

PETITIONER:
BHUNESHWAR PRASAD & ANR.

Vs.

RESPONDENT:
UNITED COMMERCIAL BANK & ORS.

DATE OF JUDGMENT: 25/08/2000

BENCH:
S.S.M.Quadri, Y.K.Sabharwal

JUDGMENT:

Y.K.SABHARWAL, J.

The appellants and respondents 3 to 7 are owners and landlords of the premises in question. United Commercial Bank-respondent No.1 is the tenant. Respondent No.2 is an officer of the bank.

A suit seeking a decree of eviction of the bank from the premises was filed by the owners. It has been, inter alia, alleged in the plaint that the bank was inducted as a tenant in the premises for a fixed period of five years commencing from 1st April, 1981 to 31st March, 1986 through a registered deed of lease. The bank was given an option to get the lease renewed for two terms of five years each provided it gives notice for renewal of the lease each time one month prior to the expiration of the period of lease. The bank exercised this option one month prior to 31st March, 1986 and accordingly the lease was renewed for the period from 1st April, 1986 to 31st March, 1991 at a monthly rent of Rs. 10,876/-. It seems that before 31st March, 1991, the bank did not exercise option for renewal of the lease. The bank was asked to vacate the premises by 31st May, 1991 under plaintiff's letter dated 22nd April, 1991. Now, the bank by letter dated 24th April, 1991 requested the plaintiffs for renewal of lease but the plaintiffs did not agree and requested for vacation of the premises. It has also been stated in the plaint that after expiry of lease on 31st March, 1991, the bank used to deposit the rent in the account of the plaintiffs in their branch but that was without their consent and mere payment of rent without consent would not create any fresh tenancy. Under the aforesaid circumstances, the owners sought eviction of the bank on the sole ground of expiry of the period of the lease under clause (e) of sub-section (1) of Section 11 of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (for short 'the Act').

The suit was resisted by the bank, inter alia, pleading that the bank has been in occupation of the premises as tenant since 1963 and from time to time the rent has been enhanced. The bank has claimed to be a tenant month to month. The bank pleaded that it regularly deposited the rent in the account of the plaintiffs and they were withdrawing the rent so deposited every month after 31st March, 1991 at the enhanced rate of rent of Rs.

13,595/- per month in place of Rs. 10,876/-. The bank pleaded that the amount is being paid as monthly rent as per its letter dated 7th September, 1991 addressed to the owners and after discussion, they agreed to receive the said enhanced rent and are withdrawing the same. It has thus been claimed that the bank is not tenant for any fixed term period but is a monthly tenant.

A decree for eviction on the ground above stated was passed by the trial court directing the bank to deliver vacant possession of the premises to the plaintiffs. In revision petition, however, judgment and decree of the trial court has been set aside by the High Court. The said judgment is under challenge in this appeal.

The High Court has recorded the finding of fact that even after expiry of period of lease, rent of the premises at the increased rate, as per request of the plaintiffs, was regularly deposited by the defendant in their bank in the accounts of the plaintiffs which have been subsequently withdrawn by them. Admittedly, the rent under the lease for the period up to 31st March, 1991 was Rs. 10,876/- per month. The High Court has further held that the plaintiffs asked the bank as per their letter dated 5th September, 1992 to deposit the rent of the premises at the increased rate and the bank deposited rent at the enhanced rate which amount was withdrawn by the plaintiffs. The amount being deposited by the bank after 31st March, 1991 was at the rate of Rs. 13,595/- per month. The High Court has held that "it is admitted position that the plaintiffs accepted 25% increased amount of monthly rent of the premises in question which is evident from Exs. B-3 and B-4." The question to be considered, therefore, is as to the effect of payment of enhanced rent by the bank to the owners. Does it create or not a fresh tenancy from month to month within the meaning of Section 116 of the Transfer of Property Act? Learned counsel for the appellants contends that mere acceptance of rent does not create tenancy from month to month because of the protection from eviction available to the bank under the provisions of the Act.

The present is not a case of the payment and acceptance of the rent which was stipulated in the lease deed. It is also not the case where standard rent fixed by any authority has been paid. The increased rent as aforesaid was deposited after 31st March, 1991. The same was accepted by withdrawal of the amount. In terms of letter dated 5th September, 1992, in fact, the owners asked for payment of the rent "hitherto deposited." It has been established on the record that the rent demanded, deposited and withdrawn was increased rent. In the light of these established facts, we would examine whether in law monthly tenancy as contemplated by Section 116 of the Transfer of Property Act, 1882 came into existence or not.

