

RAJASTHAN HIGH COURT

Om Prakash

Vs.

Manoharlal

S.B. Civil Second Appeal No. 138 of 1987

(Sunil Kumar Garg, J.)

24.04.2002

JUDGMENT

Sunil Kumar Garg, J.

1. This second appeal has been filed by the appellant- defendant against the judgment and decree dated 31.10.1987 passed by the learned Addl. District Judge, Bikaner in Civil Appeal No. 58/86 by which he allowed the appeal of the plaintiff and decreed the suit of the plaintiff for eviction of the defendant-appellant from the suit premises on the ground of default as envisaged under section 13(1)(a) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (hereinafter referred to as "the Rent Control Act") and reversed and set aside the judgment and decree dated 20.1.1983 passed by the learned Addl. Munsiff, Bikaner in Civil Suit No. 54/78 by which the learned Addl. Munsiff dismissed the suit of the plaintiff holding the defendant-appellant as first defaulter.

Note:

It may be stated here that the suit premises were purchased by the Manoharlal from the original-plaintiff-respondent Hari Narain and, therefore, he moved an application on 2.9.1994 for impleading him as party respondent in place of original plaintiff Hari Narayan and that application was allowed by this Court vide order dated 1.12.1995 and Manoharlal was impleaded as respondent in this second appeal in place of Hari Narayan.

2. It arises in the following circumstances:

On 30.5.1975, the original plaintiff-Hari Narayan filed a suit in the Court of Munsiff, Bikaner with the averments that the property mentioned in para No. 1

of the plaint was given on rent to the defendant-appellant and monthly rent was Rs. 25/- and since May, 1968, the rent was reduced from Rs. 25/- p.m. to Rs. 20/- p.m., but in Rs. 20/- pm. to Rs. 1.50/- p.m. was further added as house tax. It was further averred in the plaint that the defendant- appellant had paid rent up to January, 1965 and, thereafter, he committed default in making payment of rent. A notice terminating the tenancy was given by the plaintiff to the defendant-appellant. In para No. 5 of the plaint, it was averred by the plaintiff that though rent since January, 1965 became due to the tune of Rs. 3055.84, but since this amount included the time barred rent, therefore, the rent to the tune of Rs. 774/- for a period of three years was claimed by the plaintiff and the suit was based merely on the ground of default as envisaged under section 13(1)(a) of the Rent Control Act and eviction of the defendant-appellant was sought on that ground alone.

It may be stated here that on first date of hearing i.e. on 1.9.975, the defendant-appellant made an application under Section 13(4) of the Rent Control Act as was applicable on that day and requested the Court that the amount of rent be determined as he was ready to deposit the amount under protest, as claimed in the plaint. On that application, the Court passed the following order :

"The tenant may deposit the amount as per provisions of Section 13(4) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950. It hardly requires any order from the Court or assent of the landlord. The rent for each succeeding month is also payable under the directions of the statute. The rent is stated to be Rs. 21.50 p.m."

After that, the defendant-appellant deposited that amount of rent which was claimed by the plaintiff in his plaint, in the following manner :

Rs. 854/- as rent for 40 months upto 31.8.1975

Rs. 82/- as interest

Rs. 8/- for notice

Rs. 944/-

The defendant-appellant filed his written statement on 10.3.1977 in which he admitted that he was tenant of the plaintiff, but according to the defendant-appellant, the rent was. Rs. 15/- per month and it was never increased or decreased as alleged by the original-plaintiff-respondent. The defendant- appellant further pleaded that under protest on the first date of hearing, he had already deposited the amount of rent at the rate or Rs. 21.50 p.m. as claimed by the original plaintiff-respondent himself. Hence, the suit be dismissed.

