manupatra®

MANU/BH/0001/1959

Equivalent Citation: AIR1959Pat1, 1958(6)BLJR659

IN THE HIGH COURT OF PATNA
FULL BENCH

Misc. Judl. Case No. 110 of 1956

Decided On: 20.08.1958

Appellants: **Digambar Narain Chaudhary**
Vs.
Respondent: **Commissioner of Trihut Division and Ors.**

Hon'ble Judges/Coram:
Vaidynathier Ramaswami , C.J., Jamuar and Kanhaiya Singh , JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: S.C. Ghosh, Adv.

For Respondents/Defendant: Raghunath Jha and D.K. Choudhary, Advs.

JUDGMENT

Kanhaiya Singh, J.

1. This is a writ application under Article 226 of the Constitution to call up and quash the orders of the Commissioner of Trihut Division and the Controller, Darbhanga, dated, respectively, the 13th January, 1956 and the 6th June, 1955, and to prohibit the opposite party from giving effect to the said orders.

2. This application came up for hearing before a Division Bench, and one of the questions strenuously canvassed before it was whether the Kirayanama (deed of lease,) which was not registered, was admissible in evidence. The argument presented on behalf of the opposite party landlord was that even if the Kirayanama was not signed by the landlord in breach of the provisions of Section 107 of the Transfer of Property Act, there would still be a valid lease for a fixed term within the meaning of Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, (Bihar Act III of 1947).

This contention was based upon the decision of a Division Bench of this Court in Om Prakash v. Addl. Commr., Patna Division, Patna,' MANU/BH/0078/1956 : AIR 1956 Pat 305 (A). On behalf of the tenant, however, the contention was that the expression 'lease' in Bihar Act III of 1947 has the same meaning as it has in Section 107 of the Transfer of Property Act, and, unless the formalities required by Section 107 of the Transfer of Property Act are complied with, there will be no lease within the meaning of Bihar Act III of 1947.

It was urged in this connection that the decision of the Division Bench in the case of Om Prakash above referred to was not correct and required reconsideration by a larger Bench, and the case was, therefore, referred to a Full Bench. Before I come to that question a few facts may be stated.

3. On the 13th January, 1954 Ganesh Gami, opposite party No. 4 let out a portion of

his holding No. 75 in the town of Darbhanga to the petitioner, Digambar Narain Chaudhary, for seven months at a monthly rental of Rs. 55 and on the 30th July, 1954 served on the latter a notice through a lawyer to vacate the house on the expiration of the term of the lease. The petitioner did not vacate the house and held over even on the expiration of seven months.

On the 22nd January, 1955 the landlord filed an application before the Controller under Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control, Act, 1947 (hereinafter referred to as the Act) on the grounds that the tenant had committed a breach of the conditions of the tenancy in that he had made certain additions and alternations in the building without his consent, that he was liable to eviction on the expiration of the term of the lease and that there was non-payment of rent. The tenant petitioner opposed this application and denied that there was breach of the tenancy and there was default in the payment of the rent.

4 . At the time of hearing before the Controller it transpired that the tenant has remitted rent per money order for three months from the 13th, May, 1954 to the 12th August, 1954, which was received by the landlord on the 1st September. 1954 and further the tenant had deposited in Court the rent for the successive three months. Therefore, non-payment of the rent as ground for eviction was not pressed. As regards the other grounds, the Controller held that the tenant had executed repairs and had remodelled the house by making, additions and alterations, and there was in consequence a breach of the conditions of the tenancy.

He further held that apart from the breach the tenant did not obtain extension of the period of the lease as provided in Section 12 of the Act and was, therefore, liable to eviction. Accordingly, by his order dated the 6th June, 1955 the Controller allowed the application and directed the tenant to vacate the house within ninety days from the date of the order and restore the landlord to possession.

