

A

REHMAN JEO WANGNOO

v.

RAM CHAND AND ORS.

December 7, 1977

B [V. R. KRISHNA IYER, P. K. GOSWAMI AND V. D. TULZAPURKAR JJ.]

Jammu and Kashmir Houses and Shop Rent Control Act, 1966, S. 11(1)(h) Second Proviso to Explanation, Interpretation of—Whether mandatory for the courts to comply even in the absence of specific pleading.

C

Under the second proviso to the Explanation to S. 11(1)(h) of J & K Houses and Shop Rent Control Act, 1966 the court before evicting the tenant from part only of the premises, must satisfy itself after taking the entire evidence to fulfil the reasonable requirement of the landlord.

The High Court in second appeal held that the trial court as well as the first appellate court have taken this point into consideration and found that it would not be feasible to order the eviction of the appellants only from a portion of the suit premises and therefore dismissed the appeal.

D

Granting the special leave, allowing it and remanding the matter, the court.

E

HELD : The second proviso to the Explanations to S. 11(1)(h) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966 mandates the court to consider whether partial eviction as contemplated therein should be ordered or the entire holding should be directed to be evicted. This aspect, therefore requires judicial exploration after giving opportunity to both sides to lead evidence in this behalf. The court must proceed on the footing that the absence of a specific pleading under the said proviso does not stand in the way of the obligation of the court to act in compliance with the mandate of the statute. [381 A-B-D]

R. S. Madan v. G. M. Sadiq, 1971, J & K Law reports 260; over-ruled.

Rehman Jeo Wangnoo v. Ram Chand & Ors. Civil Second Appeal No. 46 of 1975, J & K dated 30-9-1975 reversed.

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2954 of 1977.

Appeal by special leave from the Judgment and Order dated 1-11-1976 of the Jammu and Kashmir High Court in Civil Second Appeal No. 46/75.

Niren De and *Altaf Ahmed* for the Petitioner.

Hardyal Hardy and *R. P. Sharma* for the Respondents.

ORDER

H

Delay condoned and special leave granted on a point raised by the appellants under the proviso to the Explanation to s. 11(1)(h) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966 (for short, the Act).

The only ground which we consider tenable and which has been urged by the appellants before us turns on the failure of the courts of

fact in recording a finding as contemplated in the proviso to the Explanation to s. 11(1)(h) of the Act. Obviously an error has been committed by the High Court in thinking that there is a concurrent finding of fact under the proviso aforesaid. The trial court and the first appellate court have really not considered this question on the merits; indeed evidence itself has not been taken on the score that there has been no specific plea in that behalf. We are satisfied that the proviso aforesaid mandates the court to consider whether partial eviction as contemplated therein should be ordered or the entire holding should be directed to be evicted. This aspect, therefore, requires judicial exploration after giving opportunity to both sides to lead evidence in this behalf.

We direct the first appellate court to go into the question as to whether the reasonable requirement of the landlord may be substantially satisfied by evicting the tenant from a part only of the premises as contemplated in the proviso. If after taking evidence the court is satisfied that the entire house or premises must be vacated to fulfil the reasonable requirement of the landlord, the present order will stand. If, on the other hand the court finds, as a fact, that partial eviction will meet the ends of justice as visualised in the proviso, an appropriate order will be passed on that footing. The court will take up the case on file pursuant to this order of remand and confine itself to this limited issue, give opportunity to both to lead evidence on this sole question and dispose of the appeal in accordance with law within two months. The court must proceed on the footing that the absence of a specific pleading under the said proviso does not stand in the way of the obligation of the court to act in compliance with the mandate of the statute. There will be no order as to costs in this court.

S.R.

*Appeal allowed and
case remanded.*