On the pleadings of the parties, on 21.4.1977, the following issues were framed :

- 1- vk;k izfroknh fdjk;s vnk;xh esa fMQkYVj gS \
- 2- izfroknh ds fdl dnj fdjk;k o gtkZ cker mi;ksx miHkksx ckdh gS \
- 3- vk;k izfroknh us cknh ds ys.MykMZ dks VkbZVy dks o vius fdjk;snkj gksus ds djsDVj dks fjUkkmUl dj fn;k gS \
- 4- vk;k izfroknh dks fdjk;snkjh lekflr ds fy;s fn;k x;k uksfVl voS/k gS \
- 5- vk;k fooknkLin iflj dk fdjk;k 20@& ekgokj vykok 1-50 iS- gkml VsDl gS \
- 6- vuqrks"k

Therefore, on 17.9.1981, one more issue was added and the same reads as follows :-

After recording the evidence, the learned Addl. Munsiff, Bikaner through his judgment and decree dated 21.1.1983 decided the issues in the following manner :

Issue No. 1

That Section 13A was added through Ordinance 26 and it may be stated here that amendment came into force with effect from 29th Sept. 1975 and there is no dispute on the point that no application was filed by the defendant- appellant under section 13A of the amended Rent Control Act and that if any application was to be filed, that was to be filed within one month from 29.9.1975.

The learned Addl. Munsiff came to the conclusion that the defendant-appellant was entitled to the benefit of the provisions prior to that ordinance which came into force with effect from 29th Sept, 1975 and thus, though the defendant-appellant had not filed any application under section 13A of the Rent Control Act and further since he had deposited the rent as claimed by the original-plaintiff-respondent in his plaint on first date of hearing, therefore, he could not be said to be defaulter and he was entitled to be declared as first defaulter and no decree of eviction could be passed against him on ground of default as envisaged under section 13(1)(a) of the Rent Control Act.

Thus, issue No. 1 was decided accordingly and the suit of the plaintiff was issues dismissed after declaring the defendant-appellant as first defaulter.

For rest issues, though he decided holding that there was no necessity for those issues. Aggrieved from the judgment and decree dated 20.11.1983 passed by the learned Addl. Munsiff, Bikaner, the original plaintiff-respondent preferred first appeal before the learned District Judge, Bikaner, which was transferred to the learned Addl. District Judge, Bikaner and the learned Addl. District Judge, Bikaner through his judgment and decree dated 31.10.1987 allowed the appeal of the plaintiff and decreed the suit of the plaintiff for eviction of the defendant-appellant from the suit premises on the ground of default as envisaged under Section 13(1)(a) of the Rent Control Act and reversed and set aside the judgment and decree dated 20.1.1983 passed by he learned Addl. Munsiff, Bikaner, holding inter-alia :

(1). That looking to the facts that the suit was filed on 30.5.1975 and first date of hearing was 1.9.1975 and on that day, the defendant- appellant deposited all the arrears of rent as claimed by the plaintiff in his plaint and amended Ordinance 26 came into force with effect from 29th Sept. 1975 and thus, the rights which accrued to any party before issuing that Ordinance are saved and therefore, if the defendant-appellant had deposited rent under Section 13(4) (old) of the Rent Control Act, the amended Section 13A of the Rent Control Act would have no effect on that deposit and in these circumstances, the learned Addl. District Judge came to the same conclusion as recorded by the learned Addl. Munsiff, Bikaner in his judgment and decree dated 20.1.1983.

(2). That before the learned Addl. District Judge, it was argued on behalf of the original plaintiff-respondent that while depositing the rent under section 13(4) (old) of the Rent Control Act, it was bounden duty of the defendant- appellant to deposit all arrears of rent including that time barred rent and that argument was accepted by the learned Addl. District Judge and he came to the conclusion that on first date of hearing, the defendant-appellant was bound to deposit all arrears of rent including the time barred rent and since time barred rent was not deposited by the appellant-defendant on first date of hearing, therefore, he committed default in making payment of rent on first date of hearing.

(3). That the learned Addl. District Judge further came to the conclusion that while depositing the rent under Section 13(4) (old) of the Rent Control Act on the first date of hearing i.e. on 1.9.1975, the appellant- defendant deposited Rs. 854/- as rent for 40 months upto 31.8.1975, but actually he should have deposited Rs. 860/- and thus, he deposited Rs. 6/- less and furthermore, the amount of interest was Rs. 87/- but the appellant- defendant deposited Rs. 82/-

and thus, he also deposited Rs. 5/- less towards interest and thus, in total, the defendant-appellant deposited Rs. 11/- less. Because of non-deposit of Rs. 11/-, the learned Addl. District Judge came to the conclusion that the appellant-defendant had not complied with the provisions of Section 13(4) (old) of the Rent Control Act and thus, he was not entitled for benefit of first defaulter but on the contrary, he had committed default in making payment of rent by depositing Rs. 11/- less.