5. Digambar Narain Choudhary, the tenant, took an appeal from the said order of the Controller to the Collector, Darbhanga, which was disposed of by the Additional Collector. The learned Additional Collector found that the tenant had in fact made certain alterations and additions in the buildings, but, in his opinion, they did not constitute a breach of the tenancy, because (1) the value of the building was enhanced, and (2) there was implied consent by reason of landlord's acquiescence therein.

He further held that the acceptance of rent after the expiration of the term of the tenancy-amounted to the landlord's assent to the continuance of the possession of the building by the tenant. Accordingly, he allowed the appeal and set aside the order of the Controller. Against this order, the landlord moved the Commissioner of Trihut Division. The learned Commissioner disagreed with the Additional Collector and held that the additions and alterations made by the tenant without the landlord's consent constituted a breach of the tenancy, the consequential enhancement of the value and the absence of objection by the landlord notwithstanding.

He further held that the acceptance of rent after the service of the notice to quit did not entail waiver of the notice and did not provide a legal authority for continuance of possession. He observed as follows : --

> "This evidence about the landlord's acquiescence in the tenant's conduct into the matter of making alterations in the house or continuing to occupy the house beyond the stipulated period of seven months is not such as to

override the consequence of admitted facts viz. that there was a stipulated limit of seven months to the tenancy and that the landlord's consent to the alterations was not forthcoming in the manner provided under the Act. In this view of the matter the order of the learned Additional District Magistrate is set aside and that of the House Controller, Darbhanga, Sadar, is restored. The petition is allowed."

6. The result was that the order of eviction was upheld.

7. In support of this application Mr. S. C. Ghosh contended that there was no legal evidence that the lease was for a specified period, and hence Section 12 of the Act had no application. This section provides as follows : --

"12 (1) If a tenant in possession of any building held on a lease for a limited time intends to extend the time limited by such lease by not less than six and not more than twelve months he may give the landlord, at least one month before the expiry of the time limited by the lease, a written notice of his intention to do so; and upon the delivery of such notice, the said time shall, subject to the provisions of Section 11 be deemed to have been extended for the period specified in the notice.

(2) Where the landlord to whom a notice has been given under Sub-section (1) wishes to object to the extension demanded by the tenant on one or more of the grounds mentioned in Sub-section (1) or Sub-section (3) of Section 11 or on the ground that the landlord has any other good and sufficient cause for determining the lease on the expiry of the time limited thereby, he may, within fifteen days of the delivery to him of such notice, apply to the controller in that behalf and if the Controller is satisfied that the landlord has made out a case for determining the lease, the Controller shall pass an order disallowing the extension demanded by the tenant."

8. Section 11, as it stood before the amendment and which governs the present case, lays down the grounds on which a tenant can be ejected. Sub-section (1) of this section which is relevant for the present enquiry provides as follows :

"11(1) Notwithstanding anything contained in any agreement or law to the contrary and subject to the provisions of Section 12, where a tenant is in possession of any building, be shall not be liable to be evicted therefrom, whether in execution of a decree or otherwise, except -

(a) In the case of a month to month tenant, for non-payment of rent or breach of the conditions of the tenancy, or for sub-letting the building or any portion thereof without the consent of the landlord, or if he is an employee of the landlord occupying the building as an employee, on his ceasing to be in such employment; and

(b) In the case of any other tenant, on the expiry of the period of the tenancy, or for non-payment of rent, or for breach of the conditions of the tenancy:

(c) Provided that nothing contained in this section shall apply to a tenant whose landlord is the Provincial or the Central Government or any local authority constituted under any enactment for the time being in force."

It is manifest from the above that a monthly tenant cannot be evicted except for non-payment of rent or breach of the condition of the tenancy or for sub-letting the building without the consent of the landlord. Where the tenancy is not a monthly tenancy, the tenant is liable to eviction also on the expiration of the period of the tenancy. In this case, the concurrent finding of the courts below is that the building was leased out to the tenant for a fixed term of seven months.

