

A MANIK LAL MAJUMDAR AND ORS.

v.

GOURANGA CHANDRA DEY AND ORS.

FEBRUARY 26, 2004

B [SHIVARAJ V. PATIL AND D.M. DHARMADHIKARI, JJ.]

Rent Control and Eviction:

Tripura Buildings (Lease and Rent Control) Act, 1975; Ss. 12, 13 & 20

C and Rules thereunder:

Suit for eviction on grounds of bona fide requirement and default in payment of rent—Rent Control Court found tenants defaulters and directed them to handover possession of the premises to Landlord—Appeal dismissed by Civil Court holding that appeal filed without depositing arrears of rent, not

D *maintainable—Revision petition allowed by District Court—Case remanded to Appellate Court—Challenge to—High Court held that appeal is not maintainable under Section 20 of the Act unless mandatory requirements of depositing of rent, before filing of appeal, is complied with—On appeal, matter referred to larger Bench.*

E *Held :—Per Shivaraj V. Patil, J: Depositing of arrears of rent is a condition mandatory for preferring an appeal under Section 20 of the Act—Mandatory conditions could not be relaxed—Court could stop further proceeding in case tenant fails to deposit subsequent arrears of rent—Condition could not be diluted on the ground of hardship to tenant, more so, when he*

F *was already given an opportunity before the Rent Control Court—Appellate Authority—Jurisdiction of—Does not possess all powers of Rent Control Court—Appellate Authority could neither relax condition nor it could pass an effective order staying further proceeding—Legislative intention—If plain grammatical interpretation of the provisions in a Statute gives rise to absurdity/ inconsistency, Court could disregard such interpretation and adopt the*

G *interpretation which would give effect to the purpose of legislature—Since provisions as to mandatory requirement of deposit of arrears of rent before preferring an appeal are clear and unambiguous, no further interpretation required to determine intention of the legislature—Interpretation of Statutes.*

H *Held:—Per Dharmadhikari, J: Appellate Authority has been conferred*

with all powers of Rent Control Court—Admitted arrears of rent/recurring rent accrued/accumulated during eviction proceedings before preferring an appeal are required to be determined in accordance with the provisions of law on fixation of time/manner of deposit—Period of limitation for preferring an appeal not to be construed as period of deposit of arrears of rent as precondition for preferring an appeal—Legislature—Presumption—Assuming that provisions under sub Section (4) of Section 20 does not confer on the Appellate Authority full power of Rent Control Court—Provisions under sub-section (4) of Section 20 would be rendered otiose making the legislature redundant—Such construction must be avoided—Hence, a tenant may file an appeal within the prescribed period, provided he seeks an order from the Appellate Authority in accordance with Section 13(2) and make deposit of arrears of rent/future rent as determined by the Authority—Interpretation of Statutes.

Words and Phrases:

'no', 'unless', 'prefer', 'all arrears of rent admitted by the tenant to be due'—Meaning of in the context of Tripura Rent Control Legislation.

The question that arose for consideration in this appeal was as to whether an appeal could be preferred under Section 20 of the Tripura Buildings (Lease and Rent Control) Act, without making payment or depositing of all arrears of rent as admitted by the tenant as per provisions under Section 13(1) of the Act.

It was contended for the appellant-tenant that the High Court was not correct in its findings that an appeal could not be preferred without depositing arrears of rent; that an opportunity should have been given by the Appellate Court for making payment of admitted rent due before an appeal is heard; and that as per provisions of law under Section 13 of the Act, an appeal preferred even without depositing of arrears of rent due could not be dismissed.

On behalf of the Respondent-landlord, it was submitted that Section 13(1) of the Act in clear and unambiguous terms states that no appeal could be preferred against any order of the Rent Control Court without depositing of arrears of rent admitted.

Referring the appeal to a larger Bench, the Court

HELD: Per, Shivaraj V. Patil, J:

A 1.1. From the plain language and clear terms of Section 13(1) of the Tripura Buildings (Lease and Rent Control) Act it follows that payment or deposit of all arrears of rent admitted by the tenant to be due in respect of the building up to the date of the payment or deposit is a mandatory requirement for preferring an appeal under Section 20 of the Act. [755-E-F]

B 1.2. Unless an appeal is preferred after complying with the condition of the payment of arrears of rent or deposit of the admitted arrears of rent due, the question of either pendency of the appeals or stopping of further proceedings in the appeal does not arise. There are two separate aspects - one is that the compliance to be made before preferring an appeal and the other is that the tenant has to continue to pay or deposit the rent, which may subsequently become due. Sub-section (3) of Section 13 of the Act would come into operation on the tenant failing to pay or deposit subsequent arrears of rent arising during the pendency of the appeal, so as to stop further proceedings in the appeal. But, it cannot relieve the statutory compulsion or the mandatory requirement of Section 13(1), that is, paying or depositing the arrears of admitted rent before preferring an appeal and in this regard no discretion is left to the Authorities. No effective order of stay of further proceedings can be passed by the appellate authority unless an appeal is preferred after payment or deposit of admitted arrears of rent. This is also a factor to indicate that payment or deposit of arrears of admitted rent is essential before preferring an appeal. Remedy of appeal is a creation of statute and it is open to the legislature to provide for an appeal subject to certain conditions. Insistence of payment or depositing of arrears of rent admitted as stated in Section 13(1) of the Act cannot be diluted or defeated merely on the ground of hardship to a tenant more so when tenant already had one opportunity before the Rent Control Court in regard to making payment or depositing arrears of rent. Perhaps it was considered unreasonable or unnecessary to again provide opportunity before Appellate Authority to a tenant that too to pay or deposit admitted arrears of rent.

[756-E-F; 757-C-E]

Nasiruddin and Ors. v. Sita Ram Agarwal, [2003] 2 SCC 577, relied on.

G 1.3. Sub-section (4) of Section 20 of the Act cannot render mandatory requirement under sub-section (1) of Section 13 ineffective or otiose. It is well settled principle of interpretation that every part of the provision has to be given meaning and effect in the context of a statute. When there is express provision made in Section 13(1) of the Act in emphatic terms using negative words indicating mandatory requirements of payment or deposit of arrears

of admitted rent before preferring an appeal under Section 20, neither sub-section (3) of Section 13 nor sub-Section (4) of Section 20 would be of any avail to the tenants. [758-B-C] A

Nasiruddin and Ors. v. Sita Ram Agarwal, [2003] 2 SCC 577; *E. Palanisamy v. Palanisamy (Dead) by Lrs. and Ors.*, [2003] 1 SCC 123 and *Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama*, [1990] 1 SCC 277, relied on. B

2. Intention of the legislature is primarily to be ascertained from the text of an enactment in question and if the strict grammatical interpretation gives rise to absurdity or inconsistency, the court could discard such interpretation and adopt an interpretation, which will give effect to the purpose of legislation. In the case on hand, no such anomaly, absurdity or inconsistency would arise even if plain and grammatical interpretation is given to Section 13(1) of the Act. [760-B-C] C

Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama, [1990] 1 SCC 277 and *Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Ors.*, [2003] 2 SCC 111, relied on. D

Chinnamma v. Gopalan and Ors., [1995] 6 SCC 491, distinguished.

3. The Division Bench of the High Court was right in holding that there was no conflict in the judgments in cases of Chinnamma and Binapani Roy, meaning thereby payment or deposit of all arrears of rent admitted is mandatory before preferring an appeal by a tenant under Section 20 of the Act. [762-B-C] E

Chinnamma v. Gopalan, [1995] 6 SCC 491 and *Binapani Roy v. State of Tripura*, (1994) 1 GLR 98, distinguished. F

Per, Dharmadhikari J.

