Before S.S. Nijjar, J.

SHIV SHANKAR LAL,—*Petitioner/Landlord*

versus

KISHAN CHAND,—*Respondent/Tenant*

C.R. No. 1985 OF 1986

7th May, 2003

Haryana Urban (Control of Rent and Eviction) Act, 1974—S.13—Ejectment of the tenant—Unconditional acceptance of rent tendered by tenant—Whether amounts to abandonment of ground of non-payment of rent-Held, yes—Sufficient evidence to show that shops remained closed for more than four months prior to filing of petition—Landlord failing to mention the period for which shops remained closed unoccupied and without any reasonable cause—Absence of specific pleadings—No prejudice to tenant as both parties knew the case and proceeded to trial on that issue by producing evidence—Burden to prove reasonable cause for keeping the premises unoccupied is on the tenant—Findings of Courts below rejecting evidence on the ground of non-pleading of specific averments improper, illegal and liable to be set aside.

Held, that if the rent tendered is accepted unconditionally, the ground of non-payment of rent would not be available to the landlord. The findings recorded by the learned Courts below on issue Nos. 1 & 2 are affirmed.

(Paras 11 & 12)

Further held, that the learned Rent Controller came to the conclusion that the cumulative effect of all the circumstances appearing on the file are sufficient to conclude that the shop remained closed for more than four months prior to the institution of the application. Inspite of the aforesaid finding, issue No. 3 has been decided against the petitioner. The learned Appellate Authority has not discussed any evidence at all on the ground that there are no pleadings on the issue involved. I am of the opinion that the findings recorded on issue No. 3 recorded by both the learned Courts below are erroneous and have to be set aside.

(Paras 27 & 28)

Sanjay Bansal, Advocate *for the petitioner.*

S. D. Bansal, Advocate, *for the respondent.*

JUDGMENT

S.S. Nijjar, J.

(1) The landlord has filed this rent revision under Section 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1974 (hereinafter referred to as "the Act"), against the judgment of the learned Appellate Authority, Bhiwani, in rent Appeal No. 16 of 1983 decided on 3rd April, 1986, affirming the judgment of the learned Rent Controller, Charkhi Dadri, dated 12th September, 1983, in Rent Application 201-R of 1980.

(2) The landlord (hereinafter referred to as "the petitioner"), filed an application before learned Rent Controller, Charkhi Dadri, under Section 13 of the Act for the ejectment of the tenant (hereinafter referred to as "the respondent"), in respect of two shops details of which are given in the head note of the application. It was alleged that the respondent had failed to pay the rent from 1st February, 1975 till the date of the institution of the application. The second ground was that the premises remained unoccupied by the respondent for more than four months prior to the date of the filing of the application. Notice under Section 8 of the Act was sent to the respondent on 9th January, 1979. Therefore, the respondent is liable to pay enhanced house tax increased by the Municipal Committee in the year 1975, besides the monthly rate of rent of Rs. 30.

(3) The respondent contested the application. He denied the liability to pay the enhanced house tax. He also denied that the tenanted premises are lying closed for more than four months. By his order dated 19th April, 1980, learned Rent Controller assessed the costs of the proceedings at Rs. 40 and interest in the sum of Rs. 136.80 P. Arrears of rent claimed by the petitioner for three years immediately preceding the date of the presentation of the application (2nd March, 1980) were assessed in the sum of Rs. 1080. Arrears of rent together with costs and interest made a total sum of Rs. 1256.80 P. The aforesaid sum was tendered before the learned Rent Controller on 3rd May, 1980. This amount was accepted by the learned counsel for the petitioner without any protest.

(4) On the pleadings of the parties, the following issues were framed by the learned Rent Controller on 16th July, 1980 :—

(1) Whether the petitioner is entitled to house tax ? If so, at what rate, since when and how much ? OPP

(2) What is the effect of non-payment of house tax ? OPP

(3) Whether the premises in dispute are lying closed for more than four months as alleged in para No. 6 of the petitioner? If so to what effect ? OPP

(4) Whether the application is liable to be dismissed on account of objections raised in para No. 6 of the reply ? OPR

(5) Relief.

(5) At the outset, it may be noticed that issue No. 4 was deleted as it did not arise for adjudication of the Court by order dated 5th May, 1983.

