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RAJ
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was laid upon this point before us in arguments, and we see no reason to differ from the conclusion of the learned Additional Subordinate Judge on that point.

The result is that in our opinion the decision of the learned lower court was correct, and we accordingly dismiss the appeal, with costs in favour of the respondent.

Appeal dismissed.

REVISIONAL CIVIL

*Before Sir Syed Wazir Hasan, Knight, Chief Judge and
Mr. Justice Muhammad Raza*

1933
August, 17

MOHAMMAD NOOR (DEFENDANT-APPLICANT) v. MIRZA
ASHIQ BEG (PLAINTIFF-OPPOSITE PARTY)*

Landlord and tenant—Notice by landlord to tenant claiming rent at enhanced rate and also asking him to vacate—Tenant protesting both against ejection and enhancement—Enhanced rent, if can be claimed by landlord.

Where a landlord claims rent at an enhanced rate in the notice which he serves on the tenant which notice also calls on the tenant to vacate the premises, and the tenant protests by means of a written reply both against the claim for ejection and the enhancement of rent, it is impossible to infer from the conduct of the tenant that he accepted the landlord's proposal to enhanced rate of rent for the future occupation of the leasehold property and the landlord is not entitled to claim rent at the enhanced rate. *Babu Lal v. Mirza Mohammad Askari* (1), *Bhagwan Das v. Musammat Mithana* (2), and *S. Burge v. Mouvi Mohammad Imanullah Khan* (3), relied on.

Mr. Brij Nath Shargha, for the Applicant.

Mr. Mahabir Prasad Srivastava, for the Opposite party.

HASAN, C. J. and RAZA, J.:—This is an application in revision under section 25 of the Provincial Small Cause Courts Act (IX of 1887). The respondent sued

*Section 25 Application No. 83 of 1932, against the order of Babu Shiva Gopal Mathur, Second Additional Judge of Small Cause Court, Lucknow, dated the 12th of August, 1932.

(1) (1926) A.L.R., Oudh, 97.

(2) (1897) 6 O.C., 190.

(3) (1924) 1 O.W.N., 408.

the defendant-applicant for recovery of arrears of rent in respect of a plot of land occupied by the applicant in the character of a tenant of the respondent. It appears, and it is agreed, that the defendant holds the land now in suit on a tenure of a lease from month to month.

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On the 24th of October, 1931, the respondent issued a notice of ejectment and also claimed rent at an enhanced rate if the applicant chose to continue in the occupation of the land in question. The applicant refused to vacate the land in suit and continued to occupy the same. In the suit out of which this Revision arises, the claim is made on the basis of the enhanced rate. The learned Judge of the Court below has decreed the claim.

Hasan, C. J.
 and Raza, J.

This application was originally heard by our learned brother SRIVASTAVA, J. He referred it for decision to a Bench of two Judges. The ground of the reference is that the decision in the case of *Babu Lal v. Mirza Mohammad Askari* (1) is, perhaps, not correct on the point that though a notice for ejectment and for enhancement of rent may be bad as to the former relief but good as to the latter.

But it appears that the principle of the decision in *Babu Lal v. Mirza Mohammad Askari* (1) was laid down in a much earlier case of *Bhagwan Das v. Musammatt Mithana* (2) decided by Mr. Deas, Judicial Commissioner of Oudh in 1897 and was also applied in the case of *S. Burge v. Moulvi Mohammad Imanullah Khan* (3), decided by one of us. We are of opinion that on *a priori* reasons those decisions are correct. A notice addressed by a landlord to his tenant may consist of two claims (1) ejectment and (2) enhanced rate of rent in future. The former part of the notice may be bad in the matter of time on which it is sought to operate having regard to the provisions of section 106 of the Transfer of Property Act, 1882, but it appears to us that a landlord has as much right to propose to the tenant

(1) (1926) A.I.R., Oudh, 97. (2) (1897) 6 O.C., 190.

(3) (1924) 1 O.W.N., 408.

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and Raza, J.*

an enhanced rate of rent for the future as the tenant is at liberty to propose a reduction thereof. In either case it would be open to the addressee to refuse or to accept the proposal. The refusal and acceptance may be proved by conduct. It seems to us that in case where enhanced rate of rent is proposed by a landlord for the future occupation of the land and the tenant continues to occupy the leasehold property without any protest as to the proposed enhancement of rent the latter should be deemed to have accepted the proposal. In the converse case also if the landlord does not exercise his right of ejectment or does not reject the offer made in any other manner but allows the tenant to continue in occupation of the leasehold property it is a fair inference from such conduct that he accepted the tenant's proposal to reduce the rate of rent for the future occupation of the leasehold property. On our part we do not see any flaw in this reasoning, and we think therefore that the cases referred to above were rightly decided.

In this particular case, however, when the respondent claimed rent at an enhanced rate in the notice which he served on the applicant which notice also called on the applicant to vacate the premises, the applicant protested by means of a written reply both against the claim for ejectment and the enhancement of rent. This being the state of circumstances it is impossible to infer from the conduct of the applicant that he accepted the landlord's proposal to enhanced rate of rent for the future occupation of the leasehold property. The result is that the respondent is not entitled to claim rent at the enhanced rate. We accordingly accept this application and modify the decree of the Court below by reducing it by the sum of Rs.30. This result is agreed to by the counsel of both parties as a necessary consequence of our decision. The parties will receive and pay costs in proportion to their success and failure in the two courts.

Application accepted.