1.1. As has been rightly observed by Division Bench of the High Court in the case of *Binapani Roy* Section 13 of the Act has been inserted with the intention to avoid litigations for realization of arrears of rents which is likely to accumulate during the long period of litigation and also to deter the tenant from resorting to unfair practice to use and occupy tenanted premises without payment of rent during the long period of protracted litigation. The decision in *Binapani Roy* does not directly deal with and answer the question posed G

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- A before this Court. In that case the interpretation of the words and expression "admitted by the tenant to be due" as used in sub-section (1) of Section 13 of the Act, came up for interpretation. To make the said provision workable it was held that the expression can not be given a literal meaning as conveying only the rent which has been admitted in the pleadings by the tenant. It was held that in order to fulfil the object of the provision which is in the interest of the landlord the expression is to be understood reasonably to mean 'the rent which can be found to be due from the facts and materials on record. The Division Bench of the High Court rightly observed that the earlier decision of the Division Bench of the High Court in *Binapani Roy*'s case was on a different point, thus not required to be reconsidered by the larger Bench in
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- C the light of decision of the Supreme Court in *Chinnamma*'s case. The question, therefore, needs to be answered on a proper and reasonable interpretation of the provisions of Section 13 read with Section 20 of the Act.

[766-G, H; 767-A-B; F,G]

- D *Binapani Roy v. State of Tripura*, (1994) 1 GLR 98 and *Chinnamma v. Gopalan*, [1995] 6 SCC 491, referred to.

- E 1.2. Sub-section (1) and sub-section (3) of Section 13 of the Act make express mention both of "Rent Control Court and appellate authority" for the application of those provisions to original proceedings as also to the appellate proceedings. Deposit of arrears of rent and future rent are two pre-conditions for the tenant to contest the original proceedings and avail remedy of appeal. In sub-section (2) of Section 13, there is only mention of Rent Control Court empowering it to fix time and manner of deposit of arrears and future rent. The omission of words "appellate authority" in sub-section (2) of Section 13 *prima facie* gives an impression that fixation of time and
- F manner for two kinds of deposits of arrears and future rent are not required to be made by the appellate authority. The omission of the words "appellate authority" in sub-section (2) however, is made good by incorporating sub-section (4) in Section 20. [768-F, G-H; 769-B]

- G 1.3. Section 20 with its sub-sections creates forum for appeals, describes nature of power of appellate authority and prescribes period of limitation for appeals, preferable either by the landlord or by the tenant, as the case may be, who feels aggrieved by the order of Rent Control Court. The legislative intent of conferring same power of Rent Control Court under sub-section (2) on the Appellate Authority is clear from incorporation of sub-section (4) in Section 20 of the Act which regulates the power and procedure of appeal.
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Since the appellate authority has been conferred with all powers of Rent Control Court, non-mention in sub-section (2) of 'appellate authority' with 'Rent Control Court' seems to be a deliberate omission. [769-B, D-E] A

1.4. It is true that when a tenant prefers an appeal there may be a case where the arrears of rent due up to the date of order of the Rent Control Court are already quantified and the dispute of quantum and/or rate of rent stands decided by the original order. That would enable the tenant to deposit the arrears at the time of filing of the appeal. [769-E, F] B

1.5. The Division Bench of the High Court in the case of *Binapani Roy* has reasonably construed the expression "all arrears of rent admitted by the tenant to be due", as has been used in Section 13(1) of the Act, that the expression as not merely conveying 'such rent as has been admitted by such tenant in his pleadings.' According to the Division Bench the expression has to be so construed as to fulfil the object of the Act to disable the tenant to withhold rent due pending eviction proceedings against him or appeal by him. The expression has been construed to mean 'the rent which is ascertainable as admitted from the record of the case.' The legislature also intends that the so-called admitted arrears and recurring rent to be deposited or paid by the tenant during eviction proceedings or appeal preferred by him, are required to be judicially or quasi-judicially determined in accordance with sub-section (2) of Section 13 of the Act, with fixation of time and manner of its deposit or payment. Such an interpretation of the expression is necessary to meet various kinds of situations in different cases. In such situations, it might be found necessary in original proceedings for the Rent Control Court to determine the rent which can be said to be admittedly due and similar determination might be required in appeal. [769-G, H; 770-A-C] C D E

Binapani Roy v. State of Tripura, (1994) 1 GLR 98, referred to. F

2.1. The period of limitation prescribed for preferring an appeal under clause (b) of sub-section 20 of the Act is not the period fixed for deposit of rent as a pre-condition for preferring an appeal by the tenant. However, sub-section (1) of Section 13 lays down two pre-conditions for preferring an appeal. Such requirements on the part of the tenant for preferring an appeal are clear indications that 30 days' time fixed for appeal in sub-section (2) of Section 13, is not a period for deposit of arrears of rent due and future rent as a pre-condition for appeal. To enable a tenant to prefer an appeal by fulfilling both the conditions of deposit of arrears and future rent, it is necessary that as is the power given to the Rent Control Court, the appellate authority, on being G H

- A approached by the tenant, has to pass a judicial or quasi-judicial order not only for the purpose of fixing the time and manner of two kinds of deposits but also to determine, *on the basis of record of the case, the rent which can be said to be admitted to be due by the tenant within the meaning of expression "all arrears of rent admitted by the tenant to be due" as used in sub-section (1) of Section 13.* The use of the word "prefer" therefore, in sub-section (1) of Section 13 of the Act, in the context of the said provision and the other provisions in sub-sections (2) to (4) of the said Section has a meaning different from mere filing or presentation of an appeal. The word "prefer" in the context of Section 13(1), to enable the tenant to contest original proceedings, or prosecute appellate proceedings should reasonably mean that the tenant
- B without requisite deposit of arrears of rent and future rent, *shall not be allowed to prosecute the appeal or be heard in the appeal against the order passed by the Rent Control Court.* [772-D-H; 773-A]

Commissioner of Income Tax Act v. B.N. Bhattacharjee, [1979] 3 SCR 1133 and *Nasiruddin v. Sita Ram Aggarwal*, [2003] 2 SCC 517, distinguished.

- D 2.2. The expression "all arrears of rent admitted by the tenant to be due" as used in sub-section (1) of Section 13 requires adjudication to some extent. The right of tenant to prefer an appeal can not be denied to him until such an adjudication is made. This conclusion is reinforced by the language of sub-section (3) of Section 13 which empowers expressly both the Rent
- E Control Court and the appellate authority to stop all proceedings and direct the tenant to put the landlord in possession of the leased premises, if there is a failure on the part of the tenant to make requisite deposits either of arrears and/or future rent and only if he is unable to show any sufficient cause for non-deposit or delay. Such a power with discretion both in the Rent Control
- F Court and the appellate authority to stop or refrain from stopping original or appellate proceedings, and evicting tenant in the event of default of deposit, also indicates that right of appeal to the tenant can be deprived to him only if there is a default on his part and he is unable to show any sufficient cause for such default. This also indicates that filing of an appeal within limitation and allowing the tenant to prosecute that appeal due to his failure to make
- G deposits of arrears and future rent are two different stages or steps in both original proceedings and appellate proceedings. [773-E-H; 774-A]

2.3. It is settled rule of construction of statute that 'it has to be presumed that the legislature does not waste its words and say anything in vain'. If sub-section (4) of section 20 is not read as conferring on the appellate authority full powers of Rent Control Court including power under sub-section (2) of

Section 13, sub-section (4) of section 20 would be rendered otiose or A superfluous. Such a construction which attributes redundancy to the Legislature has to be avoided. [774-B]

Principles of Statutory Interpretation by G.P. Singh, Chapter-II, Synopsis-I Page 63, referred to.

3. A tenant can file or present a memo of appeal within the prescribed period of thirty days excluding the time for obtaining certified copy of the order in accordance with sub-section (1) of Section 20 but until and unless he seeks an order from the appellate authority in accordance with sub-section (2) of Section 13 and makes deposit of all arrears of rent and continues to pay future rent in the manner and within the time directed by the appellate authority, he would not be entitled to prosecute the appeal and obtain any interim or final relief against the order of the Rent Control Court as is contemplated in sub-sections (2) & (3) respectively of Section 13 of the Act.