(6) After appreciating the evidence, issue No. 1 was decided in favour of the petitioner and against the respondent. Issue No. 2 was also decided in favour of the petitioner and against the respondent. On issue No. 3 again, it is held that the cumulative effect of all the circumstances appearing on the file are sufficient to conclude that the shop remained closed for more than four months prior to the institution of the application. Inspite of the overwhelming evidence, the learned Rent Controller decided issue No. 3 against the petitioner on the ground that there was no pleading with regard to the period for which the premises remained closed and that there was no averment to the effect that the premises remained closed without any reasonable cause. In view of the aforesaid findings, the eviction petition was dismissed by the learned Rent Controller.

(7) On appeal, it has been held that the learned Rent Controller was justified in dismissing the petitioner's application.

(8) Mr. Sanjay Bansal submitted that both the learned Courts below have erred in law by ignoring the evidence for the reason that there are no pleadings. With regard to the house tax even though the increase in house tax was not specified in the pleadings, it was

certainly mentioned in the notice which was sought to be served on the respondent of which he avoided service. There was no objection in the written statement that the increase has not been specified. Since, the parties had led evidence, no prejudice had been caused to the case of the respondent. Mr. Bansal then argued that both the learned Courts below have wrongly held that the unconditional acceptance of the rent gives rise to waiver or estoppel against the petitioner with regard to the ground for eviction for non-payment of rent. Mere acceptance of the rent that was tendered, according to Mr. Bansal, would not amount to estoppel or waiver of the ground based on non-payment of rent. It is submitted that the learned Rent Controller had accepted the increase in the House tax at the rate of 6.25% on the annual rental value of the premises to 10% of the annual rental value with effect from 1st January, 1975. It was also accepted by the learned Rent Controller that the requisite notice was served on the respondent. The Rent Controller decided issues No. 1 and 2 in favour of the petitioner. That being so, the petitioner was entitled to an order of ejectment. However, both the learned Courts below have wrongly declined the relief on the basis of waiver or estoppel.

(9) Mr. S.D. Bansal, on the other hand, has submitted that the learned Rent Controller had assessed the rent on 19th April, 1980. This was duly paid on 3rd May, 1980 alongwith interest. It was accepted by the leandlord. The tender was not rejected on the ground that it was short. Even in the replication, which was filed in July, 1980, the plea of short tender was not raised. Learned counsel submitted that these facts categorically establish the plea of estoppel/waiver. In support of this submission, learned counsel has relied on a judgment of this Court in **Shri Bal Krishan** *versus* **Shri Sita Ram, (1) Shri Des Raj Singh** *versus* **Smt. Kaushalya Devi, (2)**

(10) I have considered the rival submissions of the learned counsel for the parties.

(11) I am of the considered opinion that the findings recorded by the learned Lower Appellate Court cannot be said to be either arbitrary or not warranted. In the aforesaid cases, it has been clearly

(1) 1977 R.L.R. 935
(2) 1977 R.L.R. 548

held that if the rent tendered is accepted unconditionally, the ground of non payment of rent would not be available to the landlord. In **Des Raj Singh's** case (supra) O. Chinnappa Reddy (J.) considered a similar situation and observed as follows :—

> "The learned counsel relies on a decision of my brother A. S. Bains, J. in Santokh Singh *versus* Harnam Singh, 1976 Rent Control Reporter, 543. That was a case in which the counsel for the landlord accepted the rent and made an endorsement which was as follows :—
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> "I accept the tender and give up the ground of non-payment of rent".
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> It is true, as pointed out by the learned counsel for the respondent that no such endorsement was made in the present case, but that makes no difference. The very acceptance of the tender by the counsel for the landlady amounted to abandonment of the ground of non-payment of rent".

(12) In view of the above, findings of the learned Courts below on issue Nos. 1 and 2 are affirmed.