Therefore, the tenant was liable to ejectment on the expiration of the term of the tenancy. If, however, the tenant wanted to occupy the building even after the expiry of the term of the lease it was necessary for him to take proceedings, as provided in Section 12 of the Act. The period of lease cannot be extended except in the manner laid down in this section,

This section requires that when a building has been leased out for a limited time and the tenant wants to extend the time limited by such lease, he should give the landlord notice of his intention at least one month before the expiry of the time, and upon the delivery, of such notice the landlord is entitled to prefer objection within fifteen days. If the Collector is satisfied that the landlord has made out a case for determining the lease, the extension will be refused. Unless the extension is refused by the Collector, there will be an automatic extension of the time in terms of Sub-section (1) of Section 12 upon the delivery of the notice to the landlord.

The combined effect of Sections 11 and 12 of the Act is that unless the period limited by the lease is extended in accordance with the provisions of Section 12, the tenant was liable to be evicted on the expiry of the period of tenancy under Clause (b) of Sub-section (1) of Section 11 of the Act. Where, therefore, a tenant occupies a building by virtue of a lease for a fixed term and does not obtain extension of the time in accordance with the provisions of Section 12 of the Act, he cannot legally resist the application of the landlord for his eviction on the expiry of the term of the tenancy.

In the instant case, the tenant petitioner did not give the landlord a notice as required by Section 12, and therefore, he was liable to ejectment on this ground alone. It will appear from the above that one of the grounds on which the order of eviction is rested is the expiry of the term of the lease. The order, therefore, prima facie appears to be unexceptionable.

9. The contention of Mr. Ghosh, however, is that there was no legal evidence to prove that the tenancy was created for a fixed period of seven months, and, therefore, Section 12 had no application. All the Courts below proceeded on the assumption that the lease had been created for a fixed period of seven months. The term of the lease is deducible from the Kirayanama executed by the tenant on the 31st January, 1954, to which a reference has been made by the courts below,

Prima facie, this Kirayanama is not registered and is further a unilateral deed executed and signed by the lessee alone. The argument put forward by Mr. Ghosh is that this Kirayanama did not conform to the formalities prescribed by Section 107 of the Transfer of Property Act, and, therefore, was inadmissible in evidence. He has pointed out that if this Kirayanama be excluded from consideration, there is no evidence to support the conclusion of the courts below that the lease was for a term of seven months.

This contention obviously runs counter to the decision of the Division Bench in the case of Om Prakash (A) referred to above. In this case the Division Bench has laid down as follows :

> "A survey of the frame work would show that Bihar Act 3 of 1947 is a complete Act by itself, not dependent upon any other Act for the purpose of working out the provisions contained therein.... ..... These provisions of Act 3 of 1947 appear to be untrammelled by those obtaining in the Transfer of Property Act, and, accordingly, I feel no hesitation to hold that the two Acts are distinct and their provisions should be applied independently."

In effect, their Lordships held that for the purposes of Bihar Act III of 1947 an unregistered lease also may be considered in order to determine whether it created a month to month tenancy or a tenancy for a specified period. Mr. Ghosh's contention is that that case was not correctly decided. On the facts of this case it is, however, not at all necessary to pronounce any concluded opinion on the correctness of this decision.

Both the parties proceeded on the assumption that it was a lease for a term of seven months only. There was no dispute at all about the term of the lease or the invalidity of the lease. All that was contended in the courts below was that the acceptance of rent by the landlord after the determination of the tenancy amounted to his assent to the continuance of the tenancy. The contention about the non-admissibility of the Kirayanama for want of registration was raised by Mr. Ghosh for the first time in course of the argument in this Court.

This was not raised in any of the Courts below. Surprisingly enough, this point has not been taken even in the grounds of this application. This contention cannot be entertained. Mr. Ghosh, however, urged that the fact that the Kirayanama was not registered was too patent and did not require any investigation. It is true, but this contention overlooks the fact that a registered instrument is not the only mode of creating a valid lease.

