B.P. Khemka Pvt. Ltd vs Birendra Kumar Bhowmick & Anr on 6 March, 1987

Equivalent citations: 1987 AIR 1010, 1987 SCR (2) 559, AIR 1987 SUPREME COURT 1010, 1987 SCFBRC 177, (1987) 1 JT 665 (SC), 1987 RAJLR 190, 1987 UJ(SC) 2 1, (1987) 1 RENCR 256, (1987) 1 RENTLR 659, 1987 (2) SCC 407

Author: A.P. Sen

Bench: A.P. Sen

PETITIONER:
B.P. KHEMKA PVT. LTD.

Vs.

RESPONDENT:
BIRENDRA KUMAR BHOWMICK & ANR.

DATE OF JUDGMENT06/03/1987

BENCH:
NATRAJAN, S. (J)
BENCH:
NATRAJAN, S. (J)
SEN, A.P. (J)

CITATION:
1987 AIR 1010 1987 SCR (2) 559
1987 SCC (2) 407 JT 1987 (1) 665
1987 SCALE (1)537
CITATOR INFO :
E&F 1989 SC 291 (7)
E&F 1989 SC1534 (10,12)

ACT:
West Bengal Premises Tenancy Act, 1956---S. 17(1), (2) and (2A)--West Bengal Premises Tenancy (Amendment) Ordinance VI of 1967--Ss.2 and 5--Rent--Default in payment of--Application before Court for payment of rent arrears in instalment under s. 17 (2A) (b) of 1956 Act (as introduced by Ordinance VI of 1967)--Time limit For filing--Reading s. 17 (2A) (b) of 1956 Act conjointly with s.5 of the Ordinance--All tenants against whom suits or appeals pending on the date of promulgation of Ordinance entitled to benefit of s. 17 (2A) by filing application within one month from the date of promulgation of the Ordinance--Limitation of one month prescribed by s. 17(1) of 1956 Act inoperative by

virtue of s.5 of the Ordinance making it effective retrospectively.

West Bengal Premises Tenancy Act, 1956---S. 17(3) and (4) Proviso--Second default in payment of rent within the meaning of Proviso to s. 17(4) Must be for four months and above within 12 months-Tenant's defence against delivery of possession--Cannot be struck out if subsequent default is for a period of less than four months within 12 months--Eviction suit on ground of default liable to be dismissed-Section 17(3)---Word 'shall' being directory to be read as 'may'-Discretion of the Court--To order either striking out of defence or not--Depends upon the circumstances of the case and interest of justice--If court exercises discretion not to strike out defence-Court has further discretion to condone the default and extend time for payment of deposit.

Interpretation of statutes--Remedial amendments--To be construed liberally--Duty of Court--To avoid conflict between two sections--Mendatory or directory--Whether 'shall' used as 'may'--Depends upon legislative intent.

HEADNOTE:

The first respondent filed a suit against the appellant and the second respondent for ejectment on the ground of default in payment of the monthly rent. The appellant denied the alleged default and flied an application under s.17(2) of the West Bengal Premises Tenancy Act,
560
1956 to seek the orders of the Court regarding the amount of rent payable to the landlord.

During the pendency of the proceedings the West Bengal Premises Tenancy (Amendment) Ordinance No. VI of 1967 (later replaced by the WeSt Bengal Premises Tenancy (Amendment) Act 30 of 1969) came to be promulgated with effect from 26.8.67. By s.2 of the Ordinance subs.(2A) and (2B) to s.17 of the Act were inserted. Section 5 of the Ordinance gave retrospective effect to the amendments by providing that the amendments made by s .2 of the Ordinance shall have effect in respect of all suits including appeals which were pending on the date of commencement of the Ordinance. The amendments inter alia enabled tenants who were in default to apply to the Court and pay the arrears of rent in instalments.