(13) On issue No. 3, both the learned Courts below have held that the landlord having not specifically pleaded about the period during which the shops remained closed and that it remained closed without any reasonable cause, the evidence with regard to these facts could not be looked into. Mr. Sanjay Bansal submits that the aforesaid view taken by the learned Courts below is hypertechnical and cannot be permitted to defeat the just cause of a party if no prejudice is caused by the non-pleading of such facts. In the present case, the learned Rent Controller has come to the conclusion that there is sufficient evidence to show that the shops had remained closed for more than four months prior to the filing of the ejectment petition. Having recorded such a finding of fact, the learned Rent Controller has wrongly ignored the evidence for the reasons that :—the pleadings of the applicant "petitioner" have simply reproduced the wording of the statute : the petitioner has not specifically mentioned the period for which the shops remained closed unoccupied by the respondent : there is no pleading to the effect that the respondent failed to occupy the premises in dispute "without any reasonable cause".

(14) Mr. Bansal has further submitted that aforesaid reasoning of the learned Rent Controller which has been approved by the learned Appellate Authority, is contrary to the view taken by the Supreme Court in a number of cases. He submitted that a specific issue had been framed. The parties were permitted to lead evidence on the issue. Therefore, the parties were conscious of the case which had to be answered. Consequently, the respondent could not have been permitted to raise objection that the evidence should be excluded on the ground that necessary pleadings are lacking. In support of the aforesaid submission, learned counsel has relied on a judgment in the case of **Sardul Singh** *versus* **Pritam Singh and others (3).** According to the learned counsel, lack of pleadings has not caused any prejudice to the respondents. There cannot be a pedantic or a dogmatic approach in the matter of analysis of pleadings or of evidence adduced thereto. So long as the parties have understood the case that they have to answer neither can be said to have been prejudiced by the vagueness or the lack of proceedings. In such circumstances the evidence should not be excluded. In support of the aforesaid submission, learned counsel has relied on judgments of the Supreme Court in the case of **Ram Sarup Gupta (dead) by L.Rs.** *versus* **Bishun Narain Inter College and others (4) Smt. Rajbir Kaur and another** *versus* **M/s. S. Chokosiri and Co. (5) Ram Narain Arora** *versus* **Asha Rani (6) Bank of India** *versus* **Lekhimoni Dass (7).**

(15) I have considered the submissions made by the learned counsel anxiously. I am of the opinion that the legal issue raised by Mr. Sanjay Bansal has been firmly approved by the Hon'ble Supreme Court as well as by this Court. In Sardul Singh's case *(supra)*, the Supreme Court in paragraph 12 observed as under :—

> "12. .....It is well settled that notwithstanding the absence of pleadings before a court or authority, still if an issue is framed and the parties were conscious of it and went to trial on that issue and adduced evidence and had an opportunity to produce

(3) (1999) 3 S.C.C. 522
(4) AIR 1987 S.C. 1242
(5) AIR 1988 S.C. 1845
(6) (1999) 1 S.C.C. 141
(7) (2000) 3 S.C.C. 640

evidence or cross-examine witnesses in relation to the said issue, no objection as to want of a specific pleading can be permitted to be raised later.....".

(16) In Ram Srup Gupta's case *(supra)*, the Supreme Court while interpreting Order 6 Rule 1 of the Code of Civil Procedure (5 of 1908), observed that it is the duty of the Court to ascertain the substance of the pleadings. It is not desirable to place undue emphasis on form, instead, substance of pleadings should be considered. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, it would not be open to a party to raise the question of absence of pleadings in appeal. In praragraph 6 of the judgment, the Supreme Court observed as follows :—

"6. The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the licence was irrevocable as contemplated by S. 60 (b) of the Act and, if so, is there any evidence on record to support that plea. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by suprise. The pleadings, however, should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case, it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not

be so much about the form of the pleadings, instead the Court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal. In Bhagwati Prasad *versus* Shri Chandramaul, (1966) 2 SCR 286 : (AIR 1966 SC 735) a constitution Bench of this Court considering this question observed (at 738 of AIR) :

"If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it ? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one pary, the Court cannot do injustice to another."

(17) The aforesaid ratio of law has been affirmed by the Supreme Court in Smt. Rajbir Kaur's case *(supra)*. It is observed in paragraph 22 of the judgment as under :—

> "22. Dr. Chitaley then urged that there was not even a pleading by the appellant on the point of money—consideration for the parting of possession and that no amount of evidence adduced on a point not pleaded could at all be looked into. As a general proposition the submission is unexceptionable : but in the present case, the point, in our opinion, is not well taken. Appellants specifically pleaded "subletting". Respondent understood that pleading as to imply all the incidents of subletting including the element of "rent" and specifically traversed that plea by denying the existence of consideration. Parties went to trial with full knowledge of the ambit of the case of each other. In the circumstances the pleadings would require to be construed liberally.
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> In **Ram Sarup Gupta** *versus* **Bishun Narain Inter College, AIR 1987 SC 1242,** this Court said this of the need to construe pleadings liberally :
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> ".....Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of pleadings, instead the Court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal". (Emphasis Supplied).

