ÿþhtml> head> meta http-equiv=Content-Type content="text/html; charset=unicode"> meta name=Generator content="Microsoft Word 12 (filtered)"> title>SUPREME COURT OF INDIA/title> style> !-- /* Font Definitions */ @font-face {font-family:"Cambria Math"; panose-1:2 4 5 3 5 4 6 3 2 4;} /* Style Definitions */ p.MsoNormal, li.MsoNormal, div.MsoNormal {margin:0in; margin-bottom:.0001pt; font-size:12.0pt; font-family:"Times New Roman","serif";} a:link, span.MsoHyperlink {color:blue; text-decoration:underline;} a:visited, span.MsoHyperlinkFollowed {color:purple; text-decoration:underline;} p {font-size:12.0pt; font-family:"Times New Roman","serif";} .MsoChpDefault {font-size:10.0pt;} @page Section1 {size:8.5in 11.0in; margin:1.0in 1.0in 1.0in 1.0in;} div.Section1 {page:Section1;} --> /style> /head> body lang=EN-US link=blue vlink=purple leftmargin=50> div class=Section1> p align=center style='text-align:center'>b>SUPREME COURT OF INDIA/b>br> br> RAKESH WADHAWAN amp; ORS.br> br> Vs.br> br> M/S. JAGDAMBA INDUSTRIAL CORPORATION amp; ORS.br> br> 26/04/2002br> br> (R.C. Lahoti amp; Brijesh Kumar)/p> p align=center style='text-align:center'>Appeal (civil) 2135 of 1999/p> p>b>JUDGMENT /b>/p> p>R.C. Lahoti, J. /p> p>Late Parmodh Paul, who died during the pendency of the proceedings and whose legal representatives, the appellants before us, have been brought on record, filed a petition under Section 13 of the East Punjab Urban Rent Restrictions Act, 1949 (hereinafter 'the Act', for short), against the respondent-firm through its two partners on the ground of the tenants having defaulted in payment of rent, a ground for eviction under Clause (i) of sub-Section (2) of Section 13 of the Act. Hereinafter for the sake of convenience and brevity, Late Parmodh Paul shall be referred to as the 'landlord' and the respondents as the 'tenants'. /p> p>According to the averments made in the petition for eviction filed on 17.9.1991, the suit premises were obtained by the tenants on tenancy from Shri Mani Ram and Smt. Ratan Devi, the then owners and landlords, under the rent note dated 20-9-1982. The rate of rent agreed upon was Rs.2000/- per month excluding water and electricity charges. The tenants neither paid nor tendered the arrears of rent from 1st March, 1985. There was a civil litigation relating to partition of joint family properties, including the suit premises, between the members of the family wherein, in terms of an interim order passed by the Civil Court, the tenants had deposited rent at the rate of Rs.1800/- per month for the period October 1985 to January 1988. In the eviction petition, the landlord prayed for a direction from the Rent Controller to evict the tenants on the ground of non-payment of rent. /p> p>In the written statement dated 8.1.1992 the tenants admitted to have executed the rent note reciting the rate of rent at Rs.2000/- per month, other than water and electricity charges, but submitted that the rate of rent so appointed was never intended to be acted upon and the real monthly rent of the premises was Rs.1800/- only. In the family litigation, to which the tenants were not a party, in terms of the order passed by the Civil Court, rent at the rate of Rs.1800/- was deposited for the period October 1985 to January 1988. The rent for the period upto September 1985 was paid to the landlords. Subsequent arrears accumulating, owing to infighting amongst the legal heirs, for the period 1.2.1988 to September 1991, i.e. for 44 months, amounting to Rs.79200/- plus interest Rs.8910/- and costs Rs.75/- totalling Rs.88,185/- were tendered before the Rent Controller on 14.11.1991. /p> p>The Rent Controller held the rate of rent of the demised premises was Rs.2000/- excluding water and electricity charges. The amount tendered by the tenants was found to be short and, therefore, invalid. Consequently, at the end, the tenants were ordered to be evicted from the suit premises. /p> p>The tenants preferred an appeal before the Appellate Authority. The Appellate Authority reversed the finding of the Rent Controller and held the rate of rent to be Rs.1800/-, at which rate the arrears had stood cleared and, therefore, the tenants were not liable to be evicted. Civil Revision preferred before the High Court by the landlord was dismissed by the High Court forming an opinion that the finding of fact arrived at by the Appellate Authority was not liable to be interfered with in exercise of revisional

jurisdiction. This is an appeal by special leave preferred by the landlord. /p> p>We will first examine what is the rate of rent. It is admitted between the parties that the agreed rate of rent as recited in the deed of lease executed between the parties was Rs.2000/- but it was the case of the tenants that the rate of rent so appointed was not intended to be acted upon. No reason has been assigned to show why the parties would have arrived at an agreed rate of rent of Rs.2000/- per month and yet chosen not to act upon it. The subsequent conduct of the parties belies the plea taken by the tenants. For several months rent has been paid at the rate of Rs.2000/- p.m.. We would to refer in particular to the contents of the letter dated 9.8.1985 written by the tenants to Ratan Devi, the then landlord wherein it is stated inter alia /p> p>quot;we are forwarding herewith two cheques of Corporation Bank, cheque No.CA 78/770482 dated 9.8.1985 for Rs.4000/- being the amount of rent for June