To avail the benefit of amended provisions the appellant preferred an application within one month under s.(2A)(b) praying for payment of arrears of rent in instalments. The trial Court fixed the amount of arrears payable and allowed the payment thereof in three instalments. The appellant paid the entire arrears of rent on 31.7.70 covering the period ending with 29.2.68.

In the meanwhile the first respondent had filed an application under s.17(3) for striking out the defence of

the appellant against the delivery of possession of the demised premises for non-compliance with the terms of s.17(1). Resisting the application the appellant contended that since he had paid the arrears of rent as per the orders of the Court under s.17(2A)(b), the first respondent's suit should be dismissed under s.17(4). The trial Court allowed the application and struck out of the defence the appellant on the ground that in paying the rent for the months of September 1968 and March 1969 there had been a delay and thus the appellant had contravened s.17(1) and, therefore, he was not entitled to protection under s. 17(4). The application filed by the appellant under s. 148 CPC for extension of time for deposit of amount for the months of September 1968 and March 1969 was dismissed. The suit was decreed and the decree confirmed by the Appellate Court and the High Court. The High Court held that even an application under s.17(2A)(b) was not maintainable and hence the appellant cannot raise a plea that he had paid the arrears of rent within time and the trial Court should have dismissed the suit under s. 17(4).

Allowing the Appeal and dismissing the Civil Miscellaneous Petitions,

561

HELD: 1. When s.17(2A) of the West Bengal Premises Tenancy Act, 1956 and s.5 of the West Bengal Premises Tenancy (Amendment) Ordinance No. VI of 1967 are read conjointly it is clear that the intention of the legislature was to extend the benefit of sub.s (2A) to aH pending suits and appeals irrespective of the fact whether the time limit of one month prescribed under s.17(1) had expired or not. Any other construction would have the effect of rendering otiose s.5 of the Ordinance. Since the Ordinance came to be replaced long after by the Act, s .5 of the Ordinance was not reproduced in the Act. It is significant that s.5 of the Ordinance entitled the appellant to file an application under s.17(2A)(b), in the suit filed by the first respondent which was pending then. The High Court has looked only into the Act and not the Ordinance and that is how s.5 of the Ordinance has escaped its notice. The High Court has, therefore, committed an error in failing to notice the overriding effect of s. 17(2A) and s.5 of the Ordinance. [567C-E]

2. If the intention of the legislature was to restrict the benefits given under s.17(2A) to only those tenants against whom suits had been filed within one month prior to the promulgation of the Ordinance, there was no necessity to give retrospectively to s.(2A) under s.5 of the Ordinance. It has, therefore, to be held that all tenants against whom suits or appeals were pending on the date of the promulgation of the Ordinance were entitled to seek the benefit of s.17(2A) by filing an application within one month from the date of the promulgation of the Ordinance. The High Court was, therefore, in error in holding that the application under s.17(2A)(b) was itself not maintainable. [568B-C]

3. Remedial amendments have to be liberally construed so as not to deny its efficacy and it is the duty of the courts to avoid a conflict between two sections. [567E]

Madhav Rao Scindia v. Union of India, AIR S.C. 1971 530 at 576 and Dy. Custodian v. Offl. Receiver, [1965] 1 SCR 220 at 225, relied upon.

4. In so far as the payment of arrears for the period ending 29.2.68 is concerned, the appellant had complied with the orders of the Court under s.17(2A)(b) and was, therefore, entitled to claim the benefit of s.17(4). [568E]

5. Sub-section (3) has to be read and understood with reference to sub-s.(4) also and in particular its Proviso. Sub-section (4) lays down that when a tenant, makes payment as required by sub-s.(1), (2) or (2A)
562
no decree or order for delivery of possession shall be made on the ground of default in payment of rent by the tenant. The Proviso sets out that a tenant who has obtained relief under sub.s.(4) is not entitled to seek relief once again under the sub-section if he has again made default in the payment of rent for 4 months within a period of 12 months. The Proviso, therefore, makes it clear that if the subsequent default is for a period less than 4 months within a period of 12 months the tenant can claim relief under the sub-section once again. [569C-E]

