

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 7235/2025

1. Rajendra Sharma S/o Prabhatilal Sharma, Aged About 55 Years, Resident Of Sharma Bhojnalaya, Near Hotel Shalimar, Railway Station, Chittorgarh (Raj.).
2. Devendra Sharma S/o Prabhatilal Sharma, Aged About 52 Years, Resident Of Sharma Bhojnalaya, Near Hotel Shalimar, Railway Station, Chittorgarh (Raj.).
3. Shantilal Sharma S/o Prabhatilal Sharma, Aged About 48 Years, Resident Of Sharma Bhojnalaya, Near Hotel Shalimar, Railway Station, Chittorgarh (Raj.).

----Petitioners

Versus

1. Smt. Akhtar Begum D/o Late Sameer Khan, W/o Samshuddin Sheikh, Resident Of 26-B, Pratap Nagar, Chittorgarh (Raj.).
2. Smt. Kamla Devi, W/o Shri Prabhati Lal (Deceased - 04-07-2017)

----Respondents

For Petitioner(s)	:	Mr. Sohan Lal Jain
For Respondent(s)	:	Mr. Suresh Shrimali

JUSTICE DINESH MEHTA

Order

17/07/2025

1. By way of present writ petition, the petitioners have assailed the order dated 19.10.2024 passed by learned Rent Appellate Tribunal, Chittorgarh (hereinafter referred to as the 'Appellate Tribunal') in Rent Appeal No.24/2017 (CIS No.33/2017), whereby, the appeal filed by the respondent No.1 – Smt. Akhtar Begum has been allowed and a certificate of recovery of possession issued, while setting aside the order dated 29.05.2017 passed by the

learned Rent Tribunal, Chittorgarh (hereinafter referred to as the 'Rent Tribunal') in Rent Case No.09/2011.

2. Mr. S.L. Jain, learned counsel for the petitioners argued that the Appellate Tribunal has erred in allowing the appeal and holding that the present petitioners have violated the provisions of Section 9(a) of the Rajasthan Rent Control Act, 2001 (hereinafter referred to as the 'Act of 2001').

3. Having apprised the Court about the basic facts that the subject shop was let out by Samir Khan to Prabhatilal Sharma (petitioners' father), learned counsel submitted that after the death of Samir Khan, his son (Sharafat Khan) used to collect the rent and an agreement came to be executed between said Sharafat Khan and Kamla Bai in the year 2009-2010. Thereafter, Sharafat Khan also passed away and the respondent - Akhtar Begum, only surviving legal heir of Samir Khan started receiving the rent.

4. While informing that Akhtar Begum used to issue rent receipts, learned counsel submitted that the Appellate Tribunal has erred in deciding the issue no.1 against the petitioners and holding that the petitioners defaulted in making payment of rent for more than four months.

5. In relation to the above finding, learned counsel invited Court's attention towards the rent receipts (Exhibits 25 to 32) and submitted that as per the rent agreement or the conduct of the parties, the rent was payable month to month basis commencing from 16th to 15th of subsequent month and was fixed as Rs.3,200/- per month.

6. He emphasised that such fact is evident from the rent receipt dated 16.07.2010 (Exhibit-29), which clearly establishes that the rent for the period from 16.06.2010 to 16.07.2010 had been paid by the petitioners to the landlord on 16.07.2010.

7. He submitted that the respondents-landlord issued a notice dated 02.04.2011 to the petitioners in terms of Section 9(a) of the Act of 2001, although four months' rent had not become due on said date. Learned counsel also argued that since the notice in question did not mention the amount due, it was not a valid notice in the eye of law. In other words, learned counsel argued that since on the date of issuance of the notice, a period of four months was not over, the judgment and order dated 19.10.2024 passed by the Appellate Tribunal is contrary to law.

8. He contended that the last rent was paid on 15.12.2010 (Exhibit-59) (for the period 16th November to 15th December), whereafter, the first rent became due on 15th January; second rent became due on 15th February; third rent became due on 15th March and fourth rent became due on 15th April, whereas, the notice in terms of proviso to Section 9(a) had been issued to the petitioners on 2nd April, before the period of 4 months was complete.

9. Inviting Court's attention towards the provisions contained in clause (a) of Section 9 of the Act of 2001 and second proviso thereof, learned counsel argued that the provision in no ambiguous terms provides that the landlord has to issue a notice when the rent for four months has not been paid. He argued that since the notice issued was not valid, the tenant was justified in

not paying the rent within 30 days from the date of service of the notice.

