RENT

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1. **Default and Payment of Rent**

Default in payment of rent by the tenant is a ground of eviction under all the Rent Control Acts. Most of the Acts prescribe a minimum period of default to be a ground of eviction .e.g. 4 months (U.P.), 6 months (Rajasthan). However under certain Acts like Delhi R.C. Act 1958, Maharashtra R.C. Act 1961, Tamil Nadu R.C. Act no minimum period is specified.

A. Notice:

Some Acts like U.P. R.C. Act [Section 20(2) (a)] prescribe further that notice must also be given.

S. 20 (2)

> *"(a) That the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand:*

Mentioning wrong rate of rent or wrong period of default in notice does not invalidate the same vide *Gokran Singh v. A.D.J., 2000 (1) ARC 653* (FB)Allahabad High Court.

B. Late payment or deposit in other Court but acceptance by landlord:

If before institution of suit for eviction by the landlord on the ground of default tenant has paid the entire rent, but payment was made after due dates, still he will not be defaulter and cannot be punished for past defaults vide *S. Sundram*[83] (paras 4 & 5). Following this authority it was held in *M/s Shrikrishna Oil Mill*[57] that if in earlier suit for recovery of rent alone, the entire arrears were deposited by the tenant and withdrawn by the landlord, the landlord was not thereafter entitled to file eviction application against the tenant before controller under Hyderabad R.C. Act 1954 on the ground of default. The Supreme Court overruled the contrary view taken by all the three Courts below. In this case it was further held that in case of yearly

tenancy, no question of default for one or few months arises as the rent is to be paid after completion of whole year.

In *K.A. Ramesh*[37], before filing of suit entire arrears were sent by draft by the tenant which was got encashed by the landlord, hence, it was held that there was no default.

In all these cases it was held that the eviction proceedings should have been dismissed at the threshold as infructous.

In *Raja Muthukone*[75] under T.N.R.C. Act much before the expiry of period of two months notice eviction proceedings before Rent Controller were initiated by the landlord on the ground of default. Thereafter all the arrears of rent which had been deposited by the tenant in earlier concluded cases were withdrawn by the landlord. Even withdrawal was before expiry of period of 2 months from the notice. The Supreme Court held, inter alia, that the tenant was not defaulter. [See also synopsis 2A(xvi)].

C. Rent paid to I.T.O. or other creditor

If in proceedings under Income Tax Act the tenant is required to pay rent to Income Tax Officer (I.T.O.) in discharge of landlord's liability of Income Tax and he pays accordingly, it amounts to payment to landlord and tenant does not remain defaulter vide *J. Jermons*[32]. However in this case it was further held that under Income Tax Act only the past debt/ rent payable by someone to the assessee could be directed to be paid by the debtor to I.T.O. and not future debt hence no order directing the tenant to pay future rent to I.T.O. could be passed under I.T. Act.

If some creditor of landlord files suit against him impleading the tenant also and in the suit tenant is directed to deposit rent in Court, it will amount to payment of rent to landlord if the rent is deposited in the suit regularly and only until required by the order passed in the said suit, otherwise not vide *Vijay Amba*[107].

D. Delay in initiating proceedings, immaterial:

Allegation of non-payment of rent by tenant for a long time made by landlord cannot be brushed aside merely on the ground that in case rent had not been paid, landlord would not have remained silent for such a long time vide *Mohinder Singh*[67].

E. Paid/ deposited rent to be adjusted in earliest defaults:

In *Janak Raj*[34] under J & K. R.C. Act it has been held that rent deposited or paid will have to be adjusted first against earliest defaults.

F. Rent sent through M.O., or cheque refused by landlord:

If the tenant, after receiving the notice or otherwise, sends the rent through money order (**MO**) and the same is refused to be accepted by the landlord, tenant does not remain in arrears of rent but rent remains in arrears. In such situation decree for eviction on the ground of default will not be passed however decree for recovery of rent can very well be passed vide *Indrasani v. Din Ilahi 1968 AWR 167* (FB) Allahabad High Court quoted with approval in another Full Bench of the same High Court reported in *Gokaran Singh v. I ADJ Hardoi* reported in *2000(1) ARC. 653* Para 18 quoted below:

> *"18. in Jitendra Prasad v. Mathura Prasad Darzi, 1960 ALJ 211, it was held that the words 'for more than three months' qualified words 'rent' and not words 'is in arrears'. On the same analogy, it can be said that words 'for not less than four months' qualified word 'rent' and not words 'is in arrears'. Thus, a tenant who has run into the arrears of rent for a period of four months, is liable to be ejected by the landlord, if he fails to pay the amount of arrears of rent within thirty days of the receipt of the notice of demand. In Indrasani v. Din Ilahi, 1968 AWR 167 (FB), it was ruled by a Full Bench of this Court as under :-*

".....A tenant can be said to be in arrears of rent only when by non- performance of his legal obligation he has deprived the lessor of the benefit of the accrued rent."..........
".....We may point out that there is a clear distinction between a case in which the tenant is in arrears of rent and a case in which rent is in arrears. In the former case arrears of rent are the consequence of the default committed by the tenant in paying rent, in the latter case the arrears of rent may be due to causes attributable to the improper conduct of the landlord in refusing to accept rent lawfully tendered to him. Where such is the case and arrears of rent are due to reasons beyond the control of the tenant, the Courts will give a beneficial construction to the provisions of the Act keeping in view aims and objects to fulfil which it was enacted."

However in *M.K. Mukunthan*[47] it was held that if the M.O. returned with the endorsement "Addressee not found", it could not be said to be due tender of rent. It was also found that M.O. was deliberately sent during the period when the tenant knew that the landlord would not be in the city.

In *Damadi Lal*[18] (3 Judges) it was held that payment of rent by **cheque** was valid tender and if the landlord refused to accept / encash the same, tenant could not be treated to be defaulter. Same view has been taken in *K. Saraswathy*[36] and *Mahendra*[69]. These authorities reaffirm the view taken in both the above Allahabad Full Benches as there is no difference between refusal to accept M.O. and cheque. In the last case (*Mahendra*) it has also been held that sending cheque to the advocate who gave the notice was valid as there was confusion as to who was the proper landlord even though the advocate had mentioned that rent must directly be sent to the client. In *Gopichand*[26] arrears of rent were sent through cheque by registered post which returned as the landlord was not available at

the city. The Supreme court held that it was no tender. However thereafter the Court further held that as earlier rent was never paid through cheque hence tenant was not justified in sending the rent through cheque. This view is directly in conflict with earlier authorities mentioned above. In this case the facts involved in *M.K. Mukunthan*[47], supra, were also not properly appreciated. In *Mukunthan's*[47] case rent had not been sent through cheque but through M.O.

However, at this juncture reference may be made to the authority reported in *M/s Madan & Co.* [56] wherein it has been held that if registered notice sent by landlord to the tenant returns with the endorsement of 'not met' or 'left', it amounts to service.

G. Position of past arrears in case of transfer by landlord:

In *Sheikh Noor*[93], the Supreme Court after placing reliance upon several of its earlier authorities including *N.M. Engineer*[69] and authorities of several High Courts but disagreeing with an authority of Calcutta High court held in para 18 as follows:

> *"18. In view of the cases referred to above, in our opinion, the correct position of law is that a transferee is not entitled to recover the arrears as rent for the property on transfer unless the right to recover the arrears is also transferred. If right to recover the arrears is assigned, then the transferee/landlord can recover those arrears as rent and if not paid maintain a petition for eviction under the rent laws for those arrears as well....."*

H. Advance rent, adjustment in default:

Advance rent, premium or security paid by the tenant to the landlord may be adjusted in subsequent defaults only if it is so provided under the relevant R.C. Act (or the agreement) otherwise not.

A.P. and T.N. R.C. Acts prohibit the landlord from receiving any premium etc. from the tenant except one month's advance rent. It is further provided therein that the additional prohibited' amount if received shall either be returned or adjusted at the option of the tenant. Supreme Court in *Modern*[64] *Hotel* (under A.P. R.C. Act) and *K. Narasimha Rao*[35] (under T.N. R.C. Act) has held that advance is to be adjusted in future default. Four authorities interpreting corresponding provision of Bihar R.C. Act were distinguished in *K. Narasimha Rao*[35] on the basis of difference in language of both the sets of the Acts. Para 11 and 12 are quoted below:

> "11. *The cases relating* to *the provisions in the Bihar Act from which some support was sought by learned counsel for the appellant* to *overcome the effect of the decision in Modern Hotel, Gudur (supra) are Budhwanti and another v. Gulab Chand Prasad,* 1987 (2) *SCC 531* M/ s *Saruiari Kumar Onkar Nath v. Subhas Kumar Aqanualla,* 1987(2) *RCR 502(SC)* : *JT* 1987 (4) SC 64 : 1987 (4) *SCC* 546, *Nand Lal Aganual v. Ganesh Prasad Sah and others,* 1988 (1) *RCR* 265 : 1988 (4) *SCC 215,and Bhoja alias Bhoja Ram Gupta v. Rameshwar Agarwala and other,* 1993(1) *RCR 484(SC)* : 1993 (2) *SCC* 443:

12. For the purpose of this case, it is *sufficient for us* to *say that there are provisions in the Bihar Act, which clearly make it illegal* to *claim or receive any payment in excess of the amount in addition* to *the rent or any sum exceeding one month's rent in advance and there* is *a clear declaration that any excess amount received would not be lawful. There is, no provision in the Bihar Act corresponding* to *that in sub-sections (1) and* (2) *of Section 7 in the Tamil Nadu and Andhra Pradesh Acts, which creates a legal obligation in the landlord* to *refund the excess amount* to *the tenant creating a corresponding right in the tenant* to *recover that amount from the landlord. The absence of such a provision in the Bihar Act making the excess amount refundable and imposing an obligation on the landlord* to *make that refund immediately or to adjust it,* is *the distinguishing feature in the Bihar Act. However, on the clear provision of the Tamil Nadu Act which applies in the present case, there* is *no ambiguity. _ Further reference* to *the decisions under the Bihar Act is, therefore, not necessary."*

In *Gopi Chand*[26] under Delhi R.C. Act, without saying anything regarding permissibility of adjustment of advance in subsequent defaults the matter was remanded to decide whether any advance was available with the landlord or not and whether the advance if available covered the entire default?

In *Raminder*[81] under Karnataka R.C. Act 1961 it was held in para 4 as follows:

"4.Every tenant is obliged to pay or tender rent to *the landlord within* 15 *days of the month* to *which the*

rent relates. The purpose of advance rent is to *protect the landlord from the unscrupulous tenant who may run into arrears and vacate the premises and comfortably walk away with arrears. The advance rent is available for adjustment or is liable* to *be refunded at the time of vacating of the premises except where the law or the contract between the parties provides* to *the contrary .....*

Earlier in para 3 it had been held as follows:

"3. According to *Section* 18 *of the Act, the landlord is prohibited from receiving by uiau of advance rent any amount exceeding two months' rent. Proviso* to *sub-section (2) of Section* 2 *provides that Part III of the Act which consists of Sections* 14 to 18 *(both inclusive) shall not apply to a building constructed after the* 1 *st day of August, 1957 for a period of* 5 *years from the date of construction of such building up* to *the date of the filing of the suit, undisputedly Section* 18 *was not applicable* to *the building wherein the tenancy premises are situated."*

I. Payment of rent by third person:

Most of the Rent Control Acts define tenant as someone by whom rent is payable (e.g. section 3(a) of U.P. R.C. Act). There is lot of difference between 'payable by' and 'paid by'. Anyone who pays rent does not become tenant. Son or any other family member of tenant or his servant etc. may actually pay rent to the landlord but it would be on behalf of the tenant vide *Harshavardhan.* (See also synopsis 2A(v)]

2. Deposit of Rent

A tenant can deposit rent in Court in three contingencies. The first is when suit for his eviction is instituted on the ground of default in payment of rent. It is a sort of last opportunity to avoid eviction. (Sub Synopsis A). The second is before the institution of suit for eviction by the landlord, in case landlord refuses to accept rent (Sub synopsis B). The third is for avoiding striking off defence (Sub Synopsis C).

