misstatement. In the Punjab notification dated the 14th of March, 1952, published in the Gazette of the 21st of March, 1952, there are exactly the same 52 categories in Section A—General Staff, the same 33 in Section B—Workshop Staff, and the same 3 in Section C—Running Staff. In the Pepsu notification which was published in the Gazette of the 27th of December, 1954, and in which, incidentally, the minimum rates of wages for the lower categories are higher than in the Punjab notification of two-and-a-half years earlier, the lowest rate being Rs. 30 per mensem, there are the same 52 categories in Section A and the same 3 in Section C. The only differences is in Section B—Workshop Staff, in which only 29 categories have been shown as against 33. Since Pepsu has been merged with the erstwhile State of Punjab since November, 1956 and there are no new categories introduced in the impugned notification as compared with the Punjab notification of 1952, I do not consider that the introduction of 4 new categories in the Workshop Staff as compared with the Pepsu notification of 1954 in any way invalidates the notification. The result is that I find that there is no force in the petition and I would accordingly dismiss it with costs. Counsel's fee Rs. 50.

The Sadhaura Transport Company, (P), Ltd. *v.* The Punjab State and another.

Falshaw, J.

GURDEV SINGH, J.—I agree.

Gurdev Singh, J.

B.R.T.

REVISIONAL CIVIL.

Before D. Falshaw and Gurdev Singh, JJ.

ISHER DASS TARA CHAND,—*Petitioners*

versus

HARCHARAN DASS,— *Respondent.*

Civil Revision No. 318 of 1954.

1960

August 30th.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2)(i) Proviso—Arrears of rent—meaning of—Whether rent due upto the date of first hearing or the date of the application.

Held, that the expression "arrears of rent" occurring in the proviso to clause (i) of sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act, 1949, means the rent which is due from the tenant and remaining unpaid on the date of the application and not on the date of the first hearing and it is this amount of rent due that he is required to pay under the said proviso to save himself from the forfeiture of his tenancy.

Basant Ram v. *Gurcharan Singh and another* (1), followed.

Case referred by Hon'ble Mr. Justice J. L. Kapur to a Division Bench on 23rd November, 1954, for decision of the important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Falshaw and Hon'ble Mr. Justice Gurdev Singh after deciding the legal point on 30th August, 1960 returned the case to Single Bench for final decision and the case was finally decided by Hon'ble Mr. Justice Gurdev Singh on 14th October, 1960.

Petition under Article 227 of the Constitution of India for revision of that order of Shri Guru Datta, District Judge, Gurdaspur, dated 2nd August, 1954, reversing that of Shri A. N. Bhanot, Sub-Judge, Gurdaspur with powers of Rent Controller, dated 17th May, 1954 and ordering the eviction of the tenants from the shop in dispute within 3 months from 2nd August, 1954.

SHAMAIR CHAND AND P. C. JAIN, ADVOCATES, *for the Petitioners.*

V. C. MAHAJAN, ADVOCATE, *for the Respondent*

JUDGMENT

Gurdev Singh, J.

GURDEV SINGH, J.—On 4th March, 1954, Harcharan Das applied to the Rent Controller, Gurdaspur, for ejectment of his tenant Ishar Das, under section 13 of the East Punjab Urban Rent Restriction Act, on the plea *inter alia* that the rent from the 1st of November, 1953, to 1st March, 1954, at the rate of Rs. 40 per mensem had fallen in arrears and had not been paid. The first date of hearing of the application was the 3rd of April,

(1) 61 P.L.R. 591

1954. On that day, the tenant deposited Rs. 183-4-0 on account of arrears of rent claimed in the application calculated up to 31st of March, 1954, plus interest thereon and costs. The learned Controller held that in view of this payment, the landlord was not entitled to an order for ejectment on the ground of non-payment of rent. In appeal the District Judge sitting as Appellate Authority did not agree with this finding and held that in order to save the tenant from the consequences of non-payment of rent, he should have paid the arrears of rent calculated up to the date of deposit, i.e., 3rd of April, 1954, which was the first date of hearing of the application for ejectment and not merely up to the date of the application. Accordingly, he accepted the landlord's appeal and ordered the tenant's eviction. The matter came up in revision before Kapur, J. (now Hon'ble Mr. Justice J. L. Kapur of the Supreme Court), who, in view of the importance of the question involved and its frequent occurrence, referred it to a Division Bench for an authoritative interpretation of the relevant provisions of law. We are thus called upon to interpret the proviso to clause (i) of sub-section (2) of section 13 of the East Punjab Rent Restriction Act and the question for our consideration is: Whether the arrears of rent referred to in the proviso to clause (i) to sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act, which a tenant is required to pay or tender on the first hearing of the application, should be computed up to the date of the first hearing or only up to the date of the application ?

