REVISIONAL CIVIL

Before R. N. Mittal, J.

On a difference between P. C. Pandit, J. and B. S. Dhillon, J.

SHEO NARAIN,—*Petitioner.*

versus

SHRIMATI MEGH MALA JAIN,—*Respondent.*

Civil Revision No. 226 *of* 1971.

November 4, 1976.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 6(1)(a), 13(2)(i)—Proviso and 19—Eviction of a tenant for non-payment of arrears of rent—Deposit of such arrears before the Rent Controller prior to the first date of hearing—Advance rent deposited in excess of one month—Such deposits—Whether valid—Interpretation of statutes—Language used in an enactment unambiguous—Courts—Whether can refuse to give the words their plain meaning on the ground that the intention of the Legislature is different.

Held, (per Mittal J. concurring with P. C. Pandit J.), that if rent is paid or tendered on the first date of hearing along with the interest and costs it is deemed to be duly paid by virtue of the proviso to section 13(2)(i) of the East Punjab Urban Rent Restriction Act, 1949 and the ground of ejectment for non-payment no longer remains available to the landlord. If the tenant fails to do so, the Controller has no option but to order his ejectment. The reason for making this provision is that only the tenants who pay rent to the landlords should get benefit of other clauses in section 13. No doubt it is true that the Act provides protection to the tenants against *mala fide* attempts of landlords to procure eviction, but simultaneously it gives summary remedy to the landlord to seek ejectment of his tenant if he does not pay rent. The intention of the Legislature also appears to be that if the tenant does not pay or tender the rent in the prescribed manner, he incurs the liability of being ejected from the premises taken on lease. It is a well established principle of law that if the Legislature has prescribed a particular mode of doing a thing, it should be done in that way and no other. Hardship or inconvenience cannot alter the meaning of the language used in a statute. Thus payment of rent is to be made by the tenant under the proviso on the first date of hearing and at no other point of time. Section 13(2)(i) is not subject to two interpretations and the mode of payment of rent has been prescribed therein and consequently it can be paid only in that way. The

deposit of the rent by a tenant prior to the date of hearing before the Rent Controller cannot be considered to be either a proper tender or payment. (Paras 47 and 51)

Held, that section 6(1)(a) of the Act provides that the landlord shall not receive in advance an amount exceeding one month's rent. Section 19 says that if any person contravenes any of the provisions of section 6(1)(a) he shall be punished with imprisonment which may extend to two years and with fine. From these it is clear that in case a landlord accepts advance rent for more than one month he renders himself liable to punishment. If deposit is made by the tenant in excess of one month's rent against the provisions of section 6(1)(a), the deposit is not a proper tender.

(Para 58)

Held, that it is an established principle of law that the Courts interpret the language used in an enactment by the legislature in its plain grammatical sense. In case the words used in the statute are unambiguous and can be interpreted only in one way, the Courts cannot refuse to give the words those meanings on the ground that the intention of the Legislature is different. Statutes have to be explained according to their plain meanings without violence to the language. In case there is a lacuna in an enactment, it is not for the courts to fill in the same. (Para 56)

Held, (per B. S. Dhillon, J. contra.) that if a tenant has tendered the rent in the proceedings regarding the ejectment application filed by the landlord on or before the first date of hearing in the court of the Rent Controller so that on the first date of hearing ready money is available to the landlord for the rent due as provided in the proviso, it cannot be said that the tenant has failed to comply with the proviso. The requirement of the proviso is that on or before the first date of hearing, the landlord must be made available with the ready money for the rent due and that he should not be referred to the deposit being made by the tenant in any other proceedings leaving him still to bother for the recovery of the rent. It is immaterial whether the payment is made to the landlord out of the Court if the same is admitted by the landlord to have been received by him out of the Court, or the said amount is deposited with the Rent Controller in the ejectment proceedings on or before the first date of hearing. It is true that this provision is mandatory and if the amount due is not paid on the first date of hearing and is sought to be paid subsequently, it is only then to be held that the proviso has not been complied with and in that case the tenant will not be entitled to the benefit of the proviso, but if the

rent is paid or tendered before the Rent Controller before the date of hearing in the same proceedings, then the deposit is valid.

(Para 27)

Petition under Section 115 *of Act V of* 1908 *for revision of the order of Shri Adish Kumar Jain, Appellate Authority, under the East Punjab Urban Rent Restriction Act, Gurgaon dated the* 28*th January,* 1971 *affirming with costs that of Shri P. R. Aggarwal, Rent Controller, Gurgaon, dated the* 2*nd December,* 1967 *granting an order of eviction in respect of the premises in suit shown in the plan, Ex. P* 1 *with costs of the petition in favour of the petitioner and against the respondent.*

S. P. Goyal, Advocate with Bhoop Singh Sheokand, Advocate, *for the Petitioner.*

H. L. Sarin, Advocate, with J. L. Malhotea, Advocate, M. L. Sarin, Advocate and Krishan Gopal Chaudhari, Advocate, *for the Respondent.*

ORDER

P. C. Pandit, J.

(1) On 21st March, 1967, Sher Singh filed an application (Numbered as case No. 16 of 1967) under section 13 of the East Punjab Urban Rent Restriction Act, 1949, hereinafter called the Act, against his tenant Sheo Narain, for his eviction from the shop in dispute, which is situate in Gurgaon Cantonment. The ground for ejectment was non-payment of the arrears of rent to the extent of Rs. 240 from 9th November, 1965, to 8th March, 1967, at the rate of Rs. 15 per month. Notice of this application was issued by the Rent Controller to the tenant on 22nd March, 1967, for 11th May, 1967, and the same was served on the latter on 22nd April, 1967.

(2) In the meantime, on 18th August, 1965, the tenant had made an application under section 4 of the Act to the Rent Controller for fixing the fair rent of this shop. By his order, dated 27th April, 1967, the Rent Controller determined Rs. 10.62 Paise as the fair rent with effect from 18th August, 1965. On 29th April, 1967, the tenant made an application (*marked as Case No.* 19 *of* 1967) *in the Court of the* Rent Controller (Senior Subordinate Judge), Gurgaon, for depositing Rs. 179.48 Paise as the rent of this shop from 9th November, 1965, to 9th May, 1967, at the rate of Rs. 10.62 Paise per mensem. It was

stated in this application that the Rent Controller had fixed the fair rent of the shop at the rate of Rs. 10.62 Paise with effect from 18th August, 1965. The tenant had already paid rent to the landlord up to 9th November, 1965, at the rate of Rs. 15 per month prior to the fixation of the fair rent. The landlord was not prepared to take the due rent from 9th November, 1965, at the rate of Rs. 10.62 per mensem. The tenant, therefore, wanted to deposit the same. According to the tenant, the rent from 9th November, 1965 to 9th May, 1967, for 18 months at the rate Rs. 10.62 per month, came to Rs. 191.16 Paise and the excess rent already paid to the landlord from 18th August, 1965 to 9th November, 1965, i.e., for two months and 20 days at the rate of Rs. 4.38 Paise per mensem was Rs. 11.68 Paise. After deducting the excess rent, the due rent, according to the tenant, was Rs. 179.48 Paise, and a prayer was then made in the application that the said amount be ordered to be deposited in Court. On the same date, the Rent Controller, who was also the Senior Subordinate Judge, passed the following order on this application:—

"Present—Shri Shiv Narain petitioner.

The rent be deposited at the responsibility of the petitioner and after that *notice* be issued on payment of P.F. for the respondents for 11th May, 1967."

Such like notices are issued under section 31(2) *of the Punjab Relief of Indebtedness Act,* 1934, which provision finds mention in the later part of this judgment. This amount of Rs. 179.48 Paise was deposited in the State Bank, Gurgaon, on 4th May, 1967. On 11th May, 1967, the Senior Subordinate Judge/Rent Controller made the following order:—

"Present. Mr. Vijay Pal Singh, for the petitioner.

Shri P. L. Kakkar for the respondent.

The respondent's counsel Shri. P. L. Kakkar has been informed that the petitioner has deposited Rs. 179.48 Paise on 4th May, 1967. Papers be filed."

It may be mentioned that the ejectment application was also pending in the Court of this very officer.

(3) In the reply to the ejectment application, the tenant stated that he had deposited the due rent of Rs. 179.48 Paise at the rate of Rs. 10.62 per mensem from 8th August, 1965 to 9th May, 1967.

(4) On 11th May, 1967, the first date of hearing in the case, the Rent Controller assessed the costs at Rs. 25 and thereafter, the tenant made the following statement on solemn affirmation:—

> "I have already deposited Rs. 179.48 up till 9th May, 1967, as arrears of rent, which may be paid to the petitioner and I also tender Rs. 25 as costs and Rs. 2 as interest."

Thereafter, the counsel for the landlord stated that the tender made by the tenant was not valid or sufficient and, therefore, he did not want to accept the same.

(5) On the pleadings of the parties, only one issue was framed, viz., whether the tenant had deposited or tendered the arrears of rent, costs and interest and was not liable to be evicted for reasons of non-payment of rent.

(6) On 2nd December, 1967, the Rent Controller came to the conclusion that the tenant had failed to pay or deposit or tender the arrears of rent and interest and costs due to the landlord on the first date of hearing and as such he was liable to eviction on the ground of non-payment of rent and on this finding, the order of ejectment was passed.