A. In suit for eviction, to protect possession:

Some R.C. Acts provide that if the tenant in a suit for eviction on the ground of default in payment of rent deposits entire arrears along with interest and cost of suit (proceedings) on the first date of hearing (or such extended date which is permitted by the relevant provision of the particular Act) then he may be relieved of his liability to eviction. Some Acts (e.g. of Delhi, West Bengal and M.P.) contain the additional requirement of monthly deposit also (see sub-synopsis C)

In *S.Sundram*[83], *M/s Shrikrishna*[57] and *K.A. Ramesh*[37] (discussed under synopsis 1B) it has been held that as on the date of initiation of eviction proceedings, the tenant was not defaulter hence the proceedings were infructous and default (non-deposit) during pendency of the proceedings could not be taken note of in those very proceedings.

If continuous deposit of monthly rent in suit / proceedings or appeal/ revision is not essential for granting protection against

eviction then such non-payment of rent cannot be considered in the same proceedings. It can be a ground of eviction in subsequent suit/ proceedings. [Striking off defence for such non-payment is quite distinct as it des not lead to automatic viction, synopsis C (iii)].

Under M.P. R.C. Act in a suit for eviction on any ground the tenant is required to deposit entire arrears of rent. He is further required to deposit monthly rent subsequently in the suit as well as appeal. In case of any default, defence is to be struck off in case landlord applies for the same and if the relief of eviction is sought on the ground of default, protection against eviction on the ground of deposit is not to be granted. Such relief, in any case, is available only once and not in the second suit on the ground of default. In one case suit for eviction was instituted on the grounds of default and bonafide need. As in the suit arrears as well as rent for subsequent months was deposited, the suit was not decreed on the ground of default. However it was decreed on the ground of bonafide need. Tenant filed appeal which was allowed holding that landlord's need was not bonafide. During pendency of appeal tenant neither paid the rent nor deposited the same in appeal. Landlord had not filed any cross objection hence eviction on the ground of default was not sub-judice in appeal. Second suit for eviction on the ground of default was filed. In *Sobhagyamal*[102] the Supreme Court held that the second suit was rightly filed and decreed.

Sub Sections (4) and (6) of Section 20 of U.P.R.C. Act provide as under:

Section 20(4) of U.P.R.C. Act provides as under:-

S. 20 (4) *In any suit for eviction on the ground mentioned in clause (a) of sub-section (2), if at the first hearing of the suit the tenant unconditionally pays or tenders to the landlord or deposits in court the entire amount of rent and damages for use and occupation of the building due from his (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section 30, the Court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground:*

Provided that nothing in this sub-section, shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

Explanation: *For the purpose of this sub-section-*

(a) The expression "first hearing" means the first date for any step or proceeding mentioned in the summons served on the defendant;
(b) The expression "cost of the suit" includes one-half of the amount of counsel's fee taxable for a contested suit."

S. 20(6) Any amount deposited by the tenant under sub-section (4) or under Rule 5 of Order XV of the First Schedule to the Code of Civil Procedure, 1908 shall be paid to the landlord forthwith on his application without prejudice to the parties' pleadings and subject to the ultimate decision in the suits.

A(i) First date of hearing:

Normally first hearing or first date/ day of hearing means the first date on which the Court applies its mind to the pleadings which is the date on which issues are framed vide *Vasant Ganesh*[106] under Bombay R.C. Act 1947. (It has also been held in this authority that tenant cannot take advantage of the provision by making deposit in appeal). Similar is the position under R.C. Acts of some other States (i.e. East Punjab and Gujarat) as noticed in *Sham Lal*[91] under East Punjab R.C. Act quoted with approval in *M/s Mangat Singh*[50]. However this interpretation cannot be applied to the above provision of U.P. Act for two reasons. The first is that the term has been defined under the Explanation. The second is that in U.P. Suit for eviction of tenant of a building is to be instituted before JSCC which is not required to frame issues [Order 50 Rule 1(a) (iii)].

The term 'first hearing' as defined under the aforesaid Explanation has been interpreted by the Supreme court in five authorities; *Siraj Ahmad*[101], *Advaitanand*[3], *Sudarshan Devi*[105], *Mam Chand*[62] and *Ashok Kumar*[8]. All these authorities have been considered in *Krishna Kumar Gupta v. A.D.J. Allahabad 2004 (2) ARC 659* (decided by me), paras 7 to 10 of which are quoted below:

> *"7. In my opinion 30.11.1993 cannot be taken to be the date of first hearing as on that date neither written statement had been filed nor Presiding Officer was available. On the said date petitioner had filed application for supply of copy of plaint. If copy of plaint is not supplied to the defendant there arises no question of hearing of the suit, hence on this ground alone 30.11.1993 cannot be said to be date of first hearing [vide Shafiqur Rahman Khan v. IInd Addl. District Judge, Rarhpur, 1982 AWC 701 (DB)]. Apart from it, if on the date*

fixed in the summons the tenant prays for and is granted time to file written statement then the said date cannot be said to be date of first hearing.

8. Interpretation of the expression "first hearing" as used in Explanation under Section 20 (4) of the Act has engaged attention of the Supreme Court in several authorities including the following :

(1) Siraj Ahmad Siddiqui v. P.N. Kapoor, AIR 1993 SC 2525 (three Judges);
(2) Advaitanand v. J.S.C.C., 1995 (3) SCC 407 (two Judges);
(3) Sudarshan Devi v. Sushila Devi, 1999 (4) AWC 3484 (SC) : AIR 1999 SC 3688 (two Judges);
(4) Mam Chand Pal v. Shanti Agarwal, AIR 2002 SC 955 (two Judges); and
(5) Ashok Kumar v. Rishi Ram, AIR 2002 SC 2520.

9. Unfortunately in the fifth authority of Ashok Kumar decided on 8.7.2002, the authority of Mam Chand Pal at serial No. 4 decided on 14.2.2002 was not noticed. In the authority of Mam Chand Pal it has been held in para 7 that "in cases where the Court itself is not available, it would not be treated as date of first hearing." However, in the authority at serial Nos. 3 and 5 (Sudarshan Devi and Ashok Kumar) a contrary view has been taken. In Sudarshan Devi's authority in para 42 it has been held that "It is also true that on 12.4.1990 the Presiding Officer was on training but that in our view is not relevant inasmuch as there is no difficulty in depositing the rent etc. in the manner prescribed."

10. In Ashok Kumar's authority it was mentioned in para 3 that :

"After service of summons the suit was adjourned to May 20, 1980 for final disposal. On that day the tenant

sought time for filing written statement so the suit was adjourned to July 25, 1980 when time was, however extended for filing written statement and the suit was posted for final disposal on October 10, 1980. The hearing of the suit was not taken up on that date as Presiding Officer was on judicial training but the tenant deposited the entire amount in demand."

Thereafter in para 12 of the said authority it was held :

"On July 25, 1980 time was extended for filing written statement and the suit was again adjourned for final disposal to October 10, 1980. Inasmuch as after giving due opportunity to file written statement, the suit was posted for final disposal on October 10, 1980, it was that date which ought to be considered as the date fixed by the Court for application of its mind to the facts of this case to identify the controversy between the parties and as such the date of first hearing of the suit. Admittedly on that date the appellant tenant deposited all the arrears of rent. Though the suit was again adjourned to December 5, 1980, it would be irrelevant because the date of first hearing of the suit is the date when the Court proposes to apply its mind and not the date when it actually applies its mind. It follows that the first hearing of the suit would not change on every adjournment of the suit for final disposal. The effective date of the first hearing of the suit on which the Court proposed to apply its mind, on the facts of the case, was October 10, 1980 as stated above."

All these authorities of the Supreme Court except *Mam Chand*[62] have been noticed in *Ram Krishna*[78], infra.

Payment / deposit before first date of hearing is quite valid vide *Sheo Narain*[94] and *Mangat Rai*[63].

A(ii) Negligible deficiency to be ignored:

In *Mam Chand*[62], supra, it has also been held that if the deficiency in the deposit is negligible, it is inconsequential and on this ground benefit of the sub section cannot be denied to the tenant. In the said case about Rs. 6000/- had been deposited by the tenant which was short by Rs. 17/-.

A(ii) (a). Excess deposit under one head, adjusted under other head:

In para 9 of *Mam Chand*[62], supra, it was laid down as follows:

> *"9. In one of the cases relating to landlord-tenant dispute, decided by the Allahabad High Court reported in Dr. Neelambar Jha v. First Additional District Judge, Gorakhpur and others, 1982 ARC 555, it has been held that if some amount is deposited in excess under one head the same can be adjusted towards the shortfall of an amount under any other head."*

A(iii) Time barred rent to be deposited:

For taking benefit of section 20(4) of the U.P. Act time barred rent is also to be deposited vide *Khadi Gram Udyog*[42] and *Subash Chand*[104].

In *Bhimsen Gupta*[12] under Bihar R.C. Act 1982 it has been held that the ground of eviction provided under section 11(1)(d) to the effect that ' where the amount of two month's rent lawfully payable by the tenant and due from him is in arrears' covers time barred rent also. In the said case suit was instituted on

05.09.1994 for eviction on the ground of non-payment of rent of the months of February 1988 and December 1990.

However Delhi R.C. Act 1958 in its Section 14(1)(a) used the words 'arrears of the rent legally recoverable from him". Supreme Court in *Kamala Bakhshi*[39] held that it did not include time barred rent. Exactly similar words have been used in section 12(1) (a) of M.P. R.C. Act 1961 as noticed in *Sobhagyamal*[102].

A (iv) First date of hearing after dismissal in default and restoration:

If suit is decreed ex-parte and thereafter restored then the first date fixed after restoration is the first date of hearing vide *Subhash Chand*[104]. (In the judgment the date 30.5.1977 has wrongly been mentioned as 30.8.1977 at three places.) (In the said case at the earlier stage defendant had not appeared.) The reason is that if defendant has not appeared and his written statement is not on record then Court cannot apply its mind to the controversy. However if defendant appears and thereafter suit is decreed ex parte due to subsequent non-appearance of the defendant then the date fixed after restoration will not be first date of hearing for the purpose of deposit if first date of hearing had already arrived before the suit was decreed ex-parte and complete deposit was not made on the said date. In *Ram Krishna*[78] it was argued on the basis of *Siraj Ahmad*[101], *Advaitanand*[13], *Sudershan Devi*[105] and *Ashok Kumar*[8], supra, that if ex-parte decree was set aside on the finding that summons was not served, then the date fixed in the summons could not be taken to be

first date of hearing and deposit made within few days of restoration would be valid deposit. The Supreme Court in para 7 (of *Ram Krishna*[78]) held as follows:

> *" 7. The submissions made by Ms. Mukherjee, cannot be said to be entirely without substance and may call for a consideration by this Court in an appropriate case. In the facts of this case, however, we are not inclined to exercise our jurisdiction under Article 136 of the Constitution in favour of the appellants."*

A(v) Payment / tender/ deposit by someone other than the tenant:

Payment, tender (or deposit) of rent by son or any other family member of the tenant on behalf of the tenant is valid and absolves the tenant of the liability to eviction vide *Rama Kant*[80] (under Haryana R.C. Act, first proviso of Section 13 (2) of which is quoted below). In the said case the landlord had alleged that the father had sublet the premises to his son. However the son categorically stated that he had deposited the rent on behalf of his father.

