debate or controversy that the provisions of section 74 of the Contract Act applied to a compromise decree. Since in the instant case I am of the opinion that the third conclusion of the lower Court as noticed above also deserves to be sustained. I have not chosen to make a reference to a larger Bench.

(5) Now when can a decree be held to be penal? The answer, to my mind, is that only when a clause or condition of the decree entitles a party to something to which he would not have been at all entitled to in the suit and not otherwise. In other words if such a decree makes a provision by way of concession rather than by way of penalty, the abovenoted section of the Contract Act cannot be attracted to such a decree. In the instant case the learned counsel for the petitioners conceeds that by the date the parties entered into compromise and the decree was passed on 9th February, 1979, the claims of the respondent had come to Rs. 70,37,950.82, i.e. the principal amount of Rs. 44,96,030,66 plus the agreed interest on that, yet the Bank chose to accept Rs. 56,10,000 in case the same was paid to it by 31st December, 1979, to discharge the liability of the petitioners fully and finally. Thus it is patent that the Bank chose to accept this amount only by way of concession. Since the petitioners have failed to avail of this concession by not paying the amount by the agreed date, they cannot possibly complain of having been penalised in any manner. For committing this default they have to thank themselves. Thus they have no case either in law or in equity.

(6) For the reasons recorded above this petition fails and is dismissed with costs which I determine at Rs. 1,000.

R.N.R.

Before : I. S. Tiwana, J.

D. D. MALIK,—*Petitioner*

versus

S. M. NEHRA,—*Respondent.*

Civil Revision No. 2720 of 1990.

14th February, 1991.

East Punjab Urban Rent Restriction Act (*III* of 1949) as amend-*ed by Act* 2 *of* 1985—*Ss.* 13-*A and* 18-*A*—*Additional accommodation*—*Tenant's application for leave to contest rejected*—*Supreme Court*

granting special leave to the tenant and remitting matter to Rent Controller holding that in a case of additional accommodation there is no need to take summary procedure—Interpretation of order of Supreme Court—Rent Controller interpreting order of Supreme Court to mean that S. 13-A petition should be tried as an ordinary petition under S. 13—Such interpretation not warranted—Rent Controller was required to follow the procedure prescribed in S. 18-A (6) and what was ruled out by the Supreme Court was the procedure prescribed by sub-section (4) of S. 18-A.

Held, that S. 18-A of the East Punjab Urban Rent Restriction Act, 1949 as amended by 1985 Act is a complete Code in itself and lays down the procedure for dealing with an application under S. 13-A of the Act. Therefore, there is no question of application under S. 13-A of the Act being tried as an application under section 13. The Supreme Court had by its order in effect ruled out the procedure prescribed by sub-section (4) which is a summary procedure. With the grant of leave to the tenant by the Supreme Court, the Rent Controller had essentially to follow the procedure prescribed by sub-section (6) of S. 18-A.

(Paras 3 & 4)

Petition under section 18-A (8) of East Punjab Urban Rent Restriction (Amendment) Act No. 2 of 1985 with Section 115 C.P.C. for revision of the order of the Court of Smt. Rekha Mittal Rent Controller Chandigarh dated 18th September, 1990 allowing the application moved by the respondent/tenant. Claim;—Petition under section 13-A of the Extension of East Punjab Urban Rent Restriction (Amendment) Act, 1985, as extended to the Union Territory of Chandigarh for the eviction of the respondent from the first floor of House No. 2009, Sector 15-C, Chandigarh, on the ground of personal necessity etc. available to the petitioner being a specified landlord. Application under section 151 C.P.C.

Claim in Revision; For reversal of the order of lower court. Civil Misc. No. 674-CII of **1991**:

Application under section 151 of the Code of Civil Procedure. praying that the attached reply on behalf of the tenant which contains his side of picture and arguments may be ordered to be placed on the file.

M. L. Sarin, Sr. Advocate with Jai Shree Thakur Advocate, *for the Petitioner.*

Harbhagwan Singh Sr. Advocate with K. S. Sidhu Advocate, *for the Respondent.*

JUDGMENT

I. S. Tiwana, J.

(1) The order of the Rent Controller, Chandigarh, dated 18th September, 1990, impugned herein not only appears to be unusual but illegal also. However, it purports to have been passed in the light of the Supreme Court order dated 11th January, 1990, in Civil Appeal No. 120 of 1990 arising out of S.L.P. (C) No. 236 of 1990. The following undisputed facts furnish the necessary backdrop of the case.