and July, 1985. Another cheque for United Commercial Bank, cheque No.256453 dated 9.8.1985 for Rs.2000/-, the rent of August, 1985 receipt of which please be acknowledged.quot; /p> p>The contents of this letter are neither disowned nor explained and this letter sinks a death-nail into the plea of the tenants. Apart from other evidence available on record, these two material pieces of evidence viz. the deed of lease and tenants' letter abovesaid accompanied by cheques, are enough to overrule the plea of the tenants and to hold that the rate of rent is Rs.2000/- p.m. /p> p>The Appellate Authority, in arriving at a finding to the contrary, was deeply impressed by the fact that in the family litigation for partition of the property, the plaintiffs therein had alleged rate of rent of these premises as Rs.1800/- p.m. and this averment was not disputed by the landlord herein, who was one of the defendants therein. The Appellate Court overlooked some very relevant facts. The plaintiffs in the partition suit were not the landlords realizing the rent; that was the landlord herein who was realizing the rent from the tenants. By an interim order the Civil Court had restrained the tenants from making payment of rent to the litigating parties and had directed the rent to be deposited in the Court so as to be available for distribution to the party found entitled at the end to release of the rent. The written statement filed in the civil suit by the landlord-plaintiff herein did not contain any admission as such; there was a mere failure to object. In that suit, rent payable by the tenants herein was not a subject matter of controversy; it was a side issue. Admission is only a piece of evidence and can be explained; it does not conclusively bind a party unless it amounts to an estoppel. Value of an admission has to be determined by keeping in view the circumstances in which it was made and to whom. A mere failure to object cannot be placed on a footing higher than an admission. If the two clear cut admissions made by the tenants, referred to herein above, were to be weighed against the landlord's mere failure to object about a wrong averment as to rate of rent in a case where it was not a point in issue, then no inference other than the one of the rate of rent being Rs.2000/- p.m. could have been drawn. To that extent, the finding arrived at by the Appellate Authority suffer from perversity and should have been set aside by the High Court even in exercise of revisional jurisdiction. On the material available on record, no inference other than the rent of the suit premises being Rs.2000/- p.m., excluding water and electricity charges, can be drawn. We hold it accordingly. /p> p>Though we are holding the rate of rent as Rs.2000/-p.m. excluding water and electricity charges but it cannot be denied that to begin with there was a serious dispute as to the rate of rent as to whether it was Rs.2000/-, and hence followed the dispute whether the amount tendered by the tenant in the suit along with interest and cost of application amounted to compliance with proviso under Section 13 (2)(i), and if so, whether a decree for eviction could at all have been passed. All such disputes were genuine and not frivolous or just in air without any basis. In this appeal, the tenant-respondents have, in the affidavit of Ashwini Kumar, supported by documents, filed with the leave of the Court, set a statement of payments made, which reveals that the controversy between the parties is very narrow, and even if there is some default in payment it is marginal and not deliberate. There is a serious lacuna with which the relevant provision of the Act suffers which we propose to demonstrate

and deal with so as to remove the same, if we can. /p> p>The landlord-tenant litigation accounts for a major part of litigation pending in courts of law or before statutory authorities. Also a substantial number of cases consists of those wherein eviction is prayed for on the ground of non-payment of rent or the tenant being a defaulter. The enactment of 1949 Act was preceded by the Punjab Urban Rent Restriction Act 1941 which was intended to restrict unreasonable hike in rent because of shortage of accommodation felt on account of housing properties being requisitioned by the Government to provide accommodation to the families of civil and army officers engaged in the war effort in some capacity or the other. For raising additional revenue to compensate the costs of the war, new tax on the immoveable property was imposed. The 1941 Act was to remain in force only for a period of five years. It was replaced by 1947 Act enacted by the Governor of Punjab in exercise of his powers under Section 93 of the Government of India Act, 1935. Then the country witnessed partition and large scale migration of population between the East and West Punjab. In this wake the 1949 Act was enacted. Statement of Objects and Reasons of the Act stated, inter alia, that need was felt to re-enact as a permanent measure, a legislation for restricting the increase of rents of certain premises situated within the limits of urban areas and the protection of tenants against malafide attempts by their landlords to procure their eviction. The State legislation enacted more than 50 years ago as a measure for taking care of the then problem created by the then circumstances has, nevertheless, continued to remain in operation till this date. The