(7) Against this decision, the tenant went in appeal before the Appellate Authority. On 22nd February, 1968, the said Authority accepted the appeal and held that the tender was valid and, consequently, the eviction application was dismissed.

Against that order, the landlord filed a revision petition in this Court, which was heard by the learned Chief Justice and the revision was accepted and it was directed that the appeal of the tenant should be relisted and disposed of in accordance with the decision of the Supreme Court in *Vidya Prachar Trust* v. *Basant Ram* (1).

(8) Thereafter, the Appellate Authority reheard the appeal and dismissed the same after confirming the finding of the Rent

(1) 1969 P.L.R. 526.

Controller. The Appellate Authority was of the view that the deposit of the rent in the instant case was not a valid payment or tender as required by law and, consequently, the tenant was liable to be ejected on the ground of non-payment of arrears of rent.

(9) Against this decision, the tenant has filed the present revision petition. It came up for hearing before me in the first instance and at that time, reference was made by the counsel for the parties to the Supreme Court decision in *Vidya Prachar Trust Case* and a Division Bench ruling of this Court by Mahajan and Tuli, JJ., in *Mehnga Singh and others* v. *Dewan Dilbagh Rai and others* (2). After some arguments were heard, both the counsel prayed that the case be referred to a larger Bench, because while answering the point involved therein, the implications of the Supreme Court decision in *Vidya Prachar Trust case* would have to be considered. That is how the matter has been placed before us.

(10) From what has been stated above, it would be clear that the facts in the instant case are not in dispute. The sole point for decision is whether the deposit of arrears of rent, namely, Rs. 179.48 Paise, on 4th May, 1967, together with the tender of Rs. 25 as costs and Rs. 2 as interest on 11th May, 1967, the first date of hearing, can be considered to be a valid *tender* or *payment* within the meaning of the proviso to section 13(2)(i) of the Act. The relevant portion of section 13 reads:

13. "(1) * * * *.

(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—

(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

(2) 1971 P.L.R. 57.

the month next following that for which the rent is payable:

Provided that if the tenant on the first hearing of the application 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.

* * * *

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."

(11) A perusal of this provision will show that if the Rent Controller, after giving the tenant a reasonable opportunity, is satisfied that the tenant has not *paid* or *tendered* the rent due by him within 15 days after the expiry of the time fixed in the agreement of tenancy, and in the absence of such agreement, by the last day of the month next following that for which the rent was payable, he will make an order of eviction against the tenant. In other words, if the tenant does not *pay* or *tender* the rent as specified in section 13(2)(i), he incurs the liability of being ejected from the premises. But there is only one saving for him and that is mentioned in the proviso, which says that if the tenant on the first hearing of the application for ejectment, after due service, *pays* or *tenders* the arrears of rent and interest at the rate of 6 per cent per annum on such arrears together wifh the costs of the application as assessed by the Controller, then he will be deemed to have duly *paid* or *tendered* the rent within the time mentioned in section 13(2)(i) of the Act. It will, thus, be seen that the statute has prescribed a particular mode by which the tenant can save himself from eviction on the ground of non-payment of rent and the same is mentioned in the proviso. If a tenant wants to take advantage of that proviso, he must strictly comply with the requirements thereof. In other words, when service of the ejectment application has been effected on the tenant, he should on the first hearing of the application *either pay* or *tender* the arrears of rent together with interest and costs. There is no other method prescribed by the Act, by which he can save himself from ejectment on the ground of non-payment of arrears

of rent. The language employed in the proviso is not capable of any other interpretation except the one mentioned above. On the first date of hearing, the tenant must *either pay or tender* the arrears of rent.

(12) 'Tender' has been defined as under in a decision of this Court in *Kali Charan* v. *Ravi Datt and others* (3)—

> "That the word "tender" imports not merely the readiness and the ability to pay or perform, at the time and place mentioned in the contract, but also, the actual production of the thing to be paid or delivered over. A mere offer to pay does not constitute a valid tender; the law requires that the tenderer has the money present and ready, and produce and actually offer to the other party. Tender implies the physical act of offering the money or thing to be tendered. The law insists upon an actual present, physical offer; it is not satisfied by a mere spoken offer to pay, which although indicative of present possession of the money and intention to produce it is unaccompanied by any visible manifestation of intention to make the offer good."

(13) It is undisputed that if the language of a statute is clear and not capable of two or more interpretations, then the Courts are not entitled to put their own interpretation thereon either in the interest of justice or to avoid any hardship. When the Legislature prescribes a particular mode for doing something and the same is expressed in the statute framed by it, then that thing must be done in that very manner and no other. If the tenant wishes to avail of this proviso, then he must comply with its requirements on the first date of hearing. It is no defence on his part to say that he had *already* deposited the arrears of rent due from him before the first day of hearing or that he had paid the said arrears outside the Court or at the house of the landlord. *It is of course understood that in the latter two contingencies the landlord is denying the assertion of the tenant.* The reason for this also seems to be quite plain. The requirements of the proviso have to be complied with and that also *before the Rent Controller* and it will in addition obviate the production of evidence to show that the said arrears had already been paid in a different manner, which is of course not prescribed by the

(3) 1957 P.L.R. 204.

statute. It will not be valid answer on the part of the tenant to say that if he could pay or tender the arrears of rent on the first day of hearing, he could equally do so earlier than that date. The statute does not give him that option. It is beyond dispute that where the words of a statute are clear and unambiguous, the Courts have no option, but to uphold and give effect to the law, however inconvenient the result of the operation of the law might be to individuals or groups. In my opinion, therefore, the said proviso was not complied with in the instant case, because, admittedly, on the first date of hearing, *viz.*, 11th May, 1967, the arrears of rent had *neither been paid nor tendered* as required by the proviso.

(14) If the language of the proviso is quite clear and not capable of any other interpretation, as I have already said, one does not require judicial decisions to say that a person, who wishes to avail of it, must strictly comply with its requirements. But fortunately for the landlord, there are the Supreme Court decision in *Vidya Prachar Trust case,* and a Bench ruling of this Court in *Mehnga Singh's case,* which have taken the same view. In the Supreme Court authority, the tenant had made two deposits, regarding the arrears of rent under section 31 of the Punjab Relief of Indebtedness Act, 1934, even before the ejectment application was filed and it was contended by him that he had thereby complied with the proviso to section 13(2)(i) of the Act. A Bench of this Court had held that such a deposit was quite valid, but this decision was reversed by the Supreme Court, observing :

> "The Act does not lay down any other procedure under which money can be deposited with any Government Authority. Such provisions are to be found in other Rent Control Acts but are missing in this Act. Eviction, therefore, takes place on the ground of non-payment or tender of rent due within time fixed by the tenancy and 15 days thereafter. There is only one saving for the tenant and that is when he tenders the *full rent* in Court *before the Rent Controller* together with interest and costs."

It was further held—

> "There is no provision in the Urban Rent Restriction Act *for making a deposit except one,* and that is on the first day of the hearing of the case."

Again, it was said:

> 'Further, the deposit of money in the present case was not only of the rent due, but also of future rent. Under section 19 read with section 6 of the Urban Rent Restriction Act, a landlord is liable to be sent to jail if he recovers advance rent beyound one month."

The Supreme Court then held that there was no valid tender and there was no compliance with the proviso, with the result that the eviction application was granted.

(15) The last quotation from the Supreme Court decision has been purposely given by me, because, in the instant case also, the tenant had deposited the arrears of rent up to 9th May, 1967, whereas in the ejectment application, it was stated that the tenant had not paid the rent from 9th November, 1965 to 8th March, 1967.

(16) It was contended by the learned counsel for the petitioner that in the Supreme Court decision, firstly, the rent had been deposited by the tenant even before the ejectment application had been filed by the landlord and secondly, the said deposit was made under section 31 of the Punjab Relief of Indebtedness Act. Such, according to the learned counsel, is not the position in the instant case, because here the arrears had been deposited in the Court of the Rent Controller, who was also the Senior Subordinate Judge, before whom the ejectment application was pending and the deposit had been made after notice of the said application had been served on the tenant.

(17) But, in my opinion, when such distinctions are made, the learned counsel is ignoring the firm decision given by the Supreme Court in the said case, where it is stated in unequivocal language that there is no provision in the Act for making a deposit *except one* and that is on the first date of hearing of the ejectment application. This is the only saving for the tenant and if he does not take advantage of that, he had to be evicted. It will be seen that the statement of law given by the Supreme Court is *not confined to the facts of that case only*. While interpreting the relevant provision, the Supreme Court has categorically stated that the Urban Rent Restriction Act has prescribed only one mode for making the deposit and that is given in the proviso. The Act, according to the Supreme Court, does not lay down any other procedure under which money can be

deposited with any Government authority. Although such provisions are to be found in other Control Acts, but they are missing in the East Punjab Urban Rent Restriction Act. Obviously, this exposition of law, regarding the interpretation of section 13(2(i) is meant for universal application and not confined to the facts of the particular case, with which the Supreme Court was dealing at that time.