In the instant case, the previous arrears related to the period ending with 29.2.68 and those arrears had been paid in compliance of the Court's order. The appellant was, therefore, entitled to ask for the dismissal of the suit. In so far as the subsequent default is concerned, it is well within the limitations prescribed by the Proviso to sub-section (4). The default is only for two months and that too in a period of 13 months. The appellant will, therefore, be entitled to the protection of the proviso. [569E-F]

6. The words "shall order the defence against delivery of possession to be struck out" occurring in s.17(3) have to be construed as a directory provision and not a mandatory provision as the word "shall" has to be read as "may". Such a canon of construction is warranted because otherwise the intendment of the legislature will be defeated and the class of tenants for whom the beneficial provisions were made by the Ordinance and the Amending Act will stand deprived of them. [569H; 570A-B]

Govindlal Chhagganlal Patel v. Agricultural Produce Market Committee, Godhra, [1976] 1 SCR 451; [1975] 2 SCC 482 and Ganesh Prasad Sah Kesari v. Lakshmi Narain Gupta, [1985] 3 SCC 53, relied upon.

7. Once the word "shall" used in s.17(3) is read as "may" and consequently the provision for striking out of defence is to be read as directory and not mandatory then it follows that the Court is vested with discretion to order either striking out of defence or not depending upon the circumstances of the case and the interest of justice. If

the Court has the discretion not to strike out the defence of the tenant committing default in payment for deposit of rent as required by a provision in any Rent Restriction Act, then the Court surely has the further discretion to condone the default and extend the time for payment or deposit and such a discretion is a necessary implication of the discretion not to strike out the defence. [570F-H]
563
Shyamcharan Sharma v. Dharamdas, [1980] 2 SCR 334; Santosh Mehta v. Om Prakash and Anr., [1980] 3 SCR 325 and Ram Murti v. Bhola Nath and Another, [1984] 3 SCR 111, relied upon.
In the instant case, the default was not one of non-payment of the arrears of the rent for the subsequent period. The default pertained to belated payment of rent for two months and was, therefore, a default in the technical sense than in the real sense and hence of an inconsequential nature. Having regard to the intendment of the Act and the nature of the provisions it can never be said that the defaults were of such a serious nature as to warrant the court refusing to exercise its discretion and to fell constrained to strike out the defence. [571C-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1262 of From the Judgment and order dated 3.4.1978 of the High Court of Judicature at Calcutta in Appeal from Appellate Decree No. 1700 of 1972.

S.T. Desai and M.L. Verma for the Appellants. Govind Mukhoty and R.P. Gupta for the Respondents. M .N. Krishmani and V. Shekar for the Intervenor. The Judgment of the Court was delivered by NATARAJAN, J. This Appeal by Special Leave is by a tenant and is directed against the judgment of the Calcutta High Court in an Appeal against Appellate decree No. 1700 of 1972. The defence of appellant in the suit filed by the first respondent for eviction was struck out and thereafter a decree for eviction was passed and the said decree was confirmed by the Appellate Court and the High Court and hence this Appeal by Special Leave.

During the pendency of the suit the first respondent had entered into an agreement for sale of his building in which the suit property forms the ground floor to one Ramdir Singh Agarwala but subsequently executed a Sale Deed in favour of one Chidanand Halder. Ramdin Singh Agarwala filed a suit for specific performance in the Court of the Sub Judge, Alipore and obtained a decree. The subsequent purchaser Chidanand Halder has filed an appeal against the judgment and decree in the said suit and the appeal is pending disposal before the High Court. Both the parties, claiming to have acquired title to the building of which the suit property forms a part have filed CMP Nos. 19671 and 32297 of 1986 seeking impleadment in this Appeal. The first respondent who succeeded to the suit property after the death of his father filed a suit against the appellant and its director the second respondent for eject- ment on the ground of default in payment of the monthly rent of Rs. 550 from

March 1965 to July 1966. The appellant filed a written statement denying the default in payment of rent and also filed an application under Section 17(2) of the West Bengal Premises Act, 1956 (for short the Act) to seek the orders of the Court regarding the amount of rent payable to the landlord.

