

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.3054 of 2019

Date of Decision: August 14, 2019

Mrs. Ujjwal Sahrawat

.... Petitioner

Versus

M/s Ajay Garments

.... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Kanwaljit Singh, Senior Advocate assisted by
Mr. Gautam Sehgal, Advocate and Ms. Tammanna R.
Sahrawat, SPA for the Petitioner.

Mr. Sandeep K. Sharma, Advocate for the Respondent.

SUDIP AHLUWALIA, J.

This Revisional Application is directed against the order dated 8.5.2019 passed by the Ld. Rent Controller, Rohtak, in Rent Petition No.20 of 2017 dismissing the Application filed by the Petitioner under Order XV Rule 5 read with Section 151 of CPC for striking off the defence of the Respondent for non-payment of rent.

2. Background of the matter is that the Eviction Petition was originally filed by the Petitioner in March 2017. During its pendency, the Ld. Rent Controller, Rohtak on 14.5.2018 passed his order determining the provisional rent payable in view of the dispute to that effect, which had emerged before the Court. The Respondent was found to be in arrears of rent from the month of April, 2016 for a period of 11 months at Rs.30,000/- per month as per the original Lease Agreement between the parties. However, the Respondent was permitted to deduct 10% TDS amount with an obligation to deposit

the same with the Income Tax Department towards the Tax liability of the Petitioner, and the net amount payable thereafter to the Landlady inclusive of the interest and costs thereupon was determined at Rs.3,10,000/-, which was to be paid/tendered on 28.5.2018. The Petitioner/Landlady was however, aggrieved by the aforesaid order of Provisional Assessment and challenged the same by way of Rent Appeal No.35 of 2018, which was effectively disposed off by the Ld. Appellate Authority vide its Judgment dated 9.8.2018. She has thereafter challenged the aforesaid order of both the Ld. Courts below by filing CR No.5936 of 2018, which is pending separately in this Court.

3. The present Revisional Application was however, filed subsequently seeking to strike off the defence of the Respondent/Tenant, in which, it has been mentioned that the respondent Firm has not paid the rent since the filing of the Eviction Petition on 18.3.2017 and also no rent has been paid by it even for 24 months of the following period with effect from April, 2017 to March, 2019.

4. In its Reply to the Application, the Respondent/Tenant has denied that it failed to pay the rent as alleged, and has also contended that it tendered the arrears assessed by the Rent Controller amounting to Rs.3,10,000/- by way of a Demand Draft, which was however, not accepted by the Petitioner. The Respondent Firm further contended that it is still ready to pay the rent at the agreed rate of rent even though the amount was sent by it by cheque, which was allegedly returned by the Petitioner. In fine, it is the contention of the

Respondent in its reply that the Application is liable to be dismissed being devoid of merit, since the Petitioner/Landlady has herself refused to accept the payment of rent while the Respondent has all along been willing to make the payment.

5. The Ld. Rent Controller thereafter rejected the Petitioner's Application under Order XV Rule 5 of the CPC on two grounds. Firstly, he was of the view that the Application was being moved at a belated stage when the case was already at the stage of Respondent's evidence, whereas according to the relevant provisions, obligation is cast upon the Defendant (Tenant) to deposit the entire amount by him to be due together with interest thereon "at or before the first hearing of the Suit". In addition, the Ld. Rent Controller was also of the view that the Petitioner was blowing hot and cold at the same time by seeking to have the defence of the Defendant struck off due to non-payment of rent on one hand, and by refusing to receive the rent when offered to her, on the other. The relevant observations of the Ld. Rent Controller in dismissing the Petitioner's Application are set out below -

"6. Order 15 Rule 5 of CPC was inserted by the State Amendment of Punjab, Haryana and Chandigarh w.e.f. 13.05.1991 for striking of the defence on failure to deposit the admitted rent. As per this Section, the defendant has to pay the entire amount of admitted rent together @ 9% per annum on the 'Ist hearing' of the suit. The expression 'Ist hearing' is also defined in explanation of one of this Section which means the date for filing written statement or for hearing mention in summons where more than one of such date are mentioned the last of the dates mentioned. The title of

order 15 is the disposal of suit at first hearing. It is clear from the file that when the present application was moved, the case is at the stage of respondents evidence. From perusal of order 15 Rule 5, it shows that the application should be moved on the '1st hearing' as mentioned in the provisions. However, in the present case, the present application is moved at belated stage, when the case is at the stage of respondents evidence.