[774-C, D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7253 of 2002. D

From the Judgment and Order dated 21.6.2001 of the Gauhati High Court at Agartala Bench in Civil Rule No. 466 of 1997.

A.K. Ganguli, Avijit Bhattacharjee and Atanu Saikia for the Appellants. E

Rajiv Mehta for the Respondent.

The Judgment of the Court was delivered by

SHIVARAJ V. PATIL, J. Few facts, which are considered necessary and relevant for disposal of this appeal, in short and substance, are the following: F

The respondent No. 1 filed a petition for eviction under Section 12 of The Tripura Buildings (Lease and Rent Control) Act, 1975 (for short 'the Act') on the grounds of *bona fide* requirement and default in payment of rent. The Rent Control Court held that the claim of bona fide requirement was not proved. However, it found that the appellants were defaulters in payment of rent and directed the appellants to hand over the possession of the building in question to the respondent No. 1. The appellants filed R.C.C. Appeal 4/1995 under Section 20 of the Act before the Civil Judge (Senior Division), H

A West Tripura against the said order of the Rent Control Court. The learned Civil Judge, after hearing the parties, dismissed the appeal holding that the appellants failed to deposit the arrears of rent as directed by the Rent Control Court and the appeal filed by them without making deposit of arrears of rent was not maintainable in view of Section 13(1) of the Act. Thereafter, the appellants filed revision petition in the court of the District Judge, Tripura, assailing the order passed by the learned Civil Judge in appeal. The learned District Judge allowed the revision petition, set aside the order of the Civil Judge in appeal and remanded the case to the appellate court for considering the petition for adducing additional evidence and for deciding the appeal afresh. The respondent No. 1, aggrieved by this order passed in the revision petition, filed a petition as Civil Rule No. 466 of 1997 under Article 227 of the Constitution of India before the Gauhati High Court. A learned single Judge of the High Court, after hearing the parties, finding some conflict in the decisions of this Court in *Chinnamma v. Gopalan and Ors.*¹ and of Division Bench of the High Court in *Binapani Roy and two Ors. v. State of Tripura and two Ors.*², felt that the decision of the Division Bench of the High Court in Binapani Roy case required reconsideration by a larger bench to decide the following question: -

E “Whether in view of Section 13 of the Act, 1975, the appellate Court is prohibited from entertaining an appeal unless the tenant has paid or pays to the landlord or deposit with the Rent Control Court or the appellant authority, as the case may be, all arrears of rent admitted by the tenant to be due in respect of the building up to the date of payment of deposit and continue to pay or deposit any rent which may subsequently become due in respect of the building until termination of the proceedings before the Rent Control Court or the appellate authority, as the case may be?”

F The Division Bench of the High Court, after hearing the parties, concluded that the judgment of the Division Bench in Binapani Roy case (aforementioned) did not require any reconsideration and no reference to a larger Bench was called for. It also held that no appeal against the order made under Section 12 of the Act is competent and maintainable under Section 20 of the Act unless provision of Section 13(1) of the Act is complied with; that fulfillment of the requirement of Section 13(1) is a sine qua non for preferring appeal under Section 20. Hence, aggrieved by the same, the appellant-tenants have

1. [1995] 6 SCC 491.

H 2. [1994] 1 GLR 98.

assailed the impugned judgment of the Division Bench of the High Court in A this appeal.

The learned Senior counsel for the appellants contended that the High Court was not right and justified in taking a technical view in the matter; as in the case of contesting the proceedings before the Rent Controller, opportunity could be given by the appellate court for making payment of admitted rent due or depositing before the appeal is heard; saying that appeal itself could not be preferred without paying or depositing admitted arrears of rent may not be correct in view of Section 13(3) of the Act; if Section 13 is read as a whole, it will be clear that appeal preferred without payment or depositing of admitted arrears of rent, it could not be dismissed. On the other hand, further proceedings in the appeal could be stopped in case admitted arrears of rent were not paid or deposited. He placed reliance on the judgment of this Court in *Chinnamma* case (supra). B C

Per contra, the learned counsel for the respondents-landlord made submissions supporting the impugned judgment. It was urged that Section 13(1) in clear and unambiguous terms states that no appeal can be preferred against any order of Rent Controller without paying or depositing of arrears of rent admitted. D

Before proceeding to deal with the respective contentions urged on behalf of the parties it would be useful to reproduce the provisions of Sections 12, 13 and 20 of the Act to the extent they are relevant for the immediate purpose: - E

“12. Eviction of tenants - (1) Not-withstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted excepted in accordance with the provisions of this Act. F

Provided that nothing contained in this section shall apply to a tenant whose landlord is the State Government or the Central Government or any other public authority notified under this Act.

Provided further that where the tenant denies the title of the G landlord or claims right of permanent-tenancy the Rent Control Court shall decide whether the denial or claim is *bonafide* and if it records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a civil court and such court may pass a decree for eviction on any of the grounds mentioned in this section, H

A notwithstanding that such court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

(2)(a) A landlord who seeks to evict his tenant shall apply to the Rent Control Court for a direction in that behalf.

B (b) If the Rent Control Court, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied that the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement or 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 and such default has continued for three months within a period of twelve months, it shall make an order directing the tenant to put the landlord in possession of the building, and if it is not satisfied it shall make an order rejecting the application thereof by him.

D Provided that an application under this sub-section shall be made only if the landlord has sent a registered notice to the tenant intimating the default and the tenant has failed to pay or tender the rent together with interest at six per cent per annum and postal charges incurred in sending the notice within fifteen days of the receipt of the notice or of the receipt of the notice or of the refusal thereof.

E (c) The order of the Rent Control Court directing the tenant to put the landlord in possession of the building shall not be executed before the expiry of one month from the date of such order or such further period as the Rent Control Court may in its discretion allow; and if the tenant deposits the arrears of rent with interest and cost of proceedings within the said period of one month or such further period, as may be, it shall vacate that order."

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G "13. Payment or deposit of rent during the pendency of proceedings for eviction. - No tenant against whom an application for eviction has been made by a landlord under section 12 shall be entitled to contest the application before the Rent Control Court under that section, or to prefer an appeal under section 20 against any order made by the Rent Control Court on the application, unless he has paid or pays to the landlord, or deposit with the Rent Control Court or the appellate

authority, as the case may be, all arrears of rent admitted by the A tenant to be due in respect of the building upto the date of payment of deposit, and *continues to pay or to deposit* any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Rent Control Court or the appellate authority as the case may be.

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(2) The deposit under sub-section (1) *shall be made within such time as the Rent Control Court may fix* and in such manner as may be prescribed and shall be accompanied by the fee prescribed for the service of notice referred to in sub-section (4):

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Provided that the time fixed by the Rent Control Court for the deposit of the arrears of rent shall not be less than forty-five days from the date of the order and the time fixed for the deposit of rent which subsequently accrues due shall not be less than two weeks from the date on which the rent become due.

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(3) If any tenant fails to pay or to deposit the rent as aforesaid, the Rent Control Court or the appellate authority, as the case may be, shall unless the tenant *shows sufficient cause to the contrary, stop all further proceedings and make an order* directing the tenant to put the landlord in possession of the building.

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(4) When any deposit is made under sub-section (1), the Rent Control Court or the appellate authority, as the case may be, shall cause notice of the deposit to be served on the landlord in the prescribed manner and the amount deposited may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him to the Rent Control Court or the appellate authority in that F behalf.

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"20. Appeal. - (1) (a) The State Government may, by general or special order notified in the Official Gazette, confer on such officers and authorities not below the rank of a subordinate judge the powers of appellate authorities for the purposes of this Act in such classes of cases as may be specified in the order.

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(b) Any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, *prefer an*

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A *appeal in writing to the appellate authority having jurisdiction.*

Note: - In computing the thirty days in this clause, the time taken to obtain a certified copy of the order appealed against shall be excluded.