(18) In *Mehnga Singh's case*, the tenant had deposited the arrears of rent in two instalments on two occasions in the Court of the Rent Controller *before the first date of hearing* and it was contended by him that it was sufficient compliance with the proviso to section 13(2)(i) of the Act. This contention was negatived by the learned Judges. In that case, the tenant had tried to avail of the equitable principles also by saying that he had already deposited the rent due from him. The learned Judges referred to the Supreme Court ruling in *Vidya Prachar Trust case* and observed that in view of that authority it could not be held that the two deposits made by the tenant amounted to payment or tender of rent due to the landlord. The precise argument, which is being raised by the learned counsel for the petitioner in the instant case, was urged there as well and it was rejected by the learned Judges, observing:

> "We are, however, of the opinion that there is no substance in this argument as the *payment or tender* of the amount due has to be made to the landlord in cash by the tenant to avoid the ejectment on the ground of non-payment of arrears of rent together with interest and costs, *on the first date of hearing* of the application for ejectment and the tenant cannot force the landlord to withdraw the amount which had been deposited by the tenant with some Government Authority."

It is, therefore, clear that the learned Judges had in unmistakable terms held that the payment or tender of the amount due together with interest and costs, was to be made to the landlord in cash by the tenant on the first date of hearing of the ejectment application to avoid his eviction on the ground of non-payment of arrears of rent. The tenant cannot force the landlord to withdraw the amount, which had been deposited by the former with some Government authority. This ruling fully covers the instant case. In this Bench decision also, the statement of law has been given *not only for the particular*

facts of that case, but the learned Judges have interpreted the relevant provisions and come to the conclusion mentioned above.

(19) It was argued that the above authority was distinguishable from the facts of the present one, because there the deposit had been made by the tenant earlier than the filing of the ejectment application. That, however, will not make any difference to the proposition of law laid down by the learned Judges to the effect that the payment or tender of the amount due has to be made to the landlord in cash by the tenant on the first date of hearing of the application. The main idea of the learned counsel for the petitioner in pointing out the difference in facts was perhaps to show that on the first date of hearing, actually *no arrears of rent were due* to the landlord, because the tenant had already deposited the rent either before the Rent Controller himself or the learned Senior Subordinate Judge under section 31 of the Punjab Relief of Indebtedness Act. If the law, as laid down by the Supreme Court and the Division Bench of this Court is that eviction takes place on the ground of non-payment or tender of rent due within time fixed by the tenancy and 15 days thereafter; and there is only one saving for the tenant and that is when he tenders the *full rent* in Court *before the Rent Controller* together with interest and costs *on the first day of the hearing* and further that there is *no provision* in the Act enabling the tenant *to deposit* the rent in the Court of the Rent Controller instead of *paying* it to the landlord, even if the landlord refuses to accept the same, then the difference in facts pointed out by the counsel for the tenant will not in any way affect the decision of the case. Whether the deposit is made before or after the ejectment application is filed or whether it is made in the Court of the Rent Controller or before the learned Senior Subordinate Judge, are considerations which are irrelevant, because the tenant can save himself from being ejected on the ground of non-payment of rent only when he complies with the proviso to section 13(2) (i) of the Act and that he can do only if the *pays or tenders* the arrears of rent together with interest and costs on the *first hearing* of the ejectment application. If he does not do so, then it is no defence for him to say that he had already deposited the rent and was no longer in arrears. It may, however, be mentioned that in the Bench decision of this Court also, the amount had been deposited before the Rent Controller, in whose Court the ejectment application was also pending.

(20) It may be stated that the learned counsel for the petitioner could not point out *any provision* in the Act enabling the tenant to *deposit* the rent in the Court of the Rent Controller instead of paying it to the landlord, *even if* the *landlord refuses* to accept the same. It is, consequently, not understood under what provision of law the tenant made the application on 29th April, 1967, for the deposit of Rs. 179.48 Paise. It was contended by the learned counsel for the landlord that there being no provision in the Act for making such a deposit, the same, according to him, was obviously under the provisions of section 31 of the Punjab Relief of Indebtedness Act, because similar procedure, as under that Act, was followed while making this deposit. If that be so, then the Supreme Court authority in *Vidya Prachar Trust case* will govern the present one as well, because there it was held:

> "That there is *no provision* in the East Punjab Urban Rent Restriction Act *for making a deposit of arrears* of rent together with interest and costs except one, and that is on the first date of hearing of the case in Court before the Rent Controller. Therefore, the deposit of arrears of rent under section 31 of the Punjab Relief of Indebtedness Act cannot be valid tender of rents within the scope of the East Punjab Urban Rent Restriction Act, and did not save the tenant from the consequences of the default as contemplated by section 13 of the East Punjab Urban Rent Restriction Act.
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> That the Punjab Relief of Indebtedness Act was passed to govern the relation between the debtors and creditors. The scheme of the Act bears upon this relationship because it provides for insolvency procedure, usurious loans, *damdupat*, redemption of mortgages, deposit in Court, and sets up Debt Conciliation Boards, suitably amending the civil Law wherever necessary. Incidentally it provides for deposit in court with a view to giving a chance to save interest on the outstanding dues either wholly or partially. The section, therefore, is intended to operate between debtors and creditors where difficulty in making the payment, either wholly or partly, may arise and the debtor wishes to save himself from interest which is running. The Act is not intended to operate between landlords and tenants, nor is the Court of the Senior Sub-Judge created into a clearing house for rent." It may be

stated that section 31 of the Punjab Relief of Indebtedness Act, 1934, lays down:—

31. (1) Any person, who owes money, may at any time deposit in Court a sum of money in full or part payment to his creditor. ... ...

(2) The Court *on receipt of such deposit shall give notice thereof to the creditor* and shall, on his application, pay the sum to him. ...

(3) From the date of such deposit interest shall cease to run on the sum so deposited."

(21) As I have already said, the learned counsel for the petitioner did not invite our attention to any other provision in the Act, under which this deposit could be made. If a tenant goes to the Rent Controller and makes a prayer that he should be permitted to deposit the rent in Court for payment to the landlord, the Rent Controller, will naturally say that he could do so on his own responsibility. The Rent Controller, will, obviously, not be concerned with the consequences of making such a deposit. The fact remains that the proviso to section 13(2)(i) of the Act is not complied with by making such a deposit.

(22) Learned counsel for the landlord referred to the relevant provisions of the Delhi Rent Control Act, 1958; Madras Buildings (Lease and Rent Control) Act, 1960, and Himachal Pradesh Urban Rent Control Act, 1971, wherein provisions have been made for making such deposits, but *concededly*, there is no such provision in the East Punjab Urban Rent Restriction Act, 1949, and this is what the Supreme Court had also observed in *Vidya Prachar Trust case*:

"The Act does not lay down any other procedure under which money can be deposited with any Government authority. Such provisions are to be found in other Acts, but are missing in this Act".

(23) I have already said that the arguments of justice and fair play are not available to the tenant, if he does not comply with the requirements of the proviso to section 13(2)(i) of the Act, which proviso is not capable of any other interpretation. Such an argument was negatived by the Bench in *Mehnga Singh's case* as well.

(24) Applying the law laid down by the Supreme Court and the Division Bench of this Court, one has merely to ask oneself the question as to whether the tenant, in the instant case, had complied with the provisions of the proviso. The reply obviously has to be in the negative, because he did not *either pay or tender all* the arrears of rent on the *first day* of hearing. He may have made the said deposit earlier, but that would not be a compliance with the proviso as laid down by these two decisions.

(25) Learned counsel for the petitioner made a reference to a Single Bench decison of A. N. Bhandari C. J. in *Mukh Ram* v. *Siri Ram.* (4), where the learned Judge had observed that the law did not require that the amount of rent should be tendered to the landlord himself or to the counsel of the landlord. It declared merely that the *tender* should be made on *the first hearing* of the case. Tender would be perfectly valid in the eye of law if it was made either to the landlord or his counsel or agent, or to the Controller for payment to the landlord.

(26) This authority also does not support the case of the tenant. According to the learned Judge, the arrears of rent had to be tendered on the first hearing of the eviction application and that is precisely what has been held by me above. I may, however, mention that this decision might perhaps in one respect come in conflict to some extent with the later Bench ruling of this Court in *Mehnga Singh's case.* But we are not concerned with that likely conflict in the present case. Besides, the fact, however, remains that this authority nowhere lays down that the tenant can save himself from being evicted, if he *deposits the rent earlier* than the first hearing of the case and can take advantage of such a deposit.

In view of what I have said above, I hold that the tenant had not complied with the proviso to section 13(2) (i) of the Act in the instant case and, therefore, the order of eviction passed against him is valid. The revision petition is, accordingly, dismissed, but in the circumstances of this case, however, I make no order as to costs.

