittedly served by the landlord on the tenant terminating the tenancy with effect from 31st October, 1991. The eviction petition was filed on 20th February, 1992. The objection is that notice does not allow thirty clear days before the date of termination of tenancy. In the second case relating to Jabar Lal, the case of the landlord is that he had orally intimated to the tenant to vacate the premises in terms of the condition printed on the rent receipt. An additional fact has to be noticed at this stage with respect to Jabar Lal's case, that is, there is a rent note executed by the tenant which contains a condition to the following effect:
"...on being asked to vacate I will vacate on being told to do so after prior intimation of the month"

We have heard the learned counsel for the parties. So far as the requirement of issuance of notice under Section 106 of the Transfer of Property Act before institution of an eviction petition is concerned, the issue stands concluded as per a seven Judge Bench decision of this Court in V. Dhanpal Chettiar vs. Yesodai Ammal 1979 (4) SCC 214. It has been held that there is no legal requirement for issuance of a notice under Section 106 of the Transfer of Property Act before institution of an eviction petition. Therefore, requirement of notice under Section 106 is not necessary. The only point left for decision in this case is whether there was agreement between parties requiring service of one months' notice prior to institution of

an eviction petition. For agreement between the parties, reliance is placed only on a condition printed at the back of the rent receipt issued by the landlords. In our view, it cannot be said on the basis of what is printed on the back side of the rent receipt that the parties had accepted it as a condition of the lease. The rent receipt is a document issued by the landlord acknowledging receipt of payment of rent by him. Conditions printed at the back of rent receipt cannot be said to be a conscious decision taken by the parties governing the lease of premises. Terms and conditions of a lease result from conscious decision of parties. Therefore, we are unable to accept that the parties have entered into an agreement about service of one months' notice in advance to vacate the premises before institution of eviction petition.

In Jaswant Raj Soni's case, in fact, a notice dated 9th October, 1991 was admittedly received by the tenant. The notice terminates the tenancy with effect from 31st October, 1991 and calls upon the tenant to vacate the premises after the said date and also calls upon the tenant to pay double the rent for the period after termination of tenancy till vacation of the premises. This notice shows that though the tenancy was terminated by the end of the month, which did not allow a period of one month, yet the landlord informed the tenant that if he takes time in vacating the premises after the said date he would have to pay double the rent for the extra period. This means that tenant was being allowed to stay beyond 31st October, 1991. The eviction petition was, in fact, instituted on 20th February, 1992 which is more than a month after service of notice on the tenant. The requirement of service of notice even if it is to be read in the facts of the present case can only mean that a thirty days advance notice was required to be served on the tenant before he is asked to vacate the premises in his occupation.

The alleged condition regarding notice is very loosely worded. It does not have the technicalities of a notice under Section 106 of the Act. At best it being a requirement as per agreement of the parties, can be seen in substance, which we find to have been Jaswant Raj Soni's case. A notice was served on the tenant before institution of the eviction petition. The eviction petition was instituted more than a month after service of the notice.

In the second case the requirement as per the rent notice is : "on being asked to vacate and \005.on being told to do so" thus, there is no requirement of a written notice before institution of an eviction petition. The case of the landlord in the plaint is that he had intimated to the tenant to vacate the premises before institution of the eviction petition. Of course, the tenant denied the same in the written statement. Whether this condition was actually fulfilled or not is a question of fact to be decided by the trial court. The counsel for the parties informed that the case has not gone for trial. Therefore, so far as the second case is concerned, the trial Court will decide the issue after allowing the parties to lead evidence with respect thereto. Therefore, the eviction suit must proceed to trial and final decision.

The learned counsel for the respondents-tenants tried to argue that in view of Section 28 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950, the provisions of Section 106 of the Transfer of Property Act will apply to the facts of the present case and a notice to quit in terms of the said provision was required to be given. In view of V.Dhanpal's case (supra) we are unable to accept this argument. There is no legal or statutory requirement for a notice being given in the facts of the present case. The only requirement regarding notice, if at all, arises from the condition printed on the back of the rent receipt which in our view cannot be said to be an agreement between the parties laying down requirement for issuance of a notice for institution of an eviction petition. In any case as noticed above, the landlords have tried to meet that requirement. In Jaswant Raj Soni's case the requirement of notice has been met, as observed by us above, while in Jabar Lal case the trial Court will consider whether the requirement has been met on basis of evidence led by the parties. Both the appeals are allowed and impugned judgment of the High Court of Rajasthan is set aside. The eviction suits are directed to be expeditiously tried and disposed of by the concerned court(s). Both the appeals stand disposed of. No order as to costs.