During the pendency of the proceedings the West Bengal Premises Tenancy (Amendment) Ordinance No. VI of 1967 (later replaced by the West Bengal Premises Tenancy (Amendment) Act 30 of 1969) came to be promulgated with effect from 26.8.67. By Section 2 of the Ordinance Sub-Sections (2A) and (2B) to Section 17 of the Act were inserted. Section 5 of the Ordi- nance gave retrospective effect to the amendments by provid- ing that the amendments made by Section 2 of the Ordinance shall have effect in respect of all suits including Appeals which were pending at the date of commencement of the Ordi- nance. The amendments inter alia enabled tenants who were in default to apply to the Court and pay the arrears of rent in instalments and thereby avert their eviction. To avail the benefit of the amended provisions the appellant preferred an application on 22.9.67 i.e. within one month from the date of promulgation of the Ordinance under Section 17(2A)(b) praying for payment of the arrears of rent in instalments. By Order No. 39 the trial court fixed the amount of arrears payable at Rs. 13,602 and gave directions for the amount being paid in three instalments. As an error was noticed in the calculation of the rent arrears, the appellant filed a review petition and the Court re-fixed the arrears at Rs.9,752 by Order No. 72. Subse- quentiy this order was also revised and eventually the appellant paid the entire arrears of rent in accordance with the directions of the court by 31.7.70. It may be stated here that the payment covered the period ending with 29.2.1968 i.e. upto the end of the month previous to the date on which Order No. 39 was made, viz. 16.3. 1968.

In the meanwhile the first respondent had filed an application under Section 17(3) for striking out the defence of the appellant against the delivery of possession of the demised premises for noncompliance with the terms of Section 17(1). On 14.3.70 the court allowed the said application and struck out the defence of the appellant, on the ground that in paying the rents for the months of September 1968 and March 1969 there had been a delay of 44 days and 6 days respectively and this was in contravention of Section 17(1) of the Act. Thereafter the suit for eviction was decreed and the said decree came to be confirmed by the Appellate Court and the High Court.

The appellant filed an application on 13.6.70 under Section 148 Civil Procedure Code for extension of time for deposit of amount for the months of September 1968 and March 1969 so as to cover the delays that had occurred in the payment of rent for those two months. This application was dismissed by the Trial Court on 30.7.70. It was thereafter the decree for eviction was passed.

Resisting the application under Section 17(3) filed by the first respondent the appellant contended that since he had paid the arrears of rent as per the orders of the Court under Section 17(2A)(b), the first respondent's suit should be dismissed under Section 17(4) of the Act. The Trial Court rejected the contention and held that in view of the default in depositing the rent for the months of September 1968 and March 1969 within time i.e. before the 15th of the next succeeding month, the appellant had contravened Section 17(1) of the Act and therefore, the appellant was not enti- tled to protection under Section 17(4). The High Court went a step further and held that even the application under Section 17(2A)(b) was not maintainable and hence the appel- lant cannot raise a

plea that he had paid the arrears of rent within time and as such the Trial Court should have dismissed the suit under Section 17(4). The High Court's reasoning is as under:-

