based as they are on the concept of wrong disability to proceedings in which relief is claimed under section 13(1A) or section 13-B based as they are on the concept of a broken down marriage. In fact it is impossible to apply the provisions of section 23(1)(a) to a proceeding in which relief is claimed under section 13-B. That should be a pointer to show that section 23(1) (a) is not meant to apply to all proceedings under the Act. Even if section 23(1) (a) is to be held to apply to proceedings in which relief is claimed under section 13(1A) the wrong or disability referred to in section 23(1)(a) must be construed to be a wrong or disability other than the mere non-resumption of cohabitation or the mere non-restitution of conjugal rights which forms the basis of relief under section 13(1A). To probe into the question as to who was responsible for the non-resumption of cohabitation or non-restitution of conjugal rights and to deny relief on the ground that the petitioner was the guilty party would be to nullify the very object of the 1964 amendment. It is true that if section 23(1) (a) is applicable to proceedings based on section 13(1A), it is difficult to visualize what wrong other than non-resumption of cohabitation or non-restitution of conjugal rights can preclude relief. But failure, at present, to contemplate such a situation is neither here nor there, since one cannot pre-empt all future situations. The only reasonable way of construing the provisions and giving effect to legislative intent is to say that section 23(1) (a) applies to cases based on the concept of wrong-disability and not to section 13(1A) which is not based on that concept. At any rate, the wrong or disability contemplated by section 23(1) (a) is not the non-resumption of cohabitation or the non-restitution of conjugal rights which is the basis of section 13(1A). In that view the appeal has to be allowed.

Harbans Lal. J.—I agree with Dhillon, J.

N.K.S.

FULL BENCH

REVISIONAL CIVIL

Before R. S. Narula, C. J., Harbans Lal and Surinder Singh, JJ.

BANKE RAM, SON OF SHRI LACHHMAN DASS,—(*Tenant*)—*Petitioner.*

versus

SARASTI DEVI DAUGHTER OF SHRI MANGAT RAM,—(*Landlord*)—*Respondent.*

Civil Revision No. 392 *of* 1974

December 17, 1976.

East Punjab Urban Rent Restriction Act (*III of* 1949)—*Section* 13(3) (*a*) (*i*)—*Landlord applying for eviction of his tenant on grounds*

of personal necessity—Conditions in sub-paragraphs (b) *and* (c) *of section* 13(3) (*a*) (*i*)*—Whether to be specifically pleaded in the application.*

Held, that the conditions in sub-clauses (b) and (c) of section 13(3) (a) (i) of the East Punjab Urban Rent Restriction Act 1949 are statutory conditions in asmuch as they are provided by the statute, but to fulfil those conditions, the landlord must lead evidence to prove the facts constituting those conditions. Under sub-clause (b) the landlord is required to prove that he is not occupying any other residential building in the urban area concerned. Under sub-clause (c), it is incumbent on the landlord to bring on the record that such a building had not been vacated by him without sufficient cause. If the landlord is to satisfy those essential conditions, he must lay foundation regarding the same in his pleading so that the tenant-respondent is in a position to rebut the same and proper issues are also framed. It is, therefore, essential for a landlord to plead the ingredients of sub-clauses (b) and (c) of paragraph (i) of section 13(3) (a) of the Act in his eviction application.

(Paras 8 and 15)

Case referred by Hon'ble Mr. Justice D. S. Tewatia to a larger Bench on 28th August, 1975 for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble the Chief Justice Mr. R. S. Narula, Hon'ble Mr. Justice Harbans Lal and Hon'ble Mr. Justice Surinder Singh decided on 17th December, 1976, the question referred to.

Petition under Section 15(5) *of Act III of* 1949 *for revision of the order of Shri Kulwant Singh Tiwana, Appellate Authority, under the East Punjab Urban Rent Restriction Act, Amritsar dated the* 14*th January,* 1974 *reversing that of Shri G. L. Chopra, Rent Controller, Amritsar dated the* 22*nd March,* 1972 *accepting the application of the landlord for eviction of the tenant with costs and further ordering that the respondent shall vacate the demised premises on or before* 12*th April,* 1974, *failing which he shall be evicted in due process of law.*

M. L. Sarin, Advocate with S. K. Gowari, Advocate, *for the Petitioner.*

B. N. Aggarwal, Advocate with V. K. Jhanji. Advocate, *for the Respondent.*

Judgment of the Court was delivered by :—

Harbans Lal, J.—(1) The Full Bench is called upon to determine and decide the following question of law as referred to by Tewatia, J., (as he then was) in his reference order dated August 28. 1975:

> "Whether a landlord applying for the eviction of his tenant on the ground contained in sub-paragraphs (b) and (c) of paragraph (i) of section 13(3) (a) of the East Punjab Urban Rent Restriction Act, 1949. (hereinafter called the Act), i.e., for his own use and occupation, has or has not to specifically plead in his application the contents of sub-paragraphs (b) and (c) aforesaid. which put a rider on the right of the landlord to get the eviction of his tenant from the premises even for his own use unless he succeeds in proving that he was not in occupation of another residential building in the same urban area and that he had not vacated any such building after the commencement of the Act without any sufficient cause."

Reference has not been made to the facts of the revision petition in the reference order as only the above-mentioned legal question was raised and in view of the conflicting decisions of this Court and some other High Courts, the learned Judge was of the opinion that the question required authoritative pronouncement to clear the confusion and conflict of opinion as well as for the benefit of the subordinate Courts. Under the circumstances, it is not necessary to advert to the facts of the said revision petition.

(2) At this stage, the relevant provisions which need interpretation may be reproduced :

> "13 (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 other the termination of the tenancy, except in accordannce with the provisions of this section or in pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended ;
>
> (2) *** *** ***
> *** *** ***
> *** *** ***

(3) (a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—

(i) in the case of a residential building if,—

(a) he requires it for his own occupation;

(b) he is not occupying another residential building in the urban area concerned; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area ;"

(3) The earliest decision having bearing on the matter in controversy is by Bishan Narain, J., in Civil Revision (*Lakhi Ram* v. *Piare Lal and others*) (1), wherein the application by the landlord for the eviction of the tenant on the ground of *bona fide* need for personal occupation was dismissed by both the Rent Controller and the Appellate Authority. The landlord did not make any allegation, relating to sub-clauses (b) and (c) of the aforesaid provision, in his application. The tenant also did not make any reference regarding the same in his reply. No issue regarding the same was framed by the Rent Controller. One of the contentions of the learned counsel for the landlord-petitioner in the revision petition was that the eviction application had been dismissed on a ground regarding which no issue had been framed. This contention was upheld by Bishan Narain, J., and it was held that no amount of evidence could be looked into upon a plea which was never put forward. It was further held that it will be extremely unfair in the absence of a specific issue to non-suit the landlord. Thus, the revision petition was accepted and the case was remanded back after framing new issues with reference to sub-clauses (b) and (c) of the Act. In *Krishan Lal Seth* v. *Pritam Kumari,* (2), the Division Bench comprising of Mehar Singh and Mahajan, JJ., after taking into consideration the above-mentioned decision rendered by Bishan Narain. J., came to the conclusion and held that it was not necessary to allege and plead anything referred to in sub-clauses (b) and (c) of the aforesaid provision. The ratio

(1) CR 372/56 decided on 28-4-58.

(2) 1961 Pb. Law Reporter 865.

of the decision in *Krishan Lal Seth's case* (supra) is the sole basis of one view of the question involved and is reproduced below in extenso :

> "The learned counsel has drawn our attention to the observation of the learned Judges that 'the scope of enquiry by the judicial and quasi-judicial tribunals is normally confined to the disputes set out by the contesting parties in their respective pleadings; in other words, the rights and liabilities of the parties as they exist on the date of the initiation of the proceedings alone fall within the scope of the investigation of which the tribunal is seized, and it is generally incompetent for a tribunal to adjudicate upon any controversial matter which does not find place in the pleadings of the parties.' As a general statement of law this is unexceptional. However, the ground for eviction under section 13(3) (a) (i) from a residential building is the requirement by the landlord of the building for his own occupation and the sub-clause adds two statutory conditions to this ground before it can be successfully urged to obtain eviction. Such statutory conditions obviously must be established by the landlord, but as the conditions are provided by the statute it is not necessary to repeat them in the pleadings. The object of requiring the parties to be confined to their pleadings is to avoid surprise to the opposite party, and in regard to a praper for the eviction on the ground of requirement of residential building by a landlord for his own occupation, there can possibly be no surprise if paras (b) and (c) of sub-clause (i) of clause (a) of section 13(3) are not repeated in the application, for such conditions are provided by the statute and are available for the knowledge of the tenant from the persual of the statute. Thus it was not necessary for the landlord to restate in the application those statutory conditions and for her omission to refer to those conditions her application could not possibly be dismissed. There could not be any ground for surprise to the tenant and there is no justification for dismissal of the application for the mere omission to reproduce the statutory conditions in the application. This argument is without substance and is discarded."