7. Further, as per the applicant, the respondents had not paid any rent from March, 2017 to March, 2019. However, as per respondents, they have tendered the rent as per the order of Court. However, the applicant/petitioner has not received the same and they are still ready to pay the rent as per the agreement between the parties. In the present case, earlier the provisional rent was assessed by this Court i.e. Rs.3,10,000/- for 11 months @ Rs.27,000/- per month after deducting the TDS i.e. Rs.3,000/- per month, with costs and interest which was deposited by the respondents on 24.05.2018 through Demand Draft in the name of applicant/petitioner. However, she has refused to receive the same. Thereafter, the original demand draft was returned to respondents and copy of the same is placed on file. In the present case, at one side, the petitioner has sought the striking of the defence on the ground of non-payment of rent and on the other side, she has refused to take the rent from the respondents/tenant. As per respondents/tenant, they are ready to pay the rent as per the lease agreement between the parties but the petitioner intentionally not receiving the rent. From the conduct of applicant/petitioner, it seems that she is beating the hot and cold at the same time i.e. on one side, she has stated that the defence of respondents be struck off due to non-payment of rent, whereas, on the other

side, she has refused to receive the rent. As per respondents/tenant, the applicant/petitioner has given the directions to the Bank to not credit the rent amount deposited by the respondents. He has further stated that he is still ready to deposit the amount in the Court.

8.....On the one side, the applicant/petitioner is seeking the directions from the Hon'ble High Court to dispose off the present Eviction Petition expeditiously. On the other hand, she has moved this application at this belated stage, where the trial of this case is likely to be concluded. Further, as the applicant/petitioner herself refusing to receive the payment of rent as assessed by the Court and taking from the respondents in her bank account and whereas respondent/tenant has deposited the rent amount. So, there is no question of striking off the defence on the grounds of non-payment.”

6. Being aggrieved with the above observations and decision of the Rent Controller, it has been asserted on behalf of the Petitioner that even assuming she had refused to receive the rent as alleged by the Respondent, it ought to have approached the Controller for leave to deposit the rent in terms of Section 6A of the Haryana Urban (Control of Rent & Eviction) Act (for short “the Haryana Act”) 1973, which alone, in the circumstances, shall be deemed to be a payment made by the Tenant to his Landlord. To substantiate this contention, the Petitioner from her side has drawn attention of this Court to Section 6A of the said Act, which provides -

“6A. Deposit of rent – (1) *Notwithstanding anything to the contrary contained in any other law for the time being in force, if a landlord refuses to receive, or grant a receipt for, any rent payable in respect of the building or rented land when tendered to him by a tenant, the tenant may apply to the Controller for leave to deposit the rent in his office, and the*

Controller shall receive the deposit, if, after examining the applicant, he is satisfied that there is sufficient ground for the application and if the applicant pays the fee, if any, chargeable for the issue of the notice hereinafter provided.

(2) When a deposit has been received under sub-section (1), it shall be deemed to be a payment made by the tenant, to his landlord in respect of the rent due.

(3) On receiving the deposit, the Controller shall give notice of the receipt thereof to the landlord and shall pay the amount thereof to him.”

7. Before proceeding further to examine the Application of Section 6A in the present case, it would also be appropriate to first take note of the relevant Order XV Rule 5 of the CPC, under which, the Petitioner/Landlady had prayed for striking off the defence of the Respondent/Tenant. The aforesaid provision is set out as below -

“Order XV Rule 5 CPC Striking off defence for failure to deposit admitted rent --

(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of Sub-rule (2), strike off his defence.

Explanation 1.- The expression "first hearing" means the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2.- The expression "entire amount admitted by

him to be due" means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any, deposited in any Court.

Explanation 3.- (1) *The expression "monthly amount due" means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.*

(2) *Before making an order for striking off defence, the Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days of the first hearing or, of the expiry of the week referred to in Sub-section (1), as the case may be.*

(3) *The amount deposited under this rule may at any time be withdrawn by the plaintiff:*

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same."

8. As can be seen from the underlined portion in Sub Rule(1) of Rule 5 as reproduced above, a Defendant/Tenant is under an obligation to deposit the entire rent admitted by him not only "*at or before the first hearing of the Suit*", but such obligation binds him throughout pendency of the proceedings thereafter in view of the specific provision that "*he shall throughout the continuation of the Suit regularly deposit the monthly amount.....*" To that extent

therefore, the decision of the Ld. Rent Controller that the Application under Order XV Rule 5 of the CPC was not maintainable for having been filed “*at a belated stage and not at or before first hearing of the Suit*” would appear to be misconceived.