After all, the "parties do not have the foresight of prophets and their lawyers the draftsmanship of a chalmers". There is no substance in this contention of Dr. Chitaley either".

(18) Again in Ram Narain Arora's case *(supra)*, the Supreme Court reiterated the aforesaid proposition of law. In paragraph 11 of the judgment, it is observed as follows :—

"11. There cannot be a pedantic or a dogmatic approach in the matter of analysis of pleadings or of the evidence adduced thereto. It is no doubt true that if the pleadings are clearly set out, it would be easy for the court to decide the matter. But if the pleadings are lacking or vague and if both parties have understood what was the case pleaded and put forth with reference to requirement of law and placed such material before the court, neither party is prejudiced. If we analyse from this angle, we do not think that the High Court was not justified in interfering with the order made by the Rent Controller".

(19) In Bank of India's case *(supra)*, the Supreme Court was considering a ground in paragraph 6, which was urged as follows :—

"6. .....The second ground urged is that if the claim of the plaintiff in the suit is based on a cause of action for trespass that inasmuch as the defendants were clothed with a decree of the Court the plaintiff had to plead and prove malice and unless the same is established he could not get any relief.....".

(20) Considering the aforesaid question in paragraph 11, the Supreme Court has observed as follows :—

"11. .....Want of pleadings or raising an issue in a suit would arise where any party is put to prejudice. In a case where the facts are writ large and the parties go to trial on the basis that the claim of the other side is clearly known to them, we fail to understand as to how lack of pleadings would prejudice them".

(21) Both the learned Courts below have relied on a Single Bench Judgment of this Court in the case of **Puran Singh Tailor Master** *versus* **Ram Murti, (8)** in which it is observed in paragraph 8 as follows :—

> "8. .....Thus, the allegations made in the application were quite vague, as no period during which the tenant ceased to occupy the premises was mentioned thererin. Merely the reproduction of the wording of statute was not sufficient to warrant the order of ejectment".

(22) Subsequent to the aforesaid judgment, this Court in the case of **Harnam Singh** *versus* **Satisa Kumar (9)** has held that mere non-specification of the exact span of period under Section 13 (2) (5) of the Act should not be good enough a ground to disallow the petition. Subsequently, a Division Bench of this Court in the case of **Ram Niwas and another** *versus* **Rakesh Kumar and others, (10)** has held in paragraph 5 as follows :—

> "5. The main question which arises for decision is that if in a suit for ejectment on the ground of tenancy, the plaintiff pleads title and the parties lead evidence in that regard, can a decree for possession on the basis of the title be passed. According to the learned counsel for the appellants, it cannot be done. It is well settled that if the parties knew that a point arises in a case and they produce evidence on it, though it does not find place in the pleadings and no specific issue has been framed on it, the Court can still adjudicate thereon. None of the parties can be allowed to say that the Court cannot decide the matter because it was not raised in the pleadings".

(23) Both the learned Courts below have also rejected the evidence on the ground that the landlord had failed to plead that the premises had been unoccupied without any reasonable cause. This issue is also no longer res integra within this Court. In the case of

(8) 1981 (2) R.L.R. 448
(9) 1981 (1) R.L.R. 125
(10) AIR 1981 Pb. & Haryana 397

Raja Ram (Died) *versus* **Surjan Singh & others, (11)** it has been held in praragraph 6 which is as under :—

> "6. .....If, once it is proved by the landlords that the shop, in dispute, remained closed and thus unoccupied by the tenants, then, in view of the authoritative pronouncement of their Lordships of the Supreme Court in Mohan Lal's case *(supra)*, the burden will be on the tenants to prove that it was not so without reasonable cause".