B (2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall call for the record of the case from the Rent Control Court and after giving the parties an opportunity of being heard, and if necessary, after making such further inquiry as it thinks fit either directly or through the Rent Control Court, shall decide the appeal.

C Explanation: - The appellate authority may, while confirming the order of eviction passed by the Rent Control Court grant an extension of time to the tenant for putting the landlord in possession of the building.

D (4) *The appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent.*

E (5) The decision of the appellate authority, and subject to such decision, an order of the Rent Control Court shall be final and shall not be liable to be called in question in any court of law, except as provided in section 22."

(emphasis supplied)

F The short question that arises for consideration in this appeal is whether an appeal can be preferred under Section 20 of the Act aggrieved by the order made under Section 12 of the Act without making the payment or depositing all arrears of rent admitted as required under Section 13(1) of the Act. A landlord can seek a direction to evict his tenant under Section 12 of

G the Act and the Rent Control Court on being satisfied that the tenant has not paid or tendered the rent due in respect of the building shall make an order directing the tenant to put the landlord in possession of the building and if it is not satisfied it shall make an order rejecting the application. The order of the Rent Control Court directing the tenant to put the landlord in possession shall not be executed before the expiry of one month from the date of such

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order or till such further period as the Rent Control Court may in its discretion allow; and if the tenant deposits the arrears of rent with interest and cost of the proceedings within the said period, it shall vacate that order.

Section 13 makes provision for payment or deposit of rent during the pendency of the proceedings for eviction. In this Section it is clearly stated that no tenant against whom an application for eviction has been made by a landlord under Section 12 shall be entitled to contest the application before the Rent Control Court under that Section, or to prefer an appeal under Section 20 against any order made by the Rent Control Court on the application, unless he has paid or pays the landlord or deposit with the Rent Control Court or the appellate authority, as the case may be, all arrears of rent admitted by the tenant to be due in respect of the building up to the date of payment or deposit, and continues to pay or deposit any rent, which may subsequently become due before the Rent Control Court or the appellate authority, as the case may be. Under sub-Section (1) of Section 13 two situations are contemplated - one is contesting the application before the Rent Control Court and the other is preferring an appeal under Section 20 of the Act. An embargo is placed on the tenant expressly either to contest the application under Section 12 before the Rent Control Court or to prefer an appeal under Section 20 of the Act without payment or deposit of arrears of rent. The second part of the same sub-Section requires the tenant to continue to pay or deposit any subsequent rent before the Rent Control Court or the appellate authority, as the case may be. From this sub-Section it is clear that a tenant cannot prefer an appeal under Section 20 - (1) unless the tenant has paid or pays to the landlord or deposits the arrears of rent admitted by the tenant to be due in respect of the building and (2) after preferring an appeal he is required to continue to pay or deposit subsequent rent before the appellate authority to prosecute the appeal.

From the plain language and clear terms of Section 13(1) of the Act it follows that payment or deposit of all arrears of rent admitted by the tenant to be due in respect of the building up to the date of the payment or deposit is a mandatory requirement for preferring an appeal under Section 20 of the Act. The said sub-section declares that no *tenant shall be entitled to contest or to prefer an appeal unless he has paid or pays to the landlord or deposits with the Rent Control Court or the appellate authority, as the case may be.* The use of the words "no" and "unless" in sub-Section (1) of Section 13 in the context makes the position clear that the payment or deposit of all arrears of rent is a pre-requisite essential condition for preferring an appeal.

A The contentions of the learned counsel for the appellants that sub-Section (3) of Section 13 provides opportunity to the tenant to show sufficient cause in regard to failure to pay or deposit the rent both before the Rent Control Court and the appellate authority and by combined reading of Section 13(1) and 13(3) it may be construed that there is no bar for preferring an appeal without depositing or paying the arrears of rent; the appeal could be preferred but the further proceedings could be stopped in the appeal in case the tenant fails to pay or deposits arrears of rent without any sufficient cause and the appeal being in continuation of the original proceedings, the same powers could be exercised by the appellate authority in granting time to a tenant to pay or deposit arrears of rent even after preferring an appeal, cannot be accepted. In the same Section the Legislature consciously contemplated different situations and different stages in regard to contesting the application under Section 12 of the Act and preferring an appeal under Section 20 and continuing the proceedings in the appeal after preferring an appeal. Sub-Section (1) of Section 13 speaks of payment or deposit of arrears of rent before preferring an appeal and Sub-Section (3) of the same Section speaks of stopping all further proceedings by the appellate authority.

E Under Section 13(1) a tenant is not entitled to contest the application unless he has paid or pays to the landlord or deposits with the Rent Control Court the arrears of rent. He cannot prefer an appeal without payment or deposit of arrears of rent admitted. Section 13(3) deals with stopping all further proceedings unless the tenant shows sufficient cause for his failure to pay or deposit the rent. Stopping of further proceedings would arise only if the proceedings are pending. Unless an appeal is preferred after complying the payment of arrears of rent or deposit of the admitted arrears of rent due, the question of either pendency of the appeal or stopping of further proceedings F in such appeal does not arise. There are two separate aspects in regard to an appeal - one is compliance to be made before preferring an appeal and the other is the tenant has to continue to pay or deposit the rent, which may subsequently become due. Sub-section (3) of Section 13 will come into operation on the tenant failing to pay or deposit subsequent arrears of rent arising during the pendency of the appeal, so as to stop further proceedings G in the appeal. But, it cannot relieve the statutory compulsion or the mandatory requirement of Section 13(1), viz., paying or depositing the arrears of admitted rent before preferring an appeal. Under Section 20(2) only after an appeal is preferred under Section 20 after complying with Section 13(1), the appellate authority may stay further proceedings. Under Sub-section (4) of Section 20, H no doubt, the appellate authority shall have all the powers of the Rent Control

Court including the fixing of arrears of rent. This sub-section cannot be read A in isolation. It has to be read along with Sub-sections (1) and (3) of Section 13 and Sub-sections (1) and (2) of Section 20. Under Section 20(4) the appellate authority may have the power of fixing of arrears of rent but that is only in relation to arrears of rent that may become subsequently due during the pendency of the appeal.

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Payment or deposit of arrears of admitted rent before preferring an appeal under Section 20 is a statutory requirement as expressly stated in compulsive language under Section 13(1) of the Act and no discretion is left to the appellate authority to say that an appeal could be preferred without satisfying pre-condition of deposit or payment of admitted arrears of rent. C Under Section 20(1)(b) any person aggrieved by an order passed by the Rent Control Court may within 30 days prefer an appeal. Under Section 20(2) on such appeal being preferred, the appellate authority may order stay of further proceedings. The appeal could be preferred only on payment or deposit of arrears of admitted rent. It also follows that no effective order of stay of further proceedings can be passed by the appellate authority unless an appeal D is preferred after such payment or deposit of admitted arrears of rent. This is also a factor to indicate that payment or deposit of arrears of admitted rent is essential before preferring an appeal. It is to command a tenant to pay or deposit arrears of admitted rent to protect the interest of the landlord as in other matters certain provisions are made to protect the interest of the tenant. Remedy of appeal is a creation of statute and it is open to the legislature to provide for an appeal subject to certain conditions. Insistence of payment or depositing of arrears of rent admitted as stated in Section 13(1) of the Act cannot be diluted or defeated merely on the ground of hardship to a tenant more so when tenant already had one opportunity before the Rent Control Court in regard to making payment or depositing arrears of rent. Perhaps it F was considered unreasonable or unnecessary to provide again opportunity before Appellate Authority to a tenant that too to pay or deposit admitted arrears of rent. A Bench of three learned Judges of this Court in *Nasiruddin and Ors. v. Sita Ram Agarwal*³ while dealing with the question of deposit of arrears of rent and default in depositing the rent within the given time, in para G 35 has expressed thus:-

“In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom.”