First proviso to section 13(2) of Haryana R.C. Act:

> *"Provided that if the tenant within a period of fifteen days of the first hearing of the application for ejectment after due service, pays or tenders the arrears of rent and interest, to be calculated by the Controller, at eight per cent per annum on such arrears together with such costs of the application, of any, as may be allowed by the Controller, the tenant shall be*

deemed to have duly paid or tendered the rent within the time aforesaid."

In *Rama Kant*[80] supra two authorities of Supreme Court i.e. *Pushpa Devi*[74] and *Maghi Lal*[58] were considered. In *Pushpa Devi*[74] (under East Punjab R.C. Act) the advocate who was appearing for the tenant as well as subtenant tendered the rent. The tender was held to be valid. However in *Maghi Lal*[58] (a judgment of only six lines) only the sub tenants had tendered the rent hence it was held to be not valid.

Under Haryana and Punjab R.C. Acts the requirement is of payment or tender of arrears of rent etc. under U.P. Act additional provision of deposit is also there. The interpretation of Supreme Court of the relevant provisions of Haryana and Punjab R.C. Acts will also apply to deposit under Section 20(4) of U.P.R.C. Act.

A(vi) Time to deposit cannot be extended:

Making deposit under Section 20(4) of U.P. R.C. Act or similar provisions of other Acts is not tantamount to filing application hence Section 5 Limitation Act does not apply and delay in making deposit cannot be condoned. However if some R.C. Act grants power to the Court/ authority (Rent Controller) then the delay may be condoned. (See also sub-synopsis 'C')If power to condone is circumscribed then delay in making deposit may be condoned only for the period provided under the relevant section of the particular Act e.g. three months under Rajasthan R.C. Act,

vide *Nasiruddin*[70] (3 judges). In this case position under Rajasthan, West Bengal, Delhi, Bihar, Madhya Pradesh and Bombay R.C. Acts has been considered. Under Section 20(4) of U.P. R.C. Act there is no power to condone delay in making deposit. If a provision like Section 12(3) (b) of Bombay R.C.Act 1947 grants power to the court to extend the time, but no specific order in this regard is passed then the Court has got no discretion to relieve the tenant from eviction vide *Ganpat Ladha*[24] quoted with approval in *Yusufbhai*[110]. Time to deposit cannot be extended by appellate court vide *Vasant Ganesh*[106].

A(vii) Deposit under Section 30(2) U.P.R.C. Act also to be adjusted:

Under section 20(4) of U.P.R.C. Act, due to inadvertence, sub Section (2) of Section 30 is not mentioned. However while making deposit under Section 20(4) the tenant is entitled to deduct any amount deposited either under sub-section (1) or sub-section (2) of Section 30 vide *Kailash*[38].

A(viii) validity of Section 30 (U.P. R.C. Act) deposit to be seen in suit for eviction:

Whether deposit under Section 30 was valid or not (e.g. whether landlord had refused to accept rent or not, whether deposit was continued to be made after notice to accept rent by landlord or in case of deposit under sub-section (2) whether there was any dispute or doubt regarding landlord ship or not) is to be seen in the suit where benefit of Section 20(4) is sought and not

necessarily in summery proceedings under Section 30 vide *Maiku*[60], dealing with Section 7-C of old U.P.R.C. Act 1947 which is *pari materia* with Section 30 of new U.P.R.C. Act 1972 (See also next sub-synopsis B).

A(ix) Calculation of due rent etc., - what is unconditional payment (deposit):

Some R.C. Acts (e.g. Haryana, East Punjab and Rajasthan) provide that Rent Controller or Court must tentatively, prima facie determine due rent cost and interest and if the same is paid or tendered within the time fixed under the provision then tenant shall not be evicted on the ground of default in payment of rent. In Punjab and Haryana Acts there was a lacuna regarding determination of rent, cost and interest. The Supreme court through interpretation removed the lacuna and held that Rent Controller has to determine all the three items vide *Rakesh Wadhwan*[76] (East Punjab R.C. Act) and *Vinod Kumar*[109], three judges (Haryana R.C. Act). In the latter authority, review of the earlier one was sought which was rejected and two other authorities were overruled. After holding that the relevant provisions of both the Acts were *pari materia* it was further held that all the three items (due rent, interest and cost) were to be determined, *prima facie* but not finally, on the basis of evidence. The following observations of *Rakesh Wadhwan*[76] were quoted with approval in para 5 of *Vinod Kumar*[109] :-

"The Court further held that such order of the Rent Controller making an assessment shall, in the scheme of the section, be an interim or provisional order which would be based on a summary enquiry leading to the formation of a prima facie opinion based on the consideration of relevant material brought on record by the parties, which may consist of the documents, affidavits and pleadings which would enable the Controller to make a provisional and yet judicial assessment, and place it on record by way of an order to satisfy the spirit of the proviso."

However, as far as section 20(4) of U.P. R.C. Act is concerned the calculation is to be made by the tenant at his own risk. If the calculation of all the three items made by the tenant is ultimately (while deciding the suit) is found to be correct then the tenant would not be evicted (provided that he had deposited the calculated amount on first date of hearing). However if the calculation and deposited amount is ultimately found to be short eviction decree would be passed. If the tenant disputes rate of rent and/ or period of default as alleged by the landlord in the plaint then he has got two options. One is that he deposits the rent as asserted by him in his written statement to be due (with interest thereupon and proportionate cost) and attempts to prove the same. If ultimately his version is found to be correct, he would not be evicted otherwise eviction decree would follow. The other safer option is that in spite of disputing the allegations of the landlord the amount claimed by the landlord is deposited. In such situation if the landlord's version is found correct still tenant will not be evicted. However, if the tenant's version is found correct then the landlord, who may have withdrawn the amount under section 20(6) will be directed either to refund the extra

amount to the tenant or to adjust the same in future rent. The deposit of rent by the tenant as alleged by the landlord with assertion that so much rent is not due, does not make the deposit conditional. In such situation the tenant is fully entitled to the benefit of section 20(4) vide *Vijay Laxmi*[108]``. It has been held in this authority that contrary view will render section 20(6) nugatory.

A(x) How interest to be calculated:

For calculating 9% per annum interest on unpaid rent under Section 20(4) of U.P. R.C. Act formula has been mentioned in *Raj Bahadur Singh v. D.J.Fatehpur 1998 (2) ARC 416* (Allahabad High Court) which has been elaborated in *Kashi Nath v. Sushila Rastogi 2003 (2) ARC 347* (Allahabad High Court) paras 77 and 78 of which are quoted below:

> "*77. Question arises as to how to compute interest at the rate of 9% per annum. In Raj Bahadur case (supra), this Court laid down that the amount of interest is to be determined as follows (paragraph 8 of the said ARC) :*
>
> > *"8. Learned Counsel for the petitioner submitted before this Court that the lower revisional Court while calculating the amount of interest has committed an arithmetical error inasmuch as the interest on the monthly rent for Feb. 83 would start only from 1.3.1983 and, therefore, interest on rent became due only for 46 months and if calculated at the rate of 9% per annum, the amount would come to Rs. 486.45 only. For determining the exact amount of interest required to be deposited under the terms of Section 20 (4), the following formula has to be applied.*

Suppose 'A' is number of months for which interest became due on arrears of rent and damages, the formula to be applied is A x. (A + 1) x ½ = B. B is the figure which is to be multiplied with the monthly interest."

78. In the present case, rent/damages due from the petitioner (defendant) was for the period from 23-2-1994 to 25-3-1996; i.e., for a period of 25 months at the rate of Rs. 10/- per month. The interest on the monthly rent for the period form 23.2.1994 to 25.3.1994 would start running only on the expiry of the said month. Therefore, interest on rent damages became due only for 24 months.

As laid down in Raj Bahadur case (supra),
Amount of interest = B x Monthly interest.
'B' is calculated according to the following formula:
B = Ax (A+I) x ½
Where 'A' is the number of months for which interest became due on arrears of rent and damages.
Monthly interest at the rate of 9% per. annum.

$$912 \quad x \quad \text{Rate of monthly rent/damages} \quad 100$$

Now, in the present case, as noted above, interest on rent/damages became due for 24 months.

Therefore,	*'A' = 24.*
Hence,	*'B' = 24 x (24 + 1) x ½*
or,	*'B' = 300.*

Monthly interest at the rate of 9 % per annum (taking the rate of rent/damages as Rs. 10/- per month)

9/12 x 10/100

= Rs. 0.075

Hence, amount of interest, = 300 x 0.075

Hence amount interest	*of*	*= 300 x 0.075*
		= Rs. 22-50.

A(xi) Suit decided on the basis of complete deposit, other findings resjudicata:

If suit is decided on the basis of complete deposit and tenant is relieved against his liability for eviction under Section 20(4) of U.P.R.C. Act or similar provisions of other R.C. Acts, it means that the suit has been decreed and not dismissed even if the word 'dismissed' has been used by the Court inadvertently. Such judgments invariably contain the direction that the deposited amount may be withdrawn by the landlord. This also shows that the suit has not been dismissed. In such situation the other findings if any will operate as resjudicata vide *Pawan Kumar*[73]. In the said case the tenant in a suit for eviction on the ground of default had denied the title of transferee landlord on the ground that the transaction was benami but entire due rent etc. had been deposited by the tenant. The suit was 'dismissed' on the ground of deposit and the landlord was permitted to withdraw the amount. In subsequent suit by the same landlord against him on another

ground the tenant again questioned the title of the landlord. The Supreme Court held that the issue was barred by resjudicata and if the tenant was interested, he should have filed appeal against earlier judgment which would have been maintainable in spite of use of word 'dismissed' as a finding regarding ownership / landlord ship had been recorded against the tenant therein. In para 2 an interesting description of the situation was given as follows:

> *"2. The enviable position to which the tenant of a shop building has ensconced himself as corollary to the judgment of the High Court (under appeal now) is that he need not thenceforth be accountable to any landlord. On the one side when the claim of appellant to be the landlord has been dis-countenanced by the High Court, at the other side the person whom the tenant proclaimed as his landlord has disclaimed the credential. If the judgment of the High Court remains in force the tenant stands elevated virtually to the status of owner of the suit building. But appellant is not prepared to concede defeat and hence he has come up with this appeal by special leave."*

A (xii) Water Tax and other taxes:

By virtue of section 7 of U.P. R.C. Act infra water tax payable in respect of a rented building and part of increased house tax is part of rent and payable as such by the tenant.