legislation needs a new look and revamping at the hands of the legislature. There are several lacunae in the provisions of the Act creating bottlenecks in their smooth functioning highlighted in several judicial pronouncements and such deficiencies are proving paradise for unscrupulous litigants and also to some extent frustrating the very purpose sought to be achieved by the legislation. One of such deficiencies in legislation, as we would highlight a little later, is capable of being demonstrated from the facts of the present case. Before we may enter into that discussion, we find it appropriate to reproduce the observations made by Professor D.N. Jauhar, Department of Laws, Punjab University based on his research and survey in his work quot;Rent Matters on Trialquot; (1998), at page 23: /p> p>quot;The present Rent Act had outlived its utility decades ago and has become totally outdated. The Act which was initially introduced as a temporary short term measure for five years only, during the Second World War, has become a permanent piece of legislation. One would not mind its being permanently on the Statute Book but what is really disturbing is that it has stagnated for the last five decades. No effort whatsoever, worth the name, has been made either by the State Government, or the Central Government to suitably revise the Act from time to time so as to keep pace with the changing socio-economic pattern of society. /p> p>The need of the hour is a law which will regulate, not control, the relations between an owner and an occupier with the sole object of harmonising relations between the two. Such a statute is the dire need of the hour which requires that the present Act be consigned to history.quot; /p> p>In Nagindas Ramdas Vs. Dalpatram Iccharam Brijram amp; Ors. - (1974) 1 SCC 242 this Court summed up the reasons which persuaded the spurt of rent control legislations in different States of the country in these words : /p> p>quot;The strain of the last World War, Industrial Revolution, the large scale exodus of the working people to an urban areas and the social and political changes brought in their wake social problems of considerable magnitude and complexity and their connected evils. The country was faced with spiralling inflation, soaring cost of living, increasing urban population any scarcity of accommodation. Racketing and large scale eviction of tenants under the guise of the ordinary law, exacerbated those conditions making the economic life of the community unstable and insecure. To tackle these problems and curb these evils, the Legislatures of the States in India enacted Rent Control legislations.quot; /p> p>Almost similar necessity existed in the State of Punjab for enacting the 1949 Act as pointed out by this Court in Attar Singh Vs. Inder Kumar AIR 1967 SC 773. The Court observed that the Act is a piece of ameliorative legislation in the interests of tenants of

premises in urban areas, so that they may be protected against large increase in rents and from harassment by eviction. /p> p>It is high time when State of Punjab should have a fresh look at Section 13 and other relevant provisions of the Act learning lessons from the manner in which these provisions have so far worked and by reviewing how far the object which the legislation sought to achieve has been achieved or frustrated. Useful assistance can be taken from the Rent Control legislations in other States to see how pari materia provisions have been drafted therein. The phraseology employed in drafting Section 13(2)(i) with its proviso and the manner in which it has been so far interpreted, are, in our opinion, far from serving the object of enactment, rather defeating it. /p> p>The relevant part of Sec.13 reads as under: /p> p>quot;13. 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, [or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restrict Act, 1947, as subsequently amended]. /p> p>(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 /p> p>(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: /p> p>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; /p> p>xxx xxxx xxx /p> p>quot;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: /p> p>Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregatequot;. /p> p>The expression employed is 'the rent due'. A Full Bench of the High Court of Punjab in Rullia Ram Hakim Rai v. S. Fateh Singh S. Sham Sher Singh, AIR 1962 Punjab 256, has taken the view that the expression 'rent due' in contradistinction with the words 'rent legally due' or 'rent recoverable' or the 'arrears of rent within the period of limitation' implies that the obligation of the tenant to pay or tender the rent extends to depositing all the arrears of rent without regard to the period of limitation. This view finds support from a decision of this Court in Khadi Gram Udyog Trust Vs. Shri Ram Chandraji Mandir, 1978 (1) SCC 44, wherein, interpreting the pari materia provision contained in the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, this Court has held that the expression quot;entire amount of rent duequot; includes the rent the recovery whereof has become barred by time, for, the statute of limitation bars the remedy but does not extinguish the right. The learned counsel for the tenants conceded during the course of hearing that on the present framing of the provision under examination, the obligation of the tenant to pay or tender