At the time the reference order was made by Kapur, J., the matter does not appear to have come

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up for interpretation before this Court, but subsequently the question arose before Bhandari, C.J., in Civil Miscellaneous No. 159 of 1955 (*Jagdish Parshad* v. *Beni Parshad*), decided on the 17th of May, 1955. The argument that the arrears of rent, which a tenant is required to deposit under the proviso to section 13(2)(i) of the East Punjab Urban Rent Restriction Act to save himself from the forfeiture of the tenancy, should be calculated up to the date of the first hearing, was repelled with the following observations :—

> "I regret I am unable to concur in this contention. * * * *
> * * * * *
>
> The law, however, requires a tenant not to pay all the rent which is claimed by a landlord, but only the rent which is due up to the date on which the application for ejectment is made."

This is the only decision of this Court which has come to our notice regarding the interpretation of the proviso to clause (i) to sub-section (2), to section 13 of the East Punjab Urban Rent Restriction Act. An identical provision was, however, contained in Ordinance No. VIII of 2006 Bk. of erstwhile Pepsu State, and a similar question came up for consideration before Mehar Singh, J., in Civil Miscellaneous No. 175 of 1954, *Gopal Mal* v. *Firm Dwarka Das and Company*, while he was sitting as a Judge of the Pepsu High Court. Mehar Singh, J., took a view different from that which Bhandari, C.J., has expressed in the Punjab case and interpreted the proviso to sub-section 2(i) to section 13 of the Pepsu Ordinance as laying down that the amount of arrears of rent which a tenant was required to pay under that provision of law to avoid forfeiture of his tenancy should be calculated up to the date of the first hearing and

not merely up to the date of the application for ejectment. This decision was, however, overruled by a Division Bench of this Court in *Basant Ram* v. *Gurcharan Singh and another* (1), to which my learned brother, Falshaw J., was a party. In that case, dealing with the proviso to section 13(2)(i) of the Pepsu Ordinance referred to above, it was held that the arrears of rent that a tenant was required to pay or tender on the first hearing to avoid his ejectment were to be computed up to the date of the filing of the application for ejectment and not up to the date of its first hearing. The decision of Bhandari, C.J., in *Jagdish Parshad's* case was approved.

Since the relevant proviso of the Pepsu Ordinance, No. 8 of 2006 and that in section 13(2)(i) of the Punjab Act are in identical terms, the matter is practically concluded by the decision of the Division Bench of this Court in *Basant Ram* v. *Gurcharan Singh and another* (1). Shri Vikram Mahajan, appearing for the respondent before us, however, contended that Division Bench decision of this Court referred to above did not govern the present case as it related to the interpretation of the Pepsu Ordinance and because a similar provision for avoidance of the forfeiture of tenancy contained in section 114 of the Transfer of Property Act and the decision in *Dhurrumtolla Properties, Ltd.*, v. *Dhunabai* (2), interpreting that provision of law had not been considered in the earlier case. I have no hesitation in rejecting this argument as spurious, but even on taking into account the provisions of section 114 of the Transfer of Property Act and the Calcutta decision relied upon by Shri Mahajan, I see no reason

(1) 61 P.L.R. 591.
(2) I.L.R. 58 Cal. 311.