It is incontrovertible that an oral agreement of lease for less than a year accompanied by delivery of possession is legally valid. It is likely that in this case there was an oral lease followed by delivery of possession, and the Kirayanama was only a subsequent transaction. It may equally be that it was a mere agreement of lease & was perfected by delivery of possession. All these facts had not been investigated and could not be investigated in view of the position adopted by the petitioner himself in Court.

It is true that the courts below have referred to the Kirayanama, but when both the landlord and the tenant proceeded on the ground that the tenancy was for a specified period and the validity of the lease for want of registration was never impugned and when there is nothing to show that the Kirayanama was the foundation of the tenancy, they were not precluded from looking into it.

In my opinion, the tenant cannot be permitted to change front at this stage, when decision has gone against him, and raise a new plea challenging the validity of the lease for non-compliance with the provisions of Section 107 of the Transfer of Property Act, a plea which cannot be adjudged without investigation of further facts and materials. For this reason alone, this contention is not available to the tenant and must be overruled.

10. The next contention of Mr. Ghosh is that although there was initially a lease for a fixed term of seven months, the continuance of possession of the tenant after the expiration of the term coupled with the payment of the rent to the landlord brought into existence a statutory tenancy from month to month as contemplated by Section 116 of the Transfer of Property Act, and when it was a tenancy from month to month, the tenant cannot be ejected unless the requirements of Section 11 of the Act were complied with Section 116 of the Transfer of Property Act provides as follows :

> "If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or underlessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the Property is leased, as specified in Section 106."

Mr. Ghosh's contention is that on the expiry of the term of the lease as well as on the expiry of the notice to quit, the petitioner held over and continued in possession and the landlord accepted rent from him, month after month, without objection, with the result that a new tenancy was created, as contemplated by Section 116 of the Transfer of Property Act, and having regard to the purpose for which the building was initially let out, the statutory tenancy that came into operation was a tenancy from month to month.

When the new tenancy was a monthly tenancy Mr. Ghosh went on to argue, Section 11 of Act came into play, and the tenant cannot be evicted unless the grounds set forth therein were fulfilled. He urged that in this case there was neither a breach of the tenancy nor non-payment of rent. If one were to consider this contention only on the strength of Section 116 of the Transfer of Property Act, independent of the provisions of the Act, it must be said that his contention is valid.

I am not considering at present whether the Act controls the Transfer of Property Act. For the purposes of this contention I assume that the Transfer of Property Act applies to leases falling under the Act. Now, what is the position of a tenant under the Transfer of Property Act? Section 111 of the Transfer of Property Act provides for determination of lease on sight grounds enumerated therein. One of the grounds, as provided in Clause (a) of that section, is afflux of the time limited by the lease, as in the present case. The position of a tenant under the Transfer of Property Act is perfectly clear. When a tenancy for a fixed period is determined by efflux of time and the tenant holds over without the consent of the landlord, the possession of such a tenant becomes wrongful from the date of the termination of the lease. He is a mere trespasser and has no right to remain on the land, and the law gives the landlord a right to enter upon the land immediately after the expiration of the term without any further notice. In the case of tenancy for a fixed term Section 106 of the Transfer of Property Act has no application. If, however, the landlord in some manner signifies his intention of recognising the continuance of the tenancy, the character of possession changes, and the tenant censes to be a trespasser and becomes a tenant holding over, with the consequences laid down in Section 116 of the Transfer of Property Act.

Before, however, a new tenancy comes into operation by application of Section 116 of the Transfer of Property Act, two conditions must be satisfied, (1) the tenant must continue in possession after the termination of the tenancy and (2) the lessor accepts

rent from the lessee which is only one of the ways of signifying his assent, or otherwise assents to his continuing in possession. Section 116 lays down the effect of holding over.

In short, the position of a tenant holding over by virtue of Section 116 is that where the lessee of property remains in possession thereof after the determination of the lease granted to him and the lessor or his legal representative accepts rent from the lessee or underlessee, or otherwise assents to his (lessee's) continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased.

