penalty. On the construction of this Section, the Courts below held that the prosecution under Section 276-B was wholly uncalled for. On merits, I find absolutely no ground to arrive at a different conclusion than the one reached by the Courts below.

(4) For the reasons recorded above, the petition fails and is dismissed.

(5) However, before parting with the judgment, I am constrained to observe that the Income Tax Authorities should act in a commendable manner, and not otherwise.

*J.S.T.*

*Before : G. R. Majithia and A. S. Nehra, JJ.*

SMT. HARDEV KAUR AND OTHERS,—*Petitioner.*

*versus*

M/S GHAZAL RESTAURANT AND OTHERS,—*Respondents.*

*Civil Revision No.* 1268 *of* 1988.

5th May, 1989.

*East Punjab Urban Rent Restriction Act,* 1949—*Ss.* 6, 7 & 13(2) (1) *Eviction—Arrears of Rent—Commercial Premises leased out for five years at fixed rent—*10 *per cent increase in rent agreed to on expiry of* 3 *years—No fixation of fair rent by the controller under section* 6*—Parties are free to provide by agreement increase in rent during currency of lease—Such increase is not prohibited by law—Lesse tendering at first hearing enhanced rent agreed—Eviction petition must fall—That interest paid short by a few Rupees—Where lessor holds advance deposit—Adjustment of future rent—Short fall in arrears of interest can be adjusted out of advance rent lying in deposit with lessor—Lessee not liable to eviction—Words 'premium' and others sub—Meaning of, stated.*

(Paras 15, 18, 19 & 20)

Makhan Lal *v.* Anand Parkash 1986 H.R.R. 358 and Balwant Kaur and others *v.* Tilak Raj Gupta, 1986 H.R.R.

(Overruled)

*Held,* that learned Judge did not appreciate that section 6 of Act would be applicable only if fair rent had been fixed under Section 4 of the Act. If fair rent had not been fixed there would be no bar in law for the parties by agreement to provide for revision of rent. Accordingly, this judgment (Makhan Lal *v.* Anand Parkash) is over ruled.

*Held,* that there is nothing illegal in a landlord asking for higher rent so long as fair rent has not been fixed. If the tenant does not agree to pay it, the remedy of the Landlord may be to file petition for fixation of fair rent.

*Held,* that Section 7 of the Act only prohibits that a landlord cannot claim fine, premium or any other like sum in consideration of grant, renewal or continuance of tenancy. There is no bar for the landlord to ask for a periodical increase of rent. The act does not forbid the parties from entering into a bilateral agreement for periodical increase of rent except when Section 6 of the Act is attracted. In the instant case, on the proved facts, it was permissible for the parties to provide for periodical increase in rent by agreement. The agreement providing for such increase is legal, valid and enforceable. Lessee is obliged to pay revised rate of rent by 10 per cent as is stipulated in covenant No. (3) of the lease deed dated November 3, 1980, Exhibit A-1. The lessee complied with the covenant when it tendered rent at the revised rate in the eviction proceedings as is evidenced by Exhibits R. 13, 14 and R. 16. Thus it is not open to the lessees to say that they were not bound by the terms of the lease deed and that revision of rent is not permissible.

*Petition under Section* 15(5) *of the East Punjab Urban Rent Restriction Act, for revision of the order of the Court of Shri J. S. Sekhon, Appellate Authority, Chandigarh, dated the* 19*th December,* 1987, *reversing that of Shri J. D. Chandna, H.C.S. Rent Controller, Chandigarh, dated the* 2*nd June,* 1986, *accepting this appeal and setting aside the impugned order of the Rent Controller, and leaving the parties to bear their on costs.*

*Claim* : *Petition under Section* 13 *of the East Punjab Urban Rent Restriction Act,* 1949.