(2) The petitioner, as a specified landlord, filed an application under section 13-A of the East Punjab Urban Rent Restriction Act, 1949, as applicable to Chandigarh, and hereinafter referred to as the 'Act', to seek eviction of the respondent on the ground that the accommodation in his possession in the local area was not suitable. He duly supported it with his affidavit. To controvert this stand of his, the respondent-tenant filed an affidavit in terms of sub-section (4) of Section 18-A of the Act, requesting leave of the Court to contest the said application. The same was, however, refused by the Court,—*Vide* its order dated 26th August, 1988. Respondent's revision petition against this order was again dismissed by this Court on 20th December, 1989. He preferred a Special Leave Petition, referred to above, which was allowed by their Lordships of the Supreme Court in the following terms :—

"Special Leave granted. Having heard counsel for both the sides and also perused the material, we are of the opinion that this is a case where the Court below ought not to have refused leave to contest. The landlord is occupying the groundfloor besides the entire second floor. The tenant is occupying the first floor. The question is whether the landlord requires the first floor also. This question, in our opinion, could be properly determined only by granting leave to the tenant to contest. There is no need to take a summary procedure since it is a case of additional accommodation.

In the result, we allow the appeal and set aside the impugned orders and grant the tenant leave to contest the proceedings. The Controller shall now proceed according to law. Parties shall appear the Controller on 12th February, 1990 to receive further direction. It is needless to state that all the other points are left open".

Now in the light of this order the Rent Controller has expressed the opinion that since the leave to contest has been allowed to the respondent in terms of Section 18-A of the Act, the proceedings in this petition under section 13-A "are to be conducted as it is an ordinary petition under section 13 of the Rent Act and the Court is not to follow the procedure as laid down under section 18-A of the Rent Act". It is this order of the Rent Controller which is impugned in this petition. The order, on the face it, is against the mandate of the opening words of section 18-A which lays down that "every application under section 13-A shall be dealt with in accordance with the procedure specified in this section". This mandate is further reinforced by the next following section i.e. 18-B which reads :

> "Section 18-A or any rule made for the purpose thereof shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being inforce".

Therefore, the order deserves to be set aside summarily on this score alone.

(3) What however impressed the Rent Controller in expressing the abovenoted opinion is the following sentence occurring in the Supreme Court order :

> "There is no need to take a summary procedure since it is a case of additional accommodation".

To me it appears that the Controller has completely misinterpreted the order of the Supreme Court and has read the abovequoted sentence out of context. It is beyond dispute that the matter before the Supreme Court was only with regard to the grant of leave to the respondent to contest the proceedings launched by the petitioner under section 13-A of the Act. In case, their Lordships of the Supreme Court were of the view that the procedure under section 18-A has not to be followed in this case, then instead of granting the leave to the respondent the very application of the landlord would have been dismissed, as the suitability of the accommodation in occupation of the landlord is not one of the grounds of eviction as per section 13 of the Act. The grounds for eviction of a tenant, as specified in these two sections, are mutually exclusive of each other. By no stretch of imagination, the words "He does not own and possess any other suitable accommodation in the local area" and

"intends to reside" occurring in section 13-A of the Act be equated with the words "he is not occupying any other residential building in the urban area concerned" and "he requires it for his own occupation", as mentioned in section 13(3)(a)(i) of the Act. Section 18-A, to my mind, is a complete code in itself and lays down the procedure for dealing with an application under section 13-A of the Act. Therefore, there is no question of an application under section 13-A of the Act being tried as an application under section 13 of the same.

(4) The use of the word 'Summary Procedure' in the above-quoted order of the Supreme Court on which the learned counsel for the respondent has heavily relied to sustain the opinion of the Rent Controller, to my mind, only indicates or refers to that procedure which has to be followed when no permission to contest is granted to a tenant under sub-section (4) of section 18-A of the Act. I am of the view that this section lays down two wholly independent procedures to govern two situations : (i) when leave to contest is refused to a tenant and (ii) when such leave is granted. The procedure prescribed in sub-section (4) governs the first situation and the one specified in sub-section (6) applies to the latter. This is so very manifest from a close reading of these two sub-sections. Therefore, what the above-noted order of the Supreme Court ruled out was the procedure prescribed in sub-section (4) of this Section which obviously is a summary procedure as compared to the one laid down in sub-section (6). With the grant of leave to the respondent by their Lordships of the Supreme Court, the Rent Controller has essentially to follow the procedure prescribed in sub-section (6) of this Section. As a matter of fact, two judgments of this Court have, by now, assigned the same meaning and content to the above-noted order of the Supreme Court and the judgments are; *Ravinder Nath* v. *T. R. Lakhanpal* (1), and *K. G. P. Pillai* v. *Subash Chander Pathania* (2).

(5) I, therefore, allow this petition and while setting aside the impugned order of the Rent Controller, direct her to dispose of this petition in the manner provided for in section 18-A of the Act. There is, however, no order as to costs.

R.N.R.

(1)1990 (2) R.C.R. 73.
(2) 1990 (2) R.C.R. 386.