In other words Section 116 gives a statutory recognition to the landlord's assent to the tenant's continuing in possession after the determination of the lease and lays down the effect of such assent. The consequence of the acceptance of rent is that the possession of a tenant holding over becomes legal, and the tenant continues to be a tenant. The position of a tenant holding over under the Transfer of Property Act is perfectly clear.

The acceptance of rent by the landlord is an unequivocal act which leads only to one conclusion, namely, that he had assented to the tenant continuing in possession. But the position of law has materially changed since Bihar Act III of 1947 came into force. Under this Act a tenant holding over continues to be a tenant and does not become a trespasser, as under the Transfer of Property Act, his possession does not become unlawful after the expiry of the terra of the tenancy.

This legal position is deducible from the definition of 'tenant' itself. 'Tenant', as defined by Section 2(h) of the Act, means any person by whom, of on whose account, rent is payable for a building and includes a person continuing in possession after the termination of the tenancy in his favour. Unlike the Transfer of Property Act a tenant continuing in possession after the determination of the lease is not a trespasser and his possession is not unlawful.

This status which a tenant under Bihar Act III of 1947 acquires by virtue of holding over is a status conferred on him not by the lessor, either expressly or by implication, but by the statute itself. Therefore, the assent of the landlord signified by the acceptance of rent or otherwise is of no materiality in a case falling under the Act. Whether the landlord accepts rent or not, a tenant holding over continues to be a tenant, and it is difficult to say how in such a case assent of the landlord can be said to create a tenancy as envisaged in Section 118 when that status is forced upon the landlord by the law of the land.

It is plain that the assent under Section 116 is a free and voluntary assent. If that assent has been procured by some other means and is not an act of free volition, such an assent is not sufficient to bring into existence a tenancy of the nature described in Section 116. Acceptance of rent becomes an unequivocal act signifying assent, because after the determination of the lease there is no liability for payment of rent, and if the landlord accepts rent, voluntarily and without objection, from the tenant holding over, it gives rise to only one inference, and that is that the landlord has accorded recognition to the continuance of his possession. In a case under Bihar Act III of 1947 there is nothing like wrongful possession after the determination of the lease, and a person holding over is also a tenant in the eye of law. In such a case acceptance of rent does not introduce any change in the legal position. When such a

tenant continues to be a tenant under the law of the land, the landlord has no option but to treat him as such and accept rent from him, and when rent is accepted under compulsion of law, such acceptance cannot be regarded as a free assent of the landlord to the continuance of the tenancy and waiver of the determination of the lease. Therefore, in a case governed by Bihar Act III of 1947 acceptance of rent cannot be regarded such an unequivocal act of the landlord as to bring into existence a new tenancy, as envisaged in Section 116 of the Transfer of Property Act. I do not mean to suggest that the acceptance of rent is of no consequence at all. Two alternatives are possible: the acceptance of rent by the landlord may be attributable either to the fact that the tenant has become a statutory tenant in law and the landlord must accept rent from him, or to his assent to the creation of a new tenancy.

There is no escape from this position, and in such a situation the mere acceptance of rent cannot be regarded as conclusive in determining whether a new tenancy was created. It becomes purely a question of fact, and, in my opinion, each case must be determined on its own facts. It will be a matter for judicial investigation in every case whether the acceptance of rent is attributable to the statutory tenancy which automatically comes into existence after the expiry of the lease or to the landlord assenting to a new tenancy coming into existence.

It follows that if the acceptance of rent from a tenant under Bihar Act III of 1947 is no longer an unequivocal act, as it is under Section 116 of the Transfer of Property Act, it is incumbent upon the tenant to prove more than mere acceptance of rent for creation of a new tenancy by holding over.

11. The view I have just expressed is fortified by two English decisions in somewhat similar circumstances. In the case of Davies v. Bristow (1920) 3 KB 428 (B) the English Court of Appeal has held that where a tenant of a house to which the Increase of Rent, &c. (War Restrictions), Acts apply holds over after the expiry of a notice to quit and pays rent the landlord is not to be taken by accepting it to assent to a renewal of the tenancy on the old terms, for he has no choice but to accept the rent; he could not sue in trespass for mesne profits, for those Acts provide that the tenant notwithstanding the notice to quit shall not be regarded as a trespasser so long as he pays the rent and performs the other conditions of the lease.