*Claim in Revision* : *For reversal of the order of the Lower Appellate Court.*

(*Case referred by the Hon'ble Mr. Justice G. R. Majithia, on* 5*th May,* 1989, *to a Divisional Bench for deciding an important question of law involved in the case. The Divisional Bench consisting of Hon'ble Mr. Justice G. R. Majithia, Hon'ble Mr. Justice A. S. Nehra, decided the case finally on dated* 18*th August,* 1992).

P. C. Mehta, Senior Advocate, S. N. Saini, Advocate with him. *for the petitioner.*

M. L. Sarin Senior Advocate, Hemant Sarin and Alka Sarin, Advocates with him, *for the Respondent.*

JUDGMENT

*G. R. Majithia, J.*

The landlords, aggrieved against the order of the Appellate Authority which, on appeal, reversed that of the Rent Controller and dismissed their petition for evicting the tenant-respondents from the demised premises, have come up in revision to this Court.

(2) The revision petition initially came up for hearing before me sitting singly. On behalf of the tenant-respondents, it was canvassed that a landlord could increase rent by agreement and any increase so made could be legally recovered. The lessor could only recover fair rent from the lessee and in support of this submission, reliance was placed upon Single Bench decision of this Court in *Makhan Lal* v. *Anand Parkash* (1). I doubted the correctness of the submission made and requested my Lord the Chief Justice for constituting a larger Bench for deciding the point arising for adjudication in this petition. I also directed that the revision petition be disposed of by the larger Bench. It is how this petition has been placed before us for disposal.

(3) The landlord-petitioners leased out ground floor of Shop-cum-Office No. 189-190-191, Sector 17-C, Chandigarh to the lessee-respondents under lease deed dated November 3, 1980, Ex. A-1, on payment of monthly rent of Rs. 9,000. The tenancy was to commence from October 1, 1980. The eviction was sought on the ground that the lessees were in arrears of rent since February 1, 1984. The eviction petition was filed before the Rent Controller, Chandigarh on June 2, 1984. After the service of notice, the lessee appeared before the Rent Controller on August 1, 1984 and the Rent Controller assessed Rs. 80 as costs of the petition and the lessees' counsel made the following statement :—

> "I tender a sum of Rs. 39,600 as arrears of rent from 1st February, 1984 to 31st May, 1984 at the rate of Rs. 9,900 p.m., Rs. 700 as interest and Rs. 80 as costs total amounting to Rs. 40,380."

The counsel for the lessors accepted the tender under protest on the ground that it was insufficient.

(4) The lessees filed their written statement on September 10, 1984. It was, *inter alia*, pleaded that the arrears of rent having been tendered on the first date of hearing, the petition deserved dismissal on that short ground alone. Subsequently, amended written statement was filed on behalf of the lessees. It was pleaded therein that the lessors were only entitled to recover rent at the rate of Rs. 9,000 per mensem and not at the rate of Rs. 9,900 per mensem. The enhanced rent could not be claimed in view of the provisions of Section 7 of the East Punjab Urban Rent Restriction Act, 1949 (for short, the Act) and that the rent at the enhanced rate was tendered on the first

(1) 1986 H.R.R. 358.

date of hearing. It was further pleaded that the lessees were entitled to the refund of Rs. 27,000 collected by the lessors as security at the time of the execution of the lease deed and that they were entitled to adjustment of this amount against the future rent.

(5) From the pleadings of the parties, the following issues were framed by the Rent Controller on September 27, 1984 :—

(1) Whether the tender made by the respondent is invalid and insufficient ? OPP

(2) Relief.

(6) The Rent Controller found that the tender, so far as the interest was concerned, was short by Rs. 54.67 and ordered eviction of the lessees on the ground of non-payment of rent.

(7) The lessees aggrieved against the order of the Rent Controller moved the Appellate Authority. The Appellate Authority reversed the decision of the Rent Controller and held that the lessors were entitled to recover rent at the rate of Rs. 9,000 per mensem and not at the rate of Rs. 9,900 per mensem and if the arrears of rent are calculated at the rate of Rs. 9,000 per mensem the tender would be valid. It did not opine on the statutory provisions disentitling the lessors to claim revised rate of rent.