> "7. *Liability to pay taxes: - Subject to any contract in writing to the contrary, but notwithstanding anything contained in Section 159 of the Uttar Pradesh Municipalities Act 1916 the tenant shall be liable to pay to the landlord in*

addition to and as part of the rent, the following taxes or proportionate part thereof, if any, payable in respect of the building or part under his tenancy, namely-

(a) The water tax;

(b) Twenty-five per cent of evey such enhancement in house tax made after the commencement of this act, or such portion thereof, as is not occasioned on account of the increase in the assessment of the building as a result of the enhancement of rent under the provisions of section 5:

Provided that nothing in this section shall apply in relation to a tenant the rate of rent payable by whom for the time being (excluding any enhancement of rent under provisions of section 5 does not exceed twenty – five rupees per month."

If such taxes as are payable by tenant and form part of rent are not paid / deposited, tenant cannot get benefit of the provisions like section 20(4) of U.P. R.C. Act vide *Abdul Kader*[2] (under T.N.R.C. Act), where tenant had agreed to pay half of property tax and *Laxman*[45] (under Bombay R.C. Act), where permitted increase in the rent due to increase in municipal taxes was held to be payable by the tenant. However, in the last authority matter was remanded to ascertain the proportion of increase in taxes with respect to part of the building which was in tenancy occupation of the tenant.

By amendment of 1975 to Bombay R.C. Act 1947 as well as Bombay Municipal Corporation Act it was provided that if rent is inclusive of water taxes or water charges and the tenant has paid the

same on behalf of landlord then the same may be deducted from rent. The Supreme Court in *Ramji Purshottam*[82] held that even though the amendment was not retrospective still water tax/ charges so paid prior to the amendment could also be deducted by the tenant from the rent. It was quoted from Principles of Statutory Interpretation by Justice G.B. Singh that *"the fact that a prospective benefit under a statutory provision is in certain cases to be measured by or depends on antecedent facts does not necessarily make the provision retrospective."*

A(xiii) Repeated benefit not available:

Several R.C. Acts provide that the protection against eviction on deposit of rent is not available if default is again made either at anytime or within certain period. The position under West Bengal, Delhi, Rajasthan and M.P. has been noticed in *Monoj Lal*[68], *Kamla Devi*[40], *Kuldeep Singh*[43] and *Sobhagyamal*[102] respectively. Under Bombay R.C. Act 1947 such benefit can be availed only twice vide *Vasant Ganesh*[106] and *Yusufbhai*[110]. In the last authority it has been held that mere readiness and willingness to pay rent is meaningless. It had been held in *A.S. Sulochna*[1] (under M.P. R.C. Act) that if deceased tenant had obtained the benefit, it could again be claimed by his son who inherited the tenancy but not the sin of his father. This view was overruled in *Imdad Ali*[30] and it was held that the son of the tenant inherited the tenancy along with liability if any. Under section 20(4) of U.P.R.C. Act there is no specific bar against seeking repeated benefit of it but the use of the word 'may' indicates that repeated benefit cannot be availed as a matter of right.

A(xiv) Denial of benefit under Section 20(4) of U.P. Act on acquisition of residential building:

By virtue of proviso to the sub-section, a tenant who or any member of his family has built or acquired any residential building cannot protect his possession by depositing arrears of rent etc. on the first date of hearing. Family has been defined under Section 3(g) of the Act. Even though the proviso does not specifically refer to residential tenancies however it does not apply to purely commercial tenancies as in that eventuality acquisition of residential building will have no relevance. But the proviso applies to residential – cum – commercial tenancies as held in *Samar Pal*[85]. In this case it has also been held that if the acquired accommodation is fit to be used for residential purposes, it is sufficient for attracting the proviso and 'a building which can be used for residential as well as commercial purposes cannot be said to be excluded from the clutches of proviso to sub-section (4)'.

The words 'has built / acquired' used in the proviso cover building or acquiring of a house even prior to applicability of the Act on the tenanted building or even prior to commencement of the Act (15.7.1972) vide *Siddharth Viyas*[100]. For detailed discussion of this authority see synopsis 4 of the chapter Vacancy….. and synopsis 3 of the chapter Sub-letting.

A(xv) Benefit of deposit available to tenant even if written statement not filed or defence struck off:

Paras 11 and 13 of *Abdul Jalil v. Jalil Beg 2011 (3) ARC 429* (Allahabad High Court) (decided by me) are quoted below:

> *"11. Even though refusal to accept the written statement does not amount to striking off the defence still defendant cannot be permitted to adduce evidence for the reason that evidence can be adduced to prove the pleaded facts and in the absence of pleading (W.S.), this exercise will be futile. No amount of evidence can be looked into unless there is corresponding pleading for the same.*
>
> *13. However, the question is as to whether defendant can be permitted to assert that he had deposited the entire required amount on the first date of hearing as required by section 20 (4) of the Act hence decree for eviction should not be passed against him? In my opinion, such a plea cannot be said to be a plea in defence. It is statutory requirement as provided under section 20 (4) of the Act and no evidence is required to prove the deposit as details of the deposits are always available on the file of the suit."*

A(xvi) Deposit of rent otherwise than under R.C.Act, effect.

In *Duli Chand*[20] under Punjab R.C. Act it has been held that if before the same Court / Rent Controller where proceedings for eviction are initiated, earlier the tenant had deposited the rent under another Act (Punjab Relief of Indebtedness Act 1934) and on the first date of hearing in eviction proceedings, landlord is informed about the earlier deposit, it amounts to payment / tender as Rent Controller, then and there, can permit the landlord to withdraw the amount.

Same view was taken in *Sheo Narain*[94]. A contrary view which had earlier been taken in *Shri Vidya*[97] was overruled in *Mangat Rai*[63] and *Duli Chand*[20] & *Sheo Narain*[94] were approved. However if deposit under Punjab Act of 1934 is made before some other Court / authority than the Court / authority before whom eviction proceedings on the ground of default are initiated then it will not benefit and protect the tenant vide *Atma Ram*[9]. Similarly if rent is deposited in some other proceedings (Civil Proceedings) it is of no avail to the tenant vide *Jagat Prasad*[33] (under U.P.R.C. Act). (See also synopsis 1C)

Under West Bengal R.C. Act 1997 initially the deposit was to be made before Rent Controller during pendency of suit for eviction. Through amendment of 2005 in Section 7 w.e.f. 04.06.2006 the amount was required to be made before the Court itself. In a suit for eviction, in 2008, being oblivius, of the amendment, the tenant applied before the Court for permission to deposit the arrears of rent before Rent controller which application was allowed on 11.04.2008 and thereafter requisite deposit was made before Rent Controller. On realizing the fault in 2012, permission to deposit the said amount again before the Court was sought which was granted on 19.01.2012. The Supreme Court in *Monoj Lal*[68] approved the order holding that the mistake was bonafide. (See also synopsis 1B).

B. Deposit of Rent in Court if landlord refuses to accept:

Section 30 of U.P. R.C. Act is quoted below:

"S.30. Deposit of rent in Court in certain circumstances.- (1) If any person claiming to be a tenant of a building tenders any amount as rent in respect of the building to its alleged landlord and the alleged landlord refuses to accept the same then the former may deposit such amount in the prescribed manner and continue to deposit any rent which he alleges to be due for any subsequent period in respect of such building until the landlord in the meantime signifies by notice in writing to the tenant his willingness to accept it.

(2) Where any bonafide doubt or dispute has arisen as to the person who is entitled to receive any rent in respect of any building, the tenant may likewise deposit the rent stating the circumstances under which such deposit is made and may, until such doubt has been removed or such dispute has been settled by the decision of any competent court or by settlement between the parties, continue to deposit the rent that may subsequently become due in respect of such building.

(3) The deposit referred to in sub-section (1), or sub-section (2) shall be made in the Court of the Munsif having jurisdiction.

(4) On any deposit being made under sub-section (1), the Court shall cause a notice of the deposit to be served on the alleged landlord, and the amount of deposit may be withdrawn by that person on application made by him to the Court in that behalf.

(5) On a deposit being made under sub-section (2), the Court shall cause notice of the deposit to be served on the person or persons concerned and hold the amount of the

deposit for the benefit of the person who may be found entitled to it by any competent court or by a settlement between the parties and the same shall be payable to such person.

(6) In respect of a deposit made as aforesaid, it shall be deemed that the person depositing it has paid it on the date of such deposit to the person in whose favour it is deposited in the case referred to in sub-section (1) or to the landlord in the case referred to in sub-section (2).

The designation of Munsif is now Civil Judge (Junior Division) pursuant to Supreme Court judgment in *All India Judges Association v. Union of India AIR 1992 SC 165* (Paras 12 to 14). If the landlord refuses to accept the rent (or does not issue receipt,) the rent may be deposited in Court, however, to prove refusal it is necessary that the rent must also be sent through money order and if the landlord refuses to accept money order, it may be deposited in Court. The Court is not required to hold any enquiry before permitting the tenant to deposit the rent except that it must prima facie be satisfied that the alleged landlord has refused to accept the rent. Whether the applicant is tenant or not, whether the alleged landlord is in fact the landlord or not, what is the rate of rent and what is the period for which the rent is due are not to be decided by Civil Judge (Junior Division). It is for the reason that the notice is required to be issued by virtue of sub-section (4) of Section 30 after the deposit has been made and not before that. The validity of deposit will have to be seen in the subsequent suit which may be instituted by the landlord on the ground of default in payment of rent and not in the proceeding under Section 30 as held by the Supreme Court in *Maiku*[60] under

Section 7(C) of old U.P.R.C. Act 1947 which was *pari materia* with Section 30 of new U.P. R.C. Act 1972.

After making first deposit of the entire arrears, subsequent rent may also be deposited until landlord by notice expresses his willingness to accept the rent. Even a notice terminating the tenancy and demanding the rent under Section 20 (2) (a) of U.P. R.C. Act is sufficient in this regard vide *Gokran Singh v. A.D.J. 2000(1) ARC 653* (FB) of Allahabad High Court.

Even though under Section 20(4) of U.P. R.C. Act it is provided that only the deposit under Section 30(1) is to be adjusted however Supreme Court in *Kailash Chand*[38] has held that deposit under Section 30(2) is also to be adjusted. (See sub-synopsis A (vii) supra also.)

Settlement of dispute referred to in sub section (2) means decision of Court on merit. If the title suit between rival claimants is dismissed in default, it is no settlement vide *Kannan*[41] interpreting section 9(3) of Pondicherry R.C. Act which is *pari materia* with Section 30(2) of U.P.R.C. Act.

For making deposit under Section 30(2) it is not always necessary that regarding landlord ship some dispute must be going on in Court between two parties. The other contingency provided therein is that any bonafide doubt has arisen. Accordingly if circumstances are such which may give rise to a doubt in the mind of the tenant as to who is the genuine landlord, he may make deposit under Section 30(2) which will be perfectly valid. Suppose, someone

other than landlord to whom tenant is regularly paying rent gives notice to the tenant that he has purchased the property from the landlord but sale deed is not shown to him and the original landlord also does not intimate the tenant about the sale it may be said that bonafide doubt has come in the mind of the tenant and he will be entitled to deposit the rent under Section 30 (2).

Under Section 19-A of Rajasthan R.C. Act, in case of refusal to accept of rent by the landlord a detailed procedure to be followed by the tenant has been prescribed. First is by money order, the second is requiring the landlord by notice in writing to specify the bank and account number in which rent may be deposited. In *Fakir Mohd*[22]. it has been held that tenant may be permitted to deposit rent in Court if he had followed any of the two modes i.e. money order or asking for the Bank Account and depositing the rent therein and it is not necessary that he should have adopted both the means. The clause 'and' used in section 19-A(3) (c) has been interpreted to mean 'or'. However in the said case notice inquiring about bank account was sent under postal certificate (UPC) which was held to be insufficient and no presumption of service was drawn. But if none of the modes is adopted and the rent is directly deposited in Court it is not valid deposit and the tenant remains defaulter vide *Kuldeep Singh*[43].