9. This leads us to consideration of the second ground for rejecting the Petitioner's Application on account of her having “blown hot and cold at the same time”, by refusing to receive the rent when offered to her on one hand, and then seeking to have the Respondent's defence to be struck off for its alleged failure to pay the rent. In this connection, it was submitted on behalf of the Petitioner that the cheque delivered to her in purported compliance of the Provisional Assessment Order by the Respondent was dishonoured by the concerned Bank “due to insufficient funds”, which submission has not been controverted. It is however, the counter submission of the Respondent that subsequently, the Petitioner refused to accept the rent when it was again offered by way of Demand Draft, and has also instructed her Bankers not to accept any payment into her account at the instance of the Respondent. In response to this contention, the submission of Petitioner's counsel is that she was well within her right to refuse acceptance of the rent at a belated stage after the cheque initially delivered to her was dishonoured by the Bank and in any event, the appropriate course for the Respondent was to have approached the Rent Controller for depositing the said rent and also the subsequent rent for the following period in terms of Section 6A already quoted above, which it has failed to do. Before proceeding to consider the implications of the Respondent's failure to approach the

Rent Controller for deposit of the rent in the wake of the alleged refusal by the Petitioner to receive the same, it would be in order to consider some other arguments raised on behalf of the Respondent in opposing the Petitioner's case, which are discussed in the following Paragraphs.

10. It has been asserted that the alleged default on the part of the Respondent to pay the rent for subsequent period after the Eviction Petition had already been filed, would not entitle the Landlady to have its defence struck off, and that in such a situation, the remedy open to her would be in accordance with the provisions of Section 13 (2) of the Haryana Act. It has been further contended on behalf of the Respondent that in the absence of any specific direction of the Rent Controller to “keep on paying the future rent during pendency of the Eviction Proceedings”, no penal consequences would be attracted against the Tenant for his alleged failure to pay the future rent accruing subsequent to pronouncement of the order assessing the provisional arrears of rent and accrued interest thereupon.

11. Further, the Respondent's side has also contended that in any case if recourse is made to Order V Rule 15 of the CPC for having defence of the Lessee/Tenant struck off, then he is entitled to an opportunity to make good the payment. In support of this contention, judgment of a Coordinate Bench of this Court in “**Narinder Pal Versus Surinderjit Singh and others**” 2011(1) R.C.R. (Rent) 469 has been cited.

12. It is also the contention that the power to strike off the defence of the Lessee/Tenant is to be exercised judiciously by the Court and

that the Court has the power to condone any delay before striking off the defence and that power to strike off the defence, should not be exercised mechanically in view of Judgments of Supreme Court in **“Bimal Chand Jain Versus Gopal Agarwal” 1981(2) R.C.R. (Rent) 314**; **“M/s Mangat Singh Trilochan Singh Thr. Mangat Singh (D) thr. Lrs. and others Versus Satpal” 2003(2) R.C.R. (Rent) 567**; and **“M/s Jain Motor Car Co. Delhi Versus Smt. Swayam Prabha Jain” 1996 (1) R.C.R. (Rent) 231** and Judgments of this Court in **“Raj Kumar Mittal Versus Arvind Kumar Jain” 2003(1) R.C.R. (Rent) 63** and **“M/s Saras Paper Pack Versus Shyam Sunder” 2000(2) R.C.R. (Rent) 245**.

13. It has further been contended on behalf of the Respondent that provisions of the Code of Civil Procedure would not apply in Eviction Petition under the State Legislation/Rent Act, since the Rent Controller trying the same cannot be regarded as a Civil Court. But this contention is altogether untenable in view of the decision of this Court in **“Manoj Jain and others Versus Rajesh Kumar and others” CR No.4205 of 2013 (O&M)** wherein it was recognized that the provisions of Order XV Rule 5 CPC are harmoniously applicable in relation to Eviction Petitions in Landlord-Tenant cases under the Rent Act as well.