(8) In order to appreciate the rival contentions of the parties, it is necessary to reproduce the following five covenants of the lease deed, Ex. A.1 :—

"1. That the period of lease shall be for FIVE years commencing from 1st October, 1980 to 30th September, 1985.

2. That the lessees shall pay monthly rent for the ground floor of the said building at the rate of Rs. 9,000 (Rupees nine thousand only) per month.

3. That on completion of three years, the lessees shall pay the 10 per cent increased rent to the lessors per month. If the lessees does not agree to pay the increased rate of rent, after that the lessees shall vacate the building and shall hand over to the owners.

4. That the lessees shall pay the monthly rent, by the 7th date of each month in advance in which falls due in the name of "NIRVAN BUILDINGS".

5. That the lessees has paid the sum of Rs. 36,000 (Rupees thirty six thousand only) being first month rent and three months security, which will be adjusted at the end of the period of tenancy."

Pursuant to covenant No. (3) of the lease deed, on the expiry of the period of three years, the rent was to be increased at the rate of 10 per cent and the lessees had to pay rent at the enhanced rate. The lessees, on the expiry of three years' period, tendered rent, on the eviction application filed by the lessors, at the rate of Rs. 9,900 per mensem as is evidenced by Exhibits R.13, R.14 and R.16. The lessees complied with covenant No. (3) of the lease deed on the expiry of three years' lease period and the lessors accepted the revised rent.

(9) The precise question which arises for determination is whether the lessors and the lessees could by agreement provide for increase in rent during the continuance of the lease and this increase in rent is not prohibited by law. The Act is a social legislation. It affords protection to tenants and prevents their unreasonable eviction. It was passed in order to control the law relating to rents and eviction. The object of the Legislature in enacting the Act was to prevent tenants from being compelled to pay an excessive rent by threats of being evicted. In order to achieve this object, the Legislature, in effect, restricted by statute the rights by which landlords had to eject tenants and obtain possession of their premises in order to let them out to persons who were prepared to pay rent which the existing tenant would not agree to pay and which was an excessive rent. The Act thus is an ameliorative piece of legislation in the interest of tenants of premises in urban areas so that they may be protected against large increase in rent, and from harassment by eviction consequent on the increase of population. The Scheme of the Act is apparently meant to protect honest and reasonable tenants against the greedy and unscrupulous landlords. Section 4 of the Act prescribes a method, according to which the Rent Controller can determine and fix the fair rent of a building or rented land. He can do so only on the application of a landlord or the tenant and cannot move in the matter *suo moto*. Section 5 of the Act permits increase in fair rent only if additions, improvements or alterations have been carried out at the landlord's expense in the demised premises after the determination of the fair rent. Section 6 prevents the landlord or tenant from coming to any agreement or doing anything which shall increase the fair rent and such an increase is illegal. Section 7 prevents the landlord from charging fine or premium for grant, renewal or continuance of tenancy of any building.

Sections 6 and 7 of the Act read thus :—

"6. *Landlord not to claim anything in excess of fair rent.*—

(1) Save as provided in section 5, when the Controller has fixed the fair rent of a building or rented land under section 4 :—

(a) the landlord shall not claim or receive any premium or other like sum in addition to fair rent or any rent in excess of such fair rent, but the landlord may stipulate for and receive in advance an amount not exceeding one month's rent;

(b) any agreement for the payment of any sum in addition to rent or of rent in excess of such fair rent shall be *null and void.*

(2) Nothing in this section shall apply to the recovery of any rent which became due before the 1st day of January, 1939.

"7. *Fine or premium not to be charged for grant, renewal or continuance of tenancy.*—

(1) No landlord shall in consideration of the grant, renewal or continuance of a tenancy of any building or rented land require the payment of any fine, premium or any other like sum in addition to the rent.