Mr. Sanyal, learned senior counsel appearing for the appellants contends that Section 116 of the Transfer of Property Act would not be attracted merely on acceptance of rent. Reliance is placed upon a decision of Federal Court in *Kai Khushroo Bezongjee Capadia v. Bai Jerbai Hirjibhoy Warden & Anr.* [1949 Federal Court Reports 262]. We agree that to bring a new tenancy into existence within the meaning of Section 116, there should be an agreement as the section contemplates that on one side, there should be an offer of taking a fresh demise evidenced by lessee's

continuing occupation of the property after the expiry of the lease and on the other side, there must be a definite assent to this continuance of possession by the lessor/landlord and that such an assent of the landlord cannot be assumed in cases of tenancies to which Rent Restriction Acts apply on account of the immunity from eviction which a tenant enjoys even after the expiry of lease. In such cases, the landlord cannot eject him except on specified grounds mentioned in the Rent Restriction Acts and thus the acceptance of rent by the landlord from a statutory tenant, whose lease has already expired, would not be taken as evidence of new agreement of tenancy and it would not be open to such a tenant to urge that by acceptance of rent, a fresh tenancy was created. We do not expect a lessor not to accept the rent when, in view of the protection granted by the Rent Restriction laws, without existence of one or the other ground, he is precluded from seeking eviction of the lessee and in such a case, there would be no question of creation of tenancy from month to month. Under these circumstances, mere acceptance of amount equivalent to rent or the standard rent would not attract Section 116. Assent to lessee continuing in possession would be absent in such cases. However, an agreement creating fresh tenancy within the meaning of Section 116 can be implied from the conduct of the parties. In *Ganga Dutt Murarka v. Kartik Chandra Das and Ors.* [(1961) 3 SCR 813], while affirming the dictum laid down in *Khushroo's case* (supra), it was held that apart from an express contract, conduct of the parties may undoubtedly justify an inference that after determination of the contractual tenancy, the landlord had entered into a fresh contract with the tenant, but whether the conduct justifies such an inference must always depend upon the facts of each case. In *Bhawanji Lakhamshi and Ors. v. Himatlal Jamnadas Dani and Ors.* [1972 (1) SCC 388], again the question that came up for consideration was as to whether a fresh tenancy was created or not by acceptance of rent by the lessor after the termination of the tenancy by efflux of time. This Court declined the prayer to reconsider *Ganga Dutt Murarka's case* (supra) and held that acceptance by landlord from the tenant, after the contractual tenancy had expired, of amounts equivalent to rent or amounts which was fixed as standard rent did not amount to acceptance of rent from a lessee within the meaning of Section 116 of the Transfer of Property Act. The present is not a case of acceptance of amounts equivalent to rent or amounts fixed as standard rent but acceptance of increased rent. It was also observed that "we do not say that the operation of Section 116 is always excluded whatever be the circumstances under which the tenant pays the rent and the landlord accepts it." The whole basis of Section 116 is that a landlord is entitled to file a suit for ejectment and obtain a decree for possession and, therefore, his acceptance of rent after expiry of lease is an unequivocal act referable to his desire to assent to the tenant continuing possession. It would be absent in cases where there are the restrictions as contemplated by Rent laws. In such cases, therefore, it is for the tenant where it is said that the landlord accepted the rent not as a statutory tenant but only as a legal tenant indicating his assent to tenant's continuing possession, to establish it.

In the present case, the bank from the conduct of the owners has established that the acceptance of increased rent was in token of owners assent to the bank continuing in possession after expiry of the lease, thereby creating lease

from month to month within the meaning of Section 116 of Transfer of Property Act, 1882. The High Court has rightly reversed the judgment and decree of the trial court. Before parting we may make it clear that we are not concerned with the proceedings for fixation of the rent if pending before the appropriate authorities under the Act, as the same are not the subject matter of this appeal and the fixation of the standard rent and from when it is payable is a matter to be decided by the said authorities in accordance with law.

For the aforesaid reasons, we dismiss the appeal. The parties are, however, left to bear their costs.

JUDIS