14. Reliance from the Petitioner's side has been placed upon the decision of Apex Court in **“Atma Ram Vs. Shakuntala Rani” in Appeal (Civil) No.6742 of 2003** to contend that even assuming that the Petitioner/Landlady had ever refused to accept the rent tendered by the Respondent as claimed, still it was under an obligation to

deposit the same strictly in compliance with the provisions of Section 6A as referred to above, but such course was not adopted by it. Hence, the Respondent is liable to face the consequences in view of decision of Supreme Court, wherein in relation to Section 27(2) of the Delhi Rent Control Act, which substantially corresponds to Section 6A of the Haryana Act, the Apex Court had observed -

“The Act, therefore, prescribes what must be done by a tenant if the landlord does not accept rent tendered by him within the specified period. He is required to deposit the rent in the Court of the Rent Controller giving the necessary particulars as required by sub-section (2) of Section 27. There is, therefore, a specific provision which provides the procedure to be followed in such a contingency. In view of the specific provisions of the Act it would not be open to a tenant to resort to any other procedure. If the rent is not deposited in the Court of the Rent Controller as required by Section 27 of the Act, and is deposited somewhere else, it shall not be treated as a valid payment/tender of the arrears of rent within the meaning of the Act and consequently the tenant must be held to be in default.

We are, therefore, satisfied that the High Court was right in holding that the appellant had failed to pay/tender arrears of rent for the period February 1, 1992 to January 31, 1995. The deposit made under the provisions of the Punjab Act was of no avail in view of the express provision of Section 27 of the Act.”

15. The decision of this Court in '**M/s Saras Paper Pack (supra)**' cited on behalf of the Respondent has ironically also been relied upon by the Petitioner and attention has been drawn to the ultimate result in the said decision wherein the Trial Court's Order of striking off the defence of the Petitioner/Tenant under Order XV Rule 5 of the CPC when there was persistent default on his part in not paying the

monthly rent due during pendency of the Suit was upheld.

16. Both sides have also relied upon the decision of Apex Court in **“Rakesh Wadhawan and others Versus Jagdamba Industrial Corporation and others” (2002) 5 Supreme Court Cases 440**. This Court therefore, proceeds to consider the conclusions of the Supreme Court in the aforesaid judgment pertaining to aftermath in an eviction proceeding, subsequent to passing of the Provisionally assessed rent ordered by the Rent Controller as laid down are as follows -

“4. On the failure of the tenant to comply, nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the Controller.

5. If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing the tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.

6. While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings.”

17. However, the conceivable possibilities regarding the

correctness of Rent Controller's adjudication pertaining to the Tenant's rental liability had also been discussed in detail by the Apex Court in Para 29 of the aforesaid Judgment, which happens to be -

“29. The result of the discussion may be summarized. Under proviso to Section 13(2)(i), the Controller having discharged his obligation of passing an order under the proviso, either suo motu or on his attention in this regard being invited by either of the parties, it will be for the tenant to pay or tender the amount provisionally assessed by the Controller on the first date of hearing of the application for ejectment. On compliance, the Controller would proceed to adjudicate upon the controversy arising for decision by reference to pleadings of the parties and by holding a summary enquiry for the purpose. Such adjudication shall be provisional and subject to the later final adjudication. The finding that may ultimately be arrived at by the Controller may be one of the following three: the Controller may hold that the quantum of arrears as determined finally is (i) the same as was found to be due and payable under the provisional order, (ii) is less than what was determined by the provisional order, or (iii) is more than the one what was held to be due and payable by the provisional order. In the first case the Rent Controller has simply to pass an order terminating the proceedings. In the second case the Controller may direct the amount deposited in excess by the tenant to be refunded to him. In the third case, it would not serve the purpose of the Act if the tenant was held liable to be evicted forthwith as is the view taken by the Punjab High Court in the case of Dial Chand v. Mahant Kapoor Chand, (1967) 69 Punj LR 248. The Controller directing the eviction of the tenant may pass a conditional order affording the tenant one opportunity of and a reasonable time for depositing the amount of deficit failing which he shall be liable to be evicted. This power in the Rent Controller can be spelled out from the use of the word "may" in the expression "The Controller may make an order directing the tenant to put the landlord in possession", as also

from the principle of equity and fair play that the tenant having complied with provisional order passed by the Controller should not be made to suffer if the finding arrived at by the Controller at the termination of the proceedings be different from the one recorded in the provisional order. While exercising the discretion to make a conditional order of eviction affording the tenant an opportunity of purging himself of the default the Controller may also take into consideration the conduct of the tenant whether he has even after the passing of the provisional order continued to pay or tender the rent to the landlord during the pendency of the proceedings as a relevant factor governing the exercise of his discretion. Such a course would be beneficial to the landlord too as he would be saved from the trouble of filing a civil suit for recovery of rent which fell due during the pendency of proceedings for eviction before the Controller."