A Sub-section (4) of Section 20 also does not help the appellants to say that the appellate authority shall have all powers of Rent Control Court and in that view an appeal could be preferred without payment or deposit of arrears of admitted rent. If it is so read or understood, it will dilute or defeat the clear, express and mandatory requirement of Section 13(1). As already noticed

B above, in view of the specific provision made in Section 13(1) as regards payment or deposit of arrears of admitted rent before preferring an appeal, the argument based on sub-Section (4) cannot be accepted. Under sub-section (4), the Appellate Authority may exercise powers of the Rent Controller as regards arrears of rent that may become due after preferring an appeal and during the pendency of it. But this sub-section cannot render mandatory

C requirement under sub-section (1) of Section 13 ineffective or otiose. It is well settled principle of interpretation that every part of the provision has to be given meaning and effect in the context of a statute. When there is express provision made in Section 13(1) in emphatic terms using negative words indicating mandatory requirements of payment or deposit of arrears of admitted rent before preferring an appeal under Section 20, neither sub-section (3) of

D Section 13 nor sub-Section (4) of Section 20 are of any avail to the appellants. This view is supported by a decision of Bench of three learned Judges of this Court in *Nasiruddin and Ors.* (supra), which after considering several decisions dealing with the provisions of Rent Control Acts of different States, expressed that where statutory provision is plain and unambiguous, the court shall not

E interpret the same in a different manner only because of harsh consequences arising therefrom; the Rent Control Act is a welfare legislation not entirely beneficial enactment for the tenant but also for the benefit of the landlord; scope of legislation or its intention cannot be enlarged when the language of the provision is plain and unambiguous. In para 37 of the said judgment, it is stated thus:

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“37. The court’s jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. *It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous.* It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of expression “shall or may” is not

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decisive for arriving at a finding as to whether the statute is directory A or mandatory. But the intention of the legislature must be found out from the scheme of the Act. *It is also equally well settled that when negative words are used, the courts will presume that the intention of the legislature was that the provisions are mandatory in character.*"

(emphasis supplied)

B

In the same decision, it is also held that where the statute does not provide either for extension of time or condone the default in depositing the rent within the stipulated period, the court does not have the power to do so.

In *E. Palanisamy v. Palanisamy (Dead) by Lrs. and Ors.*⁴, this Court has taken the view that benefits conferred by statutory provisions can be enjoyed only if such provisions are strictly complied with and procedure prescribed is followed step by step. Para 5 of the said judgment reads: -

"5. Mr. Sampath, the learned counsel for the appellant argued that since the appellant tenant had deposited the arrear of rent in court, it should be taken as compliance with Section 8 of the Act. This would mean there is no default on the part of tenant in payment of rent and therefore, no eviction order could have been passed against the appellant on that ground. According to the learned counsel, the court should not take a technical view of the matter and should appreciate that it was on account of refusal of the landlords to accept the rent sent by way of money orders that the tenant was driven to move the court for permission to deposit the arrears of rent. Since there is a substantial compliance with Section 8 inasmuch as the arrears of rent stand deposited in court, a strict or technical view ought not to have been taken by the High Court. We are unable to accept this contention advanced on behalf of the appellant by the learned counsel. The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters. The statute contains express provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a pre-condition for the next step. The tenant has to observe the procedure as prescribed in the statute. A

A strict compliance with the procedure is necessary. The tenant cannot straight away jump to the last step i.e. to deposit rent in court. The last step can come only after the earlier steps have been taken by the tenant. We are fortified in this view by the decisions of this Court in *Kuldeep Singh v. Ganpat Lal*, [1996] 1 SCC 243 and *M. Bhaskar v. J. Venkatarama Naidu*, [1996] 6 SCC 228."

B This Court in *Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama*⁵ opined that the paramount object in statutory interpretation is to discover what the legislature intended. Such intention is primarily to be ascertained from the text of an enactment in question and if the strict grammatical interpretation gives rise to absurdity or inconsistency, the court could discard such interpretation and adopt an interpretation, which will give effect to the purpose of legislation. In the case on hand, no such anomaly, absurdity or inconsistency would arise even if plain and grammatical interpretation is given to Section 13(1) of the Act insisting to pay or deposit all the arrears of rent admitted before preferring an appeal under Section 20 D of the Act.

Yet again in *Bhavnagar University v. Palitana Sugar Mill (P) Ltd. & Ors.*⁶, a bench of three leaned Judges of this Court in para 25 has observed that "scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words, statutory enactment must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute."

F Judged by what is stated above, it cannot be said that the provisions of Sections 13 and 20 of the Act are irreconcilable, unintelligible or absurd so as not to give effect to plain language of Section 13(1) requiring a tenant to pay or deposit arrears of admitted rent before preferring an appeal under Section 20 of the Act.

G The decision of this Court in the case of *Chinnamma* (supra) does not advance the case of the appellants for the reasons more than one. That was a case wherein the question, which has arisen in this appeal neither arose nor

5. [1990] 1 SCC 277.

H 6. [2003] 2 SCC 111.

decided. No doubt, the provisions 11 and 12 of Kerala Building (Lease and A Rent Control) Act, 1965 and Sections 12 and 13 of the Act are similar but the question decided in that case is altogether different, as is evident from paragraph 4 of the said judgment, which reads: -

“4. We heard counsel. The short question that arises for our consideration is what is the amount that should be deposited by the tenant under Section 11(2)(c) of the Act to set aside the order passed under Section 11(2)(b) of the Act. Should the deposit be only of that amount which was specified as payable in the order of eviction passed under Section 11(2)(b) of the Act or will it take within its fold even the arrears of rent that accrued due subsequent to the said order of eviction and up to the date of deposit? The Rent Controller passed the order of eviction on 22-2-1980. He held that in case the tenant deposits a sum of Rs. 540 which is the arrears of rent due as on 1-2-1980 along with the advocate's fee Rs. 25 and interest at the rate of 6% per annum on arrears of Rs. 540, the tenant will be entitled to get the order of eviction vacated under Section 11(2)(c) of the Act. The learned District Judge has found that the amount of Rs. 750 will cover the amount quantified specifically by the Rent Controller in the order dated 22-2-1980. The deposit made along with the application filed under Section 11(2)(c) of the Act - complied with the order dated 22-2-1980. Really, no other point arose for consideration on the facts of this case, at that stage. But the learned Single Judge of the High Court held that deposit to be made by the tenant should also include the arrears of rent that accrued due subsequent to the order of eviction dated 22-2-1980 and should include the dues till the date of deposit, i.e., 6-4-1982. The question is whether the view so expressed by the learned Single Judge is in accord with Section 11(2)(c) and the Scheme of the Act?”

In paragraph 7 of the same judgment, this Court has expressed that a mere look at Sections 11 and 12 of the Kerala Act would show that they operate in different situations. Under Section 11(2)(b) the court passes a final order of eviction directing the tenant to put the landlord in possession of the building, if there is a default as provided therein. The execution of such final order is statutorily suspended for a period of one month. Within that time or such further time, as the court may allow, the tenant is given an opportunity to pay or deposit the arrears of rent with interest and cost and, if payment or deposit is made, the court shall vacate the order. Whereas the provisions of

A Section 12 are applicable during the pendency of the proceedings for eviction. In the same paragraph it is made clear that for the applicability of Section 12 the proceedings for eviction should be pending.

Hence the said judgment, having regard to the facts of that case and the question that was decided, does not support the contention urged on behalf B of the appellants in this appeal. Even the judgment of the Division Bench of Gauhati High Court in *Binapani Roy* case, aforementioned, in a way supports the case of the respondents.

C The Division Bench of the High Court was right in holding that there was no conflict in the judgments in cases of *Chinnamma* and *Binapani Roy*.

D In view of the discussion made and reasons stated, the question set out above is answered in the negative meaning thereby payment or deposit of all arrears of rent admitted is mandatory before preferring an appeal by a tenant under Section 20 of the Act. Hence, the appeal is dismissed finding no merit in it, with no order as to costs.

