

HEERA TRADERS

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v.

KAMLA JAIN

(Civil Appeal Nos. 5996-5997 of 2021)

FEBRUARY 22, 2022

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[K. M JOSEPH AND

PAMIDIGHANTAM SRI NARASIMHA, JJ.]

*Madhya Pradesh Accommodation Control Act, 1961 – s.13 – When tenant can get benefit of protection against eviction– Interpretation of – Held: Even though s.13 does refer to the erstwhile tenant as a tenant and it obliges him to deposit throughout the proceedings, the amounts, which can be treated as the rent being paid, which would be contractual rent or even the rent fixed as the standard rent, this does not, by itself, alter the effect of the Decree/ Order of eviction passed by the Court, by which, he stood deprived of the status of a tenant – Filing of an appeal or other proceeding by the tenant, does not make the decree inexecutable – Payment of the amounts u/s.13(1) or s.13(2), does not, by itself, bring about the stay of the decree or order of eviction – By making the payments, contemplated in s.13(1) or s.13(2), the erstwhile tenant, who stood deprived of the status of a tenant, does not regain the said status by mere reason of the fact that in s.13, he is referred to as the tenant – The position of the erstwhile tenant under the Act, going by the definition in s.2(i) of the Act, will continue to hold the field, even after an appeal or other proceeding is maintained by him – Therefore, s.13 despite the unique provision contained therein, does not affect the position at law, which stands declared in Atma Ram case – With the Decree of Eviction being passed, the erstwhile statutory tenant becomes an unauthorised occupant – The fact that the law permits the defendant to file an appeal or to take other proceedings, will not clothe him with rights as a tenant – The fact that the finality of the Decree of Eviction is attained at a later stage, will not be sufficient to extricate him from his position as an unauthorised occupant in the interregnum – During such interregnum, the erstwhile tenant, being in the position of an unauthorised occupant, becomes liable to pay mesne profits – Even after the substitution of s.13, it*

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- A *would be open to the Appellate Court to impose the condition that appellant seeking to contest the Decree of Eviction, shall deposit a reasonable sum, which is not to be limited to the agreed rent– Code of Civil Procedure, 1908 – Or.XLI, r.5.*

*Madhya Pradesh Accommodation Control Act, 1961 – s.13*

- B *(prior to its substitution in the year 1983) – Impact of – Discussed.*

*Madhya Pradesh Accommodation Control Act, 1961 – s.13 – Code of Civil Procedure, 1908 – Or.XLI, r.5 – Plea of the appellants-tenants that s.13 of the Act, being a special law, the power under Or. XLI r.5, cannot be exercised to direct deposit or payment of*

- C *mesne profits – Held: Not acceptable – Compliance with s.13 by the appellants, does no amount to a stay of the Decree for Eviction – The power of the Appellate Court to impose conditions for staying the Decree, cannot be confined by the dictate in s.13 of the Act, to the appellants/tenants, to deposit the agreed rent, particularly, having regard to the time consumed in litigation and, more importantly, the impact of the Decree of Eviction, depriving the appellant of his status as a tenant.*

*Interpretation of Statutes – Heading of a section – Held: The heading of a section cannot control the construction of the provision itself – The provision, as it unfolds under the heading, must be given*

- E *the full meaning according to the principles of interpretation, which the court is persuaded to apply – The only area where the heading may be useful is when the provision is shrouded in ambiguity – The heading may shed some light, however, faint it may be.*