10. In support of his contention, Mr. Jain, learned counsel for the petitioners relied upon the judgment of this Court passed in the case of ***Bharat Kumar Vs. Shyam Sunder*** reported in **2019(2) WLC (Raj.) UC 601**; judgment of the Jaipur Bench of this Court passed in the case of ***Raghuveer Prasad Sharma Vs. Smt. Manju Bansal*** reported in **2016(3) WLC (Raj.) 71 para 8** and judgment of the Jaipur Bench of this Court rendered in the case of ***Iqbal Singh & Ors. Vs. Harbans Kaur & Ors.*** reported in **2015(2) WLC page 395 para 13 to 16.**

11. He, however admitted that after receipt of the notice, the outstanding rent of six months was paid on 16.08.2011.

12. Mr. Suresh Shrimali, learned counsel for the respondent No.1 landlord, on the other hand argued that the contentions raised by Mr. Jain, learned counsel for the petitioners are not tenable. He submitted that each rent receipt clearly evinces that the rent is for the previous month, maybe the same was paid upto 15th /16th of the subsequent month. He submitted that the notice issued by the landlord on 02.04.2011 requiring the petitioners to pay the arrears of four months' rent, was therefore, perfectly in accordance with law because on 02.04.2011, rent of preceeding 4 months had become due.

13. He alternatively argued that even if for the sake of argument, the contention of the petitioners is accepted that the rent was payable from 16th of each month to 15th of the subsequent month, then also, simply because the notice was issued 15 days in advance, the same does not become null and

void, more particularly, when the petitioners failed to pay the due rent for the relevant months immediately and the arrears of rent came to be paid as late as in August 2011.

14. Learned counsel submitted that the proviso cannot be read dehors the main provision contained in clause (a) of Section 9 of the Act of 2001, inasmuch as clause (a) simply gives a right of eviction, in case, a tenant fails to pay the arrears of rent due from him for four months. He argued that second proviso requires that a landlord has to give a notice to the tenant by registered post and in case of failure of the tenant to pay the rent within a period of 30 days, a tenant is liable to be evicted.

15. In support of his contention aforesaid, learned counsel relied upon judgment of co-ordinate Bench of this Court passed in the case of ***Radhey Shyam Gautam Vs. Learned Appellate Rent Tribunal, Sawai Madhopur & Ors.*** reported in ***2019(3) DNJ (Raj.) 938.***

16. Heard learned counsel for the parties.

17. The basic issues which have cropped up for this Court's consideration are:-

- (1) Whether the rent was payable from 16th of each month to 15th of the subsequent month, and
- (2) Whether the petitioners-tenants have defaulted in making payment for four months?

18. So far as the first issue as to whether the rent of each month was payable/paid on the 16th of the subsequent month or the rent was payable from 16th to 15th of subsequent month is concerned, rent receipts Exhibits 29 to 33 creates a confusion, more particularly, the receipt (Exhibit-29), in which the period has been

mentioned as from 16.06.2010 to 16.07.2010. Though, other receipts do not contain such stipulation but the fact that the rent has been paid on 15th/16th of each month can be used by the petitioners-tenants in their advantage to contend that the rent was payable from 16th of previous month to 15th of current month, if these documents are read along with their testimony.

19. Hence, if petitioners' such contention is accepted, then the notice which the respondent-landlord has issued on 02.04.2011 can be taken or held to be the notice issued prior to expiry of four months.

20. However, according to this Court, the mere fact that the notice was issued prior to expiry of four months does not provide a defense to the tenants. Even if, the petitioners-tenants were of the view that the rent was payable on 16th of April and not on 2nd of April 2011, they ought to have tendered the due rent (for a period of three and a half month upto 02.04.2011) or four months as and when became due (i.e. on 16.04.2011) within a month of it becoming due or latest by 15.05.2011.

21. In other words, if according to the petitioners, the rent was payable on 15th of April, it was incumbent upon them to have paid the entire arrears of rent of preceding four months latest by 15th of May (within a month).

22. Since the same was not done, there was an apparent breach. Things would have been different, if the petitioners had paid the due rent of four months by 15.05.2011 but the facts in the instant case are otherwise. The petitioners did not bother to pay the rent for four months and the due rent of about eight months came to be deposited only on 16.08.2011.

23. Second proviso to clause (a) of Section 9 of the Act of 2001 clearly contemplates that the landlord has to give a notice of due rent. But the main Section provides that if the tenant has neither paid nor tendered the due amount for four months, the landlord is entitled to get the premises vacated. The date of issuance of notice does not make a significant difference.

24. Admittedly, in the instant case, the petitioners had neither paid nor tendered the due amount of rent for about eight months. Therefore, the breach of clause (a) of Section 9 of the Act of 2001 was writ large. Simply because of the minor technical flaw in the notice which too is doubtful, the tenant cannot take any advantage.

25. The view of this Court is fortified by the judgment of this Court passed in the case of **Radhey Shyam Gautam Vs. Learned Appellate Rent Tribunal, Sawai Madhopur & Ors.** reported in **2019(3) DNJ (Raj.) 938**, para No.7 and 12 thereof are relevant for the present purposes and hence, being reproduced hereinafter :

"7. In the present case, the petitioner-landlord has apparently taken a ground under Section 9(a) and 9(i) of the Act of 2001. Both the courts below have ousted the petitioner-landlord on the ground that notice sent to the respondent-tenant was not for default of four months of rent and therefore, the ground as per Section 9(a) of the Act of 2001 was not available. With regard to Section 9(i) of the Act of 2001, both the courts below have ousted the petitioner-landlord on the ground that the reasonable and bonafide necessity for the use and occupation of the premises was not available on the day when the premises was rented out. Thus, the question arises "as to whether reasonable and bonafide necessity is to be assessed on the day when the premises is let out or on the day when the application for eviction is moved ?"