A similar view was expressed by the Court of Appeal in another case, namely, Shuter v. Hersh (1922) 1 KB 438 (C). This case lays down that where a tenant remains in possession under the provisions of the Increase of Rent &c. Restrictions Act, 1920, after receiving notice to quit, there is no necessity for the landlord to give the tenant a fresh notice to quit before raising the rent to the extent permitted by the Act unless a new tenancy has been actually created, and the mere fact that the landlord accepts rent after giving the notice to quit cannot be taken as a waiver by him of the notice to quit so as to create a new tenancy.

12. A Divisional Bench of the Bombay High Court, relying upon the aforesaid English decisions, has expressed a similar view in Baldeodas Mahavir Prasad v. G.P. Sonavalla, AIR 1948 Bom 385 (D). That was a case under the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, and there also the possession of the tenant after the determination of the tenancy was not unlawful under that Act.

The Division Bench has held that when a tenant of certain premises to which Bombay Act VII of 1944 applies continues in possession after the termination of his tenancy by notice to quit, he becomes a statutory tenant whom the landlord cannot eject so

long as the tenant carries out the conditions laid down in Section 9 of that Act. It further lays down that the mere acceptance of rent is not by itself sufficient to bring into existence a new tenancy as contemplated by Section 116, Transfer of Property Act, as it used to be prior to the passing of the Rent Restriction Act, and, therefore, in order to show that a new tenancy has been created under Section 116, Transfer of Property Act, it must be shown that the acceptance of rent by the landlord was attributable to his assenting to a new tenancy coming into force.

I respectfully adopt the reasons given by their Lordships of the Bombay High Court. I am definitely of the opinion that when the tenancy of a house coming within the Bihar Buildings (Lease, Rent and Eviction) Control Act has been determined by efflux of time, the tenant by remaining in possession does not become a trespasser but becomes a statutory tenant under the Act, and acceptance of rent by the landlord after the determination of the tenancy has not the effect of bringing into existence a new tenancy of the kind contemplated by Section 116 of the Transfer of Property Act.

For creation of a new tenancy something more than mere acceptance of rent has to be proved in order to establish a clear and voluntary assent on the part of the landlord. In this case there is nothing on the record to establish the assent of the landlord to the tenant's continuing in possession, except two filings, first, acceptance of rent, and, second, delay in the institution of the suit.

As stated above mere acceptance of rent is not sufficient to bring into existence a new tenancy under Section 116 of the Transfer of Property Act read with the provisions of Bihar Act III of 1947. As regards delay, there was no inexcusable delay at all. The tenancy commenced on 13-1-1954 and was for a period of seven months. In other words, it was due to expire in August 1954. One month before, on 30-7-1954, the landlord's lawyer served a notice on the tenant to quit.

In the following January, that is, on 22-1-1955 action for the eviction of the petitioner was taken by presenting an application to the Controller under Section 11 of Bihar Act III of 1947. Even assuming that there was delay, it is not sufficient to bar a landlord's suit for eviction where tenancy was determined by efflux of time. In the case of Govindaswamy Pillai v. Ramaswami Aiyar 34 Ind Cas 6: (AIR 1917 Mad 7351 a Division Bench of the Madras High Court observed as follows:

> "Under Section 116 of that Act, the tenant holding ever becomes a tenant from year to year, only 'if the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession as lessee'. I take it that mere passive failure to take steps to eject will not, by itself, constitute an assent to the tenant's continuing in possession as tenant from year to year."

A similar view was expressed by a Division Bench of the Calcutta High Court in Ratan Lal Gir v. Farshi Bibi ILR 34 Cal 396. It has been laid down there that after the expiry of a written lease, a mere delay in the institution of a suit by the lessor for ejectment of the lessee without notice to quit, is no reason for dismissal of the suit on the ground that the lessee was allowed to hold over.