(2) Nothing in this section shall apply to any payment under any subsisting agreement entered into before the 1st day of January, 1939."

(10) Section 6 of the Act applies only where fair rent has been fixed by the Controller. If fair rent has been fixed in respect of a demised premises, the landlord is prohibited under this section from charging anything in excess of the fair rent from the tenant. If fair rent has not been fixed, there is no prohibition for increase of prevailing rent *by mutual agreement by the parties.* The terms of the contract providing for increase of rent have to be observed by both the contracting parties.

(11) Identical provisions of the Madras Buildings (Lease and Rent Control) Act (25 of 1949) came up for interpretation in *Jamuna Bai and others* v. *Gampina Narayanamurthy and others* (2), wherein it was held thus :—

"In a case of this kind where the tenant agreed to pay the enhanced rent it can be assumed from the agreement

(2) A.I.R. 1959 A.P. 108.

entered into by him with the landlord which has been held to be proved. As was observed in the case of *Raja Chetty* v. *Jagannatha Das Govind Das*, 1949-2 Mad LJ 694 (AIR 1950 Mad 284) (D) parties can always agree to be governed by the provisions of the Act.

The record would show that in this case application for the fixation of fair rent was never made and no fair rent was fixed as a matter of fact. Under these circumstances, having regard to the clear words of Section 5(1) of the Act of 1946 it must be held that the agreement entered into between the landlord and the tenant for the enhanced rent could not be declared *null* and *void* as being in contravention of the provisions of the Act. The terms of a contract have to be observed by both the contracting parties.

A contract must be enforceable unless such contract is prohibited by law or vitiated by other circumstances. This apart, it may also be noted that where a statute seeks to control contractual obligations, such a statute must always be strictly construed. Courts will not be astute to construe an Act so as to avoid a contract within the prohibition of a statute,—*vide* Craies Statute Law P. 236."

(12) Similar view was taken in *S. Venkataramanaswami Ayyar* v. *S. Abdul Wahab* (3), wherein it was held thus :—

"My attention has not been drawn to any specific provision in Madras Act (25 of 1949), particularly its amendment in 1951, or in Madras Act (18 of 1960), prohibiting the parties to agree between themselves and vary the prevailing rent, so long as the fair rent has not been fixed for the premises under the provisions of the Act. Restrictions on the rights of parties to enter into a contract cannot be imposed, purely by implication, particularly when the existence of such rights is not inconsistent with the provisions of the Act. The Act makes a distinction between a case where the fair rent has been fixed and the one where the fair rent has not been fixed under the Act. Section 5 of the Act provides against an increase of rent where the fair rent has been fixed. Provision for an increase or decrease in

(3) A.I.R. 1969 Madras 473.

the fair rent would be unenforceable. Similarly, Section 6 provides for an increase in the rent when taxes are increased. The provisions for variation of rent in Section 5 and 6 are, it must be appreciated, such that if the tenant is not willing and agreeable to an increase in accordance with the provisions, the landlord could have the rent revised under the provisions of the Act. Section 7(1)(a) provides for the landlord claiming excess in terms of the provisions of Sections 5 and 6 and the only provision which has to be considered where the fair rent has not been fixed is Section 7(2) : and this section does not prohibit any agreement between the parties increasing the rent."

(13) Section 6 of the Act came up for interpretation before their Lordships of the apex Court in *Mangal Rai and another* v. *Kidar Nath* and others (4), wherein it was held thus :—

"Section 6 thus merely provides that where a fair rent is fixed by the Controller it would not be open to the landlord to receive any amount in advance in excess of the fair rent. Section 6(a) further permits the landlord to stipulate and receive in advance an amount not exceeding one month's rent. Clause (b) makes any agreement for payment of any sum in excess of such fair rent *null and void*. This section therefore clearly deals with a situation where a fair rent under section 6 is fixed by the Controller on the application of the parties. Neither in the present case nor in *Vidya Prachar Trust's* case (AIR 1969 SC 1273) (supra) was there any allegation that a fair rent had been fixed by the Controller. Section 19 is the penal section which makes a person punishable with imprisonment for a maximum period of two years if he violates the provisions of Section 6. So long as fair rent is not fixed by the Controller the parties are free to agree to payment of any rent and neither Section 6 nor Section 19 would be attracted to such a case. Moreover, even if the tenant were to deposit future rent it is always open to the landlord not to withdraw the future rent but confine himself to taking out only the rent that is in arrears which will not at all violate any provision of the Rent Act."