even time barred rent, to take advantage of the proviso, cannot be denied. /p> p>The question still remains what is the amount which the tenant should tender and what is the course to be followed if there be any genuine dispute between the amount claimed or alleged by the landlord to be due and the amount which the tenant admits or alleges to be due. Apparently the Punjab Act does not provide any mechanism taking care of such a situation. A Division Bench of the High Court in Mangat Rai v. Ved Parkash, 1969 CLJ 254, took the view that it is wrong to say that the proviso casts only a unilateral duty on the tenant, without there being any corresponding duty and discretion vesting in the Court in connection therewith. There are reciprocal obligations created by the proviso. So far as the calculation of arrears of rent and interest is concerned, that is

the sole responsibility of the tenant. But so far as the assessment of the costs is concerned, the proviso assigns that function to the Controller. There are a few other decisions also taking the same view. However, we do not find any in-depth discussion or any attempt made at analyzing and interpreting the proviso in the light of the object behind the enactment. /p> p>There may be unscrupulous landlords, who with the purpose of placing the tenants in a quandary and thereby earning an easy order of eviction may highly inflate the claim. For example, the landlord may claim the arrears at a highly inflated rate of rent, or may claim rent alleging it to be in arrears though the same had already stood paid and for which the landlord chose not to issue receipts for payment, or there may be a bonafide dispute as to the rate at which the rent was paid or is payable. Several other State legislations provide for an interim or provisional order being passed by the Court or the Rent Controller, resolving the dispute momentarily by a judicial order, with which order the tenant should comply and failing which the tenant may suffer adverse consequences. A provision for such an interim or provisional order has not been expressly made in the Punjab Act; yet can it be spelt out? If we were to go by adopting an approach approving the interpretation placed on the proviso by the Punjab High Court in Mangat Ram's case (supra), serious and uncalled for consequences are bound to follow. /p> p>In Dial Chand v. Mahant Kapoor Chand, 1967 (69) PLR 248, the learned Single Judge of Punjab High Court opined that in the event of there being a dispute as to the quantum of rent, the tenant can take one of the three courses: /p> p>quot;He can under protest make payment or tender of the arrears at the rate claimed by the landlord in the ejectment application, and if the rate is found subsequently to be less, he can hope for adjustment of the excess payment. He can come forward with a straight statement of what is the true rate of rent and on that proceed to comply with the proviso, in which case he has the benefit of the proviso, if the finding is that the rate stated by him is the rate of rent for the tenancy. Lastly, he can enter into a dispute with the landlord, as in this case, and insist upon his lower rate of rent and then take the consequence if he is not able to prove that that is the actual rent. If he fails to establish this ground, obviously he fails to have advantage of the proviso.quot; /p> p>This is too simplistic an approach and defeats the purpose of enactment as would be seen shortly hereafter. In Behari Lal v. Ajudhia Dass, 1970 RCR 76, the tenant tendered full amount claimed by the landlord to plead that what he was paying was more than the rent due and reserved his right to recover back the excess paid by him. The plea forcefully advanced by the landlord was that as the tenant had pleaded the amount tendered by him to be in excess, accompanied by a claim for refund, the same was not a valid tender, and therefore, the tenant was liable to be ejected. Such a tall plea of the landlord, of course, did not find favour with the High Court and rightly so. Yet the manner in which Section 13 (2)(i) with the proviso has been interpreted in some of the decisions by Punjab High Court, if allowed to prevail, the consequence would be that the tenants shall have to succumb to the pressure of the landlord by conceding and making the payment or tender as dictated by the landlord along with interest and costs; else he inescapably suffers the risk of eviction. If he raises a dispute in defence even if bonafide, and howsoever believed to be true, he must suffer eviction if on trial, for any reason including any fortuitous circumstances, he fails in substantiating his plea though he very much believed, and genuinely, that he would be able to do so. A tenant forcefully raising a plea in his defence stands to lose and suffer for his failure to substantiate his defence. On the contrary, if the landlord has made a false or exaggerated claim, submitted to by the tenant by making a deposit with interest and costs, and the landlord fails in substantiating his claim of the arrears, he does not stand to lose anything. Thus there are no holds barred for the landlord while the tenant is subject to strict discipline. This could not have been the intendment of an enactment, which as its Preamble speaks, is meant to restrict the eviction of tenants from urban premises. /p> p>There are two means of resolving the riddle : firstly, by placing such meaningful interpretation on the provision as would enable the legislative intention being effectuated; and secondly, by devising such procedure without altering