B. S. Dhillon, J.—

(27) The facts of the case have already been elaborately stated by my learned brother Pandit J. in his judgment, therefore, I need

(4) 1959 P.L.R. 561.

not repeat the same except where it becomes so necessary. It is idle for the learned counsel for the landlord to contend that since there is no specific provision in the East Punjab Urban Rent Restriction Act (hereinafter referred to as the Act) for making the deposit of the rent before the Rent Controller, therefore, it be presumed that the deposit made by the tenant in this case before the first date of hearing was under section 31 of the Punjab Relief of Indebtedness Act. There was no application filed by the tenant under the provisions of the Punjab Relief of Indebtedness Act and there is no question of making any deposit under that Act. There is no provision under the Act specially empowering the Rent Controller to deal with similar matters which are ancillary and may arise during the pendency of the petition before him. For instance when an application is made to the Rent Controller for the deposit of diet money for summoning the witnesess or when a question arises whether a particular witness should be summoned or not, it is inherent and is in the competence of the Tribunal that it has jurisdiction to decide all these matters. In the present case the deposit of the rent was made with the Rent Controller after service of the notice of ejectment application on the tenant in the ejectment proceedings themselves. Therefore, as I look at the matter, the only question which requires determination in this case is whether technical compliance in detail of each word of the proviso to section 13(2) (i) of the Act, is necessary before a tenant can take advantage of this proviso. It would be seen that in this case the first date of hearing of the application for ejectment after due service of the tenant, was 11th May, 1967 and the tenant had deposited the due rent along with the rent for other two months in the Court of the Rent Controller on 4th May, 1967. This deposit was not made in any other proceedings than the application for ejectment because the contention of the learned counsel for the landlord that this deposit was made in the proceedings under section 31 of the Punjab Relief of Indebtedness Act, cannot prevail for the simple reason that there was no such application pending before the Rent Controller nor any such application under this provision was filed by the tenant. The tenant in fact deposited the rent in the ejectment application itself. Therefore, the question to be determined is if the tenant makes the payment of the rent due before the first date of hearing to the landlord either out of the Court or by way of tendering the rent before the Rent Controller on the date of first hearing or by depositing with the Rent Controller before the date of first hearing in the same proceedings, can it be said that the tenant has failed

to comply with the proviso even though the payment is admitted to have been received by the landlord out of Court before the first date of hearing or and in subsequent exigency, the money is ready to be paid on the first date of hearing to the landlord and, therefore, he is not entitled to the protection given thereunder. In my opinion, if the tenant has tendered the rent in the proceedings regarding the ejectment application filed by the landlord on or before the first date of hearing in the Court of the Rent Controller so that on the first date of hearing ready money is available to the landlord for the rent due as provided in the proviso, it cannot be said that the tenant has failed to comply with the proviso. For instance, take a case where the tenant has paid the rent due, a day earlier to the landlord out of the Court and the receipt of the payment is admitted, can the landlord take the plea that though the same was paid to him out of the Court before the first date of hearing, but since it was not paid to him on the date of hearing before the Rent Controller in cash, therefore, the tenant has failed to comply with the proviso and as such the tenant is not entitled to the protection given in the proviso. In my opinion, the answer will be that the tenant has complied with the proviso. It is to be kept in mind that the Act has been enacted for the benefit of the tenants and a number of provisos have been enacted to avoid reckless ejectment of the tenants. The proviso to sub-section (2) (i) of section 13 of the Act is another beneficial provision which has been enacted for the benefit of the tenants because this proviso provides that if a tenant has defaulted in paying the rent to the landlord, but as postulated in proviso to section 13(2) (i) of the Act, he pays the ready money to the landlord on the first date of hearing, he is not liable to be ejected and it will be deemed in law that he has duly paid or tendered the rent within the time as provided under section 13 of the Act. It is true that the tenant cannot avail the benefit of the proviso by referring the landlord to any other deposit made by him in any other proceedings or with any other governmental authority. As I interpret the proviso, the requirement of this proviso is that on or before the first date of hearing, the landlord must be made available with the ready money for the rent due and that he should not be referred to the deposit being made by the tenant in any other proceedings leaving him still to bother for the recovery of the rent. It is immaterial whether the payment is made to the landlord out of the Court if the same is admitted by the landlord to have been received by him out of the Court, or the said amount is deposited with the Rent Controller in the ejectment proceedings on or before the

first date of hearing. It is true that this provision is mandatory and if the amount due is not paid on the first date of hearing and is sought to be paid subsequently, it is to be held that the proviso has not been complied with and in that case the tenant will not be entitled to any benefit of this proviso, but if the rent is paid or tendered before the Rent Controller before the date of hearing in the same proceedings, then it cannot be said that the ready money was not available to the landlord on the first date of hearing as he would be entitled to receive the said money from the Court on the first date of hearing if the same has been deposited in the ejectment proceedings.

(28) The argument of the learned counsel that since there is no provision for making the deposit in the Court of the Rent Controller before the date of hearing under the Act, therefore, the same cannot be tendered or deposited with the Rent Controller before the date of hearing, loses sight of the fact that even if on the date of hearing the landlord refuses to accept the amount, still the Rent Controller shall have to deposit the same in Court as the tenant has tendered the same in Court and he also refuses to get the amount back, because according to the tenant this amount is due to the landlord, which the landlord, for any valid or invalid reasons, refuses to accept. In my view, it is inherent that the Rent Controller, in that situation, shall have to deposit the amount in Court and the same shall be disbursed subject to the final decision to be made by the Rent Controller. Similarly, for making any type of application during the course of the ejectment proceedings, no specific provision of law has been set out, but when the Rent Controller is trying an ejectment application, it is inherent that he is empowered to deal with any ancillary matter, which comes up before him at any time during the pendency of the ejectment application and the question of depositing the rent in the Court, is such a matter which the Rent Controller has to deal with. Earlier the landlord will accept the amount or the tenant may, after tendering the same, withdraw it, or the Rent Controller has to get the same deposited in Court if neither the landlord accepts the same nor the tenant withdraws it.

(29) If the proviso to section 13(2) (i) of the Act is to be given such a technical interpretation, that each word of it has to be literally complied with, that, to my mind, will lead to a very anomalous position. For instance, as I have already said if the rent due is

paid to the landlord before the first date of hearing out of the Court and the receipt of the said payment is not disputed by the landlord, but the landlord takes the plea that since the payment was not made in cash on the first date of hearing before the Rent Controller though the rent has been received by him before the first date of hearing still, the tenant is not entitled to the protection of the proviso to section 13(2) (i) of the Act, such plea shall have to be accepted. If the proviso is to be literally interpreted, it has to be held that the tenant has failed to comply with the requirement of the proviso and, therefore, he is not entitled to the protection. This is not the intention of the Legislature that though the rent due to the landlord has been paid by the tenant in fact before the first date of hearing and the receipt of the payment of which is not in dispute, still the tenant will be denied the protection of the proviso because he did not tender the rent on the first date of hearing before the Rent Controller in cash. Take another instance. Supposing in a given case due service of the first date of hearing on the tenant has not been effected but somehow or the other, the tenant comes to know of the first date of hearing and appears in Court and tenders the rent, can a plea be taken by the landlord that the tender is invalid because the tenant was not duly served. If each word of the proviso has to be literally complied with, then such an objection must be upheld, but in my opinion, that is not the intention of the Legislature. In enacting that the tender has to be made on the first date of hearing after due service on the tenant, the Legislature provided protection to the tenant so that he may not be defrauded inasmuch as that he is not duly served but on the basis of a faked service, opportunity given to him for tendering the due rent under the proviso to section 13(2) (i) of the Act, is not denied to him, but the landlord cannot take advantage of this part of the proviso in getting the tender declared as invalid on the ground of its being made without due service. Similarly, if the ejectment application is called up for hearing at 10.00 A.M. on the date of hearing, and the tenant for some reason, is late by five minutes and the moment he appears before the Rent Controller, the hearing of the case is already over, in that case, it can be said that the rent has not been paid on the first hearing of the ejectment application as the hearing was already over and the tenant will not be entitled to tender the amount of rent even though the landlord may be still present in the Court, as the case has already been adjourned. In this connection a Single Bench decision of this Court in *Mukh Ram* v. *Siri Ram* (4) (supra) may he referred to wherein it was held

that the expression 'hearing' is used to describe whatever takes place before a Tribunal clothed with judicial functions at any stage of the proceedings subsequent to its inception. When the Legislature directs that the tenant should tender the arrears of the rent on the first hearing of the application it appears to require that the tender should be made at any time on the day on which the application comes up for hearing for the first time. Therefore, if the tender is made at any time during working hours on the day fixed for hearing the provisions of the law are completely satisfied. It was further held that the law does not require that the amount of rent should be tendered to the landlord himself or to the counsel of the landlord. It declares merely that the tender should be made on the first hearing of the case. Tender would be perfectly valid in the eye of law if it is made either to the landlord or his counsel or agent, or to the Controller for payment to the landlord. I am in agreement with the view expressed in this reported case. The intention of the Legislature in enacting this proviso is that the landlord should be made available with the dues of rent on the first date of hearing and that it should be in the form of ready money available to him and not that the amount has to be tendered on the very first day of hearing and not before.

(30) In my view, the ratio of the decision of the Supreme Court in *Vidya Prachar Trust* v. *Basant Ram* (1) (supra), on which the learned counsel for the landlord relies, is that the amount should be made available to the landlord on or before the first date of hearing and not that the landlord be referred to the deposit made in some other proceedings. In that case, the tenant had made two deposits in the Court of the Senior Sub-Judge in an application under section 31 of the Punjab Relief of Indebtedness Act, much before even the ejectment application was filed. The tender by the tenant in these proceedings was pleaded to be a valid tender. It was held by the Supreme Court that such a tender could not be considered to be a valid tender as the provisions of section 31 of the Punjab Relief of Indebtedness Act were not the provisions under which the dispute between the landlord and the tenant could be decided nor was the Court of the Senior Sub-Judge created to be the clearing house for the rent. It was held that the provisions of the Punjab Relief of Indebtedness Act were meant to govern the relations between the debtor and the creditor and not between the landlord and the tenant. When their Lordships of the Supreme Court observed that there was no provision in the Rent Restriction

Act for making a deposit except the one, i.e., on the first date of hearing of the case, their Lordship were in fact examining the argument whether the provisions of the Punjab Relief of Indebtedness Act would govern a dispute between the landlord and the tenant because in the next sentence their Lordships observed as under :—

> "It could not have been intended that all tenants who may be disinclined to pay rent to their landlords should be enabled to deposit it in the Court of a Senior Sub-Judge making the Senior Sub-Judge a kind of a Rent Controller for all landlords. The provision for stoppage of interest is a pointer that the interest in the first instance must have been due. In our judgment section 31 has been misunderstood in the High Court. A second pointer is that amount may be deposited in part which cannot possibly be a valid tender in case of rent. It may be pointed out that the decision of the Division Bench runs counter to two other decisions of Single Judges of the same High Court who have taken the same view which we are taking here. The decisions are noticed by the Division Bench but have not been accepted. The decisions of the learned Single Judge are to be preferred. The Division Bench has taken a very extended view of the deposit under the Relief of Indebtedness Act."