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to differ with the view taken by the Division Bench in *Basant Ram's case.*

The relevant part of section 13(2)(i) of the East Punjab Urban Rent Restriction Act, which we are called upon to interpret runs as follows :—

> "13(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 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;
>
> * * *
>
> the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land * *"

If we ignore the proviso for a while, we find that under this provision of law a landlord can secure an order for eviction of his tenant only if he proves that on the date of the application for ejectment arrears of rent were due from the tenant and he had not paid the same within 15 days' of the date of the expiry of the time fixed in the agreement of tenancy, or in the absence of such agreement by last day of the month next following that for which the rent is payable. It thus follows that if on the date of the application, the rent has not become due, or the period fixed for its payment by agreement or under clause (i) of sub-section (2) of section 13 has not expired, no application for ejectment of the tenant would lie. The proviso to clause (i) of sub-section (2) of section 13, however, gives a concession to the tenant by permitting him to pay or tender the arrears of rent together with interest at 6 per cent per annum on such arrears and costs of the application assessed by the Controller on the first hearing of the application for ejectment and thus save himself from forfeiture of his tenancy. The arrears of rent, costs, etc., referred to above have to be paid or tendered by the first hearing of the application and not later. There is nothing in the proviso referred to above to debar the tenant from making the payment of arrears, etc., before the date of the first hearing, or even before an order is passed by the Collector fixing such a date. It is thus evident that if the tenant chooses to pay the arrears of rent due from him as soon as he comes to know that an application for ejectment has been put in, or before the date of the first hearing is fixed by the Controller, there can be no question of his computing the arrears up to the date of the first hearing and he would thus be perfectly within his rights to claim protection from ejectment on paying the rent that is due from him on the date of such payment.

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The expression "arrears of rent" occurring in the proviso, must be interpreted with reference to clause (i) of sub-section (2) of section 13, to which it is appended. The arrears referred to in the proviso are clearly those arrears which are mentioned in clause (i) of sub-section (2) of section 13. According to that clause an order for eviction can be made only if "the rent due" by the tenant has not been paid or tendered.

Nothing is due unless the person from whom the payment is demanded has incurred the liability to pay. In the cases of tenancy where the rent is paid every month no rent can be claimed by the landlord, before the expiry of the month. Similarly, where the rent is to be paid annually, in the absence of any agreement to the contrary, the landlord cannot recover or sue for rent before the year of the tenancy has run out, nor can he seek ejectment for non-payment of rent till the rent becomes due. Under clause (i) of sub-section (2) of section 13, a tenant has been further allowed 15 days' time after the expiry of the period fixed in the agreement of tenancy for payment of rent and in a case where no such time is fixed in the agreement of tenancy a tenant is entitled to make the payment of rent for a particular month by the last day of the month next following without incurring a liability for his ejectment. If the expression "arrears of rent" contained in the proviso is interpreted as referring to the rent, which is payable uptill the date of the first hearing, it would be inconsistent with clause (i) of sub-section (2) to which it is appended, as the first day of the hearing may in some cases be within a month of the date of the application and the rent for that month cannot be considered in arrears in view of the time which a tenant is entitled to avail of under clause (i) of sub-section (2) of section 13. The expression "arrears of rent" occurring in this

proviso means the arrears to which clause (i) of sub-section (2) of section 13 refers, i.e., the rent which has fallen due and remains unpaid uptill the date of the application for ejectment.

In *Dhurrumtolla Properties, Ltd.*, v. *Dhunbai* (1), Mitter, J., held that the expression "rent in arrears", as contained in section 114 of the Transfer of Property Act was not equivalent to the rent claimed in the suit and to save himself from the forfeiture of tenancy, a tenant must pay arrears of rent calculated up to the date of the payment. Reliance in that connection was placed upon the English rule of equity and the decision in *Howard* v. *Fanshawe* (2), where the relief was granted on payment of rent up to the date when the relief from forfeiture was allowed.