the structure as would enable the substantive law being meaningfully implemented. Let us see whether the expression 'assessed by the Controller' qualifies only 'the cost of application' or qualifies the entire preceding expression i.e. 'the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application'. As there is ambiguity and the provision is susceptible to two meanings, the Court should interpret it in the manner which will best serve the object sought to be achieved. In our opinion, if there be a dispute raised as to the quantum of arrears of rent, or as to the rate of rent which would obviously in its turn have an impact on the quantum of arrears, then for the purpose of payment or tender within the meaning of the proviso, the Controller must make an assessment, provisional in nature, and appoint the quantum of arrears including the rate of rent (if necessary) and, calculating the interest and the cost of application. There may be a dispute as to the date on which the monthly rent becomes due according to the contract of tenancy which will also need to be resolved without which the period for which interest at six per cent per annum is liable to be paid would not be capable of being quantified. For two reasons, we consider it necessary to place such an interpretation or the language of the proviso. Firstly, it is in conformity with the object of enactment. The legislation was enacted to protect the tenants from the hands of unscrupulous landlords and any interpretation to the contrary would give an upper hand to the landlords and provide a tool in their hands to be cracked like a whip on weaker tenants. Secondly, such an interpretation would bring the provision in conformity with the several other legislations of the times such as Section 13 of the M.P. Accommodation Control Act, 1961, Section 11 of A.P. Buildings (Lease and Eviction) Control Act, 1960, Section 11(4) of Bombay Rents, Hotels and Lodging House Rates Control Act, 1947, Section 15 of Delhi Rent Control Act, 1958 and so on. Thirdly, the provision suffers from ambiguity. In the absence of any in-built indication enabling determination of the quantum of arrears, if disputed, and the period for which interest at six per cent per annum is to be calculated, the provision would become unworkable and hence liable to be struck down under Article 14 of the Constitution. An obligation is cast on the Court to interpret it in such a manner as to make it workable and save it from the vice of being rendered unconstitutional. /p> p>Even if Section 13(2)(i) and the proviso would not have been enacted there was Section 114 of the Transfer of Property Act to take care of such situation. The provision in the Rent Control Legislation which obliges the tenant to pay or tender the arrears of rent during the course of hearing and relieve the tenant from the consequences of default in payment of rent is founded on the doctrine of forfeiture of lease for non-payment of rent and equitable principle of granting relief against forfeiture within the exercise of discretion vesting in the Court. The Transfer of Property Act, 1882 did not in terms apply to the State of Punjab however principles underlying or contained in such of the provisions of the Transfer of Property Act as are essentially the principles of equity, justice and good conscience have been held applicable to the State of Punjab and Haryana. Section 114 of T.P. Act embodies one such principle. (See Namdeo Lokman Lodhi Vs. Narmadabai and Ors. AIR 1953 SC 228; Guru Nanak Ex Servicemen Cooperative T.F. Society Group No.2 and Ors. Vs. The State of Haryana and Ors. AIR 1972 Punjab amp; Haryana 83 D.B.; Aziz-Ud-Din and Ors. Vs. Guru Bhagwan Das and Anr. - (1912) 17 IC 991). The rule of equity enshrined in Section 114 of Transfer of Property Act is : Where a lease of immoveable property has determined by forfeiture for non-payment of rent and the lessor files a suit for ejectment of the lessee, the Court exercises a discretionary jurisdiction of passing an order relieving the lessee against the consequences of forfeiture if at the hearing of the suit the lessee pays or tenders to the lessor the rent in arrears with interest and costs or furnishes such security as the Court thinks sufficient. Having appointed a time for payment, the Court still retains jurisdiction to extend the time (Chandless-Chandless Vs. Nicholson 1942 (2) All ER 315). Even the time appointed by a consent decree can be extended (Smt. Amiya De Vs. Dhirendra Nath Mandal AIR 1971 Calcutta 263). The discretion conferred by Section 114 of TP Act is of wide amplitude guided by the principles of justice, equity and good