While examining as to whether the Punjab Relief of Indebtedness Act, 1934, would govern a dispute between the landlord and the tenant. Their Lordships further held that under section 19 read with section 6 of the Urban Rent Restriction Act, the landlord is liable to be sent to jail if he recovers advance rent beyond one month. This was again observed by their Lordships with a view to test the argument whether the provisions of the Punjab Relief of Indebtedness Act will govern the dispute between the landlord and the tenant because if the said Act would govern such disputes, the rent could be tendered in advance from the date when it becomes due and that according to the provisions of section 19 read with section 6 of the Act it is a penal offence.

(32) In this view of the matter, I am inclined to take a view that the decision of the Supreme Court in *Vidya Prachar Trust Case* does not lay down that the tenant cannot deposit the rent before the

Rent Controller in ejectment proceedings any time before the first date of hearing. In fact that decision laid down that the tenant cannot refer to the landlord to any other deposit made in any other proceedings in another Court and ask him to take that amount which he has tendered. The argument of the learned counsel for the landlord that in this case also the tenant had deposited the rent up to 9th May, 1967 and, therefore, the landlord was not entitled to accept the same as there could be proceedings for having received the advance rent, is again without any merit. When the tender was made on 4th May, 1967, the rent had become due until that date and it cannot be said that the landlord was in any way going to receive the advance rent. At the most, even if the rent claimed in the ejectment application by the landlord was till 8th March, 1967, in that case it be taken that excess rent was deposited by the tenant and the landlord could only withdraw his rent till 5th March, 1967. Depositing of the excess rent, if the same has been tendered before the first date of hearing, would not warrant a finding that the tenant has failed to comply with the proviso to sub-section (2) (i) of section 13 of the Act.

(33) In *Vidya Prachar Trust case* the money, to which the tenant was referring as a tender, was deposited in separate proceedings, i.e., in the proceedings under section 31 of the Punjab Relief of Indebtedness Act, and also in a different Court, i.e., in the Court of the Senior Sub-Judge than that of the Rent Controller.

(34) Similarly, a Bench decision of this Court in *Mehnga Singh and others* v. *Dewan Dilbagh Rai and others* (2) (supra), which followed the Supreme Court decision in *Vidya Prachar Trust Case*, is to the same effect. In that case also the landlord had filed an application for ejectment on 31st March, 1967 in the Court that the tenant had failed to pay the rent from 1st August, 1966 to 28th February, 1967, but the tenant's plea was that the arrears of rent for the period of 7 months were cleared as the rent had been deposited in Court under section 31 of the Punjab Relief of Indebtedness Act and that no rent was due to the landlord at the time the application for ejectment was made. This was clearly a case where the deposit had been made in another proceedings, i.e., in proceedings under section 31 of the Punjab Relief of Indebtedness Act and also in a different Court, i.e., in the Court of the Senior Sub-Judge though the Senior Sub-Judge was exercising the powers of the Rent Controller. This would show that this tender was not made in the

ejectment application itself but was in some other proceedings to which it was not open to the tenant to refer the landlord for the payment of the rent due if the tenant had to take the benefit of the proviso. The learned Judges during the course of their judgment did observe that the landlord is entitled to cash rent. In my opinion, when the learned Judges were referring to the cash payment, they really meant the ready money available. As I read this judgment, it is not laid down in this case that if a deposit is made even a day earlier to the first date of hearing during the course of the same proceedings before the Rent Controller, the tender will still be invalid because there is no compliance with the proviso as the tender should have been made on the first date of hearing itself and not a day or so earlier.

(35) The matter may be examined from another angle. The proviso does not say whether the tenant has to tender the amount to the landlord. In fact he is to tender the amount to the Rent Controller who will in turn ask the landlord for its acceptance. If the landlord refuses to accept the amount and the tenant also refuses to with draw the same, the Rent Controller is bound to deposit the same in Court till the proceedings continue and the amount will be disposed of according to the final orders passed in the ejectment application. If the Supreme Court judgment in *Vidya Prachar Trust Case* is taken to have held, that no deposit could at all be made in any circumstance in the Court of the Rent Controller, even in that case the deposit of this amount will also be clearly without jurisdiction, which, in my opinion, is not the correct interpretation of the Supreme Court judgment.

(36) It is next contended by the learned counsel for the landlord that there are provisions for the deposit of the rent in the Delhi Rent Control Act, 1958 and in the Himachal Pradesh Urban Rent Control Act, 1971 (Act No. 23 of 1971), whereas there is no such analogous provision made in the East Punjab Urban Rent Restriction Act. Therefore, the tenant could not deposit the rent with the Rent Controller. This submission is without any force. The scheme of the Delhi Rent Control Act of 1958 is quite different from the scheme of the East Punjab Urban Rent Restriction Act. Chapter II of the Delhi Act makes various provisions in connection with the payment of the rent. Chapter III of the said Act deals with the control of eviction of tenants. Section 14 of the Delhi Act provides

for the protection of the tenants against eviction and is in the following terms:—

"14. **Protection of tenant against eviction.**—

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant.

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:—

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in section 106 of the Transfer of Property Act, 1882 (4 of 1882);

*(b) * * * *

(c) * * *

(d) * * *

(e) * * *

(f) * * *

(g) * * *

(h) * * *

(i) * * *

(j) * * *

(k) * * *

(l) * * *

"(2) No order for the recovery of possession of any premises shall be made on the ground specified in clause (a) of the proviso to sub-section (1) **if the tenant makes payment or deposit as required by section 15:**

Provided that no tenant shall be entitled to the benefit under this sub-section, if, having obtained such benefit once in respect of any premises he again makes a default in the payment of rent of those premises for three consecutive months.

(3) * * * *

* * * *."

(37) Section 15 deals with the situation when a tenant can get the benefit of protection against eviction, which is as follows:—

"15. (1) In every proceeding for the recovery of possession of any premises on the ground specified in clause (a) of proviso to sub-section (1), of section 14, the Controller shall, after giving the parties an opportunity of being heard, make an order directing the tenant to pay to the landlord or deposit with the Controller within one month of the date of the order, an amount calculated at the rate of rent at which it was last paid for the period for which the arrears of the rent were legally recoverable from the tenant including the period subsequent thereto up to the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit, month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate.

(2) * * *.

(3) * * *.

(4) * * *.

(5) * * *.

(6) * * *.

(7) * * *.

* * *

* * *".

(38) It would thus be seen from the scheme of the Delhi Act that there is no analogous provision as contained in section 13 of the East Punjab Urban Rent Restriction Act providing for the tendering of the rent on the first date of hearing after notice of ejectment application has been issued to the tenant, but on the other hand, under section 15 of the Delhi Act, regular proceedings take place for determining the question for the payment of the rent and the tenant is entitled to deposit the rent within one month of the order passed under sub-section (1) of section 15 of the Delhi Act. The other sub-sections of section 15 of the Delhi Act prescribe a detailed procedure and cover the case of all types in order to adjudicate between the landlord and the tenant regarding the dispute about the rent. Sub-section (6) of section 15 of the Delhi Act provides that if a tenant makes payment or deposit as required by sub-section (1) or sub-section (3), no order shall be made for the recovery of possession on the ground of the default in the payment of rent by the tenant, but the Controller may allow such costs as he may deem fit to the landlord. In sub-section (7), it is provided that if a tenant fails to make payment or deposit as required by this section, the Controller may order the defence against eviction to the struck out and proceed with the hearing of the application.

(39) It would further be seen that Chapter IV of the Delhi Act deals with the deposit of rent. Section 26 prescribes that every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable, and the landlord is enjoined upon to issue receipt for the receipt of the said rent. Under section 27 it is provided that where the landlord does not accept any rent tendered by the tenant within the time referred to in section 26 or refuses or neglects to deliver a receipt referred to therein or where there is a *bona fide* doubt as to the person or persons to

whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner. The subsequent provisions of section 27 further prescribe the detailed procedure as to how and in what manner the application accompanied by the deposit has to be dealt with by the Rent Controller. Section 28 of the Act provides that no rent deposited under section 27 shall be considered to have been validly deposited under that section unless the deposit is made within 21 days of the time referred to in section 26 for the payment of the rent.