In the present case the relief against forfeiture is claimed by the tenant not on any equitable principles of the English law nor under section 114 of the Transfer of Property Act, but under the statutory provision contained in sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act which is different in material particulars both from the equitable principles of English law and the provisions contained in the Transfer of Property Act. Under the English rule the lessee could apply for relief not only at the hearing but even within six months of the execution of the decree for ejectment, whereas under section 114 of the Transfer of Property Act, the application could be made by the lessee at any time during the hearing of the suit and even in appeal, which is considered as continuation of the suit. It was for that reason that the tenant was required to pay the arrears of rent calculated up to the date of the payment. In cases under the East Punjab Urban

(1) A.I.R. 1931 Cal. 457:
(2) (1895) 2 Ch. 581:

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Rent Restriction Act, like the one with which we are dealing, a tenant can claim relief against forfeiture and can be granted one only if he pays the arrears of rent on the first hearing of the application and not later. The Court has no power to grant relief against forfeiture if the payment of arrears is not made at the first hearing of the application. It is thus obvious that the decisions given under the English Law or under the Transfer of Property Act cannot be a safe guide to the interpretation of the expression "arrears of rent" occurring in the proviso to clause (i) to sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act. The rule against forfeiture of tenancy on payment of rent in England was based on equitable principles though later the rule was given statutory recognition as well. It is a well-known maxim of equity that a person who seeks equity must do equity. It was for that reason that a tenant, who was in arrears was required to pay arrears of rent calculated up to the date of payment if he was desirous of saving himself from the forfeiture of his tenancy on account of the default committed by him in payment of rent.

Section 114 of the Transfer of Property Act, runs as follows :—

> "Where a lease of immovable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the *rent in arrears*, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court *may*, in lieu of making a decree for

ejectment, pass an order relieving the lessee, against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred."

From the above, it is evident that relief against forfeiture can be granted by the Court under the provisions of the Transfer of Property Act, at any time during the hearing of the suit, which has been interpreted to include even an appeal, which is a continuation of the suit. In that context, it would be eminently just to call upon the tenant to pay the arrears of rent calculated up to the date of the payment, but in the present case, under the East Punjab Urban Rent-Restriction Act, the arrears of rent are required to be paid by the first hearing of the application and no Court has any power to extend that period. The object of the proviso, under consideration seems to be to save a tenant, from the consequences of non-payment, which may sometimes be due to the misconduct of the landlord himself in avoiding the acceptance of payment so as to create a ground for forfeiture and not on account of any deliberate default on the part of the tenant. In these circumstances, it will be unreasonable to insist upon the tenant paying the rent calculated right up to the date of the first hearing notwithstanding that the rent for the month, in which the first hearing occurs may not have yet fallen due.

In view of all that has been said above, I have no hesitation in respectfully agreeing with the view taken in *Basant Ram* v. *Gurcharan Singh and another*, (1). In my opinion the rent which a tenant is required to pay under the proviso to clause (i) to sub-section 2 to section 13 of the East Punjab Urban Rent-Restriction Act, to save himself from forfeiture of the tenancy, is the rent

(1) 61 P.L.R. 591.

Isher Dass Tara Chand v. Harcharan Dass,

due from him and remaining unpaid on the date of the application and not on the date of the first hearing.

Gurdev Singh, J.

The point of law arising out of the reference having been answered, the case shall go back to the learned Single Judge, for disposal.

Falshaw, J.

FALSHAW, J.—I agree.

B.R.T.

APPELLATE CIVIL.

Before D. Falshaw and Gurdev Singh, JJ.

THE MOTOR AND GENERAL INSURANCE, CO., LTD.,—*Appellant.*

versus

HOTA RAM AND OTHERS,—*Respondents.*

Regular First Appeal No. 209 of 1954.

Motor Vehicles Act (IV of 1939)—Ss. 94 and 96—Suit by a passenger suffering injuries as a result of accident to the vehicle in which he was travelling—Vehicle insured with an Insurance Company—Insurance Company made a defendant in the suit—Whether proper—Policy of Insurance containing term that liability of insurer will extend to Rs. 2,000 in respect of any one person—Decree for a higher amount than Rs. 2,000—Whether can be passed against the insurer—Code of Civil Procedure (Act V of 1908)—Order XLI Rule 33—Lower court awarding decree against the Insurance Company only—Appellate Court—Whether can pass decree against other defendants.

1960

August., 31st.

Held, that under section 96 of the Motor Vehicles Act, 1939, the Insurance Company is under a statutory liability to indemnify the insurer. It has further been given a right to receive notice of the proceedings against the insured and to be impleaded as a party at its own request with liberty to take up such defences as are specified in