E **DHARMADHIKARI J.** This appeal is directed against the order dated 21.6.2001 passed by the High Court of Gauhati. The appellant is the tenant of the leased premises in dispute. The appeal to the Appellate Authority against the order of eviction from the leased premises on the ground of default in payment of rent passed by the Rent Control Court has been dismissed on the alleged failure of deposit of rent, being a mandatory pre-condition for preferring appeal under Section 20 read with Section 30 of the Tripura Buildings (Lease and Rent Control) Act 1975 (for short hereinafter referred to as the Act).

F Learned Single Judge of the High Court formed an opinion that a decision of the Division Bench of the High Court in the case of *Binapani Roy v. State of Tripura*, (1994) 1 GLR 98, in the light of subsequent decision of the Supreme court on identical provisions of Kerala Act in the case *Chinnamma v. Gopalan*, [1995] 6 SCC 491, requires reconsideration by a larger bench.

G The learned Single Judge formulated and referred the following question for decision of the larger bench.

H “Whether in view of section 13 of the Act, 1975, the appellate Court is prohibited from entertaining an appeal unless the tenant has paid or pays to the landlord or deposits with the Rent Control Court or the appellate authority, as the case may be, all arrears of rent admitted by

the tenant to be due in respect of the building up to the date of A payment or deposit and continues to pay or deposit any rent which may subsequently become due in respect of the building until termination of the proceedings before the Rent Control Court or the appellate authority, as the case may be?"

The Division Bench answered the question against the tenant by holding B thus:

"Thus, it is clear that payment or deposit of arrears of rent admitted by the tenant and also the future rent to be due is required to enable the tenant to contest the eviction proceedings before the Rent Control Court or to file appeal against the order of Rent Control Court. This condition is sine-qua-non for the purpose of contesting the eviction proceedings or filing of an appeal. By no stretch of imagination it can be presumed that tenant may be allowed to contest the eviction proceedings or to file an appeal, without making such deposit as required by law, appeal being a creature of statute, the right conferred by the statute is also subject to any other condition imposed by the statute."

The learned counsel appearing for the tenant assailing the correctness of the judgment of the Division Bench has contended that pre-deposit of arrears of rent and future regular payment of rent during pendency of the appeal may be a mandatory pre-condition for consideration or hearing of the appeal by the tenant but *the filing or presentation of the appeal without deposit cannot* be held to be incompetent. It is submitted that until the requisite deposit of rent is made the proceedings in the appeal may be suspended as provided in sub-section (3) of Section 13 but the tenant would have a right of consideration or hearing of his appeal after he makes good the requisite deposit in accordance with sub-section (1) of Section 13 read with sub - section (2) thereof.

On the other hand, learned counsel appearing for the landlord supported the reasoning and conclusion of the Division Bench in the impugned judgment.

The legal question that arises in this appeal before us is on the tenability of the appeal without pre-deposit of arrears till the date of filing or presentation of the appeal.

To answer the above question a critical examination of the provisions

A of sections 13 & 20, in the light of the scheme and object of the said provision in the Act, is necessary.

"Section 13(1): No tenant against whom an application for eviction has been made by a landlord under section 12 shall be *entitled to contest the application* before the Rent Control Court under that section, *or to prefer an appeal* under section 20 against any order made by the Rent Control Court on the application, unless he has paid or pays to the landlord, or deposits with the Rent Control Court or the appellate authority, as the case may be, all arrears of rent admitted by the tenant to be due, in respect of the building up to the date of payment or deposit, and continues to pay or to deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Rent Control Court or the appellate authority, as the case may be.

D (2) The deposit under sub-section (1) shall be made within such time as the Rent Control Court may fix and in such manner as may be prescribed and shall be accompanied by the fee prescribed for the service of notice referred to in sub-section (4).

E **Provided** that the time fixed by the Rent Control Court for the deposit of the arrears of rent shall not be less than forty five days from the date of the order and the time fixed for the deposit of rent which subsequently accrues due shall not be less than two weeks from the date on which the rent becomes due.

F (3) If any tenant fails to pay or to deposit the rent as aforesaid, the Rent Control Court or the appellate authority, as the case may be, shall, *unless the tenant shows sufficient cause to the contrary*, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

G (4) When any deposit is made under sub-section(1), the Rent Control Court or the appellate authority, as the case may be, shall cause notice of the deposit to be served on the landlord in the prescribed manner, and the amount deposited may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him to the Rent Control Court or the appellate authority in that behalf.

H **Section 20 (1) (a).** The State Government may, by general or special

order notified in the Official Gazette, confer on such officers and **A** authorities not below the rank of a subordinate judge the powers of appellate authorities for the purposes of this Act in such areas or in such classes as may be specified in the order.

(b) Any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, *prefer an appeal* in writing to the appellate authority having jurisdiction. **B**

Note: In computing the thirty days in this clause, the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal *being preferred*, the appellate authority may *order stay of further proceedings* in the matter pending decision on the appeal. **C**

(3) The appellate authority shall call for the records of the case from Rent Control Court and after giving the parties an opportunity of being heard, and if necessary, after making such further inquiry as it thinks fit, either directly or through the Rent Control Court, shall decide the appeal. **D**

Explanation: The appellate authority may, while confirming the order of eviction passed by the Rent Control Court, grant an extension of time to the tenant for putting the landlord in possession of the building. **E**

(4) *The appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent.*

(5) The decision of the appellate authority, and subject to such decision, an order of the Rent Control Court shall be final and shall not be liable to be called in question in any court of law, except as provided in Section 22." **F**

[Underlining for pointed attention]

Section 33 confers power on the State Government to make rules to carry out the purposes of the Act including for regulating the procedure to be followed by the Rent Control Courts and appellate authorities in performance of their functions under the Act. In exercise of the aforementioned rule making power Tripura Buildings (Lease and Rent Control) Rules 1979 have been framed and the relevant Rules regulating the procedure of appeals i.e. Rules 15 and 16 read as under: **G**

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A "Section 15(1). Every appeal against an order either of the Accommodation controller or the Rent Control Court shall in addition to the grounds of appeal specify the date on which the order was received by the appellant. *The memorandum of appeal shall be signed by the appellant or his counsel and presented to the Appellate Authority or to such officer as he appoints in this behalf by the appellant himself personally or by his recognised agent or by counsel at any time during office hours on a working day.* The appeal shall be accompanied by a copy of the order of the Accommodation Controller or the Rent Control Court as the case may be against which the appeal is made.

B (2) Every appeal under the Act shall be accompanied by a spare or sufficient number of spare copies thereof for service on the respondent or respondents mentioned therein.

C Section 16 (1). When an appeal under the Act is *preferred*, the Appellate Authority shall fix a day for hearing the appeal and send notice thereof to the appellant or appellants and the respondent or respondents mentioned in the appeal and shall also send a copy of the appeal along with notice to the respondent or respondents.

D (2) The Appellate Authority after hearing the appeal may decide the appeal finally according to law of equity and good conscience or may make further enquiry. The final decision given shall be reduced into writing. In the absence of any party duly summoned to attend, the appeal may be decided *ex parte*.

E (3) If the Appellate Authority decides to make further enquiry he may take additional evidence or require such evidence to be taken by the Accommodation Controller or Rent Control Court, as the case may be.

F (4).....

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[Underlining for pointed attention]

H As has been rightly observed by Division Bench of the High Court in the decision of *Binapani Roy* (supra) 'Section 13 of the Act has been inserted with the intention to avoid litigations for realization of arrears of rents which is likely to accumulate during the long period of litigation and also to

deter the tenant from resorting to unfair practice to use and occupy tenanted A premises without payment of rent during the long period of protracted litigation.'