conscience and the Court would examine the conduct of the parties, the comparative hardship and lean in favour of one whose hands are clean (Namdeo Lokman Lodhi Vs. Narmadabai and Ors. AIR 1953 SC 228. The discretion to grant relief again forfeiture is available not only to the trial court but also to appellate court (R.S. Lala Praduman Kumar Vs. Virendra Goyal (dead) by his Lrs. And Ors. 1969 (1) SCC 714. /p> p>The question which stares us is : whether in enacting Section 13(2)(i) and proviso thereto can we assume that the Legislature intended to place the tenants in a situation worse than what it would have been under the principles deducible from Section 114 of T.P. Act and even if this provision would not have been there? We cannot attribute such misplaced wisdom to the Legislature without being uncharitable to it. We are definitely of the opinion that by engrafting Section 13(2)(i) and proviso in the body of the Act the Legislature intended to confer on the tenants a protection, larger and more beneficial than what it would have been if the provision was not enacted. /p> p>There are yet other serious infirmities with which the provision suffers. In spite of the proviso having been complied with the Rent Controller, proceeds to hold an enquiry and record a finding on the pleas raised in the case. If the Controller finds merit in the dispute raised by the tenant and accepts the truth of his plea, the deposit made by him, though it did not satisfy the claim then made by the landlord would still entitle the tenant to an order rejecting the landlord's application for eviction. If the deposit made by him is to be found in excess, would he would be entitled to an order for refund? The provision does not give an answer. If the tenant fails in substantiating his plea and the amount paid or tendered by him under the proviso is found to be deficient, the landlord would be entitled to an order directing the tenant to put the landlord in possession of the building or rented land. Yet the Controller cannot pass an order for recovery of arrears though found to be due. The landlord is constrained to initiate separate proceedings for recovery of arrears of rent before the Civil Court. Yet again, during the pendency of proceedings under Section 13, the provision does not contemplate rent falling in arrears month by month being paid or deposited by tenant. The landlord is therefore driven to the need of filing successive proceedings for recovery of rent against an erring tenant. Thus the view so far being taken by the High Court serves neither the interest of the tenant nor the interest of the landlord. All these result in multiplicity of legal proceedings. The end part of sub-section (2) of Section 13 confers a discretionary jurisdiction on the Controller who quot;may make an order directing the tenant to put the landlord in possession of the building or rented landquot;. Once a case for eviction on one of the grounds under Section 13 has been satisfactorily made out the Controller cannot refuse making an order for delivery of possession to the landlord in purported exercise of discretion spelled out by use of word 'may' because the exercise of discretion would then be termed as arbitrary as that of quot;knight-errant roaming at willquot; in the words of Benzamin Cordozo. The fact remains that the legislature has chosen to use the word 'may' and not 'shall' at the end of sub-section (2) while empowering the Controller to make an order for eviction of tenant. /p> p>The purpose of enacting such a provision as in Section 13(2)(i) proviso, which acts almost in terrorem on the tenant, in several rent control laws is dual. It ensures recovery of rent to the landlord and saves him from the recalcitrant tenant by building pressure on tenant to make payment under pain of eviction. At the same time it protects the tenants from the unscrupulous devices of landlords. Both the purposes are defeated by too simplistic an interpretation placed on Section 13(2)(i) proviso of the Punjab Act by the High Court of Punjab and Haryana, as already referred to. /p> p>It is a settled rule of construction that in case of ambiguity, the provision should be so read as would avoid hardship, inconvenience, injustice, absurdity and anomaly. Justice G.P. Singh in his Statutory Interpretation (Edition 2001) states (at page 113): quot;In selecting out of different interpretations quot;the court will adopt that which is just, reasonable and sensible rather than that which is none of those thingsquot; as it may be presumed quot;that the Legislature should have used the word in that interpretation which least offends our sense of justice. If the grammatical construction leads to some

absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity, and inconsistency. Similarly, a construction giving rise to anomalies should be avoidedquot; /p> p>What follows from the abovesaid discussion is that the proviso to clause (i) of sub-section (2) of Section 13 must be read as obliging the Controller to assess, by means of passing an order, the arrears of rent, the interest and the cost of litigation all the three, which the tenant shall pay or tender on the first date of first hearing of the main petition following the date of such assessment by Controller. Such order based on an opinion formed prima facie by perusal of the pleadings and such other material as may be available before the Controller on that day would be an interim or provisional order which shall have to give way to a final order to be made on further enquiry to be held later in the event of there being a dispute between the parties calling for such determination. The Controller would, however, at the outset assess the rent, the interest and the cost of application in the light of and to the extent of dispute, if any, raised by the tenant. Such amount, as determined by Controller shall be liable to be paid or tendered by the Controller on the 'first date of hearing' falling after the date of the preliminary or provisional order of Controller. The expression quot;the