(40) Thus from what has been stated above, it would be seen that the scheme of the Delhi Act is quite different wherein a procedure has been prescribed in the event of a landlord refusing to accept the rent or refusing to issue receipt for the rent, the tenant is entitled to approach the Rent Controller for effecting the delivery of the rent, but there is no such analogous provision in the East Punjab Urban Rent Restriction Act wherein the tenant can approach the Rent Controller for this purpose. The only provision is the proviso to section 13(2)(1) of the Act, which gives the tenant a protection that if he pays the rent due on the first date of hearing, he is not liable to be ejected. Thus the argument that there is analogous provision in the Delhi Act wherein the provision for depositing the rent has been made, cannot be sustained as there is no such provision entitling the tenant to deposit the rent on the first date of hearing nor there is any procedure for such deposit being made. The procedure for deposit of the rent is completely in a different scheme which has got completely different basis.

(41) As regards the Himachal Pradesh Urban Rent Control Act, 1971, it may be pointed out that the provisions of section 14 are in the following terms:—

14. *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 the tenancy, except in accordance with the provisions of this section.

(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—

(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 application for ejectment after the due service pays or tenders the arrears of rent and interest at 6 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;

Provided further that the tenant against whom the Controller has made an order for eviction on the ground of non-payment of rent due from him, shall not be evicted as a result of his order, if tenant pays the amount due within a period of 30 days from the date of order, or

* * *

* * *".

(42) It would be seen that in the Himachal Pradesh Act there is first proviso to sub-section 2(i) of section 14 which is analogous to the proviso under the East Punjab Urban Rent Restriction Act, but here again no procedure has been prescribed for depositing the rent before the Rent Controller under this proviso. This Act further contains the pattern of the Delhi Act, regarding the deposit of the rent by the tenant where the landlord does not accept the rent tendered by the tenant or refuses to deliver the receipts as under section 18 a similar provision as under section 27 of the Delhi Act, has been provided. Section 19 of the Himachal Pradesh Act, provides the time limit for making deposit. There is a second proviso to sub-section (2)(i) of section 14 of the Himachal Pradesh Act, which provides that if the tenant against whom the Controller has made an

order for eviction on the ground of non-payment of rent due from him, shall not be evicted as a result of his order if the tenant pays the amount due within a period of 30 days from the date of the order. It is, therefore, to be noted as regards the deposit to be made under both the provisos to sub-section (2)(i) of section 14 of the Himachal Pradesh Act, there is no procedure prescribed by the Act, and therefore, the argument that since in the analogous provisions of the Delhi and Himachal Pradesh Acts, a procedure for deposit of the rent has been prescribed and since it has not been prescribed in the East Punjab Act, therefore, no deposit could be made under the East Punjab Act, cannot be sustained.

(43) As I have already said the proviso to section 13(2)(i) of the East Punjab Urban Rent Restriction Act, is a provision for the benefit of the tenants and the other purpose of the said proviso is to see that the landlord is not unncessarily harassed and if the tenant pays him the rent due along with the amount as stipulated in the proviso on the first date of hearing, i.e., ready money, the tenant is not liable to be ejected and if the rent has been deposited by the tenant before the Rent Controller in the same proceedings, which rent is readily available to the landlord on the first date of hearing, it cannot be said that the tenant has failed to comply with the proviso. In one case the rent will be in cash before the Court when it is tendered before the Rent Controller on the first date of hearing, in the other case, the rent is already tendered to the Rent Controller and is available for being paid to the landlord immediately on the first date of hearing. Neither of the cases will affect the basis of the proviso, i.e., that the rent will be readily available to the landlord for being paid to him.

(44) In this view of the matter, I would accept this revision petition and hold that the tenant in this case has duly complied with the proviso to sub-section (2)(i) of section 13 of the Act, having paid the rent due along with the necessary charges as mentioned in the proviso, which were payable to the landlord on the first date of hearing. The order of the authorities below is, therefore, set aside. There is, however, no order as to costs.

JUDGMENT

R. N. Mittal J.

(45) This revision petition came up for hearing before Pandit, J., who referred it to a Division Bench. The matter thereafter was listed

before a Division Bench consisting of Pandit and Dhillon, JJ. There was difference of opinion between the learned Judges and consequently it was ordered that it may be listed for hearing before a third Judge. This is how the matter has been placed before me.

(46) It is not necessary to give the facts as these have been given in detail by my learned brother Pandit, J.

(47) The main question that arises for determination is as to whether the amount of Rs. 179.48 deposited by the tenant on May 4, 1967, in the Court of Senior Subordinate Judge (Rent Controller) on account of rent from November 9, 1965 to May 9, 1967, together with the tender of Rs. 25 as costs and Rs. 2 as interest on May 11, 1967, the first date of hearing, is a valid tender or payment under the provisions of section 13(2)(i) of the East Punjab Urban Rent Restriction Act (hereinafter referred to as the Act). In order to determine this question, it will be advantageous to refer to section 13(2)(i) of the Act, which is reproduced below:—

> "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 application, is satisfied
>
> (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 application 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."

A reading of the section shows that the tenant is required to pay or tender the rent due to a landlord within the prescribed period, that is, within 15 days after the expiry of the time fixed in the agreement of tenancy and in the absence of such an agreement, by the

last day of the month, next following that for which the rent is payable. In case the tenant fails to do so, the landlord can seek his eviction on this ground. The proviso gives to the tenant a further opportunity of paying or tendering rent after the application of ejectment has been filed. He can, however, do so only on the first date of hearing of the application for ejectment and that too with interest at the rate of 6 per cent per annum and costs of the application assessed by the Rent Controller. If the rent is paid or tendered on the first date of hearing along with the interest and costs, it is deemed to be duly paid by virtue of the proviso and the ground of ejectment for non-payment no longer remains available to the landlord. If the tenant fails to do so, the Controller has no option but to order his ejectment. The reason for making this provision is that only the tenants who pay rent to the landlords should get benefit of other clauses in section 13. No doubt it is true that the Act provides protection to the tenants against *mala fide* attempts of landlords to procure eviction, but simultaneously it gives summary remedy to the landlord to seek ejectment of his tenant if he does not pay rent. The intention of the Legislature also appears to be that if the tenant does not pay or tender the rent in the prescribed manner, he incurs the liability of being ejected from the premises taken on lease. It is a well established principle of law that if the Legislature has prescribed a particular mode of doing a thing, it should be done in that way and no other. Hardship or inconvenience cannot alter the meaning of the language used in a statute. In the present case, the proviso can be interpreted only in one way and it is that the tenant who is in arrears of rent must pay or tender the rent in the manner mentioned in it and in no other manner.

(48) The facts of the case are not disputed. The rent from November 9, 1965 to May 9, 1967, at the rate of Rs. 10.62 per mensem after adjusting the excess rent from August 18, 1965 to November 9, 1965, was deposited by the tenant on May 4, 1967, in the Court of Rent Controller (Senior Subordinate Judge), Gurgaon, in pursuance of the order, dated April 29, 1967. He tendered the interest and the costs as prescribed by the Rent Controller on May 11, 1967, the first date of hearing, to the landlord. The question for determination is whether the amount deposited by the tenant prior to the first date of hearing was proper or not. In other words, whether the amount deposited by him on May 4, 1967, before the Rent Controller would be considered to have been tendered on May 11, 1967. In order to determine this question, I shall first advert to the factual

position. The ejectment application, titled *Sher Singh* v. *Sheo Narain* was filed by the landlord on March 21, 1967, which was numbered 16 of 1967. Notice of this application was issued to the tenant on March 22, 1967, for May 11, 1967. He was served on April 22, 1967. He filed an application titled as *Sheo Narain* v. *Sher Singh* for depositing the rent on April 29, 1967. It is noteworthy that in the application he has not mentioned about the application for ejectment by the landlord against him, in spite of the fact that a notice had been served upon him of the ejectment application prior to the date of filing the above application. This application was numbered separately. The Rent Controller did not treat this application as a part of the application for ejectment. He passed an order that the rent be deposited at the responsibility of the petitioner and after that notice be issued on payment of process fee to the respondent for 11th May, 1967. Consequently a notice was issued to the landlord for the aforesaid date. It may be reiterated that the amount of rent was ordered to be deposited by the Rent Controller at the responsibility of the petitioner in that application, that is, Sheo Narain, tenant. On May 11, 1967, it was ordered in that application that the respondent's counsel, Shri P. L. Kakar had been informed that the petitioner had deposited Rs. 179.48 on May 4, 1967, and the papers be filed. It is established from the aforesaid facts that the application for deposit of the rent was treated as a separate application from that of the ejectment application, by the Court as well as the tenant. In the application for ejectment, Sheo Narain tenant, made a statement before the Court that he had already deposited Rs. 179.48 up till May 9, 1967, as arrears of rent, which be paid to the petitioner and that he also tendered Rs. 25 as costs and Rs. 2 as interest. The counsel for the landlord declined to accept the amount on the ground that the tender made by the tenant was not valid and sufficient. In the aforesaid situation it is to be seen whether the tender is a proper one or not.

(49) It is not disputed that there is no provision in the Act regarding the deposit of the arrears of rent before the Rent Controller. The counsel for the landlord vehemently contends that in case there is no provision in the Act to deposit the arrears of rent, the deposit would be deemed to be under the Punjab Relief of Indebtedness Act. On the other hand, learned counsel for the tenant has submitted that the arrears of rent were deposited before the Rent Controller in the ejectment application. He further argues that if no provision has been made in the Act, the Rent Controller had the inherent power

to order deposit of arrears of rent in his Court. In the circumstances he says that the deposit would not be considered to have been made under the Punjab Relief of Indebtedness Act.