Clauses (a) and (b) of sub-section (1) of Section 6 of the Act will be attracted where the fair rent has been fixed by the Controller.

(4) A.I.R. 1980 S.C. 1709.

Section 7 prohibits a landlord from charging fine or premium or any other like sum in addition to rent in consideration of the grant, renewal or continuance of a tenancy of any building or rented land. The word "premium" also occurs in clause (a) of Section 6(1) of the Act. Both the sections prevent a landlord from claiming premium or fine for grant, renewal or continuance of a tenancy. The Act does not define the words "premium" or "any other like sum". This expression also occur in Section 7(2) of the Madras Buildings (Lease and Rent Control) Act (18 of 1960) and Section 18(1) of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947.

(14) In *A. Abdul Rahim* v. *State of Madras by Accommodation Deputy Tahsildar* (5), after referring to the well known judgment in *King* v. *Cadogan* (Earl) (6), pointed out that the term "premium" as ordinarily understood is a lump sum payment made outright as a price for a lease. Referring to the words "other like sum", he observed that these words had to be understood in the light of the doctrine of *ejusdem generis*. He held thus :—

> "Premium as ordinarily understood is a lump sum payment made outright as price for a lease. In the context of words "in addition to the agreed rent" in clause (a) of sub-section (2) of section 6, it appears clear that what is contemplated by "premium" is something other than the agreed rent. The premium in the context of the words used, it seems to me, involves the idea that what is paid should be in the nature of a price for the lease of money which is refundable is, in the case, therefore not within the scope of premium.
>
> "The question then is whether such an amount is within the scope of "other like sum". The scope of those words has to be understood in the light of the doctrine of *ejusdem generis*. Only sum which has some resemblance to what is comprehended by the word "premium" that will come within the scope of the words "other like sum".

(15) Again, in *Ranganayaki Ammal* v. *M. Chockalingam* (7), examined at length the nature of the terms "premium" or "other like

(5) A.I.R. 1962 Madras 272.
(6) L.R. 1915 3 K.B. 485 at 492.
(7) 1966 II M.L.J. 139.

sum", and after critical examination of the various authorities, be observed thus :—

"The matter is so free from doubt that it does not really require any discussion of the first principles or decisions. Under Section 105 of the Transfer of Property Act, a lease of immovable property is defined as a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetulity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. In the same section it is stated that the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent. Thus, 'premium' is defined in Section 105 of the Transfer of Property Act as the price paid or promised for a lease. In Shorter Exford "English Dictionary, Volume II, Second Edition at page 1570, 'premium' has been defined as a reward given for some specific act or as an incentive; a price. In a note under the definition it is stated that if no premium were allowed for the hire of money, few persons would care to lend it. In Wharton's Law Lexicon, Fourteenth Edition, at page 791, 'premium' is defined as a consideration; something given to invite a loan or a bargain; the consideration paid to the assignor by the assignee of a lease, etc. In *Vithal Krishnaji Nivendkar* v. *Parduman Ram Singh,* (1963) M.L.J. (Cri.) 517, it stated that the word 'premium' means any amount paid for the purpose of getting a lease. It was held in that decision that if donation has been received in respect of the granting of the lease and not as a free donation for the advancement of the purposes of the Sangh, it will come within the expressions 'premium' or 'consideration' in section 18 of the Bombay Rents, Hotel and Lodging House Rates Control Act. The word 'premium' has been considered in *Abdul Rahim* v. *State,* I.L.R. (1961) Mad. 1243. It was pointed out in that decision that the scope of the words 'other like sum' has to be understood in the light of the doctrine of *ejusdem generis.* It was held in that decision that the deposit of a large sum of money free of interest, which was liable to be returned at the end of the term of lease, is not a 'premium'. It is unnecessary to consider the correctness

of this view in this case. But it is clear from what I have stated that there is a clear distinction between 'rent' on the one hand and 'premium' or 'other like sum' on the other."