#### **Partly allowing the appeals, the Court**

- F **HELD:** 1.1 Let us first analyse the impact of Section 13, as it stood prior to its substitution in the year 1983. Section 12(1)(a) confers a right upon the landlord to seek eviction on the ground of the tenant falling into arrears of rent and remaining in arrears even after service of a notice of a demand. The default should persist for two months from the service of demand. The demand must relate to arrears of rent not barred by time. This is a ground available under Section 12(1)(a). It constitutes a cause of action for seeking eviction. However, Section 12(3) provided and continues to provide that no Order for the Eviction of a tenant shall be made on the ground under Section 12(1)(a), if the tenant
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makes payment or deposit, as contemplated in Section 13. The proviso to Section 13, however, tabooed and continues to prohibit the invocation of the protection under Section 12(3) read with Section 13, more than once, in respect of any accommodation. The tenant, in other words, stands shielded from eviction despite the availability of the ground under Section 12(1)(a), leading to an Eviction proceeding being filed. But, in respect of the same accommodation, in respect of which, the default took place, the tenant does not get insulated from eviction, if he defaults in payment of rent for the same accommodation for three consecutive months. This was the protection, which was actually contemplated under Section 13, prior to Section 13 being substituted in the year 1983. Till 1983, thus, the protection could not be availed by any tenant on the ground of payment of rent by him during the proceeding for eviction or Appeal. After Section 13 was substituted in 1983, the legislative intent marks a shift. The tenant is obliged not only when a Suit or other proceeding is filed by the landlord to deposit the amount in terms of Section 13, but he is compelled by law, even after an Order of Eviction has been passed against him and when he challenges the Decree or Order for Eviction by way of an Appeal or other proceeding, to deposit within one month of the institution of the Appeal or other proceeding the amount equal to the rent. He may also, on an application made to the court, deposit the amount or pay within such further time, as the court may allow. The amount, to be paid by the tenant, is to be calculated at the rate of the rent at which it was paid. So far, there is no controversy. The conundrum is introduced by the following words in Section 13 “for the period for which the tenant may have made default”. It is here that the debate sharpens. [Paras 19-21][326-D-H; 327-A-C]

1.2 One of the salient features of the Act. Section 11A provides that Chapter III, in which Sections 12 and 13 appear, shall not apply to matters provided, especially in Chapter IIIA to a landlord defined in Section 23J. Section 23J defines “landlord”, for the purpose of Chapter IIIA, as retired Government Servant, widow, a divorced wife and physically handicapped person, inter alia. The proceeding is instituted under Chapter IIIA before the Rent Controlling Authority (hereinafter referred to as, ‘the

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- A Authority'). The grounds for eviction under Chapter IIIA are bonafide need for the residential and non-residential purposes. The ground of arrears of rent is conspicuous, it must be noticed by its absence in the proceeding under Chapter IIIA. The right of the tenant is constrained by restrictions, as provided in Section 23C. He must obtain leave to contest. Section 23D provides for the procedure to be followed by the Authority to grant leave. Section 23E declares that no Appeal shall lie from any Order passed by the Authority. However, Section 23E(2) clothes the High Court with revisional jurisdiction both suo motu or an application by an aggrieved person. Section 23F provides that
- B the stay of operation of the Order of Eviction by the Authority or the High Court, shall not enure for a total period of more than six months. As far as the proceedings, covered by the landlord, not falling in Section 23J, but falling under Section 2(b), which defines the word "landlord" is concerned, the Act contemplates the
- C Authority being endowed with certain powers of a Civil Court under Section 29. An Appeal is provided to the District Judge or the Additional District Judge from every Order of the Authority. Another feature of the Act is that a Second Appeal lies under Section 32, on grounds, which may be described as being parimateria with Section 100 of the Code of Civil Procedure,
- D 1908 (hereinafter referred to as, 'the CPC', for short), as it stood prior to the amendment in the year 1977. [Paras 22, 23][327-G-H; 328-A-C-F-G]