(4). That rent for the month of May, 1977 should have been deposited by the defendant-appellant as soon as the Court opened after summer vacation i.e. on 27.6.1977, but he deposited that rent on 1.7.1977 and, therefore, by doing so, he has not paid the rent regularly and thus, from this point of view also, the learned Addl. District Judge came to the conclusion that the appellant- defendant committed default in making payment of rent after first date of hearing and he has further come to the conclusion that because of this fact, the defense of the defendant-appellant against eviction should be struck off.

In these circumstances, the learned Addl. District Judge came to the conclusion that since on the first date of hearing due rent was not deposited by the appellant-defendant nor rent for the month of May, 1977 was deposited in time, therefore, the appellant-defendant had committed default in making payment of rent and thus, on that ground alone, he was liable to be evicted from the suit premises and thus, the learned Addl. District Judge decreed the suit of the plaintiff for eviction of the defendant-appellant on the ground of default as envisaged under section 13(1)(a) of the Rent Control Act. He granted two months' time to the defendant-appellant for vacating the suit premises. Aggrieved from the said judgment and decree dated 31.10.1987 passed by the learned Addl. District Judge, Bikaner, this second appeal has been filed by the defendant-appellant.

3. This Court while admitting this second appeal on 10.9.1988 framed the following substantial question of law :

"That after judgment given by the Supreme Court in AIR 1987 Supreme Court Page 1010, the decision given by appellate court is correct or not."

4. In this second appeal, the following submissions have been made by the learned

counsel appearing for the appellant-defendant:

(1) That since the original plaintiff-respondent had relinquished his right about the time barred rent and had not claimed that time barred rent in this plaint, therefore, in these circumstances, the defendant-appellant was not under obligation to deposit time barred rent on first date of hearing along with the due rent and thus, the findings of the learned Addl. District Judge that the appellant-defendant should have deposited on first date of hearing i.e. on 1.9.1975 time barred rent also, are erroneous one and cannot be sustained.

(2) That so far as the depositing of Rs. 11/- less is concerned, since it is a petty amount, therefore, because of this petty amount, it cannot be inferred that the defendant-appellant had committed the default in making payment of rent.

(3) That similarly, though the rent for the month of May, 1977 was to be deposited on 27th June, 1977 and it was deposited on 1st July, 1977 with three days delay, but that delay of three days might be due to many reasons like that the appellant-defendant must have thought that the court would be opened after summer vacation on 1st July etc., and further, that delay of three days is not a significant delay and therefore, it should have been condoned and on this ground alone, it cannot be said that the defendant- appellant committed default in making payment of rent for that month.

Hence, it was prayed that this second appeal be allowed and the judgment and decree dated 31.10.1987 passed by the learned Addl. District Judge, Bikaner be set aside and the judgment and decree dated 20.1.1983 passed by the learned Addl. Munsiff, Bikaner be restored and the suit of the plaintiff be dismissed.

5. On the other hand, the learned counsel appearing for the respondent- plaintiff supported the impugned judgment and decree dated 31.10.1987 passed by the learned Addl. District Judge, Bikaner.

6. I have heard the learned counsel appearing for the appellant-defendant and the learned counsel appearing for the respondent-plaintiff and gone through the record of the case.

7. In the present case, there is no dispute on the points that the suit was filed by the original plaintiff on 30.5.1975 and the first date of hearing was 1.9.1975 and the defendant-appellant filed his written statement on 10.3.1977 and issues were framed

on 21.4.1977 and on the first date of hearing i.e. on 1.9.1975, the defendant-appellant moved an application for determination of rent under section 13(4) (old) of the Rent Control Act, but the Court instead of determining the rent passed the order just quoted above at page 3.

8. There is also no dispute on the point that the defendant-appellant deposited Rs. 11/- less on the first date of hearing and there is also no dispute on the point that the rent for the month of May, 1977, which should have been deposited by the defendant-appellant on 27th June, 1977, was deposited on 1st July, 1977 with delay of three days.

9. There is also no dispute on the point that in the plaint, the original plaintiff-respondent had abandoned his claim for the time barred rent though amount was mentioned as he had claimed rent for the period of three years, which was deposited by the defendant-appellant on the first date of hearing i.e. on 1.9.1975.