However under Tamil Nadu R.C. Act by virtue of its section 8 if the landlord does not accept the rent then first the tenant is required to ask the landlord by notice in writing to intimate the bank account and on the failure of the landlord to do the needful, the rent shall be

remitted through money order and in case money order is refused then rent may be deposited before the Controller. In *E.Palanisamy*[21] it was held that sending money order without asking for bank account number and on refusal by landlord to accept money order depositing rent before controller was not due compliance hence in spite of deposit of rent, tenant was defaulter. It was held in para 5 as follows:

> *"5. Mr. Sampath, the learned counsel for the appellant argued that since the appellant-tenant had deposited the arrears of rent in Court, it should be taken as compliance of 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 appellant 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 inasmuch 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 appellant 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 of the statutory provisions. Equitable considerations 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 of 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 & Another *reported in* 1996(1) RCR(Rent) 348 (SC) : 1996(1) SCC 243 *and* M. Bhaskar v. J. Venkatarama Naidu *reported in* 1996(6) SCC 228 : 1996(2) RCR(Rent) 573 (SC).*"*

However even if deposit is neither proper nor legal still if the deposited amount is withdrawn by the landlord there is no default vide *C. Chandramohan*[15], para 13 (under Tamil Nadu R.C. Act).

West Bengal R.C. Act 1956 also contains provision for deposit of rent before Rent Controller if landlord refuses to accept the same, like section 30 of U.P. R.C. Act. By virtue of its section 4(2) tenant is required to pay rent by 15th day of succeeding months. In a case the tenant sent the rent of a month to the landlord through money order (M.O.) on 26th of succeeding month and on the refusal of the landlord to accept the money order, deposited the same, as well as rent of subsequent months, before Rent Controller. The Supreme Court in *Ram Bagas*[77] held that M.O. for the first month of default having been sent beyond 15th day of succeeding month was rightly refused by the landlord hence the deposit for the said month was invalid and consequently deposit of subsequent months was also invalid, with the result that the subsequent suit for eviction on the ground of default had to be decreed. However under U.P. R.C. Act there is no provision corresponding to section 4(2) of W.B. R.C. Act hence this principle will not apply to the proceedings under U.P. Act.

C. Regular deposit in suit for eviction:

Under various R.C. Acts it is provided that in a suit for eviction on the ground of default in payment of rent tenant must pay/ deposit entire arrears of rent and shall continue to deposit monthly rent failing which his defence will be struck off; however, if he has made requisite deposit then decree for eviction on the ground of default in payment of rent will not be passed. (E.g. Delhi, Rajasthan, West Bengal and Madhya Pradesh) So far as **U.P.R.C. Act** is concerned it does not contain any such provision. Instead such provision has been made in Order 15 Rule 5 C.P.C. added by Uttar Pradesh which is quoted below: (Initially the rule was inserted in 1972. Thereafter the following was substituted in 1981 for the old Rule)

> *"Order XV Rule 5 CPC Striking off defence for failure to deposit admitted rent, etc.- (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 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, paid to the lessor acknowledged by the lessor in writing signed by him and the amount, if any, deposited in any Court under Section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

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.

States of Punjab and Haryana (Chandigarh) have also added similar Rule 5 to Order 15 C.P.C. Delhi, Bombay and Andhra Pradeh

High Courts have made similar provision by adding order 15A w.e.f. 12.11.2008, 11.01.1990 and 23.02.2005 respectively.

Under Section 15 of **Bihar R.C. Act 1982** in a suit for eviction of tenant on any ground landlord may file application for order against the tenant to deposit rent month by month and also subject to the law of limitation the arrears of rent and if in spite of order requisite deposit is not made defence of the tenant shall be struck off. Supreme Court in *Bindeshwary Chaudhary*[14] held that time barred rent could not be directed to be deposited by the tenant. With this rider it up held the validity of requirement of deposit of pre suit arrears of rent.

In *Shiv Dutt*[96] under **Rajasthan R.C. Act** it has been held that the monthly rent must be continued to be deposited in appeal also as appeal is continuation of suit and tenant cannot be permitted to enjoy the property without payment of rent. In the said case appeal had been filed by the landlord. Under Section 16 of **Bihar R.C. Act** it is specifically provided that in appeal or revision rent as determined by Controller shall be deposited as noticed in *Bindeshwary Chaudhary*[14].

C(i) Striking off defence discretionary, not mandatory:

In *Bimal Chand*[13] (3 judges) it has been held that under Order 15 Rule 5 C.P.C. as added by U.P. striking off the defence is discretionary and not mandatory. Latter part of para 6 of *Bimal Chand*[13] is quoted below:

"Sub-rule (2) obliges the court, before making an order for striking off the defence to consider any representation made by the defendant in that behalf. In other words, the defendant has been vested with a statutory right to make a representation to the court against his defence being struck off. If a representation is made the court must consider it on its merits, and then decide whether the defence should or should not be struck off. This is a right expressly vested in the defendant and enables him to show by bringing material on the record that he has not been guilty of the default alleged or if the default has occurred, there is good reason for it. Now, it is not impossible that the record may contain such material already. In that event, can it be said that sub-rule (1) obliges the court to strike off the defence? We must remember that an order under sub-rule (1) striking off the defence is in the nature of a penalty. A serious responsibility rests on the court in the matter and the power is not to be exercised mechanically. There is a reserve of discretion vested in the court entitling it not to strike off the defence if on the facts and circumstances already existing on the record it finds good reason for not doing so. It will always be a matter for the judgment of the court to decide whether on the material before it, notwithstanding the absence of a representation under sub- rule (2), the defence should or should not be struck off. The word "may" in sub-rule (1) merely vests power in the court to strike off the defence. It does not oblige it to do so in every case of default. To that extent, we are unable to agree with the view taken by the High Court in Puran Chand (supra). We are of opinion that the High Court has placed an unduly narrow construction on the provisions of clause (1) of Rule 5 Order 15."

In *Smt. Satyakumari*[88] (from U.P.) it was held that representation referred to in Rule 5(2) of Order 15 could either be tenant's application or his reply to the landlord's application for

striking off the defence. In the said case the tenant only asserted that he had made complete deposit which was found to be wrong. Accordingly it was held that defence was rightly struck off.

In *Bal Gopal*[10] (from U.P.) it was held that in the absence of any representation etc. delay in deposit of few months rent could not be ignored and defence had to be struck off.

West Bengal R.C. Act in its Section 17(3) uses the word 'shall' ('the Court shall order the defence ……. to be struck out'). However in *M/s B.P. Khemka*[48] (followed in *Gopal Chand*[25]) the word shall was read as may and the power to strike out defence was held to be directory. In one case initially a two Judge Bench doubted the principle laid down in *M/s B.P. Khemka*[48] and referred the matter to three Judge Bench. The Three Judge Bench in *Shibu Chandra*[95] confirmed the view taken in *M/s B.P. Khemka*[48]. However in *Shibu Chandra*[95] even though it was categorically held that the delay in deposit of rent did not deserve to be condoned and defence deserved to be struck out, still contrary order of High Court was upheld on payment of good cost by the tenant. Para 16 is quoted below:

> *"16. On the facts of this case, it does appear to us that the Respondent did not have sufficient cause for not depositing the amount of rent for such a long period of time. However, as the High Court has exercised its discretion, we do not propose to interfere. However, in our opinion, on the facts of this case, the leniency which has been shown to the Respondent should be on heavy costs. Considering the cost of litigation today, in our view, the Respondent should pay in both these Appeals cost fixed at Rs. 50,000/- (i.e. Rs. 25,000/- in each Appeal).*

The same should be paid within a period of 6 weeks from today. If such cost is paid his Appeal shall stand dismissed with no further Order as to costs. If, however, the said sum of Rs. 50,000/- or any part thereof is not paid within the period aforesaid, then the Appeal shall stand allowed and the impugned Judgment dated 2nd June, 1998 shall stand set aside and the Order of the trial Court dated 4th September, 1997 shall stand revived."

This appears to be the best way of dealing with the situation. Imposing very heavy rather penal cost instead of striking off the defence will serve as sufficient deterrent, benefit the landlord also, simplify and shorten the litigation and will also act as balancing factor in the current scenario where the Supreme Court and Legislature have decidedly shown a radical shift from pro-tenant to pro-landlord approach vide *State of Maharashtra*[103], *Dina Nath*[19] and *Siddharth Viyas*[100].

As far as **Delhi R.C. Act 1958** is concerned the relevant provisions are sections 14 and 15 which have been considered in *Hem Chand*[28], *Santosh Mehta*[87], *Ram Murty*[79], *Kamla Devi*[40] (3 judges), *M/s Jain Motor*[49] (3 judges), *M/s Aero Traders*[54] (3 judges), *Amrit Lal*[5] and *Dina Nath*[19]. In most of these authorities reliance has also been place upon *Shyam Charan*[98] (3 judges) under M.P.R.C. Act after holding that the relevant provision of the Act is *pari materia* with sections 14 and 15 of Delhi R.C. Act. *Hem Chand*[28], supra, has been held to be impliedly overruled by *Shyam Charan*[98] in subsequent authorities. Sections 14 and 15 of Delhi R.C. Act have been quoted in various authorities including *M/s Jain Motor*[49]. Under the relevant

provisions of both the Acts it has been provided that Rent Controller shall make an order directing the tenant to pay or deposit the entire arrears of rent within one month as well as future rent month by month by fifteenth of each succeeding month and in case it is done order of eviction on the ground of default in payment of rent shall not be passed, however, if it is not so done defence of tenant against eviction may be struck out. Even though there is no provision for condonation of delay in making deposits however it has been held in all the above authorities, particularly *Shyam Charan*[98] (except *Hem Chand*[28]), that the discretion not to struck out defence implies further discretion to condone the delay in making deposit.

The factual situation in each of the aforesaid authorities was as follows:

In *Shyama Charan*[98] , the delay in monthly deposits of few months was of a day or two or three and the amount had also been withdrawn by the landlord without any protest. Supreme Court allowed the appeal and condoned the delay. In *Santosh Mehta*[87] the tenant who was a working lady had given the requisite amount of rent to her advocate to deposit who betrayed her and did not deposit the amount. The appeal was allowed by Supreme Court, failure to deposit rent on time was condoned and order striking out the defence was set aside after holding the provision to be directory and not mandatory. However, in *M/s Jain Motor*[49] this very ground taken for condonation of 15 days delay in depositing just one month's rent was rejected. The attorney had fallen ill and one of the tenants had forgotten the date of deposit. It was held that deposit could be made

by any other partner of tenant firm. In *Ram Murti*[79] the matter was remanded to decide whether delay in deposit of few months rent deserved to be condoned or not. In *Kamla Devi*[40] there was huge delay in depositing about three fourth of arrears of rent. The allegation of tenant that there was some talk of compromise between the parties was accepted and delay was condoned. In *M/s Aero Traders*[54] the allegation that rent had twice been sent to landlord through cheque was not accepted by the controller. Supreme Court held that defence was rightly struck out. It further held that as rent was negligible (Rs. 30/- per month) hence it was further reason for not condoning the delay in deposit of rent.

In *Amrit Lal*[5] (purely on facts) it was held that due to persistent default in payment / deposit of rent, High Court rightly struck out the defence of the tenant.

From the above it emerges that the question whether under given facts and circumstances delay in deposit shall or shall not be condoned (defence shall or shall not be struck out) is like 'to be or not to be that is the question'.

The dilemma is best illustrated by *Dina Nath*[19] where both the judges held that legally delay in payment / deposit of monthly rent could be condoned but one judge held that on the facts and circumstances of the case defence was rightly struck off while the other judge disagreed. The rent of the tenanted shop was Rs. 66/- per month. Order of deposit of monthly admitted rent from the date of institution of eviction proceedings i.e. November, 2007 was passed by

the Rent Controller on 21.04.2008. However, for 11 months no payment was made on time except of one month's rent. Rent for the period June to October 2008 was paid on 17.12.2008 and rent for November and December 2008 and January to March 2009 was deposited on 05.05.2009. The counsel for the tenant had offered to enhance the rent ten times and pay five years rent in advance. This offer weighed with the judge deciding in favour of the tenant. In this authority all the previous authorities of Supreme Court under Delhi R.C. Act, supra, have been considered.

In *Sayeda Akhter*[89] under **M.P.R.C. Act** it was held that even though time granted by Court to make the deposit may be extended but application for condonation of delay made after more than 4 years was rightly dismissed.

In *Sankaran Pillai*[86] *under* Tamil Nadu R.C. Act it has been held that the expression 'sufficient cause' in Section 11(4) has to be liberally construed but without there being any explanation benefit cannot be granted to the tenant. In the said case tenant denied the relationship of landlord and tenant, it was only in the Supreme Court that it was argued on his behalf that he under mistaken belief did not deposit arrears and so default might be condoned, the contention was rejected.

C(ii) Defence to be struck off in what type of suit or proceeding:

In *Ladu Ram*[44] under **Rajasthan R.C. Act** it has been held that if the suit for eviction is instituted on the ground of default for the requisite period of six months however in the plaint only relief of

eviction is sought but no relief for payment of arrears is sought still provision of Section 13(5) will apply and the defence will be struck off.

However by virtue of Rule 5 to Order 15 C.P.C. as added by **U.P. and Punjab & Haryana** in order to attract the provision it is not necessary that ground of eviction must be non-payment of rent for requisite period but prayer for recovery of rent must be there. Suppose in U.P. a tenant is in arrears of rent for two months, it cannot be a ground of eviction. However if suit for eviction is instituted on any other ground (e.g. sub-letting) and relief of recovery of two months' rent is also sought, Order 15 Rule 5 C.P.C. will apply. In view of Order 15 A as added by Andhra Pradesh and Delhi High Courts neither it is necessary that eviction shall be sought on the ground of default nor prayer for recovery of rent need be there. In fact Rule 5 of Order 15 or Order 15A C.P.C. apply to all suits by landlord against tenant and is not confined to the suits relating to buildings covered by R.C. Acts.

As seen in the earlier part of this sub-synopsis and sub-synopsis A (xvi) under **Bihar R.C. Act** and **West Bengal R.C. Act** provision is applicable irrespective of the nature of ground of eviction vide *Bindeshwary Chaudhary*[14] and *Monoj Lal*[68] respectively.

C(iii) Effect of striking off defence:

If defence is struck off, tenant cannot give evidence. However he can cross examine plaintiff/landlord's witnesses to a limited extent and can argue the case vide *Modula India*[65]. In *Gopal Chandra*[25] it has

been held that even if defence is struck out, plaintiff landlord has to prove his case and eviction cannot automatically be ordered.

3. MISCELLANEOUS

A. Frozen Rent:

The twin objects for enacting all the Rent Control Acts in late forties and early fifties were tenancy protection and rent restriction as observed in opening sentence of para 35 of *Leelabai Gajanan*[46] in respect of Bombay R.C. Act of 1947. Frozen rents started pinching after few years and played havoc after a decade or two. Construction of new buildings for letting out purpose was greatly hampered. The most damning verdict against this still in otherwise fast moving economy and society was delivered in *Malpe*[61] under Bombay R.C. Act 1947. In para 16 it was observed that 'reports of different committees and resolutions of the ministers have been placed on record in an effort to show that these official agencies have since over the last two decades themselves felt that increase in rents was called for'. The material detailed in the said para contained as item nos. 4 onwards, a report of Economic Administrative Reforms Commission on Rent Control 1982, particularly para 51, Resolution no. IV Rent Control of the Conference of Housing Ministers of all the states held on 21/22.05.1987, letter dated 24.07.1987 from the ministry of Home Affairs Govt. of India to State Government of Maharashtra and recommendations by a Conference of Chief Ministers of all states dated 09.03.1992. Thereafter in para 17 it was observed as follows:

> *"17. A perusal of the aforesaid extracts of reports and resolutions clearly demonstrates that since the last two decades the authorities themselves seem to be convinced that the pegging down of the rents to the pre war stage and even*

thereafter, is no longer reasonable. Unfortunately apart from lip service little of note (nothing ?) has been done. Even the Rent Control Bill introduced in 1993 has not yet become law."

In para 30 it was held that the Court was inclined to strike down the provision of freezing the rent at 1940 level as unreasonable however as the Maharashtra State Government was contemplating to bring a new Act hence the Court was stopping short of that.

Thereafter Maharashtra Rent Control Act 1999 was passed and following the above directions of the Supreme Court provisions for periodical enhancement of rent etc. were made therein. After quoting extensively from *Malpe*[61] in para 36, it was held in para 38 of *Leelabai Gajanan*[46], supra, dealing with Maharashtra R.C. Act 1999 as follows:

"38. Therefore, the legislature was required to keep in mind the vulnerability of fixing standard rent as on 1.9.1940. At the same time, the legislature had to keep in mind two aspects, namely, tenancy protection and rent restriction. The problem arose on account of economic factors. However, the legislature found the solution by evolving an economic criterion. The legislature evolved a package under which the prohibition on receiving premium under Section 18 of the 1947 Act stood deleted. In other words, landlords were given the liberty to charge premium. The second package was to exclude cash-rich body corporates and statutory corporations from the protection of the Rent Act. This part of the economic package helps the landlords to enhance the rent and charge rent to the entities mentioned in Section 3(1)(b) who can afford to pay rent at the market rate. This was the second item in the economic package offered to the landlords under the present Rent Act. The third

item of the Rent Act was to give the benefit of annual increase of rent at the rate of 5% under the present Rent Act."

In *State of Maharashtra*[103], a three Judge Bench observed that in an appropriate case it would have to be seriously examined as to whether the directions contained in *Malpe*[61] had actually been incorporated in the new Act of 1999 or it merely brought about some cosmetic changes (paras 15 and 16).

Delhi R.C. Act 1958 was amended in 1988 through which section 6A was also added permitting the landlord to enhance the rent by 10% every three years. In *M/s Nopany*[51] it was held that rent under this provision could be enhanced even during pendency of eviction proceedings. Some other R.C. Acts, particularly new ones, also provide for periodical enhancement of rent.

Still there are several R.C. Acts including U.P. R.C. Act which do not provide periodical enhancement of rent except in certain contingencies (Sections 9-A, buildings belonging to Trusts etc., 21(8) buildings of which Government or Government Corporation is tenant, 24(2) newly constructed building pursuant to release of dilapidated building under Section 21(1) (b) of U.P.R.C. Act). Under U.P.R.C. Act 1972 the only general enhancement was provided as one time measure by Section 5 under which rent could be enhanced by 25% in case notice by landlord was given within three months from commencement of the Act (15.07.1972).

Several R.C. Acts, now contain the provision exempting from its operation the buildings carrying more than specified rent e.g. U.P. –

Rs. 2000/- per month. (See also the chapter 'Applicability of the Act.....') However the only major flaw in U.P. R.C. Act (and several other similar Acts) still persisting is that it does not contain any provision of periodical enhancement of rent of old buildings/ tenancies. In this regard few paragraphs of the judgment of Allahabad High Court reported in *Avadh Raj Singh v. A.D.J. Gorakhpur 2013 (3) ARC 151* (decided by me) are quoted below:

> *"21. Before parting it is essential to notice a great flaw in the U.P. Rent Control Act, which has by passage of time become so unjust and arbitrary that it virtually amounts to confiscation of property without due (virtually nil) compensation. Since September, 1972, U.P. Rent Control Act has frozen rents. By virtue of Section 5 of the Act, landlord could enhance rent by 25% by giving notice within three months from the date of enforcement of the Act (15.07.1972). Thereafter, a private landlord cannot enhance the rent of the tenanted building in possession of a private tenant. There are only two provisions of recurring enhancement of rent. One is Section 9-A, which applies to the buildings belonging to Trust and the other is Section 21(8), which applies to the buildings of which Government or Government Corporation is tenant."*
>
> In para 22, paras 26 to 30 of *Malpe* were quoted.
>
> *"23. In Bal Kishan v. A.D.J., 2003 (2) ARC 545, I made strong recommendation to the U.P. State Legislature to consider for providing a General Provision for enhancement of rent. In Khursheeda v. A.D.J., 2004 (2) ARC 64 after placing reliance upon the aforesaid Supreme Court authority I held that the writ court while granting relief against eviction to the tenant could enhance the rent to a reasonable extent. Thereafter, in H.M. Kitchlu v. A.D.J., 2004 (2) ARC 652 I held that while*

dismissing writ petition of the landlord, rent could be enhanced.

24. However, now the time has come for providing general provision for enhancement of rent by the court as State Legislature for last several decades has failed in its duty to consider this aspect. Such provision is there in some other States Acts e.g. Bengal and Kerala as noticed by the Supreme Court in Pallawi Resources Ltd. v. Protos Engineering Company Pvt. Ltd., AIR 2010 SC 1969 and Seshambal (dead) through L.Rs. v. Chelur Corporation Chelur Building and Ors., AIR 2010 SC 1521 : 2010 (1) ARC 874.

25. The most leading authority on this question is reported in Satyawati Sharma (dead) by L.Rs. v. Union of India and another, (2008) 5 SCC 287 : 2008 (3) ARC 3. In the said case, the Supreme Court held that absence of provision of release of tenanted commercial building on the ground of bona fide need of landlord was violative of Article-14 of the Constitution of India (Delhi Rent Control Act provided for release of tenanted accommodation on the ground of bona fide need of the landlord only in case of residential buildings). The Supreme Court held that it was a fit case where the court should exercise the legislative powers, which are to be exercised rarely. The Supreme Court accordingly issued direction in the nature of legislative enactment directing that it must be read into/ deemed to be included in the Delhi Rent Control Act that landlord can seek release of commercial building also like residential building on the ground of his bona fide need.

26. In Union of India (UOI) and Anr. v. Raghubir Singh (Dead) by Lrs. Etc., AIR 1989 SC 1933, the Supreme Court quoting Lord Reid has held as follows:

"There was a time when it was thought almost indecent to suggest that Judges make law. But we do not believe in fairy tales any more."

27. Accordingly, in my opinion, absence of general provision of enhancement of rent in U.P. Rent Control Act is such an alarming and rarest of rare situation that court has got no option except to exercise the powers akin to law making power and to provide general provision for enhancement of rent.

28. I have decided several thousand rent control writ petitions and in several hundred writ petitions, the rates of rent particularly in big cities like Kanpur, Lucknow, Allahabad etc. specifically Kanpur, the most expensive city of U.P. were less than Rs. 100/- per month even for shops. In some cases, rates of rent were Rs. 25/-, 20/-, 15/- or even Rs. 10/- per month for residential or commercial accommodations. Recently I decided a case where a tenanted accommodation situate in Lucknow, capital of U.P. was carrying a rate of rent of Rs. 8/- per month and the tenancy was continuing since 1930 (Rent Control No. 126 of 1998, J.P. Tiwari v. A.D.J., decided on 01.08.2013). In the instant case also, a building having six rooms situate in Gorakhpur City is carrying a rent of Rs. 25/- per month.

29. Accordingly, on the analogy of Section 21(8) of the U.P. Rent Control Act, it is directed that henceforth any landlord of a building which is carrying less than Rs. 2000/- per month rent may file an application before the R.C. & E.O. (Delegatee of the D.M.) for enhancement of rent against a private tenant also. If such an application is filed, the rent to be enhanced by R.C. & E.O. shall be determined exactly on the same formula as is provided under Section 21(8) of the Act, however it is provided that under no circumstances, the rent

shall be enhanced to more than Rs. 2000/- per month, which is the upper limit of the rent for the buildings to remain within U.P. Rent Control Act by virtue of Section 2(1)(g) of the U.P. Rent Control Act. It is further directed that if such an application is filed and rent is enhanced, then for ten years from the date of filing of application, landlord shall not be entitled to file application for release on the ground of bona fide need."

B. **Rent enhancement by Court**

(i) W.e.f. date of decree / order of eviction and / or condition of stay order:

In case tenanted building is covered by R.C. Act, mesne profits (rent/damages for use and occupation from the date of institution of suit till the decree/ order of eviction is passed) cannot be directed to be paid at a higher rate than the rent payable till the institution of the suit or termination of tenancy. However future damages from the date of decree/ order of eviction till actual eviction may be directed to be paid at the market rate vide *Chander Kali*[17]. If R.C. Act does not apply then higher rent /damages may be awarded w.e.f. date of termination of tenancy vide *Shyam Charan (1977)*[99].

In *M/s Atma Ram Properties*[55] it was laid down in para 18 as follows:-

> *" That apart, it is to be noted that the appellate court while exercising jurisdiction under Order 41, Rule 5 of the Code did have power to put the appellant tenant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate court. While ordering stay the appellate court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate court to put the appellant tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In*

Marshall Sons & Co. Ltd. v. Sahi Oretrans (P) Ltd. This court has held that once a decree for possession has been passed and execution is delayed depriving the judgment-creditor of the fruits of decree, it is necessary for the court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property"

In the said case the rent was Rs.371.90 per month. The Rent Controller while staying dispossession of the tenant had imposed the condition of payment of Rs. 15,000/- per month. The High Court had reversed the said order of the Rent Controller. The Supreme Court set aside the order of the High Court and approved the order of Rent Controller.

Following the said authority Allahabad High Court in *Ganga Prasad v. M/s Hanif Opticians 2005 (2) ARC 723* (decided by me) issued general directions in para 5 as follows:

"5. Accordingly it is directed that in revisions under Section 25 Provincial Small Causes Court Act or appeals under Section 22 of U.P.Act No. 13 of 1972 District Judge or Addl. District Judge while granting stay order shall impose condition of payment of reasonable amount which may be about 50% of the current rent (i.e. rent on which building in dispute may be let out at the time of grant of stay order. In this regard no detailed inquiry need be made. Mere guess work based on common sense may do). The tenants enjoying the tenanted property on highly inadequate rent tend to prolong the disposal of the appeal or revision for continuing their possession without payment of proper rent/damages for use and occupation. If the stay against eviction is granted on the condition of monthly payment of reasonable amount, this practice can sufficiently be checked."

In *G.L. Vijain*[23], explaining *M/s Atma Ram Properties*[55] it was held that admission of appeal/ revision cannot be made conditional but stay order can be so made.

In *Sadhu Ram*[84] the appellate Court while granting stay against eviction order passed by the authority below had directed the tenant appellant to pay rent at the rate of Rs. 9600/- per month as against the agreed rent of Rs. 500/- per month. The Supreme Court modified the order of appellate court and the tenant was directed to pay rent at the rate of Rs. 5000/- per month.

In a writ petition directed against eviction order from two shops initially Allahabad High Court while granting stay order directed the tenant to pay Rs. 600/- per month as rent as against agreed rent of Rs. 60/- per month. The condition attached with the stay order was afterwards varied and enhanced to payment of Rs. 2100/- per month on the ground that both the shops mere quite big (total area 240 sq. feet) and situate on main High way. The last order was challenged before Supreme Court which maintained the same in *Mohammad Ahmad*[71] holding that even Rs. 2100/- per month was on the lower side. In this case general provision of enhancement of rent was prescribed but no methodology was provided. Para 21 and 22 are quoted below:

> *"21. According to our considered view majority of these cases are filed because landlords do not get reasonable rent akin to market rent, then on one ground or the other litigation is initiated. So before saying omega, we deem it our duty and obligation to fix some guidelines and norms for such type of*

litigation, so as to minimise landlord-tenant litigation at all levels. These are as follows :-

(i) The tenant must enhance the rent according to the terms of the agreement or at least by ten percent, after every three years and enhanced rent should then be made payable to the landlord. If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rate should be worked out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas, let out on rent recently.

(ii) Apart from the rental, property tax, water tax, maintenance charges, electricity charges for the actual consumption of the tenanted premises and for common area shall be payable by the tenant only so that the landlord gets the actual rent out of which nothing would be deductible. In case there is enhancement in property tax, water tax or maintenance charges, electricity charges then the same shall also be borne by the tenant only.

(iii) The usual maintenance of the premises, except major repairs would be carried out by the tenant only and the same would not be reimbursable by the landlord.

(iv)But if any major repairs are required to be carried out then in that case only after obtaining permission from the landlord in writing, the same shall be carried out and modalities with regard to adjustment of the amount spent thereon, would have to be worked out between the parties.

(v) If present and prevalent market rent assessed and fixed between the parties is paid by the tenant then landlord shall not be entitled to bring any action for his eviction against such a tenant at least for a period of 5

years. Thus for a period of 5 years the tenant shall enjoy immunity from being evicted from the premises.

(vi) The parties shall be at liberty to get the rental fixed by the official valuer or by any other agency, having expertise in the matter.

(vii) The rent so fixed should be just, proper and adequate, keeping in mind, location, type of construction, accessibility with the main road, parking space facilities available therein etc. Care ought to be taken that it does not end up being a bonanza for the landlord.

22. These are some of the illustrative guidelines and norms but not exhaustive, which can be worked out between landlord and tenant so as to avoid unnecessary litigation in Court. "

In a writ petition which had been filed by landlord after losing from both the courts below, Allahabad High Court while issuing notice directed the tenant respondent to pay higher rent., Supreme court in *Niyas Ahamd*[71] set aside the direction. Such direction can obviously be issued while granting stay order against eviction.

In *State of Maharashtra*[103] (3 judges) the correctness of the view taken in *M/s Atma Ram Properties*[55], supra was questioned. The Supreme Court after discussing several authorities found that it had decidedly shifted away from pro tenant approach of yore. In the said case Government of Maharasthra was tenant of a building comprising a whole floor area 9000 sq. feet (or about 11000 sq. feet) situate in the heart of city of Mumbai. Rate of rent was less than Rs. 6000/- per month since 1966. Against decree of ejectment revision was filed in the High Court in which conditional stay order was granted staying dispossession on payment of Rs. 5,40,000/- (above 100 times of the

rent) every month. The said order was challenged before the Supreme Court. The Supreme Court affirmed the view taken in *M/s Atma Ram Properties*[55] (para 45) and approved the condition attached with the stay order by the High Court. Para 46 to 48 are quoted below:

> *"46. In light of the discussions made above we hold that in an appeal or revision preferred by a tenant against a order or decree of an eviction passed under the Rent Act it is open to the appellate or the revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/ decree is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.*
>
> *47. In the case in hand, the High Court has fixed the amount of Rs. 5,40,000/- per month with reference to the Stamp Duty Ready Reckoner and hence, its reasonableness cannot be doubted. In fairness to Mr. Lalit he did not challenge the fixation of the amount on that ground.*
>
> *48. Before concluding the decision one more question needs to be addressed : what would be the position if the tenant's appeal/revision is allowed and the eviction decree is set aside ? In that event, naturally, the status quo ante would be restored and the tenant would be entitled to get back all the amounts that he was made to pay in excess of the contractual rent. That being the position, the amount fixed by the court over and above the contractual monthly rent, ordinarily, should not be directed to be paid to the landlord during the pendency of the appeal/revision. The deposited amount, along with the accrued interest, should only be paid after the final disposal to either side depending upon the result of the case. In case for*

some reason the Court finds it just and expedient that the amount fixed by it should go to the landlord even while the matter is pending, it must be careful to direct payment to the landlord on terms so that in case the final decision goes in favour of the tenant the payment should be made to him without any undue delay or complications."

The direction of returning the enhanced rent / damages for use and occupation to the tenant in case he ultimately wins does not appear to have been issued in any other case. In the body of the judgment, which is quite long, also no specific reason for the same has been given.

B(ii) –By Supreme Court/ High Court while finally deciding the case in favour of tenant:

In several cases Supreme Court while denying relief to landlord has enhanced the rent e.g. *Ansuayben*[6], *Ashok Kapil*[7] (U.P. R.C. Act), and *Seshambal*[90] (Kerala R.C. Act). In the last authority rent was very low and had not been enhanced since 1973. Landlord's petition seeking eviction of tenant from a commercial building on the ground of bonafide need was dismissed by all the Courts including High Court. However High Court in revision enhanced the rent to Rs. 10,000/- per month w.e.f. 01.11.2003 probably the date of decision by High Court. Supreme Court while dismissing the appeal of landlord further enhanced that to Rs. 15,000/- per month w.e.f. 01.11.2003, and Rs. 25000/- per month w.e.f. 01.01.2009. It was observed in the end that *"Needless to say that the revision ordered by us is also tentative and shall not prevent the parties from seeking determination of the fair rent for the premises by instituting*

proceedings before the competent Court/authority in accordance with law."

Allahabad High Court in *Khurshida v. A.D.J. 2004 (2) ARC 64: 2004(55) ALR 586* (decided by me) held as follows in paragraphs 7 to 12.

> *7. It is a great lacuna in U.P. Act No. 13 of 1972 that there is no provision for enhancement of rent to the reasonable extent after September, 1972. The Supreme Court in M.V. Acharya v. State of Maharashtra, AIR 1998 Supreme Court 602 : 1998 SCFBRC 75, issued an earnest appeal to the legislature for insertion of such provision. In one of my judgments Bal Kishan v. A.D.J (sic), 2003(2) ARC 545, I also suggested to the legislature to consider whether it was desirable to incorporate such provision.*
>
> In paras 8 and 9, paras 16, 26 to 29 of *Malpe* were quoted.
>
> *10. On the failure of the legislature to address itself on this question the Court particularly a writ Court cannot sit with folded hands. The Supreme Court in AIR 1996 Supreme Court 2410, has held in Para 11 as under :-*
>
> *"It is well-settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a pary priorly, before invoking the jurisdiction of the High Court, the Court can take into account the unfair advantage*

gained and can require the party to shed the unfair gain before granting relief."

11. Rent Control Act confers a reasonable advantage upon the tenant of protection against arbitrary eviction. Tenant under the Rent Control Act can not be evicted except on specific grounds like bonafide need of the landlord, arrears of rent, subletting and material alteration etc. This advantage is also coupled with the advantage of immunity from enhancement of rent. The latter advantage cannot be said to be either reasonable or equitable. The Supreme Court in the aforesaid authority of S.F.P. v. L.I.C., AIR 1996 Supreme Court 2410, has laid down that while granting relief to a party the writ Court can very well ask the said party to shed the unfair advantage which it gained under the impugned order. By slightly extending the said doctrine it may safely be held that while granting the reasonable advantage to the tenant conferred upon him by the Rent Control Act the tenant may be asked to shed the un-reasonable arbitrary advantage conferred upon him by the said Rent Control Act. The writ Court, therefore, while granting or maintaining the relief against arbitrary ejectment to the tenant can very well ask the tenant to shed the un-reasonable benefit of the Rent Control Act granted to him in the form of immunity against enhancement of rent, however inadequate the rent might be. Tenant will have to shed the undue advantage, of immunity from enhancement of rent under the Rent Control Act to barter his protection from arbitrary eviction provided for by the said Act.

12. Accordingly, I am of the opinion that while granting relief to the tenant-petitioner against ejectment writ Court is fully empowered to enhance the rent to some reasonable extent. On the suggestion of the Court, learned counsel for the tenant-petitioner agreed to reasonable enhancement of rent.

The Court is of the opinion that in view of extent of accommodation and the locality where accommodation in dispute is situate Rs. 1,000/- per month rent would be reasonable rent in the facts and circumstances of the case. Learned counsel for tenant-petitioner argued that enhancement of rent from Rs. 27.50 to Rs. 1,000/- per month would be quite un-reasonable. In my opinion looking to the prevalent rate of rent Rs. 1,000/- per month is not an un-reasonable enhancement. In fact current rate of rent of the property in dispute will be several times more than Rs. 1,000/- per month.

Rent was increased from Rs. 27.50 per month to Rs.1000/- per month as the accommodation was quite big having 9 rooms/ kotharies and other amenities.

Following this authority, in about 500 writ petitions rent was enhanced at the time of their final disposal. (All decided by me).

Rent may be enhanced to more than Rs. 2000/- per month and U.P.R.C. Act may still be made applicable vide *Satish Chand Kakkar v. A.D.J. 2006(1) ARC 739,* para 11 of which is quoted below:

"11. I have held in Khursheeda v. A.D.J., 2004 (2) A.R.C. 64 that while granting relief against eviction to the tenant writ court is empowered to enhance the rent to a reasonable extent. Property in dispute is a shop which is situate in Chowk market, Allahabad: Chowk is the most important market of Allahabad. Rent of Rs. 50/- per month is virtually as well as actually no rent. Accordingly it is directed that with effect from April, 2006 onward tenants shall pay rent to the landlord @ Rs. 4,000/- per month inclusive of all taxes etc. No further amount shall be payable by tenant. However, UP. Act No. 13 of 1972 shall continue to apply to the building in dispute in spite of rent of Rs. 4,000/- per month. This direction of applicability of Rent Control Act in spite of the fact that by virtue of Section

2(g) of UP. Act No. 13 of 1972 the said Act does not apply to any building whose monthly rent exceeds Rs. 2000/- rupees is being issued for the reason that by agreement parties can apply the Rent Control Act to a building to which it is not applicable. The Supreme Court in Lachoo Mal v. Radhey Shyam, 1971 (1) SCC 619 : AIR 1971 SC 2213 while interpreting old Rent Control Act of UP. (UP. Act No. 3 of 1947 has held that landlord can legally waive the benefit of exemption Clause (Section 1-A of the said Act). The Court can also therefore while enhancing rent to more than Rs. 2,000/- per month can waive the applicability of Section 2(g) of UP. Act No. 13 of 1972."

B(iii) Enhancement while granting time to vacate:

Usually High Court or Supreme Court while deciding the matter against the tenant grants him some time to vacate. It is appropriate that for this grace period reasonable damages must be directed to be paid by the tenant and in case building is not vacated even after the said period higher damages must be directed to be paid. It has been done by Allahabad High Court in several cases (decided by me). One of the such orders was passed in *Azimuddin v. Malika Bano 2008(3) ARC 570* (which was a writ petition arising out of release proceedings under Section 21 of U.P.R.C. Act on the ground of bonafide need in respect of a house rent of which was Rs. 95/- per month) Paras 15 to 18 are quoted below:

"15. Accordingly, there is no merit in the writ petition hence it is dismissed.

16. Tenant-petitioner is granted six months time to vacate provided that:

1. Within one month from today tenant files an undertaking before the Prescribed Authority to the effect that on or before the expiry of aforesaid period of six months he will willingly vacate and handover possession of the property in dispute to the landlady-respondent.

2. For this period of six months, which has been granted to the tenant-petitioner to vacate, he is required to pay Rs. 4,500/- (at the rate of Rs. 750/- per month) as rent/damages for use and occupation. This amount shall also be deposited within one month before the Prescribed Authority and shall immediately be paid to the landlady-respondent.

17. In case of default in compliance of any of these conditions tenant-petitioner shall be evicted through process of Court after one month. It is further directed that in case undertaking is not filed or Rs. 4,500/- are not deposited within one month then tenant-petitioner shall be liable to pay damages at the rate of Rs. 1,500/- per month since after one month till the date of actual vacation.

18. Similarly, if after filing the aforesaid undertaking and depositing Rs. 4,500/- the house in dispute is not vacated on the expiry of six months then damages for use and occupation shall be payable at the rate of Rs. 1,500/- per month since after six months till actual vacation. It is needless to add that this direction is in addition to the right of the landlord to file contempt petition for violation of undertaking and initiate execution proceedings under Section 23 of the Act."

Supreme Court in *Shashi Jain*[92] while allowing landlord's appeal directed payment of Rs. 15000/- per month (Rs. 500/- per day) in case building was not vacated after two months, the time granted to vacate. (The rent was only Rs. 30/- per month)

C. Nonpayment of rent during pendency of S.L.P. / appeal before Supreme Court or writ petition in High Court:

In *Carona*[16] (para 45) it has been held that if during pendency of appeal by the tenant before Supreme court under article 136 of the Constitution regular rent is not paid then he does not deserve the equitable relief under the Article and the appeal is liable to be discussed on this ground alone.

Same principle may be applied to the writ petitions filed by the tenants before the High Court as writ petition is also equitable relief.

D. Fixation of standard, fair rent:

In *M/s Raval and Co*[52] (Constitution Bench) under Madras / T.N. R.C. Act 1960 it was held by a majority of 3:2 that under section 4 of the Act application for fixation of fair rent could be filed not only by the tenant but also by the landlord. It was further held that the provision was applicable not only to statutory tenancies (where tenant continues to be in possession by virtue of protection granted by R.C. Act, even after determination of lease / termination of tenancy) but also to contractual tenancies where tenancy has not been terminated.

In *Banatwala*[11] it has been held that if on a building both the Acts Public Premises (Eviction of Unauthorized Occupants) Act 1971 **(P.P. Act)** and R.C. Act (Maharashtra R.C.Act) apply then applicability of R.C. Act stands excluded with respect to matters covered by P.P. Act (e.g. eviction and recovery of arrears of rent /

damages). However it has further been held that with regard to matters not covered by P.P. Act, R.C. Act continues to apply. It was therefore held that tenant's application for fixation of standard Rent under Section 8(3) of Maharashtra R.C. Act was quite maintainable.

Under Section 29-A (5) of U.P. R.C. Act (quoted in synopsis 1 of the chapter Applicability of the Act……) D.M. (or his delegatee R.C.E.O.) is to determine rental value on the basis of prevailing market value. In *Hindustan Petroleum*[29] it was held that circle rate (for the purpose of determining stamp duty) as mentioned in the valuation report of Tehsildar which was called for by the D.M. was rightly relied upon by the D.M. It was further observed that in the absence of any valuation report or any other evidence adduced by tenant, H.P.C.L., it could not question the valuation report of Tehsildar.

In *M/s Shaw Wallace*[53] under T.N. R.C. Act 1960, after referring to section 2(2) defining building and Section 4 dealing with fixation of fair rent it was held in para 11 as follows:

> *"11. Reading the two provisions together, it is clear to us that for the purpose of assessment of fair rent not only the area on which the building is constructed, but also the land appurtenant to it subject to the limit prescribed in the Statute and other structure appurtenant to the main building and also the amenities described in Schedule I of the Act are all to be taken into account. Therefore, the contention raised by Dr. Singhvi that the 'platform and the henpen' are not to be included in calculating the area for the purpose of assessment of fair rent, since it cannot be used as a building, cannot be accepted having regard to the facts found in the case. The High*

Court, in our considered view, did not commit any illegality in including the said structures within the plinth area for the purpose of fixation of fair rent."

Section 4(2)(b) of Haryana R.C. Act provides as under:-

> *(2) In fixing the fair rent under this Section, the Controller shall first determine the basic rent which shall be :-*
>
> *(b) In respect of the building the construction whereof is completed after the 31st day of December, 1961 or land let out after the said date, the rent agreed upon between the landlord and the tenant preceding the date of the application, or where no rent has been agreed upon, the basic rent shall be determined on the basis of the rent prevailing in the locality for similar building or rented land at the date of application,*

In *Ishwar Swaroop*[31] explaining the said section it was held in para 10, 11 and 12 as follows:

> *"10. Therefore for the purpose of determining fair rent Section 4(2)(b) draws a distinction between cases where the parties have agreed to the rent and cases where rent is payable otherwise than by agreement. In the first case, the agreed rent is to be taken as the base and the increase determined according to the formula provided in Section 4(3). In the second case, the base is the market rate.*
>
> *11. There is no warrant for drawing any distinction between a monthly tenancy and tenancies for longer periods. Nor is it necessary that the agreement should have been entered into immediately preceding the date of the application. Section 4(2)(b) uses the word 'preceding' without any limitation. This may be contrasted with Section 3 where the word 'preceding' is qualified by the word 'immediately'.*

12.....It is only after the fair rent is fixed that the landlord could seek re-fixation under the second limb subject to the limitations provided in the Act, as the rent would then cease to be the agreed rent."

In *Pallawi Resources*[72] Section 17(4A) of West Bengal R.C. Act 1997 (inserted in 2002) was considered and it was held that increase in rent on the fulfillment of the conditions provided therein was not automatic and making of application before and decision / determination thereupon by Rent Controller was essential.

E. Increase in rent after repairs:

Section 6 of U.P.R.C. Act provides as under:-

"6. Effect of improvement on rent.- Notwithstanding, anything contained in Section 4 or Section5, but subject to the provisions of Section 8, where the landlord has, after the commencement of this Act, either with the consent of the tenant or in pursuance of any requirement of law, made any improvement in a building, he may by notice in writing to the tenant, given within three months from the date of completion of the improvement, enhance the monthly rent of the building by an amount not exceeding one per cent of the actual cost of such improvement, with effect from the said date, and thereupon the standard rent of that building shall stand enhanced accordingly."

In *Ajai Agarwal*[4] it was held that as repairs had been affected by the landlord and he had also issued notice hence rent stood enhanced from Rs. 100/- to Rs. 200/- per month.

RENT – List of Cases (Alphabetically)

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