Thus, the learned Judge concluded that there is nothing illegal in a landlord asking for higher rent so long as fair rent has not been fixed. If the tenant does not agree to pay it, the remedy of the landlord may be to file a petition for fixation of fair rent.

(16) In *Commissioner of Income-tax, Assam, Tripura and Manipur* v. *The Panbari Tea Co. Ltd.*, (8), the apex Court drew a distinction between 'premium' and 'rent' and the question was posed as under :—

"Whether the amount described as premium in the lease deed is really rent and, therefore, a revenue receipt."

Their Lordships referred to their earlier decision in *Board of Agriculture Income-tax, Assam* v. *Sindhurani Chaudhurani* (9), and after referring to various other earlier judgments and Section 105 of the Transfer of Property Act, observed thus :—

"Under Section 105 of the Transfer of Property Act, a lease of immovable property is a transfer of a right to enjoy the property made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer of such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and money, share, service or other thing to be so rendered is called the rent. The section, therefore, brings out the distinction between the price paid for a transfer of a right to enjoy the property and the rent to be paid periodically to the lessor. *When the interest of the lessor is parted with for a price, the price paid is premium or salami. But the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent.*" (Emphasis supplied)

(8) A.I.R. 1965 S.C. 1871.

(9) 1957 32 I.L.R. 169 : A.I.R. 1957 S.C. 729.

(17) Again, a Full Bench of the Madras High Court in *The Chief Controlling Revenue Authority, Madras Referring Authority* v. *S. M. Abdul Jammal and another* (10), drew distinction between 'premium' and 'rent' in the following terms :—

> "Section 105 of the Transfer of Property Act defines a lease as one of immovable property in which there is a transfer of a right to enjoy such property, that it is made for a certain term, express or implied, and in consideration :—
>
> 'of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferror by the transferee.'
>
> who accepts the transfer on such terms. The price paid or promised, or money, a share of crops, service or any other thing of value to be rendered periodically or on specified occasions would both form part of the consideration for the lease, but the distinction between a premium and a rent, in the context, lies in the fact *that premium is one paid in consideration of the conveyance implied in the lease and is quantified in lump, whether it is paid outright or by instalments over a period or promised to be paid at a certain time.* But a rent, while it is also in consideration of a lease, is in lieu of the enjoyment which the lessee has and particularly as consideration therefor. The further feature of rent is it is payable as and when it accrues unlike a premium the liability for which arises at the time the contract is entered into."

(18) Section 7 of the Act only prohibits that a landlord cannot claim fine, premium or any other like sum in consideration of grant, renewal or continuance of tenancy. There is no bar for the landlord to ask for a periodical increase of rent. The Act does not forbid the parties from entering into a bilateral agreement for periodical increase of rent except when Section 6 of the Act is attracted. In the instant case, on the proved facts, it was permissible for the parties to provide for periodical increase in rent by

(10) A.I.R. 1970 Madras 288.

agreement. The agreement providing for such increase is legal, valid and enforceable. Lessee is obliged to pay revised rate of rent by allowing increase in rent by 10 per cent as is stipulated in covenant No. (3) of the lease deed dated November 3, 1980, Exhibit A-1. The lessee complied with the covenant when it tendered rent at the revised rate in the eviction proceedings as is evidenced by Exhibits R.13, R.14 and R.16. Thus, it is not open to the lessees to say that they were not bound by the terms of the lease deed and that revision of rent is not permissible.