The decision in *Krishan Lal Seth's case* (supra) was followed by Pandit, J., (as he then was) in *Dev Raj* v. *Tilak Raj Dharam Pal and others* (3), and the revision petition of the tenant was dismissed though there was no averment in the eviction application regarding sub-clauses (b) and (c) of section 13 of the Act. The learned Judge without any discussion, relying upon the above-mentioned Division Bench decision only held as under :

> "Under the law, it was not necessary to mention these things in the application."

Tewatia, J., (as he then was) also relied upon the *ratio* of the above-mentioned decision by the Division Bench while deciding (*Gurdit Singh* v. *Shankar Lal Misra and another*). (4).

(4) This matter also came up for consideration before Himachal Bench of the Delhi High Court in *H. N. Bhasin* v. *Chamba Mall*, (5), in which Ansari, J., expressed doubt if in the absence of specific pleadings by the lanndlord and in the absence of specific issue on the point the evidence of the landlord was at all admissible. It was held.—

> "It is doubtful whether in the absence of specific pleadings by the respondent and in the absence of a specific issue on the point the evidence of the respondent was at all admisible. No doubt the petitioner did not object to this portion of the evidence of the respondent. But under the circumstances, it cannot be said that this portion of the evidence had gone unchallenged by the petitioner. In the absence of pleadings and also in the absence of a specific issue on the point the petitioner could not have expected the respondent to lead evidence on this point and he could not be expected to challenge such evidence either by cross-examination or by leading independent evidence. There are also no findings either by the learned Controller or by the Appellate Authority that the respondent has satisfied these requirements of section 13(3) (a) (i) of the

(3) 1973 Current Law Journal 557.

(4) CR 529/73 decided on 15.7.75.

(5) 1970 Rent Control Reporter 840.

Act. The order of the learned Appellate Authority directing the petitioner to put the respondent in possession of the portion of the building in dispute cannot, therefore, be sustained."

The revision petition was, thus, allowed and the case was remanded for amendment of necessary pleadings and to adduce evidence. Subsequently, however, the *ratio* of the decision in *Krishan Lal Sethi's case* (supra) was followed by a Division Bench of the Himachal Pradesh High Court in *Puran Chand* v. *Jagdish Lal and others,* (6). However, on facts, the learned Judges came to the conclusion that the pleadings by the landlord in the eviction application decidedly embraced substntially conditions (b) and (c), although the narration was not made with that much exactitude and precision. Further, it was also that both the parties knew very well as to what points were at issue between time and none was prejudiced. They were afforded ample opportunity to meet such points of dispute. As a matter of law, however, it was finally held that the absence of a specific pleading with regard to the provisions of sub-clauses (b) and (c) could not prove fatal to the eviction petition.

(5) In *Darshan Singh* v. *Jagdish Kumar* and another, (7), Mahajan, J., (as he then was) who was also one of the Judges comprising the Division Bench who had rendered the decision in *Krishan Lal Seth's case* (supra), took a contrary view. In the former case, the landlord had not made any averment in his pleading with regard to the provision of sub-clauses (b) and (c). His application had been dismissed by the Rent Controller, but allowed by the Appellate Authority in appeal. Relying upon *H. N. Bhasin's case* (supra); a Full Bench decision in *Sant Ram Das* v. *Karam Chand Mangal Ram,* (8), and the Supreme Court decision in *Attar Singh* v. *Inder Kumar,* (9), the learned Judge held it was necessary to make averments regarding sub-clauses (b) and (c), but came to the conclusion that the tenant had not taken the objection regarding the absence of pleadings and thus the landlord had been misled. It was also held that if the objection had been taken by the tenant at the proper stage, the landlord would have amended his eviction petition. The landlord was, thus, allowed to amend his eviction petition, to plead

(6) 1974, Rent Control Reporter 413.

(7) 1974 Rent Control Reporter 99.

(8) A.I.R. 1963 Pb. 1.