10. There is also no dispute on the point that when the Ordinance 26 of 1975 came into force with effect from 29.9.1975, the defendant-appellant did not move any application under the provisions of Section 13A of the Rent Control Act.

11. The learned Addl. District Judge and the learned Addl. Munsiff have rightly observed that as no application under Section 13A of the Rent Control Act was filed by the appellant-defendant, therefore, he could not get any benefit of amended Rent Control Act and filing of application is must. For that the decision of this Court in *Sanwarmal v. Murarilal*,¹ may be referred to where this Court observed that the defendant had to make fresh application within time prescribed by ordinance for taking benefit of that Ordinance.

12. Both the courts below have also rightly observed that the case of the defendant-appellant would be governed by the law prevailing before coming into force of the amendment in the Rent Control Act on 29.9.1975 and for that a Division Bench judgment of this Court in *Kishan Lal Sharma v. Prem Kishore*,² may be referred to where it was held that the suit for eviction pending at the time of commencement of amended Rent Control Act would be tried in accordance with the provisions of unamended Rent Control Act.

On Time Barred Rent

13. On this point, the learned Addl. District Judge in his impugned judgment dated 31.10.1987 has observed that since on the first date of hearing i.e. on 1.9.1975 the time barred rent was not deposited by the appellant-defendant, therefore, he committed default in making payment of rent and that default was found sufficient to make out a case of eviction and thus, he was liable to be evicted on the ground of default as envisaged under section 13(1)(a) of the Rent Control Act.

Law after coming into force of amended Rent Control Act with effect from 29.9.1975

14. It may be stated here that proviso to sub-section (3) of Section 13 of the Rent Control Act was added through amendment in 1976 by which it has been categorically mentioned that while determining the amount under sub-section (3) of Section 13 of the Rent Control Act, the Court shall not take into account the amount of rent which was barred by limitation on the first date of hearing of the suit, but this amendment came into force through Rajasthan Premises (Control of Rent & Eviction) (Amendment) Ordinance 1975 (Raj. Ordinance No. 26 of 1975) vide Notification No. F4(15) vidhi/75 dated 29.9.1975 pub. in Raj, gaz. Extra-ordi. Part IVB dt. 29.1.1975 at pages 183 to 188. Now replaced by the Raj. Amending Act No. 14 of 1976.

15. Thus, it can easily be said that proviso to sub-section (3) of Section 13 of the Rent Control Act forbids the Courts not to make (take ?) into account the amount of time barred rent, if any and this proviso, which was introduced by amendment in 1975-76 has nullified the old view taken by this Court in various decisions that the tenant is bound to deposit in Court or pay even those arrears of rent, recovery of which is barred by time.

16. But, the present case would be tried and disposed of in accordance with the provisions of un-amended Rent Control Act, as it stood before amendment on 29.9.1975.

17. Now the most important aspect of this case is that the original plaintiff-respondent in his plaint had not claimed time barred rent though amount was shown and the defendant-appellant moved an application on the first date of hearing i.e. on 1.9.1975 for determination of rent under section 13(1) (old) of the Rent Control Act and further observed that it hardly required any order from the Court and, therefore, in these circumstances, the defendant- appellant deposited the amount of rent, which was claimed by the plaintiff in his plaint excluding time barred rent.

18. The case of the defendant-appellant on this issue is that the learned Addl. District Judge has wrongly held that the defendant-appellant was under an obligation to deposit the time barred rent because of two reasons :

- (1) That time barred rent was not claimed by the original plaintiff-respondent in his plaint; and
- (2) That he moved an application on first date of hearing i.e. on 1.9.1975, but the Court did not pass any order nor directed the appellant- defendant to deposit time barred rent and, therefore, it was vehemently argued that in no circumstances the appellant-defendant was bound to deposit time barred rent.

Hence, the findings on this count as recorded by the learned Addl. District Judge in his impugned judgment are erroneous one and they should be set aside.