- 1.3 However, it is apposite to notice that the Act was enacted in the year 1961. Section 12(1), which provides for grounds of eviction of tenants, provides that no Suit shall be filed in any Civil Court against the tenant for his eviction except on any of the grounds mentioned thereafter. Thus, it is not, as if, a Suit for Eviction in a Civil Court, is not maintainable. Section 28, however, provided for appointment of Authority. The Collector, with the previous approval of the State Government, can appoint an Officer not below the rank of Deputy Collector, to be the Rent Controlling Authority for the area in his jurisdiction. As already noticed, the said Authority was to have the same powers, as vested in a Civil Court, in regard to certain matters. Therefore, in an area, where there is no such Authority notified under Section 28,
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  - H the Law-Giver contemplated a Suit before the Civil Court. It is

in this context, apparently, that the law provided that Section 13 contemplates Decree being passed for eviction and protection under Section 13 being extended in an Appeal from such Decree. In fact, in the cases before us, the proceedings are suits, appeals under Section 96 of the CPC and second appeals under Section 100. What is, however, relevant from a reference to Chapter IIIA, which provides for eviction on the grounds of bonafide requirement, is that, vide Section 23H, Section 13 has been made applicable ‘mutatis mutandis’. Section 23H makes Section 13 applicable, not only in an application for recovery of possession under Section 23A, but it also is made applicable in respect of a proceeding for Revision under Section 23E against a Final Order by the Authority under Section 23C and Section 23D, as they apply to a proceeding instituted under Section 12. It must be noticed that Chapter IIIA was inserted vide the very same amendment (Act 27 of 1983), which also resulted in Section 13 being substituted. In other words, Section 13, as substituted, was intended to apply mutatis mutandis, undoubtedly, to a Revision maintained against a Final Order under Section 23C or Section 23D. Section 23C contemplates an Order of Eviction, being passed against the tenant, if the conditions in the said provision are satisfied. Section 23F also contemplates a stay being granted by the High Court in a Revision under Section 23E of the Order of Eviction. Therefore, when Section is made applicable to a Revision filed against an Order of Eviction under Section 23C, the Revision would be a Revision filed by the tenant, who has suffered an Order of Eviction under Section 23C. What is, however, more important is that, under the scheme of Chapter IIIA, that is the fast-track procedure, as it were, contemplated for the special categories of landlords falling under Section 23J, it provides only for bonafide requirement as the ground for seeking eviction. If eviction is sought, in other words, on the ground of arrears of rent, it may be open to the landlord to invoke the provisions of Section 12. The special right, however, to invoke the shorter and faster route to obtain an Order of Eviction, is available to the landlord, falling under Section 23J, only in respect of grounds of bonafide requirement. The relevance of this lies in concluding that, by the insertion of Chapter IIIA along with the substitution of Section 13, and by virtue of Section 23H, making

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- A Section 13 applicable even to the proceeding under Chapter IIIA, when an Order for Eviction is passed under Section 23C and the tenant challenges such an Order of Eviction by a Revision, he is expected to pay the amount, as provided in Section 13(1), during the pendency of the Revision. No doubt, in a proceeding under Chapter IIIA, the Law-Giver has limited the operation of a Stay Order of Eviction to the total period of six months. As already noticed, as far as a proceeding contemplated under Chapter III by the ordinary landlord is concerned, if we may use that expression, falling under Section 2(b), Section 13, as such, applies. We have only attempted to divine the impact of Section 23H, to
- B find that, even in a proceeding by the special category of landlords, falling under Section 23J, and what is more, where eviction cannot be sought under Chapter IIIA, on the ground of arrears of rent, Section 13 applies even after the passing of the Order for Eviction, when the matter is pending in a Revision. This aspect helps to reveal the mind of the Legislature, and the ambiguity shrouding its real intention, is to some extent, effaced. [Paras 24-27][329-B-H; 330-A-G]
- C 1.4 Section 12(3) continues to grace the Statute Book. Thus, in a proceeding under Section 12(1)(a), viz., a petition seeking eviction on the ground of arrears of rent, the Act protects the tenant by permitting him to deposit the amount in arrears, which constitutes a ground for seeking eviction, in the first place, in the manner provided in Section 13. As explained by this Court in Sobhagyamal (*supra*), the tenant, in default of payment of rent, gets a new lease of life, despite the default being the ground for
- D eviction, to ward off the passing of an Order of Eviction by virtue of Section 12(3). Undoubtedly, in order that Section 12(3) apply, not only must the tenant pay the amount in arrears, which is the basis for the application under Section 12(1)(a), but he must continue to pay the amounts, which are further mentioned in
- E Section 13. Section 13(5), no doubt, again must be read along with Section 12(3). Section 13(5) interdicts the passing of the Decree or Order by the Court for recovery on the ground of default of payment of rent if compliance was made by the tenant of the requirement under Section 13(1) or Section 13(2). The Court is, however, authorised to allow costs. It is clear that Section
- F 13(5) is totally inapplicable in the case where the ground of