(9) 1967 Pb. Law Reporter 83.

all the three ingredients and also to lead evidence on the same. A perusal of the judgment, however, shows that the decision in *Krishan Lal Seth's case* (supra) had not been brought to the notice of the learned Judge. The Hon'ble the Chief Justice Narula, however, in *Rajinder Singh Nanda* v. *Kewal Krishan,* (10), had the occasion to consider the ratio of the decision in *Krishan Lal Seth's case* (supra) exhaustively in the light of the decision of the Full Bench in *Sant Ram Das's case* (supra) and the decision of their Lordships of the Supreme Court in *Attar Singh's case* (supra) and came to the conclusion that the view taken by the Division Bench in *Krishan Lal Seth's case* (supra) did not lay down a good law. In *Om Parkash* v. *Jaswant Rai,* (11), Jain, J., held the same view. The learned Judge not only held that it is legally incumbent on the landlord—applicant to plead and prove all the three ingredients as given in sub-clauses (a), (b) and (c) of section 13(3)(a)(i) of the Act, but also that the mere fact that objection was not raised by the tenant before the Rent Controller or the Appellate Authority would be no ground to reject the contention of the tenant and that the tenant is entitled to show at any stage that the application for ejectment has not been filed in accordance with law and is liable to be rejected. Varma, J., (as he then was), in *Brij Lal* v. *Smt. Janak Rani*) (12) and Koshal, J., (as he then was) in (*Hari Kishan Udasi* v. *Jawala Dass* (13), agreed with the *ratio* of the decision in *Rajinder Singh Nanda's case* (supra), and categorically held that it is essential to not only prove, but also to plead the ingredients of sub-clauses (b) and (c) along with sub-clause (a) of section 13(3).

(6) Reliance was placed by the learned counsel for the respondent on the decision of Goyal, J., in (*Amar Nath* v. *Sudarshan Singh*) (14). In that case, the learned Judge noticed some of the above-mentioned decisions in favour of the proposition that it was essential to plead the ingredients of sub-clauses (b) and (c), but then posed the question as to whether the non-pleading of the fact that the landlord was not occupying any other residential area in the

(10) 1975 Rent Control Genl. 320.

(11) 1975 Rent Control Reporter 702.

(12) C.R. 826/74, decided on 18th July, 1975. Short Note No. 48, 1975 Rent Control Journal, 41.

(13) C.R. 1182/72, decided on 14th July, 1975, 1976 Rent Control Journal 15.

(14) C.R. 1116/76, decided on 2nd November, 1976.

urban area concerned was fatal to the cause of the respondent landlord. According to the learned Judge, every variance between pleading and proof is not necessarily fatal to the suit or defence and the test is to see whether the party aggrieved has really been taken by surprise or is prejudiced by the action of the opposite party. A perusal of the judgment shows that the learned Judge did not express disagreement with the proposition that it was necessary to plead ingredients of sub-clauses (b) and (c) and decided the matter on the particular facts of that very case.

(7) Thus, it is clear from the above discussion that the predominent view of this Court has been that it is imperative for the landlord to plead the ingredients of sub-clauses (b) and (c) of section 13(3)(a). Even after the decision of the Division Bench of this Court in *Krishan Lal Seth's case* (supra), to the contrary, Mahajan, J., (as he then was) one of the Judges on this Division Bench expressed a contrary view in *Darshan Singh's case* (supra). It is well established and salutary principle of law that in any civil proceeding, it is essential for a party to plead the ingredients of any facts in the pleading on which he wants to rely and in proof of which he may produce evidence. Order VI rule 2, Code of Civil Procedure, specifically provides for the same. It is reproduced below :—

> "Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall when nesesary, be divided into paragraphs, numbered consuctively. Dates, sums and numbers shall be expressed in figures."

Though all the provisions of the Code of Civil Procedure, are not applicable to the proceedings in applications for eviction under the Act, but the principles which are the basis and foundation for the administration of justice as the one incorporated in Order VI, rule 2 of the Code of Civil Procedure, will be undoubtedly applicable to these proceedings also. The purpose in following the procedure for framing of issues in eviction applications is also intended to pin-point the parties to the matter in controversy between them so that none of the parties may be taken by surprise and subsequently none of them may allege that he was in any way prejudiced. If there is no specific pleading about certain

matter, the respondent would have no opportunity to controvert the same and consequently, no issue would be framed. In these circumstances, the parties will be in the dark as to whether to lead evidence in affirmation or in rebuttal and thus, some important matter in controversy may be overlooked deliberately or inadvertently. Even the Division Bench in *Krishan Lal Seth's case* (supra), appreciated the weight of the principle of law and observed,—

> "It is generally incompetent for a tribunal to adjudicate upon any controversial matter which does not find place in the pleadigs of the parties."