(24) In the case of **Mohan Lal** *versus* **Kasturi Lal (12)** it has been observed by their Lordships of the Supreme Court as follows :—

> "5. .....The facts necessary to establish any reasonable cause could only be in the knowledge of the tenant, and if he did not lead any evidence to establish those facts, it was hardly the statutory duty of the Rent Controller to give a detailed and specific finding as to reasonable cause for not occupying the shop".

(25) Similar view has been expressed by V. K. Jhanji, J. in the case of **Hari Dev Sood** *versus* **Mandir Bhagwan Dwarka Nath Ji, (13).** In that case, it has been observed as follows :—

> "After hearing the learned counsel for the parties and going through the record, I am of the view that the revision petition is without any merit. Initially, it is for the landlord to prove that the premises have remained unoccupied by the tenant for a requisite period, i.e. four months preceding the presentation of the eviction application. It is only thereafter, that burden of proof shifts on the tenant to establish that it was not so without any reasonable cause. It is for the tenant to explain as to under what circumstances he ceased to occupy the premises as the facts necessary to establish

(11) 1981 (1) R.L.R. 174
(12) 1966—68 P.L.R. (Supplement) 35
(13) AIR 1981 Pb. & Haryana 397

any reasonable cause can only be in the knowledge of the tenant. It is for him to lead evidence to prove reasonable cause for keeping the premises unoccupied. .....".

(26) In view of the above, it is held that the findings recorded by both the learned Courts below on issue No. 3 are improper, illegal and liable to be set aside.

(27) Before parting with the judgment, it is to be noticed that the learned Rent Controller while discussing the evidence on issue No. 3 has pointed out that the consumption of electricity for the period from 16th September, 1979 to 17th March, 1980 remained static. Not only that, the respondent failed to make payment of the electricity bills. No transaction of sale or purchase was effected in the premises and not a single letter is produced by the respondent which might have been received by the tenant through post. In fact, the tenant had admitted that he stopped dealing with sale and purchase of the goods from the demised premises. The tenant failed to produce any account book of the shop for the relevant period. Even otherwise, account books do not seem to have been maintained regularly in the ordinary course of business. The learned Rent Controller found significant cuttings and alterations in the description of month and year and many dates in the account books. In the periodic visits made by the employees of the Haryana State Electricity Board, the premises have been shown to be locked. Therefore, the learned Rent Controller came to the conclusion that the cumulative effect of all the circumstances appearing on the file are sufficient to conclude that the shop remained closed for more than four months prior to the institution of the application. Inspite of the aforesaid finding, issue No. 3 has been decided against the petitioner. The learned Appellate Authority has not discussed any evidence at all on the ground that there are no pleadings on the issue involved.

(28) In view of the above discussion and the law laid down by the Supreme Court as well as by this Court, I am of the opinion that the findings recorded on issue No. 3 recorded by both the learned Courts below are erroneous and have to be set aside.

(29) In view of the above, present petition is allowed. The findings recorded by the learned Courts below on issue No. 3, are hereby reversed. The respondent is directed to hand over the vacant and peaceful possession of the demised premises to the petitioner. No costs.

(30) At this stage, Mr. S. D. Bansal, has made a prayer that since the demised premises are shops, it will take some time for the tenant to make the alternative arrangements. He, therefore, prays that some time be granted for handing over the possession to the landlord-petitioner.

(31) In view of the above, the respondent-tenant is granted two months time for handing over the vacant and peaceful possession of the demised shops i.e. the premises be handed over to the landlord-petitioner on or before 9th July, 2003. This extension in time is granted to the respondent-tenant on his furnishing usual undertaking as required by law before the learned Rent Controller, Charkhi Dadri, within a period of two weeks from today.

R.N.R.

Before M.M. Kumar, J.

JAGBIR SINGH,— *Petitioner*

versus

STATE OF HARYANA AND OTHERS,— *Respondents*

CWP No. 6478 OF 1988

9th April, 2003

Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—Rls. 16.2 and 16.21—Criminal case against a member of disciplinary force—Department placing him under suspension—Rl.16.2 provides that punishment of dismissal could be awarded only for the gravest act of misconduct—Whether absence from duty during suspension period without any sanctioned leave constitutes a gravest act of misconduct—Held, yes—Petitioner also not entitled to pensionary benefits as he had not rendered qualifying service—Petition dismissed while upholding order of dismissal from service.