eviction is a ground other than under the one in Section 12(1)(a). A In other words, Section 13(5) applies only in a case, where the landlord invokes default in payment of rent, as a ground for eviction. The argument of the respondent- landlord, therefore, is that this circumstance, along with the use of the words, “for the period for which the tenant may have made default”, in Section 13, would indicate that the protection from eviction, is not available unless the suit is made under Section 12(1)(a). To make it further clear, the argument is that the Legislature has articulated the intention to protect the tenant upon his paying the amount under Section 13 only qua the tenant sued for eviction on the ground of arrears of rent. The landlord further argues that Section 13(6) indicates that, if there is failure on the part of the tenant to pay or deposit the amount under Section 13, the Court is free to strike off the defence and proceed with the hearing of the matter. Section 13(6) has been interpreted by this Court, as noted by us earlier in *Shyamcharan Sharma* (*supra*). As held by this court, the Court has a discretion to condone the default in payment of rent and extend the time of payment of rent. Section 13(6) does not compel the Court to order eviction of a tenant, found in violation of Section 13. This view has also been followed in *Ram Murti*, as well. [Para 28][330-G-H; 331-A-G]

*Sobhagyalal and another v. Gopal Das Nikhra* (2008) E  
 3 SCC 788 : [2008] 3 SCR 243; *Ram Murti vs. Bhola Nath and another* (1984) 3 SCC 111 –referred to.

1.5 The opening words of Section 13 provide that, on a Suit or any other proceeding, being instituted by a landlord on any of the grounds referred to in Section 12, the tenant is to deposit in Court or pay to the landlord, the amount equal to the rent. Can it, therefore, be contended that the words “any of the grounds”, referred to in Section 12, is to apply only to a situation where Suit or any other proceeding is instituted by the landlord? To expatiate, after the above opening words in Section 13, by virtue of the substitution effected by Act 27 of 1983, can it mean that the words “or in an Appeal or in any other proceeding by a tenant against any Decree or Order for his eviction”, is not to be read along with “on of the grounds referred to in Section 12”? To put

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- A it in a different manner, can it be said that the substituted provisions of Section 13 contemplated that the Appeal or any other proceeding by the tenant, must be in a proceeding instituted only under Section 12(1)(a), i.e., on the ground of arrears of rent, for the reason that the construction of the provision, which consists of an elongated sentence to which meaning cannot be attached, except by bearing in mind the statutory duty of the tenant to deposit the amount for the period for which the tenant may have made default. In other words, if the words "for the period for which the tenant may have made default" is an indispensable requirement to apply Section 13, then the substituted provisions,
- B extending the protection in an Appeal or other proceeding by a tenant, would be confined to a proceeding under Section 12(1)(a). In this regard, we may also look for any inkling available in Section 13 for the proposition that Section 13 is attracted in an Appeal or other proceeding by the tenant, on any of the grounds under Section 12. This would mean that Section 13 would apply even if the ground of eviction is not one under Section 12(1)(a). The words "Appeal or proceeding, as the case may be", were inserted in sub-Section (6) of Section 13 by Act 27 of 1983. This was in keeping with the substitution effected in Section 13(1), whereby the words "or in any Appeal or any other proceeding by a tenant,
- C against any Decree or Order for his eviction", also came to be added. Therefore, the legislative history tends to indicate that Sections 13(1) and 13(2) are to apply in any Appeal or other proceeding against the Order or Decree of Eviction on any of the grounds under Section 12. [Paras 29, 30][331-G-H; 332-AH; 333-A]
- F 1.6 Act 27 of 1983, inserted the words "or in any Appeal or any other proceeding by a tenant against any Decree or Order for his eviction". The word "any" is intended to convey a wide meaning. The Decree of Eviction may be a Decree passed on any of the grounds. It need not be confined to a Decree passed under Section 12(1)(a). This is also to be understood in the context of the words "on any of the grounds referred to in Section 12", being used, preceded by the words in a Suit or other proceeding instituted by the landlord. The problem persists in the form of the logical culmination of the command to the tenant in an Appeal
- G or other proceeding, against any Decree of Eviction, to deposit