(19) In *Balwant Kaur and others* v. *Tilak Raj Gupta and others* (11), a learned Single Judge of this Court examined the lease deed containing a condition that the tenant would be liable to pay rent at the rate of Rs. 2,000 instead of Rs. 500 as originally agreed upon. The learned Judge found this condition as penal in nature and hit by Section 7 of the Act. The entire judgment reads thus :—

> "I am in complete agreement with the Courts below that the condition contained in the lease deed that in case the premises is not vacated by the tenant on the expiry of six years voluntarily, he would be liable to pay rent at the rate of Rs. 2,000 instead of Rs. 500 per month is penal and in any case is hit by section 7 of the East Punjab Urban Rent Restriction Act, 1949. The precise words in the lease deed are to the following effect :—
>
> 'That if the tenant does not return the possession of the premises to the landlord after the expiry of the fixed tenure of six years, he would be liable to pay rent at the rate of Rs. 2,000 per month.'
>
> 2. As already noticed the agreed rent was Rs. 500 per month. The aforesaid condition imposed is clearly contrary to section 7 of the Act."

There is no rational in coming to this conclusion. In the light of the aforementioned reasoning, the ratio of this judgment cannot be sustained. The same is overruled.

(20) In *Makhan Lal* v. *Anand Parkash* (12), a learned Judge of this Court, after referring to Section 6 and 7 of the Act, observed thus :—

> "In the view that I have taken the parties not having right to increase rent by contract but their right only being

(11) 1986 H.R.R. 18.
(12) 1986 H.R.R. 358.

to have fair rent fixed and to have any increase permitted by the statute, the tender made by the tenant on the first hearing of the eviction application was proper and valid tender according to proviso to Section 13(2)(1) of the Act, and so the Appellate Authority was wrong in ordering eviction of the tenant for non-compliance of that proviso."

The ratio of the judgment in *Makhan Lal's case* (supra) runs counter to the view expressed by the apex Court in *Mangal Rai's* case (supra). Even otherwise, the learned Judge did not appreciate that Section 6 of the Act would be applicable only if fair rent had been fixed under Section 4 of the Act. If fair rent had not been fixed, there would be no bar in law for the parties by agreement to provide for revision of rent. Accordingly, this judgment is also overruled.

(21) The next question which arises for determination is whether the tender was valid. Section 13(2) of the Act states the grounds on which a landlord can seek eviction of this tenant. Clause (1) of Section 13(2) says that a tenant will be liable to be evicted if he has not paid or tendered the rent due in respect of a building within fifteen days after the expiry of the time fixed in the agreement of tenancy or, in the absence of such agreement, by the last date of the month next following that for which the rent is payable. A proviso has been added to this clause saying that a tenant can save himself from eviction on the ground of non-payment of rent if he, on the first date of hearing of the application for ejectment, pays or tenders the arrears of rent and interest at the rate of 6 per cent per annum on such arrears together with costs of the application for eviction assessed by the Controller. If the tenant tenders rent in compliance with the proviso to clause (i) of sub-section (2) of Section 13, he shall be deemed to have paid or tendered the rent within the period mentioned in clause (i). In the application for eviction it was stated by the lessors that the tenant was in arrears of rent since February 1, 1984. The application for eviction was filed on June 2, 1984. The tenant tendered a sum of Rs. 39,600 as arrears of rent from February 1, 1984 to May 31, 1984 at the rate of Rs. 9,900 per mensem, Rs. 80 as costs which was assessed by the Controller and Rs. 700 towards interest. The lessors say that the interest is short by Rs. 54.67. The learned counsel could not state how it was short and what was the basis for this assertion. The lessees had led evidence to prove that on the arrears of rent upto April, 1984, the interest accruing comes to Rs. 486.50. On the other hand, the lessors have also led evidence to