> "In our view, the application under section 17(2A)(b) was not also maintainable. It is true that section 17 (2A)(b) was made applica- ble to pending suits by the Ordinance. But such applicability will be subject to the limitation imposed by sub-section (2B) of Section 17, namely, that an application under sub-section (2A)(b) has to be made before the expiry of the time specified in sub-section (1) of Section 17 for the deposit or payment of the amount due on account of default in payment of rent. Under sub-section (1) of Section 17 the time specified is one month from the service of the writ of summons on the defendant or where he appears in the suit or proceeding without the writ of summons being served on him, within one month of his appearance. In the instant case, the summons was served on the defendants on April 6, 1967. The application under section 17(2A)(b) having been filed on September 22, 1967, it was barred by limita-

tion ..... In our view, after the expiry of one month of the service of summons on the defendants, they had no right to avail them- selves of the provisions of section 17(2A). Sub-section (2B) of section 17 having pre- scribed a time limit for an application under sub-section (2A), no other period of limitation can be substituted for the purpose of making an application for instalments. It is true that the Act is a remedial statute, but that fact does not give the Court jurisdiction to alter the period of limitation as pre-

scribed by the statute for the purpose of giving relief to the tenant. If the legisla- ture had intended that the tenant in a pending suit would be entitled to make an application under section 17(2A) within one month of the date of promulgation of the Ordinance, it would have expressly provided for the same as it has done in other cases covered by section 17B and 17D."

Having regard to the reasons given by the Trial Court and the High Court for striking out the defence of the appellant and the inapplicability of Section 17(4) to the case, two questions fall for consideration, viz. (1) whether the appellant was not entitled to the benefit of Section 17(2A)(b) of the Act since the application under the subsec- tion had not been filed within one month from the date of service of the writ of summons and (2) whether in any even the delayed payment of rent for the months of September 1968 and March 1969 necessarily warranted the striking out of the defence. Mr. S.T. Desai, learned counsel for the appellant, contended that the decisions rendered by the trial court and the High Court are clearly unsustainable. On the contrary, the learned counsel for the first respondent argued that the trial court and the High Court had acted perfectly in accordance with law.

Taking up the first question for consideration we find that the High Court has committed an error in failing to notice the overriding effect of Section 17(2A) and Section 5 of the Ordinance. Section 17(2A) begins with the words "Notwithstanding anything contained in sub-section (1) or sub-section (2) on the application of the tenant, the Court may, by order" and then sets out sub-sections (a), (b) and the Proviso. Then comes the all important Section 5 of the Ordinance which is in the following

terms:-

> "5. Retrospective effect.--The amendments made by section 2 shall have effect in respect of all suits including appeals which are pending at the date of commencement of this Ordi- nance".

(Emphasis supplied.) Since the Ordinance came to be replaced long after by the Act, Section 5 of the Ordinance was not reproduced in the Act because it had served its purpose. What is, however, of significance is that Section 5 of the Ordinance entitled the appellant to file an application under Section 17(2A)(b), in the suit filed by the first respondent which was pending then. Unfortunately, the High Court has looked only into the Act and not the Ordinance and that is how Section 5 of the Ordinance has escaped its notice. When Section 17(2A) and Section 5 of the Ordinance are read con jointly it may be seen that it was the intention of the legislature to extend the benefit of sub-section (2A) to all pending suits and appeals irrespective of the fact whether the time limit of one month prescribed under Section 17(1) had expired or not. No other construction is possible be- cause any other construction would have the effect of ren- dering otiose Section 5 of the Ordinance. It is a well-known rule of interpretation of law that remedial amendments have to be liberally construed so as not to deny its efficacy and it is the duty of the courts to avoid a conflict between two sections. In Madhav Rao Scindia v. Union of India, AIR S.C. 1971 530 at 576 this Court has held as follows:

> "The Court will interpret a statute as far as possible, agreeably to justice and reason and that in case of two or more interpretations, one which is more reasonable and just will be adopted, for there is always a presumption against the law-maker intending injustice and unreason .... A provision in a statute will not be construed to defeat its mainfest pur- pose and general values which animate its structure."