19. On the order hand, the learned counsel appearing for the plaintiff- respondent has submitted that the appellant-defendant was under bounden duty to deposit the time barred rent on the first date of hearing alongwith due rent and since he had not deposited the time barred rent on the first date of hearing, he committed default in making payment of rent and therefore, on that ground alone, he was liable to be evicted and thus, the learned Addl. District Judge was right in holding that since the defendant-appellant had not deposited the time barred rent on the first date of hearing i.e. on 1.9.1975, he committed default in making payment of rent on the first date of hearing and on that ground, he was liable to be evicted from the suit premises. He has placed reliance on the following decisions :

- (1) *Nathulal v. Vishnu Chand*, ³
- (2) *Muhammedkutty v. Ahmedkutty*, ⁴
- (3) *Khadi Gram Udyog Trust v. Shri Ram Chandraji Virajman Mandir*. ⁵

20. In Nathulal's case (supra), this Court has taken the view that if a tenant wants to take benefit of Section 13(4) (old) of the Rent Control Act, he was bound to deposit in Court or pay those arrears of rent recovery of which has become barred by time.

21. In Muhammedkutty's case (supra), the Kerala High Court has held that where a suit for eviction on grounds of arrear of rent was there, the landlord can

recover rent irrespective of period of limitation.

22. In the case of Khadi Gram Udyog Trust (supra), the Hon'ble Supreme Court held :
"The tenant can take advantage of the benefit conferred by Section 20(4) only when he pays the entire amount of rent due as required under section 20(4). The question that arises for consideration in this appeal is whether the entire amount of rent due would include even rent which cannot be recovered as having been time-barred. There is ample authority for the proposition that though a debt is time barred, it will be debt due though not recoverable, the relief being barred by limitation."

23. Thus, the view expressed by this Court in another way has been approved by the Hon'ble Supreme Court in the judgment in the case of Khadi Gram Udyog Trust (supra).

24. Thus, the view of this Court prior to amendment of 1976 was that time barred arrears of rent was also covered by the term "rent due" and hence was recoverable.

25. No doubt proviso to sub-section (3) of Section 13 of the Rent Control Act forbids the Courts not to take into account the amount of time barred rent, if any, but this proviso has been introduced by the amendment of 1975-76 and it has nullified the old view taken by this Court that the tenant was bound to deposit in Court or pay even those arrears of rent, recovery of which was barred by time.

26. However, as already stated above, the present case would be tried and disposed of in accordance with the unamended Rent Control Act and thus, the so-called amendment of 1975-76 would not be helpful to the defendant-appellant so far as disposal of this second appeal is concerned.

27. In my considered opinion, the appellant-defendant was bound to deposit the time barred rent along with the rent on the first date of hearing and since he had not deposited the time barred rent along with the due rent on the first date of hearing i.e. on 1.9.1995, therefore, he committed default in making payment of rent on first date of hearing and thus, he was liable to be evicted on the ground of default as envisaged under section 13(1)(a) of the Rent Control Act.

28. Thus, the findings of the learned Addl. District Judge that as the defendant-

appellant had not deposited the time barred rent along with due rent on the first date of hearing, therefore, he committed default in making payment of rent on first date of hearing i.e. on 1.9.1975 and thus, on that ground, he was liable to be evicted, are liable to be confirmed one.

29. But, a difficulty has arisen during the course of arguments that a substantial question of law in terms whether without claiming the time barred rent, the defendant-appellant was under an obligation to deposit the amount of time barred rent or whether in the facts and circumstances of the case, time barred rent was also to be deposited by the appellant-defendant on the first date of hearing, having not been specifically framed by this Court, whether this Court could give findings on that issue or not.

30. It may be clarified here that the substantial question which was framed by this Court on 10.2.1988, which was been quoted above, certainly does not cover the issue just mentioned above.

31. According to sub-section (4) of Section 100 of the Code of Civil Procedure, where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and in this case, only one question was framed by this Court which does not cover the substantial issue in real sense, but the proviso to sub-section (5) of Section 100 of the Code of Civil Procedure further provides that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

32. The question that arises for consideration is whether the substantial question, as quoted above, can be framed by this Court during the course of hearing of this second appeal or not especially when the arguments have been addressed by both the learned counsel on that point and there is a specific pleading in the memorandum of second appeal by the learned counsel for the defendant-appellant and in pleadings, questions No. 5, 6 and 7 pertained to the controversy in issue, but due to some reasons, they have not been specifically framed by this Court.

33. The jurisdiction of the High Court is now confined to entertain only such appeals as involve a substantial question of law specifically set out in the memorandum of appeal and formulated by the High Court.