(Emphasis added)

18. It is thus seen that discretion has been granted to the Rent Controller to take into consideration the conduct of the Tenant on whether even after passing of the provisional order, he continued to pay or tender the rent during pendency of the proceedings, with a view to secure benefit to the Landlord, and to save him from the trouble of filing a Civil Suit for recovery of rent which fell due during pendency of the proceedings. It would necessarily follow therefore, that the logical fallout in a case of non-deposit of the subsequent rent during pendency of the proceedings can be only to the serious peril of the Tenant/Defendant.

19. In **"Sarla Goel & Ors. Versus Kishan Chand"** Civil Appeal No.4162/2009 decided on 8.7.2009, the Supreme Court went one step further. It referred to its earlier decisions in **"E.Palanisamy vs. Palanisamy"** (2003) 1 SCC 123 & **Atmaram's case (supra)** and

revisited its earlier observations -

“19. In Atmaram’s case (supra), this Court observed at paragraph 19 as under :-

“It will thus appear that this Court has consistently taken the views that in Rent Control Legislations if the tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirements of the Act. If any condition precedent is to be fulfilled before the benefit can be claimed, he must strictly comply with that condition. If he fails to do so he cannot take advantage of the benefit conferred by such a provision” (Emphasis supplied).

20. Again in paragraph 20 of the same decision, this Court observed as follows :-

“Section 26 of the Delhi Rent Control Act, 1958 provides that every tenant shall pay rent within the time fixed by contract, and in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable. Every tenant who makes a payment of rent to his landlord shall be entitled to obtain forthwith from the landlord or his authorized agent a written receipt for the amount paid to him, signed by the landlord or his authorized agent. It is also open to the tenant to remit the rent to his landlord 20 by postal money order. The relevant part of Section 27 of the Act reads as under:-

"27. Deposit of rent by the tenant - (1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in Section 26 or refuses or neglects to deliver a receipt referred to therein or where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner : Provided that in cases where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may remit such rent to the Controller by postal money order.”

21. This Court in the aforesaid decision, after examining Section 27 of the Act observed at paragraph 21 as follows :-

“The Act, therefore, prescribes what must be done by a tenant if the landlord does not accept rent tendered by him within the specified period. He is required to deposit the rent in the Court of the Rent Controller giving the necessary particulars as required by Sub-section (2) of Section 27. There is, therefore, a specific provision which provides the procedure to be followed in such a contingency. In view of the specific provisions of the Act it would not be open to a tenant to resort to any other procedure. If the rent is not deposited in the Court of the Rent Controller as required by Section 27 of the Act. and is deposited somewhere else, it shall not be treated as a valid payment/tender of the arrears of rent within the meaning of the Act and consequently the tenant must be held to be in default.”

22. In *E. Palanisamy vs. Palanisamy* (2003) 1 SCC, 123, this Court while considering the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, which is similar to the Delhi Rent Control Act, observed at paragraph 4, 5 & 8 as follows :- “4. It would be seen from the above provisions that while the landlord is required to issue a notice of default, on refusal by landlord to accept rent, the tenant is required to call upon the landlord by way of a notice to specify the name of a Bank in which rent could be deposited by the tenant to the credit of the landlord. If the landlord specify the name of the Bank to deposit the rent, there is an obligation on the part of the tenant to make the deposit of arrears of rent in the account of landlord. However, if the landlord does not specify the name of a Bank inspite of being called upon by the tenant through a notice, the tenant is required to send the amount of arrears through a money order to the landlord after deducting the commission payable on the money order. If the landlord still refuses to accept the rent, the tenant is entitled to file an application before the Rent Controller seeking permission to deposit the arrears of rent under Sub-section (5) of Section 8 of the Act.

5. Mr. Sampath, the learned counsel for the appellants argued that since the appellants-tenant had deposited the arrears of rent in Court, it should be taken as compliance with Section 8 of the Act. This would mean there is no default on the part of tenant in payment of rent and therefore, no eviction order could have been passed against the appellants on that ground. According to the learned counsel, the Court should not take a technical view of the matter and should appreciate that it was on account of refusal of the landlords to accept the rent sent by way of money orders that the tenant was driven to move the Court for permission to deposit the arrears of rent. Since there is a substantial compliance of Section 8 in as much as the arrears of rent stand deposited in Court, a strict or technical view ought not to have been taken by the High Court. We are unable to accept this contention advanced on behalf of the appellants by the learned counsel. The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well-settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration have no place in such matters. The statute contains express provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a pre-condition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance with the procedure is necessary. The tenant cannot straight away jump to the last step i.e. to deposit rent in court. The last step can come only after the earlier steps have been taken by the tenant. We are fortified in this view by the decisions of this Court in Kuldeep Singh v. Ganpat Lal and Anr. 1996 (1) SCC 243 and M. Bhaskar v. J. Venkatarama Naidu 1996 (6) SCC 228.