(50) I have given the details of the application and the order under which the deposit was made. As already stated there was no reference of application of ejectment in the application for depositing the arrears of rent. If it was so, it cannot be held that the rent was deposited in the application for ejectment. In the application it is not mentioned that the deposit was being made under the Punjab Relief of Indebtedness Act. The Senior Subordinate Judge passed the order in that application for depositing the amount as a Rent Controller on April 29, 1967. The subseqpent order on May 11, 1967, was also passed by him as a Senior Subordinate Judge-cum-Rent Controller. In the aforesaid situation it cannot be held that the amount was ordered to be deposited by the Rent Controller under he Punjab Relief of Indebtedness Act. Thus the amount was deposited by the tenant before the Rent Controller, for which there was no provision in the Act.

(51) As already mentioned above, under the proviso, the tender or payment of the rent can be made by a tenant to his landlord on the first date of hearing of the application for ejectment together with 6 per cent interest and costs of the application assessed by the Controller. It is not the argument of the learned counsel that the case of the tenant is covered by main clause (i) of section 13(2). His argument is that his case is covered by the proviso to the aforesaid clause. The intention of the legislature appears to be clear that the payment of tender is to be made by the tenant under he proviso on the first date of hearing and at no other point of time. The deposit of the rent by a tenant prior to the date of hearing before the Rent Controller cannot be considered to be either a proper tender or payment. The word 'tender' has been interpreted by a learned Judge of this Court in *Kali Charan* v. *Ravi Datt and others* (3) (supra), as follows:—

> "The word 'tender' imports not merely the readiness and the ability to pay or perform, at the time and place mentioned in the contract, but also, the actual production of the thing to be paid or delivered over. A mere offer to pay does not constitute a valid tender; the law requires that the tenderer has the money present and ready, and produce and actually offer to the other party. Tender implies the physical

act of offering the money or thing to be tendered. The law insists upon an actual, present, physical offer; it is not satisfied by a mere spoken offer to pay, which although indicative of present possession of the money and intention to produce it is unaccompanied by any visible manifestation of intention to make the offer good."

I am in respectful agreement with the above observations. The amount deposited in the Court cannot amount to a proper tender within the purview of proviso to clause (i) of section 13(2) of the Act. In order to constitute a proper tender, the amount should have been tendered before the Rent Controller himself. It also cannot amount to payment. Even the Rent Controller was cautious in passing the order on April 29, 1967. There he stated that the amount be deposited at the responsibility of the petitioner. He did not take the responsibility on himself and considered the amount as payment towards the rent.

(52) This matter is not *res integra* and has been dealt with by this Court as well as the Supreme Court. Reference in this connection may be made to *Ram Nath* v. *Girdhari Lal etc.* (5). In that case an application for ejectment was made on the ground of non-payment of rent in August, 1952. The Court issued summons to the defendants for January 20, 1953. One of the defendants deposited arrears of rent in the Court on January 16, 1953, before the date of hearing. January 20, 1953, was declared a holiday and the case was adjourned to February 17, 1953. Some of the defendants appeared in the Court on that date and the Court ordered substituted service for the unserved respondents. On the same day the defendant who had deposited the arrears of rent, applied to the Court to consider the deposit which he had made under section 30 of the Relief of Indebtedness Act and in the alternative sought extension of time for deposit of the arrears of rent. The Court extended time up to March 26. The deposit was made in Court on the 16th March. All the defendants appeared before the trial Court on March 26, 1953. The learned Judge, after taking notice of section 13(2) of the Delhi and Ajmer Rent Control Act, 1952, which is analogous to the proviso to section 13(2)(i), observed that section 13(2) of the Delhi and Ajmer Rent Control Act does not contemplate payment in Court before the first

(5) 1959 P.L.R. 77.

date of hearing and there is no provision which governs such a payment. Similar question again arose in (6) (*Sat Paul* v. *Mathooran*), Mehar Singh, J., who decided it, followed *Ram Nath's case* and held as follows:—

> "Once payment of rent is not made by the last day of the month next following that for which the rent is payable, the rent is in arrears and under section 13(2)(i) the right that accrues to the landlord to apply for ejectment of the tenant can only be made by complying with the proviso to that provision and deposit in a forum other than the Rent Controller and at a time other than the time referred to in the proviso is not a deposit in the shape of payment or tender under the proviso nor at the time mentioned in the proviso."

The above two decisions were approved by the Supreme Court in *Shri Vidya Prachar Trust* v. *Basant Ram* (1) (supra). In the aforesaid case the landlord had made an appliction for ejectment under section 13 of the Act on the allegation that the rent for the premises from October 1, 1959 to June 30, 1961, had not been paid. The rent of the premises was Rs. 32-8-0 and the water connection charges were Rs. 2-8-0 On the first date of hearing, the tenant appeared and tendered Rs. 292-8-0 as rent from October 1, 1960 to June 30, 1961. He also paid Rs. 7 as interest and Rs. 25 as costs. The amounts were accepted by the landlord without prejudice to his claim that the rent for the earlier period had not been paid. The tenant had made two deposits of Rs. 210 each in the Court of the Senior Subordinate Judge under section 31 of the Punjab Relief of Indebtedness Act on December 23, 1959 and July 18, 1960. The tenant claimed that that was a valid tender of rent to the landlord. The Rent Controller took the view that the tenant was not in default, appellate authority and a Division Bench of this Court affirmed the view of the Rent Controller. The Supreme Court, on further appeal, differed from the view taken by the Division Bench of this Court and observed as follows:—

> "The Act does not lay down any other procedure under which money can be deposited with any Government Authority. Such provisions are to be found in other Rent Control Acts

(6) C.R. 357/62, decided on 22nd November, 1962.

but are missing in this Act. Eviction, therefore, takes place on the ground of non-payment or tender of rent due within time fixed by the tenancy and 15 days thereafter. There is only one saving for the tenant and that is when he tenders the full rent in Court before the Rent Controller together with interest and costs. In the present case, the tenant did tender rent, but only for a portion of the period and he relied on his deposit under the Relief of Indebtedness Act as due discharge of his liability for the earlier period. It may be stated that the deposit before the Senior Sub-Judge was made not only of arrears of rent, but prospectively for some further period for which the rent was then not due. The question is whether such payment is a valid payment or tender to the landlord.

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There is no provisions in the Urban Rent Restriction Act for making a deposit except one, and that is on the first day of the hearing of the case. It could not have been intended that all tenants, who may be disinclined to pay to their landlords should be enabled to deposit it in the Court of a Senior Sub-Judge making the Senior Sub-Judge a kind of a Rent Controller for all landlords. The provision for stoppage of interest is a pointer that the interest in the first instance must have been due. In our judgment section 31 has been misunderstood in the High Court. A second pointer is that amount may be deposited in part which cannot possibly be a valid tender in case of rent. It may be pointed out that the decision of the Division Bench runs counter to two other decisions of Single Judges of the same High Court who have taken the same view which we are taking here. The decisions are noticed by the Division Bench, but have not been accepted. Division Bench has taken a very extended view of the deposit under the Relief of Indebtedness Act."

It may be referred at this juncture that the learned Judges of the Supreme Court did not mention particulars of the two judgments given by the learned Single Judges, but it was stated by Mr. H. L.

Sarin, learned counsel for the landlord that the reference was to *Ram Nath's and Sat Paul's cases* (supra). He was not contradicted by the counsel for the tenant in this regard. It may further be mentioned that a Division Bench judgment of this Court in *Mam Chand* v. *Chhotu Ram and others*, (7), which did not approve the aforesaid two Single Bench cases and expressed a contrary view was overruled by their Lordships of the Supreme Court. From the perusal of the aforesaid judgment it is clearly established that payment can be made by the tenant if he has not made the payment in accordance with clause (i) of section 13(2) of the Act, on the first date of hearing before the Rent Controller after he had been served. It further shows that the deposit of the rent in the Court prior to that date would not be a proper deposit as the Rent Controllers had no such power to order deposits. This case was followed by a Division Bench of this Court in *Mehnga Singh and others* v. *Dewan Dilbagh Rai and others* (2) (supra), and it was held by it that the payment or tender of the amount due has to be made to the landlord in cash by the tenant to avoid his ejectment on the ground of non-payment of arrears of rent, together with interest and costs, on the first date of hearing of the application for ejectment and the tenant cannot force the landlord to withdraw the amount which had been deposited by the tenant with some Government Authority. A contention was raised before the learned Bench that the technicalties of law should be discarded by a Court and it should act upon equitable principles, keeping in view the spirit of the law. This contention was negatived by the learned Bench. After considering all the aforesaid cases, I am of the view that the deposit made by the tenant before the Rent Controller on May 4, 1967, together with interest and costs paid on May 11, 1967, was not a proper tender or payment of arrears of rent within the meaning of the proviso to section 13(2)(i) as there is no provision in the Act for making a deposit of the amount.

(53) The learned counsel for the tenant wanted to distinguish all the aforesaid cases on the ground that the amount was deposited in the said cases under the Punjab Relief of Indebtedness Act. He argues that in the present case, the amount has not been deposited under the aforesaid Act, but under the East Punjab Urban Rent Restriction Act. Consequently he submits that the observations in those cases are not applicable to the present case. He further argues that the aforesaid cases were decided on different facts and

(7) 1964 P.L.R. 93.

consequently the observations in them should not be applied to the present case. I am not impressed with this argument. No doubt, it is true that deposits were made in all those cases under the Punjab Relief of Indebtedness Act, the observations of the Supreme Court have wide amplitude. As already stated above, the Supreme Court specifically observed in *Shri Vidya Prachar Trust's* (1) (supra) case that there is only one saving for the tenant and that is when he tenders the full rent in the Court before the Rent Controller together with interest and costs. It is very clear from the observations that in order to save ejectment it is incumbent upon the tenant to tender the amount on the first date of hearing. Consequently any deposit made earlier cannot be said to be a tender on the first date of hearing.