In Dy. Custodian v. Offl. Receiver, [1965] 1 SCR 220 at 225 it was held as follows:-

> "If it appears that the obvious aim and object of the statutory provisions would be frustrat- ed by accepting the literal construction suggested by the respondent, then it may be open to the court to enquire whether an alter- native construction which would serve the purpose of achieving the aim and object of the Act, is reasonably possible."

It was the intention of the Legislature to restrict the benefits given under Section 17(2A) to only those tenants against whom suits had been filed within one month prior to the promulgation of the Ordinance, there was no necessity to give retrospectivity to subsection (2A) under Section 5 of the Ordinance. It has, therefore, to be held that all ten- ants against whom suits or appeals were pending on the date of the promulgation of the Ordinance were entitled to seek the benefit of Section 17(2A) by filing an application within one month from the date of promulgation of the Ordi- nance. The High Court was, therefore, in error in holding that the application under Section 17(2A)(b) was itself not maintainable. If the High Court's view is to be accepted it would then amount to asking the appellant to perform the impossible i.e. asking the appellant to file an application under Section 17(2A)(b) which came into force on 26.8.67 within one month from 6.4.67 when the suit summons

was served. Therefore the first question has to be answered in favour of the appellant. The resultant position would then be that in so far as the payment of arrears for the period ending 29.2.68 is concerned, the appellant had complied with the orders of the Court under Section 17(2A)(b) and was therefore entitled to claim the benefit of Section 17(4). The second question now remains for consideration. The trial court and the High Court have taken the view that the delayed payment of rent for the months of September 1968 and March 1969 attracted the striking out of the defence under Section 17(3) of the Act. Sub-sections (3) and (4) are worded as under:-

> "(3) If a tenant fails to deposit, or pay any amount referred to in sub-section (1) or sub-

section (2) within the time specified therein or within such extended time as may be allowed under clause (a) of sub-section (2A), or fails to deposit or pay any instalment permitted under clause (b) of sub-section (2A) within the time fixed therefore, the Court shall order the defence against delivery of posses- sion to be struck out and shall proceed with the hearing of the suit;

(4) If a tenant makes deposit or payment as required by sub-section (1), sub- section (2), or sub-section (2A) no decree or order for delivery of possession of the prem- ises to the landlord on the ground of default in payment of rent by the tenant shall be made by the Court but the Court may allow such costs as it may deem fit to the landlord:

> Provided that a tenant shall not be entitled to any relief under this sub-section if, having obtained such relief once in re- spect of the premises, he has again made default in the payment of rent for four months within a period of twelve months."

> Perhaps on a rigid construction of sub-section (3) without reference to sub-section (4) it may be said that the failure to pay the rent for the months of September 1968 and March 1969 by the 15th of the next succeeding month may afford ground for striking out the defence of the appellant. But then sub-section (3) has to be read and understood with reference to sub-section (4) also and in particular its Proviso. Sub-section (4) lays down that when a tenant makes payments as required by sub-sections (1), (2) or (2A) no decree or order for delivery of possession shall be made on the ground of default in payment of rent by the tenant. The Proviso sets out that a tenant who has obtained relief under sub-section (4) is not entitled to seek relief once again under the sub-section if he has again made default in the payment of rent for 4 months within a period of 12 months. (Emphasis supplied.) The Proviso, therefore, makes it clear that if the subsequent default is for a period less than 4 moths within a period of 12 months the tenant can claim relief under the sub-section once again. In this case the previous arrears related to the period ending with 29.2.1968 and those arrears had been paid in compliance of the Court's order. The appellant was, therefore, entitled to ask for the dismissal of the suit. In so far as the subsequent default is concerned, it is well within the limitations prescribed by the proviso to sub-section (4). The default is only for two months and that too in a period of 13 months. The appel- lant will, therefore, be entitled to the protection of the

proviso. The trial court and the appellate court have failed to notice this aspect of the matter.

