

Compensation Commissioner/ Deputy Labour Commissioner, U.P., Ghaziabad Region, Ghaziabad in E.C.A. Case No.-164 of 2015 (Smt. Seema Devi Vs. Sri Vimal Jain and another), is set aside.

17. The matter is remanded back to the concerned Employees Compensation Commissioner to decide the claim petition as fresh after affording opportunity of hearing to the parties within a period of six months from the date of production of certified copy of this order, unless there is any legal impediments.

-----  
**(2024) 11 ILRA 453**  
**REVISIONAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 14.11.2024**

**BEFORE**

**THE HON'BLE AJIT KUMAR, J.**

S.C.C. Revision No. 146 of 2023

**Er. Prabhu Dayal Agrawal & Ors.**

**...Revisionists**

**Versus**

**Joint Registrar Co-Operative Society & Anr.**

**...Opp. Parties**

**Counsel for the Revisionists:**

Arvind Srivastava

**Counsel for the Respondents:**

Tej Bhanu Pandey

**Civil Law -Transfer of Property Act, 1882-Section 106-** in the absence of any contract between the parties or any local law usage to the contrary- the tenancy is terminable upon notice by the landlord in 15 days' advance-notice would not be rendered invalid merely because the period mentioned therein was short -notice is a must to determine the tenancy and once the tenancy has been determined, tenant is liable to be evicted at the instance of the landlord by instituting the suit-impugned order set aside.

**Revision allowed. (E-9)**

**List of Cases cited:**

1. Smt. Anju Srivastava Vs Saurabh Birla & anr.:2020(140) ALR 576

2. Waqf Allal Aulad/Waqf Alkhair Allahtala, Dr. Ziaul Haq Vs Ist ADJ, Bijnor:2008 SCC OnLine All 862

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard Sri Arvind Srivastava, learned counsel for the petitioner and Sri Rahul Malviya, learned Standing Counsel for the State-respondent.

2. This revision application has been directed against the judgment and decree dated 16.12.2022 dismissing the suit of the plaintiff.

3. As many as five issues were framed. While the issue no.1 is qua damage caused to the property by the tenant, issue no.2 is qua non-application of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act No.13 of 1972). The most crucial issue is the third issue as to whether the plaintiff has been able to determine the tenancy by issuance of notice. The entitlement of the plaintiff for damages @ Rs.600/- per day as issue no.4 and default in payment of rent by the defendant-respondent being issue no.5 have all been decided against the plaintiff.

4. The submission advanced by learned counsel for the revision-applicant is, when the trial court had determined issue no.2 against the defendant-respondent holding that Act No.13 of 1972 did not apply, the Court was neither to see the default in payment of arrears of rent, nor could have seen into the niceties with

which the notice as was claimed to have been issued and served. He submits that as per Section 106 of the Transfer of Property Act, the lease of any immovable property except for agricultural or manufacturing purposes, in the absence of any contract or local law, usage to the contrary, shall be deemed to be on month to month basis and is liable to be terminated with 30 days' of notice in advance.

5. None of the other sub-sections 2, 3 and 4 according to learned Advocate, provides for any format of notice making it compulsory for the landlord to describe the period of default and the amount due to be paid by the tenant. Thus according to him trial court manifestly erred in holding that the notice terminating the tenancy of the defendant-respondent was not valid and non suited the plaintiff. Regarding issue nos.4 and 5 learned counsel argues that Act No.13 of 1972 was not applicable and was rightly so held, the trial court could not have gone into the question of default in payment of arrears of rent. In support of his submission, learned counsel has placed reliance upon paragraph no.19 of the judgment of coordinate Bench of this Court in the matter of **Smt. Anju Srivastava v. Saurabh Birla and another:2020(140) ALR 576.**

6. Countering the submission, Sri Malviya, learned Standing Counsel for the State-respondents has sought to defend the judgment and order for the reasons assigned in determining the issue nos.3, 4 and 5.

7. Having heard learned counsel for the respective parties and having perused the record and the judgment passed by the Judge, Small Cause dated 16.12.2022, I find there to be the only issue

no.3 which if is determined in favour of the plaintiff, petitioner would deserve remand order by this Court for the suit to be decided afresh.

8. For better appreciation of the point raised before the Court to question the finding on issue no.3, I find it appropriate to reproduce Section 106 of Transfer of Property Act, 1882 which runs as under:

*"106. Duration of certain leases in absence of written contract or local usage.?"*

*(1)In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year; terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.*

*(2)Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.*

*(3)A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.*

*(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."*

9. From a bare reading of the aforesaid provisions, it is clear that except where the immovable property is leased out for agricultural or manufacturing purposes, in the absence of any contract between the parties or any local law usage to the contrary what is prescribed under Sub-section 1 of Section 106, the tenancy is terminable upon notice by the landlord in 15 days' advance.

10 Still further, Sub-section 3 of Section 106 clarifies that a notice would not be rendered invalid merely because the period mentioned therein was short as prescribed under Sub-section 1, in the event suit proceedings have been initiated after expiry of the period mentioned in Sub-section-1. The intendment of the legislature therefore, appears to be very clear that notice is a must to determine the tenancy and once the tenancy has been determined, tenant is liable to be evicted at the instance of the landlord by instituting the suit. The only caveat could have been Section 20(4) of Act No.13 of 1972 which ofcourse, is not applicable as has already been held by the trial judge while determining issue no.2. It would have been a different case altogether, had the tenant-respondent took up the plea of deposit made in time to seek benefit under Section 114 of the Transfer of

Property Act but neither any such pleading had been raised, nor any such issue was framed. Thus the findings qua issue no.3 returned by the trial judge in the judgment and decree impugned here in this petition is clearly unsustainable.

11. In so far as the issue nos.4 and 5 regarding default in payment of rent, I find that a coordinate Bench of this Court has considered a number of judgments dealing with such matters where the question of termination of tenancy arose and the issue was whether the default part in the conduct of the tenant has to be seen or not and it was held that this question could not have been gone into. The court has heavily relied upon paragraph no.6 judgment in the case of **Waqf Allal Aulad/Waqf Alkhair Allahtala, Dr. Ziaul Haq v. Ist ADJ, Bijnor:2008 SCC OnLine All 862** which runs as under:

*"6. If Rent Control Act does not apply, then tenant is liable to eviction simply after termination of tenancy. Default or no default is wholly immaterial. Revisional court itself held that building in dispute belonged to Waqf-allal-aulad and was beyond the purview of U.P. Act No.13 of 1972. Thereafter, there was absolutely no sense in holding that the notice of termination of tenancy was invalid on the ground that tenant was not defaulter when notice was given. The view taken by the lower revisional court is quite strange and utterly untenable. Even if Rent Control Act applies and in the notice wrong period of default and wrong rate of rent is mentioned, still notice does not become invalid vide Full Bench authority of Gokaran Singh Vs. Ist*