In *Siddik Mahomed Shah* v. *Mussamnat Saran and others*, (15), which is the basic judgment on the subject, it was held,—

> "Where a claim has been never made in the defence presented, no amount of evidence can be looked into upon a plea which was never put forward."

The *ratio* of the decision in the above-said case was approved by their Lordships of the Supreme Court in *Bhagat Singh and others* v. *Jaswant Singh,* (16).

(8) It was contended by the learned counsel for the respondent that the decision in *Rajinder Singh Nanda's case* (supra), is based on the Full Bench decision of this Court in *Sant Ram Das's case* (supra) and that of the Supreme Court in *Attar Singh's case* (supra), *wherein* it was not in controversy whether the ingredients of sub-clauses (b) and (c) are required to be pleaded or not. It is true that in both these cases it was not specifically in controversy whether the ingredients of sub-clauses (b) and (c) of section 13(3)(a)(i) are essential to be pleaded by the landlord or not, but it was clearly and expressly held therein that it was essential to prove the ingredients of sub-clauses (b) and (c). Once it is so held, there is no escape from the proposition of law that these ingredients have to be pleaded before any evidence is led on the same. In *Krishan Lal Seth's case* (supra), the Division Bench while agreeing with the principle that any matter in controversy must find place in the

(15) AIR 1930 Privy Council 57 (1).
(16) AIR 1966 S.C. 1861.

pleadings of the parties, however, came to the conclusion that ingredients of sub-clauses (b) and (c) may not be pleaded because they are only statutory conditions and the tenant is expected to have knowledge of the same and will not be taken by surprise. There can be no doubt that the conditions laid down in sub-clauses (b) and (c) are statutory conditions inasmuch as they are provided by the statute, but to fulfil those conditions, the landlord must lead evidence to prove the facts constituting those conditions. Under sub-clause (b), the landlord is required to prove that he is not occupying any other residential building in the urban area concerned. Under sub-clause (c), it is incumbent on the landlord to bring on the record that such a building had not been vacated by him without sufficient cause. If the landlord is to satisfy those essential conditions, he must lay foundation regarding the same in his pleading so that the tenant-respondent is in a position to rebut the same and proper issues are also framed. It is difficult to visualise how a tenant will not be taken by surprise if there is no pleading in this regard. It may be a different matter if the statutory conditions are in relation to questions of law, but in case of statutory conditions pertaining to questions of fact, the landlord must make specific averments, otherwise, prejudice is very likely to ensue to the opposite party.

(9) One of the main objects of the Act is to protect the tenant from the caprice and whim of the landlord to eject him without any valid and sufficient reason. It has been specifically provided under section 13(1) that a tenant will not be ejected except in accordance with the conditions laid down in sub-section (2) and (3). The landlord has been injuncted from evicting the tenant even on the ground of the need of his own occupation unless two other conditions provided in sub-clauses (b) and (c) are also fulfilled. The fulfilment of the conditions is a pre-requisite for any order of ejectment. If this objective is to be achieved, it is essential that both landlord and tenant must state all the facts specifically and expressly in their pleadings before they enter on evidence. In its absence, the proceedings will be a fertile source of objections that the tenant was taken by surprise because the landlord had not made specific averments in his pleadings and the objection by the landlord that the tenant had not raised specific objection in his reply. In a large number of cases, it has been seen that after a long time, the appellate authority or the High Court, are required to deal with the question whether amendment of the pleadings by the landlord should be allowed or not. This results in unnecessary prolonged litigation and avoidable burden of expenditure

consequent thereto. Such a course is neither in the interest of the landlord nor the tenant. The interest of speedy justice makes it imperative that both the landlord and the tenant must be absolutely clear in their minds from their respective pleadings as to what case is required to be proved by the landlord and rebutted by the tenant. Viewed from any angle, there is no escape from the conclusion that the landlord must make specific averments in regard to the ingredients contained in sub-clauses (b) and (c). In my considered opinion, the judgment of the Division Bench in *Krishan Lal Seth's case* (supra), as far as it lays down that it is not necessary for the landlord to plead the ingredients of sub-clauses (b) and (c) in the pleadings does not lay down good law and the same is reversed.