Even if the proviso is viewed in a limited sense as being attracted only to those cases where there has been full and complete compliance with the provisions of sub-section (1) or (2) or (2A) of Section 17 and will not apply to a case as the one on hand, the appellant cannot be denied relief because the words "shall order the defence against delivery of possession to be struck out" occurring in Sec- tion 17(3) have to be construed as a directory provision and not a mandatory provision as the word "shall" has to be read as "may". Such a canon of construction is warranted because otherwise the intendment of the Legislature will be defeated and the class of tenants for whom the beneficial provisions were made by the Ordi- nance and the amending Act will stand deprived of them. We may only refer to two decisions of this Court on this aspect of the matter. In Govindal Chhagganlal Patel v. Agricultural Produce Market Committee, Godhra, [1976] 1 SCR 451: [1975] 2 SCC 482, Chandrachud, C.J. speaking for the Court approved the following passage in Crawford on 'Statutory Construc- tion' (Ed. 1940, Art. 261, p. 516): (SCC p. 487, para 13) "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also while considering its nature, its design, and the consequence which would follow construing it the one way or the other."

In Ganesh Prasad Sah Kesari v. Lakshmi Narain Gupta, [1985] 3 SCC 53 this Court, dealing with a similar provision for striking out of defence in Section 11A of the Bihar Build-

ings (Lease, Rent and Eviction) Control Act, 1947 referred to Govindlal Chhagganlal Patel's case (supra), and held as follows:-

"Applying this well-recognised canon of construction the conclusion is inescapable that the word 'shall' used in the provision is directory and not mandatory and must be read as 'may'."

Once the word "shall" used in Section 17(3) is read as "may" and consequently the provision for striking out of the defence is to be read as directory and not mandatory then it follows that the Court is vested with discretion to order either striking out of the defence or not depending upon the circumstances of the case and the interests of justice. This Court has consistently taken the view that if the Court' has the discretion not to strike out the defence of the tenant committing default in payment or deposit of rent as required by a provision in any Rent Restriction Act, then the Court surely has the further discretion to condone the default and extend the time for payment or deposit and such a discretion is necessary implication of the discretion not to strike out the defence. We may only refer in this connection, to three earlier decisions of this Court. Shyamcharan Sharma v. Dharamdas, [1980] 2 SCR 334 is a case which arose under the Madhya Pradesh Accommodation

Control Act, 1961. Santosh Mehta v. Om Prakash and Anr., [1980] 3 SCR 325 and Ram Murti v. Bhola Nath and Another, [1984] 3 SCR 111 were cases which arose under the Delhi Rent Control Act, 1958. The Rent Control Act of Madhya Pradesh as well as the Rent Control Act of Delhi provided that if a tenant failed to make payment or deposit as required by the Section the Controller may order the defence against eviction to be struck out and proceed with the hearing of the application. In all these cases it has been uniformly held that the powers of discretion vested in the Rent Controller give him further right to condone the delay in deposit or payment of rent for the subsequent months.

In this case the default was not one of non-payment of the arrears or the rent for the subsequent period. The default pertained to belated payments of rent for two months and was, therefore, a default in the technical sense than in the real sense and hence of an inconsequential nature. Having regard to the intendment of the Act and the nature of the provisions it can never be said that the defaults were of such a serious nature' as to warrant the court refusing to exercise its discretion and to feel constrained to strike out the defence. Such being the case the answer to the second question has also to be in favour of the appellant. The subordinate courts and the High Court were in error in holding that the delayed payment of rent for the months of September 1968 and March 1969 constituted such defaults as necessarily warranted the striking out of the defence under Section 17.

In the light of our conclusions the appeal succeeds and will accordingly stand allowed. The suit filed by the first respondent will stand dismissed.

In so far as the petitions for impleadment are con- cerned, though we heard the arguments of the counsel for the parties, we do not think their presence is necessary in the appeal and hence both the petitions are dismissed. The parties will pay and bear the respective costs.

A.P.J. Appeal allowed and Petitions dismissed.