date of first hearingquot; came up recently for the consideration of this Court in Mam Chand Pal Vs Smt. Shanti Agarwal (C.A. No.1187 of 2002 decided on 14.2.2002). It was held that 'the date of first hearing' is the date on which the Court applies its mind to the facts and controversy involved in the case. Any date prior to such date would not be date of first hearing. For instance, date for framing of issues would be the date of first hearing when the Court has to apply its mind to the facts of the case. Where the procedure applicable is the one as applicable to Small Cause Courts, there being no provision for framing of the issues, any date fixed for hearing of the case would be the first date for the purpose. The date fixed for filing of the written statement is not the date of hearing. Keeping in view the interpretation so placed on 'the date of first hearing' the obligation cast by the proviso under consideration can be discharged by the Controller on any date fixed for framing of the issues or for hearing. It would be the obligation of the parties to place the relevant material on record, in the shape of affidavits or documents, which would enable the Controller to make a provisional judicial assessment and place it on record to satisfy the spirit of the proviso. It would be desirable if the Rent Controller specifically appoints a date for the purpose of such assessment and order so that the parties are put on adequate notice and bring the relevant material on record to assist the Controller. A litigant cannot be expected to be ready to comply with the order of the Controller on the very day on which the order is made. How could he anticipate what order the Controller would be making? /p> p>Having held that the Controller, has to provisionally assess (i) the arrears of rent, (ii) the interest on arrears of rent assessed by him, and (iii) cost of application, question arises as to how the provision shall work thereafter or, in other words, what shall be the procedure to be followed thereafter by the Controller. Salmond states in Jurisprudence (Twelfth Edition, pp. 5-6): /p> p>quot;Suppose the legislator could draft rules that were absolutely clear in application: even so, he could not foresee every possible situation that might arise, and so, he could not anticipate how he, or society, would wish to react to it when it did arise. Too certain a rule would preclude the courts from dealing with an unforeseen situation in the way they themselves, or society, might think best. As it is, legal uncertainty is counter- balanced by judicial flexibility.quot; /p> p>We may with advantage quote a passage from Law in the Making by Sir Allen (Seventh Edition, 1964, at p.308): /p> p>quot; 'This Court', said Scrutton L.J., 'sits to administer the law; not to make new law if there are cases not provided for.' 'It may be', said Lord Denning M.R. in Att.-Gen.- v. Butterworth, [1963] I, Q.B.,696, 719, 'that there is no authority to be found in the books, but if this be so all I can say is that the sooner we make one the better.' But how did the Master of the Rolls 'make' this authority? By reference to 'many pointers to be found in the books in favour of the view which I have expressed'.quot; /p> p>Again at page 521, the eminent jurist states: /p> p>quot;There is no doubt

that some judges will 'read into' a statute, under the guise of the 'implied intention' of the legislator, what justice and convenience require.quot; /p> p>A statute can never be exhaustive, and therefore, Raghubar Dayal,J. speaking for himself and Wanchoo and Das Gupta, JJ. observed in Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527 at page 532, quot;that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them.quot; Sometimes when a difficult situation arises it may demand such directions being made as would pragmatically meet the needs of the situation and resort can be had to the inherent powers of the Court, if need be. Krishna Iyer, J. in The Newabganj Sugar Mills Co. Ltd. and others v. The Union of India and others, (1976) 1 SCC 120, held quot;The difficulty we face here cannot force us to abandon the inherent powers of the Court to doquot;, and he quoted Jim. R. Carrigam to say - quot;The inherent power has its roots in necessity and its breadth is co-extensive with the necessity.quot; H.R. Khanna, J. observed in M/s. Jaipur Mineral Development Syndicate, Jaipur v. The Commissioner of I.T., New Delhi, (1977) 1 SCC 508 : quot;The Courts have power, in the absence of any express or implied prohibition, to pass an order as may be necessary for the ends of justice or to prevent the abuse of the process of the court. To hold otherwise would result in quite a number of cases in gross miscarriage of justice.quot; Jurisdiction to pass procedural orders though not specifically contemplated by statute can be spelled out from what was said by Hidayatullah, J. (as he then was) in Mahant Ram as Vs. Ganga Das, AIR 1961 SC 882, when orders are 'in essence in terrorem so that dilatory litigants might put themselves in order and avoid delay' the Courts are not powerless to meet a situation for 'such orders are not like the law of the Medes and the Persians'. /p> p>The result of the discussion may be summarized. Under proviso to Section 13(2)(i), the Controller having discharged his obligation of passing an order under the proviso, either suo moto or on his attention in this regard being invited by