(54) The learned counsel for the petitioner has further argued that if no procedure is prescribed by any Act, the Court can adopt its own procedure. He argues that as there is no procedure in the Act for depositing the rent, the Rent Controller under his inherent powers could order the deposit of the rent prior to the date of hearing. He further says that in accordance with the principles of fair play, justice and equity, the deposit should be considered to be a proper tender on the first date of hearing. I am also not inclined to accept this contention of the learned counsel. The Act prescribes a particular mode of payment of rent. In the proviso to section 13(2)(i) it is stated that in case a tenant has not paid the rent in terms of clause (i) of section 13(2) he can do so on the first date of hearing. From the aforesaid provision it is clear that the Legislature wanted that the payment should be made by the tenant in a particular way and in no other. There is no provision in the Act to make a deposit of the amount of rent in the Court of Rent Controller. Therefore, the Rent Controller, can not order deposit of the rent. In case he does so, that order is without jurisdiction and the deposit will not amount to a tender or payment within the meaning of the proviso to section 13(2) (i). The learned counsel, in support of his contention, placed reliance on the observations of R. S. Narula, J. (as my Lord then was), in *Chaman Lal* v. *Ashwani Kumar and others* (8). The facts of that case are different as the question in that case was whether Rent Controller could allow amendment of the pleadings. The learned Judge observed that the Court of the Rent Controller has the inherent jurisdiction to allow amendment of pleadings in eviction cases for good and sufficient reasons, as there is no bar in

(8) 1974 P.L.R. 224.

any law to the exercise of that power by a Rent Controller. Regarding payment of rent after an application for ejectment has been filed, as already stated above, a particular procedure has been prescribed by the proviso to section 13(2)(i) of the Act. Therefore *Chaman Lal's* case is distinguishable. In the circumstances, the counsel cannot derive any benefit from the above observations.

(55) The learned counsel for the petitioner then argues that the law does not intend that the rent should be paid or tendered only to the counsel or the landlord. He argues that the tender would be a good tender in the eye of law if it is made either to the landlord or his counsel or the Rent Controller for payment to the landlord. From the aforesaid circumstances he submits that in case rent is deposited before the Rent Controller for payment to the landlord, that would amount to tender of the amount in the Court on the first date of hearing. In support of the contention he has placed reliance on the observations of A. N. Bhandari, C. J., in *Mukh Ram* v. *Siri Ram,* (4) (supra), wherein it has been observed that the law does not require that the amount of rent should be tendered to the landlord himself or to his counsel, but a tender would be perfectly valid in the eye of law if it is made even to the Rent Controller for payment to the landlord. There is no dispute about the proposition laid down by the learned Chief Justice. The question again revolves on the fact as to whether the amount of rent can be deposited prior to the first date of hearing with the Rent Controller. I have already negatived the argument of the learned counsel that the amount of rent cannot be deposited with the Rent Controller prior to the date of hearing. In the aforesaid circumstances the decision on *Mukh Ram's case* has no applicability to this case. This contention of the learned counsel is also rejected.

(56) Lastly it is contended by the learned counsel for the petitioner that the preamble of the Act says that it has been enacted to restrict the increase of rent of certain premises situated within the limits of urban areas and the eviction of the tenants therefrom. He argues that the Act has been made for giving protection to the tenants and for their benefit. According to the learned counsel, if two interpretations are possible of any provision of the Act, the one that advances the purpose of the Act should be adopted and the other be rejected. According to the learned counsel, in the present case, two interpretations of the proviso are possible and consequently the one

which is in favour of the tenant should be accepted. In support of his contention, the learned counsel placed reliance on *Krishna Khanna* v. *Additional District Magistrate, Kanpur and others,* (9) wherein it was held at page 436 as follows :—

> "The object of the Act as its preamble indicates is to provide for continuance of powers to control the letting and the rent of residential and non-residential accommodation and to prevent the eviction of tenants therefrom. Section 3, providing for restrictions on eviction as held by one of us (Mathew, J.), delivering the judgment on behalf of this Court in the case of *Murlidhar Agarwal and another* v. *State of Uttar Pradesh and others,* (10), is based on Public Policy. It is intended to protect the weaker section of the community in general by granting equality of bargaining power. The protection is based on Public Policy."

I have given a deep thought to the argument of the learned counsel, but find it devoid of force. It is an established principle of law that the Courts interpret the language used in an enactment by the legislature in its plain grammatical sense. In case the words used in the statute are unambiguous and can be interpreted only in one way, the Courts cannot refuse to give the words those meanings on the ground that the intention of the legislature is different. Statutes have to be explained according to their plain meaning without violence to the language. In case there is a lacuna in an enactment, it is not for the Courts to fill in the same. In the present case, in my view, section 13(2) (i) is not subject to two interpretations. The mode of payment of rent has been prescribed in the section and consequently it can be paid only in that way. The language of the proviso is clear and unambiguous. If the rent has to be tendered after the filing of the application, it is to be tendered in accordance with the proviso. If the legislature desired to make a provision for deposit of the amount, it would have done so in the Act. It may be mentioned that provisions of depositing the rent have been made in several enactments relating to other States. This fact has been noticed by the Supreme Court in *Shri Vidya Prachar Trust's* case (*supra*) wherein it has been observed in clear terms, that the Act

(9) 1975 R. C. R. 432.
(10) AIR 1964 S.C. 1924.

does not lay down any procedure under which money can be deposited with any Government authority. It is further observed that such provisions are to be found in other Rent Control Acts, but are missing in this Act. There is no provision in the proviso or any other part of the Act to the effect that rent can be deposited by a tenant before the Rent Controller. In these circumstances it cannot be held that the deposit of rent by a tenant before the Controller amounts to a proper tender of rent. The words used in the proviso are not subject to two interpretations. The observations in *Krishna Khanna's case*, are unexceptionable but these are not applicable to the facts of the present case. In view of the aforesaid reasons I reject the contention of the learned counsel for the petitioner.

(57) Mr. Sarin, learned counsel for the respondent, raised another argument in this revision petition. It is that the application for ejectment was filed on March 21, 1967, where rent was claimed from November 9, 1965 to March 8, 1967. The tenant, on April 29, 1967 deposited rent from November 9, 1965 to May 9, 1967, that is; for 18 months. The rent as due on April 29, 1967, was up to March 9, 1967. The learned counsel argues that thus the tenant deposited rent for two months more, that is, from March 9 to May 9, 1967. According to him, under section 6 of the Act, the landlord can charge only one month's advance rent and in case he charges more, then he is liable to punishment under section 19 of the Act. In the aforesaid situation he submits that the tender is improper. In support of his contention he has referred to a passage from *Shri Vidya Prachar Trust's case.*

(58) I also find force in this contention of the learned counsel. It is not disputed by the learned counsel for the tenant that the rent has been deposited by the tenant before the Rent Controller in excess for two months. He, however, argues that in case the rent was in excess, the landlord could withdraw less rent. The submission made by the learned counsel for the petitioner is not tenable. Section 6(1) (a) provides that the landlord shall not receive in advance an amount exceeding one month's rent. Section 19 says that if any person contravenes any of the provisions of section 6(1) (a), he shall be punished with imprisonment which may extend to two years and with fine. From the aforesaid sections, it is clear that in case a landlord accepts advance rent for more than one

month he renders himself liable to punishment. If deposit is made by the tenant against the provisions of section 6(1) (a) and the amount is withdrawn by the landlord, he becomes liable to penal action under section 19. In the light of the aforesaid reasoning also the deposit of the rent in this case cannot be held to be a proper tender. In the aforesaid view, I get support from the observations of the Supreme Court in *Shri Vidya Prachar Trust's case (supra)*. After taking into consideration all the circumstances, I am of the opinion that the tenant has not tendered the rent in accordance with the proviso to section 13(2) (i) of the Act and the order of ejectment passed by the Courts below is correct.

(59) I, therefore, dismiss the revision petition but, in the circumstances of the case, leave the parties to bear their own costs.

N. K. S.

LETTERS PATENT APPEAL

Before Gurnam Singh and Harbans Lal, JJ.

RAMISHAR LAL,—*Appellant.*

versus

THE MUNICIPAL COMMITTEE, KAPURTHALA ETC.,—

Respondents.

Letters Patent Appeal No. 715 of 1973.

November 9, 1976.

Punjab Municipal Act (III of 1911)—Sections 12-D and 12-E—Newly elected committee—Co-option made after thirty days of the election—Whether valid—Power of nomination—Whether vests in the Government.

Held, that co-option under sections 12-A, 12-B and 12-C of the Punjab Municipal Act 1911 must be held by the time of the first meeting of the newly elected committee or within thirty days of the arising of the vacancy. The intention of the legislature is to have the members co-opted by the elected members and that also without loss of time. The power to hold a meeting of the elected members of a committee, to achieve this objective has been conferred on the representatives of the Government to guard against