The decision in *Binapani Roy* (supra) does not directly deal with and B answer the question posed before us. In that case the interpretation of the words and expression "admitted by the tenant to be due" as used in sub-section (1) of Section 13, came up for interpretation. To make the said provision workable it was held that the above-mentioned expression can not be given a literal meaning as conveying only the rent which has been admitted in the pleadings by the tenant. It was held that in order to fulfil the object of the provision which is in the interest of the landlord the expression is to be understood reasonably to mean 'the rent which can be found to be due from the facts and materials on record.'

The decision of the Supreme Court in the case of *Chinnamma* (supra) which interprets similar provisions in the Kerala Act also does not deal with point involved before us. In that case it was held that provisions of Section D 11(2) of the Kerala Act, which are comparable to Section 13(1) of the present Act, impose an obligation in specified terms on the tenant to enable him to contest the proceedings before the Rent Control Court. He is required to deposit the arrears of rent (along with interest and cost of proceedings) for which the landlord had sent a demand notice on him and on basis whereof the Rent Control Court had passed an order of deposit under Section 11(2) (b) of the Kerala Act which is comparable to Section 13(2) of the present Act. The Supreme Court held that the arrears of rent to be deposited before the Rent control Court as a pre-condition for contesting the case by the tenant are only arrears of rent for which a notice has been served by the landlord and 'would not include rent which might become due till the actual date of deposit under the order of the Rent Control Court.' The above proposition does not directly answer the question of the nature of the requirement of deposit of arrears as a pre-condition for preferring appeal under Section 20 of the Act under consideration before us. The Division Bench in the impugned judgment, therefore, was right in observing that the decision of the Division Bench of the High Court in *Binapani Roy*'s case (supra) which was on a different point was not required to be reconsidered by the larger bench in the light of decision of this Court in *Chinnamma*'s case (supra). G

The question, therefore, arising needs to be answered on a proper and reasonable interpretation of the provisions of Section 13 read with Section 20 H

A of the Act.

Sub-section (1) of Section 13 restricts right of tenant to contest proceedings before the Rent Control Court as also appeal arising from them. The language of sub-section (1) is “no tenant shall be *entitled to contest the application before the Rent Control Court under that section, or to prefer* an appeal under Section 20 against any order made by the Rent Control Court on the application, unless he has paid or pays to the landlord, or deposits with the Rent Control Court or the appellate authority, as the case may be, all arrears of rent admitted by the tenant to be due in respect of the building up to the date of payment or deposit, and continues to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Rent Control Court or the appellate authority, as the case may be.”

Sub-section (2) of Section 13 contemplates passing of an order by the Rent Control Court fixing the time and manner of deposit to be made by the tenant under sub-section (1).

The proviso below sub-section (2) empowers the Rent Control Court to fix period of not less than 45 days for deposit of arrears of rent and not less than two weeks for future rent. The minimum period indicated in proviso to sub-section (2) for making two kinds of deposits allows larger periods than the minimum prescribed to be granted by the Rent Control Court.

After the Rent Control Court has fixed the period and manner of two kinds of deposits i.e. arrears and future rent, if there is failure on the part of the tenant to make the requisite deposits within the prescribed period, the Rent Control Court in the original proceedings and appellate court in appeal proceedings can stop all further proceedings. The tenant if, however, shows sufficient cause for failure or delay in deposit, the Rent Control Court or the appellate authority, as the case may be, has discretionary power under sub-section (3) not to take adverse action against the tenant of stopping all proceedings and directing the tenant to put the landlord in possession of the building. The use of the expression “unless tenant shows sufficient cause to the contrary” as used in sub-section (3) clearly gives such a discretion. Sub-section (1) and sub-section (3) of Section 13 make express mention both of “Rent Control Court and appellate authority” for the application of those provisions to original proceedings as also to the appellate proceedings. Deposit of arrears of rent and future rent are two pre-conditions for the tenant to

contest the original proceedings and avail remedy of appeal. In sub-section A (2) of Section 13, there is only mention of Rent Control Court empowering it to fix time and manner of deposit of arrears and future rent. The omission of words "appellate authority" in sub-section (2) of Section 13 *prima facie* gives an impression that fixation of time and manner for two kinds of deposits of arrears and future rent are not required to be made by the appellate authority. B

This omission of the words "appellate authority" in sub-section (2) however, is made good by incorporating sub-section (4) in Section 20. Section 20 with its sub-sections creates forum for appeals, describes nature of power of appellate authority and prescribes period of limitation for appeals, preferable either by the landlord or by the tenant, as the case may be, who feels aggrieved by the order of Rent Control Court. C

Sub-section (4) of Section 20 states "the appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent.

The language employed in sub-section (4) gives all powers of Rent Control Court to Appellate Authority inclusive of the power of Rent Control Court to fix arrears of rent. On examination of all other provisions of the Act, power to fix arrears of rent by the Rent Control Court is to be found only in sub-section (2) of Section 13 and in no other provision. The legislative intent of conferring same power of Rent Control Court under sub-section (2) on the appellate authority is clear from incorporation of sub-section (4) in Section 20 which regulates the power and procedure of appeal. Since the appellate authority has been conferred with all powers of Rent Control Court, non-mention in sub-section (2) of 'appellate authority' with 'Rent Control Court' seems to be a deliberate omission. D E F

It is true that when a tenant prefers an appeal there may be a case where the arrears of rent due up to the date of order of the Rent Control Court are already quantified and the dispute of quantum and/or rate of rent stands decided by the original order. That would enable the tenant to deposit the arrears at the time of filing of the appeal. G

The language "all arrears of rent admitted by the tenant to be due", as has been used in Section 13(1), has been interpreted by the Division Bench of the High Court in the case of Binapani Roy (supra). I find that the Division Bench has reasonably construed that expression as not merely conveying 'such rent as has been admitted by such tenant in his pleadings.' According H

A to the Division Bench the expression aforementioned has to be so construed as to fulfil the object of the Act to disable the tenant to withhold rent due pending eviction proceedings against him or appeal by him. The expression has been construed to mean 'the rent which is ascertainable as admitted from the record of the case.' The legislature also intends that the so-called admitted arrears and recurring rent to be deposited or paid by the tenant during eviction proceedings or appeal preferred by him, are required to be judicially or quasi-judicially determined in accordance with sub-section (2), with fixation of time and manner of its deposit or payment. Such an interpretation of expression "all arrears of rent admitted by the tenant to be due" is necessary because there may be various kinds of situations in different cases, such as,

B where the tenant denies his relationship with the landlord, or disputes the quantum of arrears and/or rate of rent. In such situations, it might be found necessary in original proceedings for the Rent Control Court to determine the rent which can be said to be admittedly due and similar determination might be required in appeal.

C On behalf of the landlord, learned counsel has argued that sub-section (1) of section (13) which is intended to protect the interest of the landlord casts a mandatory pre-condition on the tenant to deposit or pay arrears of rent due up to the date of deposit and make future payment for preferring appeal. It is submitted that appeal without payment of arrears of rent found due

E against the tenant is incompetent. The appeal cannot even be filed without deposit of rent. In appeal, any order under sub-section (2) of section 13 is not contemplated which is restricted in its application to proceedings before Rent Control Court. In this respect it is submitted that a strict literal construction is required to be placed on the provisions of Section 13(1)(2) & (3) of the Act. Reliance is placed on the decision of this Court in *Nasiruddin v. Sita Ram Aggarwal*, [2003] 2 SCC 517.

We find that the decision of *Nasiruddin* (supra) of this Court turned on the express language of Section 13(4) of the Rajasthan Premises (Control of Rent and Eviction) Act 1950. The said section required a tenant to deposit or pay to the landlord the amount of rent determined by the court under sub-section (3) of that section within 15 days from the date of such determination or within such further time not exceeding three months as may be extended by the Court.

The section further provides that the tenant has to continue to deposit in court or pay to the landlord future monthly rent by 15th of each succeeding

month or within such further time not exceeding 15 days as may be extended A by Court.