34. The learned counsel appearing for the appellant-defendant has placed reliance on the decision of Kerala High Court in *Moosa v. Moideen*,⁶ and in that case, the Kerala High Court, after considering the scope of Section 100 CPC, came to the conclusion that in terms of Section 100 of the Code of Civil Procedure, this Court can also raise any other substantial question of law that may arise in the light of the arguments addressed before it.

35. Thus, from the above ruling, if at the time of hearing, another substantial question of law comes into picture, the Court can frame it, but for that there are some limitations which are mentioned just below.

36. The first limitation is that the question to be framed must be a substantial question of law. The proviso presupposes that the court shall indicate in its order the substantial question of law which it proposes to decide even if such substantial question of law was not earlier formulated by it. Thus, the existence of a "substantial question of law" is sine qua non for the exercise of the jurisdiction under the amended provision of Section 100 of the Code of Civil Procedure.

37. The second limitation is that such a substantial question of law can be formulated at the initial stage and in some exceptional cases, at a later point of time and in the present case, in my considered opinion, even at the time of argument stage, such substantial question of law can be formulated provided the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet out the point.

38. In the present case, the learned counsel for the plaintiff-respondent from the very beginning was arguing this case on this point and actually in this second appeal, the main point of argument by both the learned counsel was that whether the defendant-appellant was bound to deposit the time barred rent on the first date of hearing or not. Therefore, it can easily be said that in this case, the learned counsel for the plaintiff-respondent had notice of this question.

39. The question whether the time barred rent was to be deposited by the defendant-appellant on that first date of hearing i.e. on 1.9.1975, in my considered opinion, in the facts and circumstances is nothing but a pure substantial question of law and, therefore, the same is now framed as question No. 2 in the following manner keeping

in mind the parameters at this stage.

"Question No. 2

Whether in the facts and circumstances of the case, the time barred rent was to be deposited by the defendant-appellant on the first date of hearing i.e. on 1.9.1975 or not."

40. So far as the decision of the above substantial question of law is concerned, it has been discussed earlier and this Court has come to the conclusion that the defendant-appellant was bound to deposit the time barred rent on the first date of hearing as the expression "entire amount of rent due" includes the rent which had become time barred and since the appellant- defendant had not deposited the time barred rent on the first date of hearing, he committed default in making payment of rent on the first date of hearing and on that ground, he was liable to be evicted from the suit premises.

41. The argument that since the time barred rent was not specifically claimed by the original plaintiff-respondent in his plaint and the Court did not determine the rent on the application of the defendant-appellant nor directed him to deposit time barred rent, therefore, the defendant-appellant was not bound to deposit the time barred rent, is not at all tenable in view of the decision of the Hon'ble Supreme Court in the case of Khadi Gram Udyog Trust (supra). The facts of the present case and that of Khadi Gram Udyog Trust's case (supra) are to some extent similar. In the case of Khadi Gram Udyog Trust (supra), the plaintiff of that case relinquished his claim for rent for the period 1.1.1963 to 31.12.1970 as the relief was time barred and the defendant of that case paid the rent for the period 1.1.1971 to 30.3.1973 and thereafter, plaintiff restricted his claim for the period 1.5.1973 to 8.8.1973, but since time barred rent was not paid by the defendant even though it was not claimed by the plaintiff of that case, the defendant was found defaulter in that case and the Hon'ble Supreme Court in that case held as under :

"The law is well settled that though the remedy is barred the debt is not extinguished. On consideration of the scheme of the Act, it is clear that the statute has conferred a benefit on the tenant to avoid a decree for eviction by complying with the requirement of Section 20(4). If the fails to avail himself of the opportunity and has not paid the rent for not less than four months and within one month from the date of service upon him of a notice of demand, the landlord under Section 20(2) would be entitled to an order of eviction. Still the tenant can avail himself of the protection by complying with the requirements of

Section 20(4). As he has not deposited the entire amount due the protection is no more available. We agree with the view taken by the trial court and the High Court of Allahabad that the words "entire amount of rent due" would include rent which has become time barred.