8. Admittedly the tenant did not follow the procedure prescribed under Section 8. The only submission that was advanced on behalf of the appellants was that since the

deposit of rent had been made, a lenient view ought to be taken. We are unable to agree with this. The appellants failed to satisfy the conditions contained in Section 8. Mere refusal of the landlord to receive rent cannot justify the action of the tenant in straightaway invoking Section 8(5) of the Act without following the procedure contained in the earlier sub-sections i.e. Sub-sections (2), (3) and (4) of Section 8. Therefore, we are of the considered view that the eviction order passed against appellants with respect of the suit premises on the ground of default in payment of arrears of rent need no interference.”

23. Applying the principles laid down in *Atmaram’s case* (*Supra*), as noted herein earlier, and the decision in *E. Palanisamy* (*Supra*) and in view of our discussions made herein earlier and considering the object of the Act and the intention of the Legislature, we are in respectful agreement with the observations made by this Court in the aforesaid two decisions. In our view, similar facts had arisen in the present case.

24. It is not in dispute that the tenant/respondent had availed the benefit of Section 14(2) of the Act by its order dated 3rd of December, 2001 passed by the Additional Rent Controller, Delhi. Since we have already come to the conclusion that since the tenant/respondent has failed to deposit rent in compliance with Section 27 of the Act because in the present case, admittedly, landlord/appellants had not accepted any rent tendered by the tenant/respondent within the time referred to in Section 26, it was the duty of the tenant to deposit such rent before the Rent Controller as prescribed in Section 27 of the Act. Admittedly, this step was not taken by the respondent which is mandatory in nature and, therefore, we must hold that the tenant/respondent had committed a second default in payment of rent and is, therefore, liable to be evicted from the suit premises.”

20. It is therefore, seen that the consistent view of the Apex Court

has been that a Tenant even in the event of refusal on the part of the Landlord to accept the rent is obligated to adopt the procedure strictly provided in the concerned Rent Act. The procedure applicable under Section 27 of the Delhi Rent Control Act has been narrated in Para 21 of the decision in **Sarla Goel's case (supra)**, while that prescribed under Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 has been referred to in Sub Para 5 of Para 22, which related to the case of **E. Palanisamy (supra)**. In this case, the Supreme Court went to the extent of observing -

“The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well-settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration have no place in such matters. The statute contains express provisions.”

(Emphasis added)

21. The Apex Court thus held the Tenant in **Sarla Goel's case (supra)** to be a defaulter notwithstanding that he had deposited the rent before the Rent Controller in compliance of the provisions of the Punjab Act, which was therefore, found to be of no avail in view of express provisions of Section 27 of the Delhi Rent Control Act, which was not followed as already reproduced in the relevant extracts from the decision in **Atma Ram's case (supra)** at the end of Para 14 of the instant Judgment. The same principle is also thus applicable to the present case, in which, in the event of refusal of the Landlord, the Tenant was obliged to deposit the rent with the Rent Controller in strict compliance of Section 6A of the Haryana Act, as already set out in Para 6 earlier. But it failed to do so at any stage for the period

following passing of the original Provisional Assessment Order by the Rent Controller, and in fact did not deposit even the amount assessed in terms of the said order. In the given facts and circumstances, this is a much more serious case of double default after the Respondent's appearance in the Eviction Proceedings, coupled with abject non-compliance of the Statutory Provisions prescribed in Section 6A of the Haryana Act applicable in the case. The Respondent's repeated assertions of even now being "ready and willing to pay/deposit the rent" are thus of no avail whatsoever at this stage.

22. For the aforesaid reasons, the impugned order passed by the Rent Controller is unsustainable and is therefore, set aside. The Petitioner's Application under Order XV Rule 5 of the CPC for striking off the defence of the Respondent (Annexure P-2) accordingly stands allowed.

(SUDIP AHLUWALIA)
JUDGE

August 14, 2019
AS

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|--------------------------------|--------|
| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |