REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5129 OF 2017
[Arising out of SLP(C) No. 24952 of 2015]

DALIP KAUR BRAR ..APPELLANT

VERSUS

M/S.GURU GRANTH SAHIB SEWA MISSION (REGD.) AND ANR. ..RESPONDENTS

J U D G M E N T

Dr D Y CHANDRACHUD, J

Leave granted.

2 The Rent Controller ordered that the tenant be evicted under Section 13 of the East Punjab Urban Rent Restriction Act,1949[1] for defaulting in the payment of rent. The Punjab and Haryana High Court set aside the order of eviction. The correctness of the decision rendered

1 the Act

by the learned Single Judge on 29 April 2015 has been called into question. The appellant is the landlord. The Respondents are her tenants.

3 On 1 June 2005 a lease was executed by the appellant by which a residential property, bearing House No. 2535 in Sector 35-C at Chandigarh, was let out to the respondents. The term of the lease was three years commencing on 1 June 2005, to end on 31 October 2008. The rent agreed was Rupees 25,000 for an initial period of one year which was to be enhanced to Rupees 28,000 commencing from 1 June 2006 for the remainder of the term.

4 On 8 November 2006, the appellant filed an ejectment application under Section 13 of the Act on the ground that : (i) the respondents failed to pay the rent from 1 November 2005 to 31 May 2006 at the agreed rate of Rupees 25,000 per month and with effect from 1 June 2006 at the rate of Rupees 28,000 per month, and the cheques which were issued were dishonoured; (ii) the premises have been kept locked and were not being used for sufficient reason since December 2005.

5 The respondents contested the ground of default by claiming that they had paid an advance of six months' rent and hence no arrears were due.

6 The Rent Controller by an order dated 14 November 2007 made a provisional assessment of rent and directed the respondents to deposit an amount of Rupees 19,000 per month with effect from 1 June 2005 together with interest at the rate of 6 per cent per annum and costs quantified at Rupees 500. The order of the Rent Controller fixed the proceedings on 14 December 2007 for payment or tender of the rent as provisionally assessed.

7 On 14 December 2007 the respondents filed an application for review on the ground that though the appellant had claimed rent with effect from 1 November 2005 the direction for deposit was with effect from 1 June 2005. The fact that the respondents were in arrears appears not to have been in dispute for even in the application for review the prayer was in the following terms :

> "…It is, therefore, respectfully prayed that the order dated 14.11.2007 may kindly be reviewed and set aside and the Respondent, be allowed to tender the rent from 01.03.2007 to 14.11.2007, in the interest of justice."

The respondents failed to comply with the order of provisional assessment.

8 Since the respondents failed to comply with the order by which provisional rent was determined together with interest and costs, the Rent Controller passed an order of eviction on 14 December 2007. The

respondents filed an appeal against the order. On 7 January 2008 a conditional stay was granted by the District and Sessions Judge, Chandigarh, acting as the appellate authority, by which the order of eviction was stayed subject to the deposit of rent within a period of one month before the Rent Controller and the continued deposit of the monthly rent by the seventh day of every succeeding month. The respondents failed to comply with the conditions subject to which stay was granted. Instead, they filed on 7 February 2008 an application for modifying the order dated 7 January 2008. On 11 February 2008, the respondents filed an application for extension of time. The appellate court by its order dated 18 February 2008 dismissed the applications for modification and for extension of time.

9 The first round of proceedings before the High Court was then initiated by the respondents by instituting a civil revision application[2] in which they sought to challenge the order of eviction dated 14 December 2007, the order granting conditional stay dated 7 January 2008 and the order of the appellate court dated 18 February 2008 dismissing the application for modification and extension of time. A learned Single Judge of the High Court by an order dated 31 March 2008 dismissed the civil revision.

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RA 1948 of 2008

10 The appellant thereupon filed an application before the Rent Controller for executing the order of eviction dated 14 December 2008. On 3 June 2008 the Rent Controller issued a warrant of possession. The appellate court declined to stay execution on 14 June 2008. This led to a second round of proceedings before the High Court in the form of a Civil Revision Application (RA No. 3922 of 2008) by which the respondents challenged the order of the Rent Controller dated 14 November 2007 making a provisional determination of the rent, the order of eviction dated 14 December 2007 and the order dated 14 June 2008 of the appellate authority declining to stay the execution proceedings.

11 A learned Single Judge of the High Court dismissed the Civil Revision on 14 June 2008 though by then, the respondents claim to have deposited an amount of Rupees 6.50 lakhs towards the arrears of rent. The High Court held that on 31 March 2008 it had already dismissed the civil revision against the interim order passed by the appellate authority and hence a fresh application was barred. Moreover, the High Court noted that a substantive appeal against the order of eviction was pending before the appellate authority. The appellate authority was directed to dispose of the appeal expeditiously, by 28 February 2009.

12 A Special Leave Petition was filed before this Court against the order of the High Court dismissing the Civil Revision. During the pendency of the special leave petition the appellate authority dismissed the appeal against the order of eviction on 25 February 2009. The respondents failed to comply with the order passed by this Court for depositing the entire arrears within two months. Eventually, the special leave petition was dismissed on 2 April 2012 and an interim order passed by this Court earlier was vacated.

13 Thereafter a third round of proceedings was initiated before the High Court in the form of a Civil Revision Application (RA No. 3202 of 2009) in which the order of eviction and the order of the appellate authority dismissing the appeal of the respondents was questioned. The High Court by its judgment and order dated 29 April 2015 has allowed the civil revision and set aside the order of eviction. The High Court has principally relied on the fact that by the provisional order of assessment the Rent Controller had directed the respondents to deposit rent with effect from 1 June 2005 though the tenant was alleged to have been in default with effect from 1 November 2005. Since the order of provisional assessment has been held to be flawed on this ground, the consequential order of eviction has been held to be contrary to law. However, the proceedings have now been remanded for consideration of

the ground of non-use on which a decree for eviction has also been sought. The judgment of the High Court is called into question in these proceedings.

14 The first submission which has been urged on behalf of the appellant is that the correctness of the order of eviction dated 14 December 2007 was called into question in the first civil revision Application that was filed before the High Court. The dismissal of the application on 31 March 2008, it was asserted, culminated in the challenge to the order of eviction being concluded. The order of the High Court dated 31 March 2008 has attained finality, there being no further proceedings before this Court. Hence it has been submitted that the challenge to the order of eviction in appeal did not survive upon the dismissal of the Civil Revision Application on 31 March 2008. This submission was sought to be further buttressed by adverting to the principle of issue estoppel as elaborated in the judgments of this Court in **Hope Plantations Ltd.** v. **Taluk Land Board, Peermade and Anr.**[3] and **Narayan Dutt Tiwari** v. **Rohit Shekhar and Anr.**[4].

15 In order to address the submission, it would be necessary to note at the outset that following the failure of the respondents to comply with the provisional assessment made by the Rent Controller on 14

3 (1999) 5 SCC 590
4 (2012) 12 SCC 554

November 2007, the order of eviction was passed on 14 December 2007. The respondents filed an appeal against the order of eviction and on 7 January 2008 a conditional stay was granted subject to deposit. The respondents filed an application for modification of the condition of deposit and for extension of time. When both the applications were dismissed by the appellate Court they instituted proceedings before the High Court invoking its revisional jurisdiction. Undoubtedly, the frame of the civil revision incorporated a challenge to the order of eviction as well as to the orders passed by the appellate authority on 7 January 2008 (granting a conditional stay) and on 18 February 2008 (dismissing the application for modification and extension). At that stage, the respondents having already invoked the appellate remedy against the order of eviction, the substantive challenge to the order of eviction could not have been the subject of a parallel proceeding before the High Court in a civil revision. An appeal having been preferred against the order of eviction, it would be natural to postulate that the respondents would have to first exhaust the appellate remedy before seeking to question the final order of eviction in revision before the High Court. Moreover, the appeal was not withdrawn. The scope of the challenge by the respondents before the High Court in revision was in regard to the conditions which were imposed by the appellate authority for staying the operation of the order of eviction. The respondents were aggrieved by the condition of

deposit and by the refusal of the appellate authority to modify its order imposing those conditions. The revision traversed that limited area and it would be impermissible to construe the judgment of the High Court dated 31 March 2008 as having brought down the curtains on the order of eviction dated 14 December 2007. The appeal filed against the order of eviction was still pending and there is no reason to assume that the High Court would, despite the recourse that was taken by the tenants to the appellate remedy, interdict the exercise of jurisdiction by the appellate authority in exercise of the statutory right of appeal under Section 15(1)(b) of the Act.

16 There can be no dispute about the position in law. The decision in **Hope Plantations Limited** (supra) formulates the principle in the following observations :

> "26......When the proceedings have attained finality parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel...."

In the subsequent judgment of a Bench of two learned Judges in **Narayan Dutt Tiwari** (supra), it has been held that principles of *res judicata* and *constructive res judicata* apply also to successive stages of the same proceedings. However, in the present case this principle would not stand attracted for the simple reason that the legality of the order of eviction was the subject matter of a statutory appeal under Section 15(1)(b) before the appellate authority. Properly construed, the scope of the revision application before the High Court, during the pendency of the appeal, related to the conditions which were imposed by the appellate authority for staying the order of eviction. The decision of the High Court dated 31 March 2008 would hence have to be construed as a view taken upon the legality of the conditions imposed by the appellate authority for staying the order of eviction and not in regard to the legality of the order of eviction which was pending consideration in the appeal. We therefore do not find merit in the first submission which has been urged on behalf of the appellant.

17 The next aspect of the matter arises from the provisions of Section 13. Insofar as it is material, Section 13 provides as follows :

> "13. Eviction of tenants.- (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under Section 13 of the East

> Punjab Urban Rent Restriction Act, 1949, as subsequently amended.
>
> (2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied –
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> (i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable :
>
> Provided that if the tenant on the first hearing of the applications for ejectment after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid.
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> *** *** ***
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> The Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:
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> Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate."

18 Sub-section (1) of Section 13 contains a bar to the eviction of a tenant who is in possession of a building or rented land except in accordance with the provisions of the Section or in pursuance of an order passed under Section 13 of the East Punjab Urban Rent Restriction Act 1949. A landlord who seeks the eviction of his tenant must under sub-section (2) apply to the Rent Controller. Clause (i) of

sub-section (2) empowers the Rent Controller to pass an order of eviction (directing the tenant to put the landlord in possession) if the tenant has not paid or tendered the rent due by him within 15 days of the expiry of the time fixed in the agreement of tenancy or, where there is no agreement, by the last day of the month following the month for which the rent is payable. The proviso to clause (i) of sub-section (2) is in the nature of a concession by which the legislature has introduced a deeming fiction. The deeming fiction arises where the tenant at the first hearing of the application for ejectment pays or tenders the arrears of rent together with interest at six per cent per annum and the costs of the application assessed by the Rent Controller. If this condition is fulfilled, the deeming fiction that comes into being is that the tenant shall be deemed to have duly paid or tendered the rent "within the time aforesaid". The expression "within the time aforesaid" obviously is in reference to the time for payment of rent which is stipulated in the substantive part of clause (i) of sub-section (2) immediately before the commencement of the proviso.

19 Hence the position is that the tenant must pay or tender the rent within 15 days of the expiry of the time fixed in the agreement of tenancy or in the absence thereof "by the last date of the month next following that for which the rent is payable". If the tenant fails to do so, the Rent

Controller upon being moved by the landlord is empowered to order the eviction of the tenant. This consequence is however obviated upon compliance with the terms of the proviso. Before a tenant can claim the benefit of the proviso, it is necessary that its terms must be observed. Where the tenant upon an assessment being made by the Rent Controller has on the first hearing of the application for eviction paid or tendered the arrears of rent together with interest and costs as assessed by the Controller, by a deeming fiction of law, the tenant would be treated to have duly paid or tendered the rent within the period as stipulated in the statutory provision. In order to seek the benefit of the proviso, there has to be first an assessment by the controller; second, the payment or tendering of the rent, interest and costs by the tenant in terms of the order of the Rent Controller and third, such payment or tender must be on the first hearing of the application for ejectment. But for the proviso, a tenant in default would be liable to suffer an order of eviction for default in paying rent. The proviso makes a concession but conditions the benefit of the concession granted to the tenant subject to compliance with its conditions. If the tenant complies with the conditions, the deeming fiction comes into existence. If the tenant fails to fulfil the conditions, the Rent Controller will be empowered to order eviction. To protect himself against suffering the consequence of eviction, the tenant has no option but to tender or pay the rent, interest and costs assessed

by the Rent Controller on the first hearing of the application for ejectment. If he fails to do so, the tenant will not have the benefit of the deeming fiction by which the consequence of a default in payment is obviated.

20 In **Rakesh Wadhawan and Ors.** v. **Jagdamba Industrial Corporation and Ors.**[5], a Bench of two learned Judges of this Court construed the provisions of Section 13(2)(i). Its conclusions were summarised thus :

> "To sum up, our conclusions are :
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> 1. In Section 13(2)(i) proviso, the words "assessed by the Controller" qualify not merely the words "the cost of application" but the entire preceding part of the sentence i.e. "the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application".
> 2. The proviso to Section 13(2) (i) of the East Punjab Urban Rent Restriction Act, 1949 casts an obligation on the Controller to make an assessment of (i) arrears of rent, (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order the amount which the tenant must pay or tender on the "first date of hearing" after the passing of such order of "assessment" by the Controller so as to satisfy the requirement of the proviso.
> 3. Of necessity, "the date of first hearing of the application" would mean the date falling after the date of such order by the Controller.
> 4. On the failure of the tenant to comply, nothing remains to be done and an order for

5 (2002)5 SCC 440

eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the Controller.

5. If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing the tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.
6. While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings".

21 The decision in **Wadhawan** (Supra) lays down that under the proviso to clause (i) of sub-section (2) of Section 13 the Rent Controller is obliged to assess the arrears of rent, interest and costs of a litigation which the tenant must pay on the first date of hearing. If there is a dispute raised about the quantum of the arrears of rent or about the rate of rent the Controller will initially make a provisional assessment. The provisional assessment is based on a *prima facie* view formed by the

Controller on the basis of the pleadings or such other material as may be available. Such amount as determined by the Controller must be paid by the tenant on the first date of hearing after the date of the provisional order passed by the Controller. The date of first hearing is the date on which the Controller applies his mind to the facts involved in the case. Once the Rent Controller has made a provisional assessment of the rent, interest and costs, the tenant is required to pay or tender the amount provisionally assessed on the first date of hearing of the application for ejectment. The provisional adjudication is subject to a subsequent final adjudication by the Rent Controller. The final adjudication by the Rent Controller may hold that the quantum of arrears as determined is (i) the same as that which was found due under the provisional order; (ii) less than what was determined by the provisional order; or (iii) more than what was held to be due and payable under the provisional order. In the first eventuality, the Rent Controller would proceed to terminate the proceedings. In the second eventuality, the Rent Controller may direct that the amount deposited in excess be refunded to the tenant (or adjusted against future payments due). In the third eventuality, the Rent Controller may pass a conditional order affording the tenant an opportunity of reasonable time for depositing the amount (in deficit) failing which the tenant would be liable to be evicted. In passing such an order the Rent Controller furnishes an opportunity to

the tenant to make good the deficit in terms of the final order of assessment. The deposit by the tenant in terms of the final order of assessment, within the period fixed by the Rent Controller would protect the tenant from the consequence of an order of ejectment.

22 The judgment in **Wadhawan** (supra) was reaffirmed subsequently by a Bench of three learned Judges of this Court in **Vinod Kumar** v. **Premlata**[6].

23 In a subsequent decision of a Bench of two learned Judges in **Harjit Singh Uppal** v. **Anup Bansal**[7] , this Court considered the impact of the statutory right of appeal which is available to the tenant under Section 15(1)(b). Section 15(1)(b) is in the following terms :

> "15. Vesting of appellate authority on officers by State Government.-
>
> (1)(a)
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> (b) Any person aggrieved by an order passed by the Controller may, within fifteen days from the date of such order or such longer period as the appellate authority may allow for reasons to be recorded in writing, prefer an appeal in writing to the appellate authority having jurisdiction. In computing the period of fifteen days the time taken to obtain a certified copy of the order appealed against shall be excluded."

In that case, the landlord who was the respondent before this Court had sued the tenant for eviction on the ground of a default in the payment of

6 **(2003) 11 SCC 397**
7 **(2011)11 SCC 672**

rent. The Rent Controller made a provisional determination of the arrears of rent together with interest and costs which was directed to be deposited by a stipulated date. The tenant made an application for recalling the order on the ground that the payment which he had made to the landlord had not been considered. The Rent Controller rejected the application and, upon the failure of the tenant to comply with the order of provisional assessment, an order of eviction was passed. The tenant preferred an appeal under Section 15(1)(b). The appellate authority held that the order of provisional assessment was liable to be set aside. An order of remand was passed by the appellate authority directing the Rent Controller to determine the provisional assessment afresh. In a revision by the landlord before the High Court, a learned single Judge held that since the tenant had not availed of the remedy to challenge the order fixing provisional rent during the period between the date of the order and the date fixed for payment, the Rent Controller had no choice but to order eviction. Accordingly, the High Court while allowing the revision petition set aside the order of the appellate authority and restored the order of eviction passed by the Rent Controller. This Court held in appeal that while the determination of provisional rent by the Rent Controller is foundational to an order of eviction, where the tenant has failed to comply with the order of provisional assessment, nevertheless such an order is interlocutory in the sense it does not determine the principal

matter finally. In the view of this Court, though the tenant may not have challenged a provisional order of assessment at the interlocutory stage, there is no impediment to lay a challenge to the provisional assessment in an appeal against the final order :

> “24. We find no impediment for an aggrieved person, on reading Section 15(1) (b) of the 1949 Rent Act, that an interlocutory order which had not been appealed though an appeal lay, could not be challenged in an appeal from the final order. In our opinion, Section 15(1) (b) does not make it imperative upon the person aggrieved to appeal from an interlocutory order and, if he does not do so, his right gets forfeited when he challenges the final order.
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> 25. It is true that an order of eviction follows as a matter of course if there is non-compliance with the order determining the provisional rent but when tenant challenges the order of eviction and therein also challenges the order of fixation of provisional rent – the order of eviction, in its nature, being dependant on the correctness of the order fixing the provisional rent and there being no indication to the contrary in Section 15(1) (*b*) – it must be open to the appellate authority to go into the correctness of such provisional order when put in issue.”

24 The position that emerges in law is that once the Rent Controller has made a provisional assessment of the arrears of rent, interest and costs, the tenant must deposit the amount so determined on the first hearing of the application for ejectment. A tenant who does so would be deemed to have duly paid or tendered the rent within the time prescribed by the substantive provision of Section 13(2)(i). A tenant failing to comply with the terms of an order of provisional assessment, cannot thereafter avail of the concession extended to a tenant, through the

proviso under Section 13(2)(i), and will be liable to suffer an order of eviction. However, having suffered the order of eviction, the tenant is entitled to the statutory remedy of an appeal under Section 15(1)(b). The determination of a provisional assessment being the foundation of the order of eviction (which flows from the non-compliance of the terms of the provisional assessment), the tenant in an appeal against the order of eviction is entitled to question the correctness of the order of provisional assessment. This is available even after an order of eviction has been passed. **Harjit Singh Uppal** (supra) holds that the right is not lost upon an order of eviction being passed.

25 In the present case, the petition for eviction that was filed by the appellant proceeded on the basis that the rent had remained in arrears from 1 November 2005. The averment in the petition was to the following effect :

> "(a) That the Respondents have neither paid for tendered the due rent w.e.f. 01.11.2005 to 31.05.2006 @ Rs.25,000/- p.m. and w.e.f. 01.06.2006 onwards at the rate of Rs.28,000/- p.m. Even the cheques issued by the Respondents in favour of the petitioner have been dishonoured."

26 The Rent Controller by his order dated 14 November 2007 required the respondent to deposit the arrears of rent with effect from 1 June 2005 till the filing of the petition and thereafter till the passing of the

order at the rate of Rupees 19,000 per annum together with interest at 6 per cent per annum and costs quantified at Rupees 500 on 14 December 2007. Though the rent was directed to be deposited with effect from 1 June 2005 (and not 1 November 2005) it must be noted that the tenant got the benefit of an order for depositing only Rupees19,000 per month (as against the agreed rent of Rupees 25,000 per month till 31 May 2006, and Rupees 28,000 per month thereafter). The Respondents did not deposit anything – not even the admitted amount – within the period fixed. In the course of the hearing of the Civil Revision, the appellant conceded before the High Court that the determination of arrears with effect from 1 June 2005 was erroneous since the Rent Controller ought to have determined the arrears only from 1 November 2005. The High Court has recorded the concession in the following observations :

> "….The counsel for the landlord is prepared to admit that the Rent Controller had made a mistake in making a reference that the Rent determined by it namely Rs.19,000/- to be payable from 01.06.2005 and that it should have been only from 01.11.2005."

On this foundation, the High Court observed thus :

> "….. I have already observed that the landlord's counsel does not deny before me that the direction to pay rent from 01.06.2005 was a mistake. The determination of provisional rent could not be merely with reference to the rate of rent but also the quantum of rent. The quantum of rent by its reference to a period when there was no

> default, was therefore, in error and the correctness of such finding was surely susceptible for a challenge to Appellate Forum. The Appellate Authority ought to have seen that if it was admitted that the tenant was in default only from 01.11.2005, the payment of arrears for 30 months was mistake, it was liable to be set aside. That had the consequential relevance for also setting aside the order of ejectment that was passed for alleged non-compliance of the order which was erroneous. If the first order of determination of provisional rent was erroneous and liable to be set aside, the consequential order of ejectment for non-compliance was also bound to be set aside."

Was the High Court correct in taking this view?

27 One line of interpretation for construing the provisions of Section 13 is that which has been suggested on behalf of the respondents. According to this interpretation (which seeks to draw sustenance from the observations in **Harjit Singh Uppal** (supra)), the tenant would be at liberty to ignore the order of provisional assessment passed by the Rent Controller and upon the passing of an order of eviction for non-compliance, to pursue the remedy of an appeal under Section 15(1)(b). According to this line of interpretation, in the appeal under Section 15(1)(b) the tenant may demonstrate that the order of provisional assessment was erroneous and as a consequence thereof, the order of eviction must fail. The issue is whether such an interpretation must be adopted invariably in all cases. In our view, the interpretation of the provisions of Section 13 must bring about a just balance between the

rights of the tenant and those of the landlord. On the one hand, there is a need for protecting the tenant against being subjected to a disproportionate demand by the landlord and of suffering in consequence, an unjust decree of eviction. On the other hand there is a need to protect the landlord against the tactics which a recalcitrant tenant may adopt by deploying every gambit in the rule book to defeat the just claims of the landlord to the payment of rent. The judgment rendered by this Court in **Wadhawan** (supra) and reaffirmed by a Bench of three Judges in **Vinod Kumar** (supra) brings about a just balance by interposing the function of the Rent Controller who determines on a provisional basis the arrears of rent, interest and costs. This determination ensures on the one hand that while the tenant is protected against an unjust demand by the landlord, the landlord in turn is not deprived of the just dues owing on account of the use and occupation of the property by the tenant. Upon a provisional determination being made by the Rent Controller, the tenant must deposit the amount of the demand, on the first hearing of the application for ejectment. What needs to be kept in mind is, that the proviso under 13(2) (i) is a concession, and also, that it is based on a provisional "assessment". A tenant admitting to be in arrears of rent, within the parameters provided for under Section 13(2)(i), is liable to eviction forthwith. To avail of the concession, the provisional "assessment", must be complied with. If the tenant does so

the payment is deemed to have been made within time. If the tenant fails to do that, the Rent Controller is empowered to pass a decree for eviction. The manner in which a wrongful provisional “assessment” will be remedied have been laid down in **Wadhawan** and **Vinod Kumar** (supra). The tenant upon complying with the order of the Rent Controller is not left without a remedy. When the Rent Controller subsequently makes a final determination of the rent payable, if it is found that the tenant has paid an amount in excess, the Rent Controller can issue directions for refund or adjustment, as the case may be. A tenant who complies with an order of provisional assessment by the Rent Controller is to be protected against eviction. At the same time, the tenant is entitled to pursue the challenge to the assessment made by the Rent Controller. A tenant who fails to observe the order of provisional assessment will not be protected against an order of eviction. That will, however, not deprive the tenant of a right of appeal, as held in **Harjit Singh Uppal** (supra).

28 The dispute which the tenant seeks to raise in regard to the rent which is payable may straddle several aspects. There may be a dispute of the rate of rent. The period over which the rent has not been paid may be in dispute. Where the tenant has admitted that the rent is due and payable at least for a certain period, it is necessary that the Court should

adopt an interpretation which does not permit the tenant to defeat the just claim of the landlord. The present case is an object example of such a situation. The lease agreement between the parties provided for a rent of Rupees 25,000 for the first year of the lease ending on 31 May 2006, and which was to stand enhanced to Rupees 28,000 for the remaining two years. The Rent Controller directed the tenant to deposit only an amount of Rupees 19,000 (representing the component of the basic rent for the first year, the remaining amount of Rupees 6,000 being towards furniture and fixtures). After the Rent Controller made his provisional determination on 14 November 2007 the tenant sought to dispute essentially that part of the determination by which the Rent Controller had fixed the amount due and payable from 1 June 2005. The prayers made by the tenant in the review petition would indicate that even according to the tenant, rent was due and payable at least for the duration which was referred to therein. The tenant was granted, in the appeal filed against the order of eviction, a conditional stay requiring the tenant to deposit the arrears and to continue to pay the rent for the subsequent period on a monthly basis. The tenant failed to comply with this order. An application for modification and for extension of time was moved which was rejected by the appellate Court. The civil revision against the order of rejection was also dismissed by the High Court. The appellant has provided in the special leave petition a table setting out the

cheques that were issued by the respondents in favour of the appellant both towards the rent and towards furniture and fixtures which were dishonoured. This is extracted below :

Cheques issued by the Respondents in favour of Petitioner Dalip Kaur, which were dishonoured

Sl.No.	Cheque No.	Amount (Rs.)	Dated	Bank	Reason for dishonour
1	055192	19,000/-	7.11.2005	Bank of Punjab	Insufficient Funds
2	055194	19,000/-	7.12.2005	-do-	-do-
3	055196	19,000/-	7.1.2006	-do-	-do-
4	055198	19,000/-	7.2.2006	-do-	-do-
5	055200	19,000/-	7.3.2006	-do-	-do-
6	069589	19,000/-	7.4.2006	-do-	-do-
7	069404	19,000/-	7.5.2006	-do-	-do-
8	069448	21,000/-	7.3.2008	Bank of Punjab/ Centurion Bank	-do-
9	069450	-do-	7.4.2008		-do-
10	069581	-do-	7.7.2008		-do-

Cheques issued by the Respondents towards furnitures and fixtures in favour of Pushp Roop Singh Brar which were dishonoured

Sl.No.	Cheque No.	Amount (Rs.)	Dated	Bank	Reason for dishonour
1	069449	7,000/-	7.3.2008	Bank of Punjab/HDF C Bank	Insufficient Funds
2.	069576	7,000/-	7.4.2008	-do-	-do-
3.	069582	7,000/-	7.7.2008	-do-	-do-

The appellant was constrained to file a complaint under Section 138 of the Negotiable Instruments Act, 1881. She is a widow who has been

made to run from pillar to post to secure the just payment of dues legitimately owing to her. The respondents are facing trial and have been granted bail by the CJM, Ludhiana. The conduct of the respondents has been noticed in the judgment of the High Court dated 31 March 2008 where the High Court records that :

> "….the petitioners admitted the fact that they were unable to pay the arrears of rent and sought one month's more time to arrange the money."

The High Court further observed as follows :

> "As the facts would speak for themselves, the petitioners have been adopting one or the other delaying tactics in order to wriggle out of their liability to pay the arrears of rent. Firstly, they contended that since the arrears of rent were demanded by the respondent with effect from 1.11.2005, they could not be asked by the Rent Controller to tender the same with effect from 1.6.2005.
>
> Be that as it may, the Appellate Authority vide order dated 7.1.2008 granted them stay and permitted the petitioners to pay the rent within a period of one month. Had there been any bona fide intention to pay the rent, the petitioners could deposit the same without prejudice to their rights and any excess payment, if any, could very well be adjusted against the future rent. However, instead of depositing the arrears of rent, they sought extension of time and wanted to deposit only part of the arrears of rent.
>
> If one reads the application moved by the petitioners for extension of time, it can be safely inferred that before the Appellate Authority, they coined a new objection against payment of rent for the subsequent period by 7th of every calendar month. The petitioners presumably wanted to suggest that they could be directed to pay the arrears of rent till the filing of the ejectment petition only and not for the subsequent period.
>
> In these circumstances when either the petitioners are unable to pay the rent due to lack of funds or they

> deliberately don't want to pay the same, no case to interfere with the impugned orders in exercise of the revisional jurisdiction of this Court is made out."

The facts before the Court leave no manner of doubt that there was a stubborn and steadfast unwillingness on the part of the tenant to comply with the order passed by the Rent Controller even to the extent of non-deposit of rent for the period for which it was admittedly due and payable. The tenant even went to the extent of claiming that a direction could have only been issued for the deposit of the arrears and not for the payment of the rent for subsequent months as directed by the appellate court as a condition for the grant of stay. Accepting the line of interpretation which has been suggested by the respondents would lead to a situation where, though the rate of rent is not in dispute and the tenant admits that rent is due and payable for a certain duration of time (while disputing the quantum of arrears) the landlord in pursuance of a determination made on a provisional basis by the Rent Controller would be deprived of the rent due and payable, while the tenant takes a chance of being able to demonstrate in the course of an appeal against the order of eviction that the initial determination for a certain part of the period was not payable. In our view such an interpretation would defeat the object and purpose of Section 13 and the rationale for the decision of this Court in **Wadhawan** (supra) which has brought about a balance

between the rights of the landlord and the tenant. If the respondents intended to dispute the claim of arrears for a specified period, there was no reason or justification for them not to deposit the rent. It needs to be kept in mind, that the legislative concession, extended to tenants through the proviso under Section 13(2)(i), is available conditionally. To be entitled to be saved against eviction, the tenant must satisfy the conditions laid down. To understand the words “assessed by the Rent Controller”, as “correctly assessed”, would not be proper. Arrears payable by a tenant, would be correctly assessed only after evidence is recorded and concluded. The instant assessment is clearly provisional. It is made, even before evidence has commenced to be recorded. Therefore, it would be improper to understand and extend to such assessment, any further meaning. Every kind of excuse was made by the tenant for not paying the rent due and payable. As we have set out earlier the cheques that were issued to the appellant were dishonoured. In this view of the matter, the tenant cannot have the benefit of the observations contained in the judgment of this Court in **Harjit Singh Uppal** (supra) for the simple reason that they would not come to the aid of a tenant who has not deposited even the admitted dues in pursuance of the determination which has been made by the Rent Controller, even though the proviso extends the concession, only to tenants who have complied. The High Court while determining whether the provisional

determination of the Rent Controller was correct or otherwise could not have ignored the position that while the rent payable was Rupees 25,000 per month till 31 May 2006 and Rupees 28,000 per month from 1 June 2006, the Rent Controller had directed a deposit only of Rupees 19,000 per month. The Respondents deposited nothing within the period fixed and a deposit made in May 2008 would not enure to their benefit.

29 For these reasons, we are of the view that the High Court fell into error in allowing the revision application against the judgment and order of the appellate authority and in setting aside the order of eviction. The Civil Revision filed by the respondents was liable to be dismissed and we order accordingly.

30 We accordingly allow the appeal and set aside the impugned order of the High Court dated 29 April 2015. The order of eviction passed by the Rent Controller as confirmed by the appellate authority shall accordingly stand restored.

31 The respondents shall pay costs to the appellant quantified at Rupees 50,000.

..CJI
[JAGDISH SINGH KHEHAR]

…...J
[Dr D Y CHANDRACHUD]

New Delhi;
April 11, 2017

ITEM NO.1A COURT NO.1 SECTION IVB
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

C.A.No.5129/2017 @ Petition(s) for Special Leave to Appeal (C) No(s).24952/2015

DALIP KAUR BRAR Appellant(s)

VERSUS

M/S. GURU GRANTH SAHIB SEWA MISSION (REGD.) AND ANR. Respondent(s)

Date : 11/04/2017 This appeal was called on for judgment today.

For Appellant(s) Mr.Sudhir Walia, Adv.
Mr. Abhishek Atrey, Adv.

For Respondent(s) Mr.Rajesh Sharma, Adv.
Ms. Shalu Sharma, Adv.

Hon'ble Dr.Justice D.Y.Chandrachud pronounced the judgment of the Bench comprising Hon'ble the Chief Justice of India and His Lordship.

Leave granted.

The appeal is allowed in terms of the signed judgment. The order of eviction passed by the Rent Controller as confirmed by the appellate authority shall accordingly stand restored.

The respondents shall pay costs to the appellant quantified at Rupees 50,000.

(SATISH KUMAR YADAV) (RENUKA SADANA)
AR-CUM-PS ASSISTANT REGISTRAR
(Signed reportable judgment is placed on the file)