42. Thus, in view of the decision of the Hon'ble Supreme Court in the case of Khadi Gram Udyog Trust (supra), the contention of the learned counsel for the appellant-defendant that the appellant-defendant was not bound to deposit the time barred rent on the first date of hearing, is rejected and in every manner, the appellant-defendant was to be treated as defaulter in the present case. Similarly, the submission that the Court was to first determine the rent is concerned, it has got no relevancy in the present case as for depositing the time barred rent, it was the duty of the appellant-defendant to deposit that time barred rent if he wanted to take benefit of being declared first defaulter and for that, termination (determination ?) of rent by Court was not necessary. Furthermore, the original plaintiff had clearly mentioned in his plaint the amount of time barred rent apart from the period of time barred rent and therefore, when the amount of time barred rent was clearly mentioned in the plaint itself, there was no necessity for determining that rent by the Court.

43. For the reasons stated above, the findings of the learned Addl. District Judge that since the time barred rent was not deposited by the defendant- appellant on the first date of hearing, therefore, he committed default in making payment of rent on first date of hearing and thus, he was liable to be evicted on ground of default as envisaged under Section 13(1)(a) of the Rent Control Act, are liable to be confirmed one.

44. So far as the other two points that defendant-appellant deposited Rs. 11/- less and that rent for the month of May, 1977, which was to be deposited on 27th June, 1977, was deposited by the defendant-appellant on 1st July, 1977 with three days delay are concerned, in my considered opinion, in such matter, technical and rigid view should not be taken when the tenant has made substantial compliance and for that, the latest decision of the Hon'ble Supreme Court in *Mam Chand Pal v. Shanti Agarwal (Smt.)*,⁷ may be referred to where it was held that on shortfall of amount that may be due to some reason, a decree of eviction cannot be passed.

45. But, in the present case, so far as decree of eviction of the ground of default as envisaged under Section 13(1)(a) of the Rent Control Act is concerned, that has to be

passed against the defendant-appellant because he had not deposited the time barred rent on the first date of hearing.

46. Thus, the substantial question are answered in the following manner :

S.No.	Substantial question	Answer
(1)	That after judgment given by the Supreme Court in AIR 1987 Supreme Court Page 1010, the decision given by appellate court is correct or not.	This question No. 1 is answered in the manner that the findings of the learned Addl. District Judge pertaining to depositing of Rs. 11/- less and further depositing of rent for the month of may, 1977 with delay of three days would not make the appellant-defendant defaulter in making payment of rent. Thus, this question No. 1 is decided in favour of the defendant-appellant and against the plaintiff-respondent.
(2)	Whether in the facts and circumstances of the case, the time barred rent was to be deposited by the defendant-appellant on the first date of hearing i.e. on 1.9.1975 or not.	This question No. 2 is answered in the manner that the appellant-defendant was bound to deposit the time barred rent on the first date of hearing i.e. on 1.9.1975 and by not depositing the time barred rent on the first date of hearing, he committed default in making payment of rent on first date of hearing and thus, he was liable to be evicted on the ground of default as envisaged under section 13(1)(a) of the Rent Control Act. Thus, this question No. 2 is decided in favour of the plaintiff-respondent and against the appellant-defendant.

47. For the reasons stated above, this second appeal is liable to be dismissed and the judgment and decree dated 31.10.1987 passed by the learned- Addl. District Judge, Bikaner are liable to be confirmed.

48. At the time of hearing of this second appeal, the learned counsel appearing for the appellant-defendant has also prayed that in case this second appeal is going to be dismissed by this Court, sufficient time may be awarded to his client for vacating the suit premises.

49. Looking to the entire facts and circumstances of the case and on equity grounds, if six months' time is granted to the appellant-defendant for vacating the suit premises, it would meet the ends of justice.

Accordingly, this second appeal filed by the appellant-defendant is dismissed, after confirming the judgment and decree dt. 31.10.1987 passed by the learned Addl. District Judge, Bikaner. Six months' time is granted to the appellant-defendant for vacating the suit premises. Parties are directed to bear their own costs throughout.

Appeal dismissed.

Cases Referred.

1. 1979(1) RCR (Rent) 680 (Raj): 1979 RLW 184
2. 1983 RLR 164
3. 1972 RCR (Rent) 13 (Raj): 1971 RLW (Raj.) 469
4. 1979(2) RCR (Kerala) 178
5. 1978(1) RCR (Rent) 220 (SC): 1978(1) RCR (SC) 220
6. 2001(1) CLT 426
7. 2002(1) RCR (Rent) 326 (SC): 2002(3) SCC 49