There are no other overt acts indicating the landlord's assent to the continuance of the tenancy. Therefore, in this particular case acceptance of rent and mere delay in the institution of the suit are not sufficient to raise a presumption that the tenant was allowed by the landlord to hold over. For these reasons, the contention of Mr. Ghosh is not maintainable.

manupatra®

13. Then, there is a further criticism of this argument. The renewal of tenancy by application of Section 116 of the Transfer of Property Act takes place only when there is no agreement to the contrary. If there is an agreement that acceptance of rent after the determination of the lease will not give rise to a renewal of tenancy, there will be no renewal, as laid down in Section 116.

In this particular case there was indeed no agreement to the contrary. But, there is a statutory bar to the automatic renewal of the lease by the mere fact of holding over after the determination of the lease. A tenant is liable to eviction on the expiry of the period of tenancy under Section 11 of the Act. If he, however, wants to obtain a renewal or extension of the period, the tenant has to take proceedings, as provided in Section 12 of the Act.

In other words, he has to give the landlord, at least one month before the expiry of the time limited by the lease, a written notice of his intention to do so. But, even in this case the extension cannot be allowed beyond twelve months. The combined effect of Sections 11 and 12 of the Act is that where the tenant has not served the landlord a notice intimating to him his intention to extend the time limited by the lease, he has no defence to an action for his ejectment.

If the contention of Mr. Ghosh were to prevail, the position will be simply anomalous. By application of Section 116 of the Transfer of Property Act mere acceptance of rent after the determination of the lease is sufficient to bring about a renewal of the tenancy. Under Bihar Act III of 1947 there can be no renewal nor extension of the period of tenancy unless the tenant by a written notice intimates to his landlord his intention to extend the time limited by the lease, as provided in Section 12 of the Act.

On the contention of Mr. Ghosh it will be difficult to harmonise both these provisions of Section 12 of the Act. The general provision contained in Section 116 of the Transfer of Property Act must be deemed to have been cut down to the extent laid down in Section 12 of the Act, and the inevitable conclusion is that in the case of a lease falling under Bihar Act III of 1947 the renewal or extension of the tenancy can be brought about only in the manner laid down in Section 12.

This also leads to the same conclusion as reached earlier, namely, that mere acceptance of rent cannot be regarded as an unequivocal act signifying the landlord's assent to the continuance of the tenancy, as contemplated by Section 116 of the Transfer of Property Act. Taking any view of the case, the contention of Mr. Ghosh cannot stand scrutiny and must be rejected.

14. Lastly, Mr. Ghosh contended that the learned Commissioner misconstrued the Kirayanama and wrongly held that the improvement effected in the building constituted breach of the tenancy. The facts found by the Courts below are that the tenant had made certain additions and alterations in the building and these additions and alterations had enhanced rather than impaired the value of the house.

Now, the Kirayanama does not prohibit, either expressly or by implication, any alteration in the building by the tenant which tended to improve it and enhance its value. All that the Kirayanama says is that the tenant shall keep the house always neat and clean and repair charges and municipal tax will be borne by the owner of the house. The learned Commissioner was, therefore, wrong in thinking that additions and alterations in the building which had been effected increasing its value were not permissible under the terms of the Kirayanama.

Therefore, this contention of Mr. Ghosh, is right, and there was no breach of the tenancy on this ground. This, however, is not sufficient to entitle the petitioner to a writ of certiorari or prohibition. His claim fails on the main ground, namely, expiration of the terms of the lease. This circumstance, though favourable to him, does not assist him in this case.

15. For the reasons aforesaid, this application is dismissed with costs. Hearing fee Rs. 64/-.

Vaidynathier Ramaswami, C.J.

16. I agree.

Jamuar, J.

17. I agree.

© Manupatra Information Solutions Pvt. Ltd.