Failure to deposit or pay the rent as required by sub-section (4) in the specified time enables the court under sub-section (5) to "strike out the defence of tenant against his proposed eviction". It is on the aforesaid language of Section 13(4) of the Rajasthan Act which prescribes not only an outer limit for deposit of rent but also the outer limit of extended period for deposit to be granted by the court, that this Court put strict interpretation on the provisions regardless of the harsh consequences that may ensue against the tenant. The decision of this Court in Nasiruddin's case (supra), therefore, is clearly distinguishable on the peculiar language of provisions of Rajasthan Act B C interpreted therein.

It is then contended on behalf of the landlord that both sub-section (1) of section 13 and section 20 of the Act use the word "prefer" in respect of remedy of appeal meaning thereby that no appeal can be filed by tenant without fulfilling the mandatory condition of pre-deposit of arrears of rent D and future rent.

The word "prefer" as used in Section 245M of the Income Tax Act came for consideration before this Court in the case of *Commissioner of Income Tax Act v. BN Bhattacharjee*, [1979] 3 SCR 1133. Under the provision of Income Tax Act an assessee can approach a Settlement Commissioner for E settlement of his case but the embargo under section 245 M(1) is that he would not be entitled to make an application to the Settlement Commission where Income Tax Officer had preferred an appeal under Sub-section (2) of Section 253. The proviso to Section 245M(1) of the Income Tax Act which came up for interpretation reads thus:

"Provided that no assessee shall be entitled to make an application in a case where the Income-Tax Officer has preferred an appeal under sub-section (2) of Section 253 against the order to which the assessee's appeal relate."

On the meaning of the word "prefer" an appeal this Court explained the word thus: G

"Preferred" is a word of dual import; its semantics depend on the scheme and the context; its import must help, not hamper, the object of the enactment even if liberty with language may be necessary. H

A There is good ground to think that an appeal means an *effective appeal*. An appeal withdrawn is an appeal non est as judicial thinking suggests.

Black's Law Dictionary gives the following meaning:

B PREFER: To bring before; to prosecute; to try to proceed with. Thus, preferring an indictment signifies prosecuting or trying an indictment.

To give advantage, priority, or privilege; to select for first payment, as to prefer one creditor over others.

C Thus, *it may mean 'prosecute' or effectively pursue a proceeding or merely institute it. Purposefully interpreted, preferring an appeal means more than formally filing it but effectively pursuing it.'*

(Emphasis added)

D In clause (b) of sub-section (1) of Section 20 period of limitation of 30 days has been prescribed for preferring an appeal in writing from the order of Rent Control Court, excluding the period for obtaining certified copy. The period of limitation prescribed for preferring an appeal is not the period fixed for deposit of rent as a pre-condition for preferring an appeal by the tenant. As has been noted above, sub-section (1) of section 13 lays down two pre-conditions for preferring an appeal. First is deposit of arrears of rent due till the date of deposit for appeal and second payment or deposit of future rent due after the date of deposit. Such requirements on the part of the tenant for preferring an appeal are clear indications that 30 days' time fixed for appeal in sub-section (2) is not a period for deposit of arrears of rent due and future rent as a pre-condition for appeal.

E F To enable a tenant to prefer an appeal by fulfilling both the conditions of deposit of arrears and future rent, it is necessary that as is the power given to the Rent Control Court, the appellate authority, on being approached by the tenant, has to pass a judicial or quasi-judicial order not only for the purpose of fixing the time and manner of two kinds of deposits but also to determine, *on the basis of record of the case, the rent which can be said to be admitted to be due by the tenant* within the meaning of expression "all arrears of rent admitted by the tenant to be due" as used in sub-section (1) of Section 13.

H The use of the word "prefer" therefore, in sub-section (1) of Section 13, in the context of the said provision and the other provisions in sub-

sections (2) to (4) of the said Section has a meaning different from *mere filing or presentation of an appeal*. The word "prefer" in the context of Section 13(1), to enable the tenant to contest original proceedings, or prosecute appellate proceedings should reasonably mean that the tenant without requisite deposit of arrears of rent and future rent, *shall not be allowed to prosecute the appeal or be heard in the appeal* against the order passed by the Rent Control Court.

The word "prefer" as used in clause (b) of Section 20, in the context of providing a period of limitation for appeals both by the landlord and tenant, as the case may be, from the order of the Rent Control Court, if they feel aggrieved, would have a narrower meaning as *mere filing or presentation of an appeal*. It is so indicated in Rules 15(1)& (16) where both expressions "presentation of appeal" and "prefer an appeal" have been used synonymously.

No doubt, there is a presumption that the legislature uses same word in different parts of the same statute with the same meaning. The presumption is, however, weak and can be displaced by the context. Even when the same word is used at different places in the same clause of the same Section it may not bear the same meaning at each place having regard to the context of its use. [See *Principles of Statutory Interpretation* by GP Singh 8th Edition Chapter-V, Synopsis-I at pages 286-287].

The word "prefer" for the purpose of Section 13(1) has to be distinguished from *mere filing of an appeal* in the prescribed period of limitation. As interpreted by us above sub-section (2) of section 13 containing power of Rent Control Court, in the matter of fixing period and manner of deposit, is available to the appellate authority by virtue of sub-section (4) Section 20. The expression "all arrears of rent admitted by the tenant to be due" as used in sub-section (1) of Section 13 requires adjudication to some extent. The right of tenant to prefer an appeal can not be denied to him until such an adjudication is made. My above conclusion is reinforced by the language of sub-section (3) of Section 13 which empowers expressly both the Rent Control Court and the appellate authority to stop all proceedings and direct the tenant to put the landlord in possession of the leased premises, if there is a failure on the part of the tenant to make requisite deposits either of arrears and/or future rent and only if he is unable to show any sufficient cause for non-deposit or delay. Such a power with discretion both in Rent Control Court and appellate authority to stop or refrain from stopping original or appellate proceedings, as the case may be, and evicting tenant in the event

A of default of deposit, also indicates that right of appeal to the tenant can be deprived to him only if there is a default on his part and he is unable to show any sufficient cause for such default. This also indicates that filing of an appeal within limitation and allowing the tenant to prosecute that appeal due to his failure to make deposits of arrears and future rent are two different stages or steps in both original proceedings and appellate proceedings.

B Another settled rule of construction of statute is that 'it has to be presumed that the legislature does not waste its words and say anything in vain'. If sub-section (4) of section 20 is not read as conferring on the appellate authority full powers of Rent Control Court including power under sub-
C section (2) of Section 13, sub-section (4) of section 20 would be rendered otiose or superfluous. Such a construction which attributes redundancy to the Legislature has to be avoided. *[See Principles of Statutory Interpretation by G.P. Singh, Chapter-II, Synopsis-I at Page 63].*

D As a result of the detailed discussion aforesaid of the provisions under consideration before us, I have come to the conclusion that a tenant can file or present a memo of appeal within the prescribed period of thirty days excluding the time for obtaining certified copy of the order in accordance with sub-section (1) of Section 20 but until and unless he seeks an order from the appellate authority in accordance with sub-section (2) of Section 13 and E makes deposit of all arrears of rent and continues to pay future rent in the manner and within the time directed by the appellate authority, he would not be entitled to prosecute the appeal and obtain any interim or final relief against the order of the Rent Control Court as is contemplated in sub-sections (2) & (3) respectively of the said Section.

F In the result, the appeal preferred by the tenant is allowed. The impugned order passed by the Division Bench is set aside. The case is sent back to the appellate authority with liberty to the tenant to invoke provisions of sub-section (2) of Section 13 as interpreted above.

G In view of divergency of opinion on the question whether an appeal can be preferred by a tenant under Section 20 of the Tripura Buildings (Lease and Rent Control) Act, 1975 [for short, "the Act"] without making payment or deposit of admitted arrears of rent, as stated in Section 13(1) of the Act, the civil appeal is to be posted before a larger Bench, after obtaining the order of the Hon'ble Chief Justice.

H S.K.S.

Referred to the Larger Bench.