establish that the interest on the arrears of rent due comes to Rs. 754.67. but the same is not reliable. In the instant case, the matter is only of academic interest and not of any substance. It cannot be said that the lessees have not paid or tendered the rent due on the first date of hearing of the eviction application. Admittedly, a sum of Rs. 27,000 was lying in deposit with the lessors for adjustment towards the future rent on the termination of the lease. The amount has not been adjusted so far towards rent. If the lessee had paid advance rent to the lessors pursuant to the lease deed and the tender of interest was short by Rs. 54.67, the lessee could ask the lessor to make good the shortage out of the advance rent lying in deposit with the latter. In support of this conclusion, reliance can be placed on the apex Court's decisions reported as *Mohd. Salimuddin* v. *Misri Lal and another* (13), and *M/s Sarwan Kumar Onkar Nath* v. *Subhash Kumar Agarwalla* (14). In the latter case, it was observed thus :

> "It is not disputed that the respondent was not entitled to receive more than one month's rent by way of advance. Yet, the respondent had received in advance the rent for two months. The receipt under which the said advance was received does not state that the amount received was liable to be adjusted towards the arrears of rent only on the appellant informing the respondent orally or in writing that such adjustment is to be made. In the written statement, however, the appellant pleaded that the amount paid by way of advance could be set off by way of rent whenever necessary or required. This is not a case where there was any agreement to the effect that such adjustment could be made only on the tenant asking the landlord to make such adjustment. Nor is this a case where the tenant was liable to the landlord on any other account. The only transaction between them was the lease and the amount in question had been paid as rent in advance. There was also no agreement that the amount was liable to be adjusted at the termination of the lease. It was, therefore, open to the respondent to appropriate the said sum towards the arrears even without any option being exercised as regards such adjustment by the appellant."

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**(13) 1986 2 S.C.C. 378.**
**(14) 1987 4 S.C.C. 546.**

The ratio of this judgment was again followed by the apex Court in *Modern Hotel, Gudur, represented by M. N. Narayanan* v. *K. Radhakrishnaiah and others* (15). Thus, it was wholly illegal to say that the lessee was in arrears of rent.

(22) For the reasons stated above, the revision petition fails and is dismissed, but with no order as to costs.

*R.N.R.*

*Before : A. P. Chowdhri, J.*

MURTI DURGA MAAI JI THROUGH SHRI HARPHOOL SINGH & OTHERS,—*Petitioners.*

*versus*

HAR NARAIN AND OTHERS,—*Respondents.*

*Civil Rev. No.* 2647 *of* 1991

March 12, 1992.

*Code of Civil Procedure* (V of 1908)—*Order* 40—*Rule* 1—*Appointment of Receiver—Can be appointed where Court finds it just and convenient—Plaintiff must show good* prima facie *case for justifying such appointment—Where plaintiff unable to* prima facie *show exclusive possession it cannot be considered just & convenient to appoint receiver.*

(Para 6 &7)

*A. P. Chawdhri.*

*Held*, that a receiver can be appointed under order 40 Rule 1 of the Code where the Court finds that it is just and convenient to do so. It follows by necessary implication that the plaintiff must show a good *prima facie* case to justify the application of Order 40 Rule 1 for purposes of appointment of receiver.

*Held*, that where the plaintiff is unable to make out a strong *prima facie* case with regard to its exclusive possession, broadly speaking it cannot be considered just and convenient to appoint a receiver.

*Petition under Section* 115 *C.P.C. for revision of the order of the Court of Shri S. N. Chadha, Additional District Judge, Narnaul dated* 30*th May*, 1991 *reversing that of Shri S. K. Dhawan, H.C.S., Additional Senior Sub-Judge, Narnaul dated* 5*th September*, 1990 *accepting the appeal and setting aside the order of learned trial court dated* 5*th September*, 1990 *and however directing the appellants shall keep the proper accounts date-wise under a committee in order to avoid misuse of the fund as already ordered*,—vide *order dated* 13*th September*,

(15) 1989 H.R.R. 273.