(10) The learned counsel for the respondent, during arguments, at one stage, took up even the extreme position that the landlord was required to allege and prove the ingredients of sub-clause (a) only, that is, he was required to prove only that he needed the premises for his own occupation. If the landlord was successful in proving the same, it was for the tenant to disprove or rebut the ingredients of sub-clauses (b) and (c). This proposition is, on the face of it, fallacious and has to be noted to be repelled. It is clear from a combined reading of section 13(1) and sub-section (3) of section 13, that the landlord is not entitled to get the premises vacated unless he is able to prove the conditions contained in the various sub-clauses of sub-sections (2) and (3) of section 13. These sub-sections are an essential part of sub-clause (a). Even those decisions of this Court or the other High Courts referred to in the earlier part of this judgment according to which it is not necessary to allege and plead the ingredients of sub-clauses (b) and (c) have categorically laid down that it is necessary to prove their ingredients. After the decision of the Full Bench in *Sant Ram Das's case* (supra) and the Supreme Court decision in *Attar Singh's case* (supra), the proposition that it is essential to prove the ingredients of sub-clauses (b) and (c) along with sub-clause (a) is no more a matter in controversy, nor such a question has been referred to us for determination.

(11) The learned counsel for the respondent, then contended that even if some facts which are required to be pleaded are not averred in the pleadings, but the evidence has been led by both the parties and the Court comes to the conclusion that the tenant has not

been taken by surprise by the absence of a certain pleading, the landlord should be entitled to get the necessary relief even in the absence of the pleadings. In support of this contention, reliance has been placed on *Nedunnuri Kameshwaramma* v. *Sampati Suba Rao*, (17), wherein it was held,—

> "Where the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contention but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mis-trial which vitiates proceedings. The suit could not be dismissed on this narrow ground, and also there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion and neither party claimed that it had any further evidence to offer."

(12) In the present case, we are concerned only with the question as a principle of law as to whether it is essential to plead in an eviction application the ingredients of sub-clauses (b) and (c) and not the question that if in a particular case these ingredients are not pleaded, but the parties have led evidence with regard to them, what will be the effect? In any given case, where facts have not been averred in the pleading, a number of questions can arise as to whether proper evidence has been adduced by the landlord regarding those facts which do not find place in the pleadings and secondly whether such evidence will be admissible or not and lastly, whether the tenant was taken by surprise or not and had led evidence with full knowledge of the requisite contentions raised by the landlord and whether the tenant has in those circumstances been prejudiced or not. The Court would be required to give full consideration to the contentions raised by the respective parties and the facts and circumstances of each case before its decision in favour of the landlord or the tenant, but the decisions of the High Courts or the Supreme Court, in this regard, cannot be of any avail to detract from the validity of the proposition that it is necessary for the landlord to make averments regarding the ingredients of sub-clauses (b) and (c). However, it may be made clear that when it is held that it is essential to plead the ingredients of sub-clauses (b) and (c) in the eviction application by the landlord, it should not be understood

(17) A.I.R. 1963, S.C. 884.

that under no circumstances, in the absence of pleadings, the evidence regarding the ingredients envisaged in sub-clauses (b) and (c) can be looked into. This is not peculiar to the eviction applications. Similar considerations come into operation even in the case of suits which are governed by the specific and detailed provisions of the Code of Civil Procedure regarding pleadings.

(13) This Court, the other High Courts and the Supreme Court have had the occasion to make pronouncements one way or the other in cases where the evidence was led by parties in the absence of requisite pleadings. Those decisions will serve as guides in eviction proceedings under the Act.

(14) While reversing the *ratio* of the decision in *Krishan Lal Seth's case* (supra), in answering the question referred to us, I cannot lose sight of the fact that this judgment was pronounced in the year 1961 and in the eviction application filed after the pronouncement of that judgment, the landlords are likely to have omitted to make averments regarding the ingrediens of sub-clauses (b) and (c) and the question may arise as to whether the pleadings should be allowed to be amended if prayer is made to this effect by the applicant or otherwise. In a number of judgments considered in the earlier part of this judgment, amendments have been allowed and the cases have been sent back allowing further evidence to be led after the amendment of the pleadings. Though it is difficult to lay down any rigid proposition of law that in all cases, without exception, amendment should be allowed it is, however, expected that the Court concerned will give due consideration to the history of the case on the matter in controversy and conduct of the parties before disallowing amendment of the eviction applications.

(15) To sum up, the reply to the question referred for decision is that it is essential for a landlord to plead the ingredients of sub-clauses (b) and (c) of paragraph (i) of section 13(3)(a) of the Act in his eviction application and that the decision of the Division Bench in *Krishan Lal Seth's case* (supra), in this regard, does not lay down a good law.

N.K.S.

26768 ILR—Govt. Press, Chd.