either of the parties, it will be for the tenant to pay or tender the amount provisionally assessed by the Controller on the first date of hearing of the application for ejectment. On compliance, the Controller would proceed to adjudicate upon the controversy arising for decision by reference to pleadings of the parties and by holding a summary enquiry for the purpose. Such adjudication shall be provisional and subject to the later final adjudication. The finding that may ultimately be arrived at by the Controller may be one of the following three. The Controller may hold that the quantum of arrears as determined finally is (i) the same as was found to be due and payable under the provisional order, (ii) is less than what was determined by the provisional order, or (iii) is more than the one what was held to be due and payable by the provisional order. In the first case the Rent Controller has simply to pass an order terminating the proceedings. In the second case the Controller may direct the amount deposited in excess by the tenant to be refunded to him. In the third case it would not serve the purpose of the Act if the tenant was held liable to be evicted forthwith as is the view taken by the Punjab High Court in the case of Dial Chand (supra). The Controller directing the eviction of the tenant may pass a conditional order affording the tenant one opportunity of and a reasonable time for depositing the amount of deficit failing which he shall be liable to be evicted. This power in the Rent Controller can be spelled out from the use of the word quot;mayquot; in the expression quot;The Controller may make an order directing the tenant to put the landlord in possessionquot;, as also from the principle of equity and fair play that the tenant having complied with provisional order passed by the Controller should not be made to suffer if the finding arrived at by the Controller at the termination of the proceedings be different from the one recorded in the provisional order. While exercising the discretion to make a conditional order of eviction affording the tenant an opportunity of purging himself of the default the Controller may also take into consideration the conduct of the tenant whether he has even after the passing of the provisional order continued to pay or tender the rent to the landlord during the pendency of the proceedings as a relevant factor governing the exercise of his discretion. Such a course would be

beneficial to the landlord too as he would be saved from the trouble of filing a civil suit for recovery of rent which fell due during the pendency of proceedings for eviction before the Controller. /p> p>To sum up, our conclusions are: /p> p>1. In Section 13(2) (i) proviso, the words 'assessed by the Controller' qualify not merely the words 'the cost of application' but the entire preceding part of the sentence i.e. 'the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application'. /p> p>2. The proviso to Section 13(2)(i) of East Punjab Urban Restriction Act, 1949 casts an obligation on the Controller to make an assessment of (i) arrears of rent (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order the amount which the tenant must pay or tender on the 'first date of hearing' after the passing of such order of 'assessment' by the Controller so as to satisfy the requirement of the proviso. /p> p>3. Of necessity, 'the date of first hearing of the application' would mean the date falling after the date of such order by Controller. /p> p>4. On the failure of the tenant to comply, nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the Controller. /p> p>5. If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction. /p> p>6. While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings. /p> p>The view of the law so taken by us advances the object sought to be achieved by the legislation, serves best the interests of landlord and tenant both, removes uncertainty in litigation and obscurity in drafting of the provision and also accords with the principles of justice and equity. Even if, it is an innovation, it is in the field of procedural law, without affecting the substantive rights and obligations of the landlord and the tenant and such innovation is permissible on the basis of authority and supported by principles of justice, good sense and reason. We have not touched the substantive rights of landlord and tenant, and are feeling satisfied with a do little in the field of procedure so as to effectuate the purpose of enactment. /p> p>We do not find that the Controller has, in the present passed any order under Section 13(2)(i) proviso as aforesaid and therefore the order for eviction stands vitiated on the view of the law which we have taken hereinabove. The appeal is allowed. The impugned judgment of the High Court and the orders of the Rent Controller as also of the Appellate Authority are all set aside. The case is sent back to the Controller. The Controller shall, after affording the parties an opportunity of hearing, pass a provisional order under the proviso to Section 13(2)(i) and afford the tenants an opportunity of making payment or tender and then proceed to decide the case afresh consistently with the law as settled hereby. The costs before the Appellate Authority, the High Court and this Court shall be borne by the parties as incurred. The costs before the Controller shall abide the result./p> /div> /body> /html>