12. The second proviso carves out another condition whereby the landlord has to give a notice by registered

post demanding arrears of rent and the tenant has not made payment of rent within period of 30 days from the date of service of notice. The words in the proviso do not say that the notice must mention default of payment of rent of four months. In the opinion of this Court, the proviso has to be independently read in terms of the guidelines laid down herein above as this proviso has to be construed as an additional condition for the success of the ground. The period of arrears of rent which may be demanded by the notice is not required to be the same as four months default which is a ground for eviction under the main clause. This, the demand of arrears is independent of the ground and would not necessarily synchronize with the period of default as a ground for eviction. In other words, the proviso only lays down a sine-qua-non of a notice to be sent to the tenant demanding arrears. The said arrears demanded may be less than four months or may be more than four months and on that ground, the application for eviction cannot be ousted. Once the landlord submits an application before the concerned Tribunal raising a ground of default in payment of rent for four months or more also satisfies the precondition of the two provisos, as noticed above, i.e. information relating to the bank account and a notice demand arrears, the Tribunal shall thereafter examine on facts whether the default is for four months or above independently on the evidence led by the landlord and the tenant. In view thereof, both the courts below have fallen in error in ousting the application of the landlord only on the ground that the notice mentions of default of rent for a period of three and half months.”

26. Adverting to the judgment relied upon by Mr. Jain, learned counsel for the petitioners, this Court finds that the facts in the case of **Bharat Kumar** (supra) were entirely different, because in that case, the landlord had not disclosed the due amount of rent while demanding arrears of rent, whereas, in the instant case, the notice (Exhibit-6) reveals that the landlord had clearly mentioned that a sum of Rs.3,200/- per month for four months had become due.

27. The landlord's omission to mention the total amount (Rs.12,800/-) cannot render the notice redundant, because it is

simple mathematical calculation (Rs.3,200/- X 4 = Rs.12,800/-).

Therefore, the judgment rendered in the case of **Bharat Kumar** (supra) hardly helps the petitioners' cause.

28. So far as para-8 of the judgment rendered in the case of **Raghuveer Prasad Sharma** (supra) is concerned, the facts of the case reveals that the landlord had demanded amount of interest and while dealing with these facts, this Court held as under :

“.....Section 9 of the Act provides that notwithstanding anything contained in any other law or contract but subject to other provisions of this Act, the Rent Tribunal shall not order eviction of tenant unless it is satisfied that the tenant has neither paid nor tendered the amount of rent due from him for four months. Second proviso to Section 9(a) of the Act stipulates that no petition on the ground under this clause shall be filed unless the landlord has given a notice to the tenant by registered post, acknowledgment due, demanding arrears of rent and the tenant has not made payment of arrears of rent within a period of thirty days from the date of service of notice. The phraseology “due from him for four months” in Section 9 supra is quite crucial as it shall have to be read conjointly with the words “arrears of rent”, as envisaged in second proviso thereto. Revised rent or differential amount payable to the landlord consequent upon revision of rent or in other words, the difference between what has been paid in the past as per the old rate and what has actually become payable subsequently as per the order of revision of rent, cannot for the purpose of Section 9(a) of the Act be construed as arrears of rent. Although of course, it is arrears payable by the tenant to the landlord as part of the rent payable but the quantification of the same having been made by specific order under a particular provision, i.e. Section 6 of the Act, the said order would be executable as per the procedure provided under Section 20 of the Act. Notice by landlord to tenant disclosing his bank account and calling upon him to pay the rent due from him for four months under first proviso of Section 9(a) of the Act envisages specific four months whether rent has not been paid. Such four months could be any four months, not necessarily continuous four months. Notice under proviso second to Section 9(a) of the Act should demand from the

tenant payment of arrears of rent of such four months and if he fails to make payment of such arrears of rent within 30 days from the date of service of notice, only then the landlord would be entitled to maintain a petition for eviction against him on this ground. The amount payable pursuant to order passed under Section 6 of the Act whether full or in part, cannot be read into second proviso to Section 9(a), i.e., "amount of rent due from him for four months and arrears of rent for such four months.""

29. Mr. Jain, learned counsel for the petitioners in the last submitted that the agreement shows that an advance of Rs.3,200/- had been received by the respondents-landlord, while executing the agreement and if that is adjusted, on 02.04.2011, the total rent was not due for 4 months.

30. So far as the advance rent is concerned, the respondent landlord had pleaded that the same had been adjusted earlier but even if, the contention of the respondent landlord is not accepted then also, neither the petitioners had responded to the notice nor had they paid the rent up to August 2011, the breach is apparent, as by that time it was 7 months' rent which had become due.

31. In view of the aforesaid, this Court does not find any merit and substance in the present writ petition, which is hereby dismissed. No order as to costs.

32. All pending applications, if any, also stand disposed of.

33. At the request of Mr. Jain, a month's time is allowed to the petitioners-tenants either to avail appropriate remedies or to vacate the premises.

(DINESH MEHTA),J