the rent or pay for the period, for which the tenant may have made default. Undoubtedly, in the context of Section 12(1)(a) read with Section 12(3), the words “for the period for which the tenant may have made default”, is perfectly apposite. In other words, when Section 12(3) provides that no Decree shall be passed for eviction under Section 12(1)(a), if the tenant makes the deposit or payment of the amount of rent, under Section 13, it is intended to mean that, even if the tenant has invited the wrath of Section 12(1)(a), he would be protected under Section 12(3), if he complied with Section 13, made the deposit within a period of one month or the extended period of the service of summons and made further deposits/payment. However, Section 13 clearly is intended to apply in a Suit or proceeding instituted by the landlord on any other grounds under Section 12. If that be so, the words, “for the period, for which, the tenant may have made default”, may not apply, as the tenant may not be in default and no ground under Section 12(1)(a) may even be pleaded. Therefore, in such a proceeding by the landlord, the words, “for the period, for which, the tenant may have made default”, pales into insignificance and irrelevance. It would then mean that, in a proceeding under Section 12, which does not involve Section 12(1)(a), or in other words, when there is no default within the meaning of Section 12(1)(a), the protection would be available to the tenant, only if, he makes a deposit or payment for the period during the pendency of the proceeding. In other words, throughout the proceeding by the landlord, on any of the grounds under Section 12, the tenant is obliged to deposit the amount of rent. The failure to do so, would attract Section 13(6) and it is open to the Court to strike off the defence and proceed further in the matter. [Paras 31-33][333-A-H]

1.7 If that be so, in an Appeal or any other proceeding by the tenant against an Order of Eviction, which does not involve Section 12(1)(a), the intention of the Law-Giver appears to be that the tenant, so described, despite the Order of Eviction and the definition of the word “tenant” in Section 2(i), is obliged to pay or deposit the amount of rent under Section 13(1) or Section 13(2), as the case may be, in the manner provided, till the termination of the Appeal or proceeding. We may profitably

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- A appreciate the problem through the prism of Section 23H, which we have already adverted to. Section 23H was also inserted by Act 27 of 1983. Thereunder, the provisions of Section 13 is to apply mutatis mutandis, inter alia, in respect of a proceeding for Revision under Section 23E, against an Order of Eviction under Section 23C, as they apply to a Suit or a proceeding instituted on any of the grounds referred to in Section 12. The words “mutatis mutandis”, is a well-known legislative device, employed for the purpose of adaptation of a law in an altered context. It must be remembered that Section 13 contemplates proceedings under Section 12 and on any grounds thereunder. The impact of Section 23H, applying Section 13 mutatis mutandis, is that, since Section 12 is inapplicable in a proceeding under Section 23A, wherein the grounds are only of bonafide requirement, as provided therein, Section 13, in its application under Section 23H, would mean that the proceeding by the landlord for eviction is on any of the grounds under Section 23A. Equally, in the application of Section 13 to the Revision by the tenant against an Order under Section 23C, the ground of eviction, can only be the ground under Section 23A. In other words, in its application to a proceeding under Chapter IIIA, in a Revision by the tenant against an Order of Eviction, Section 13 is intended to apply, even though, eviction is not based on the ground under Section 12(1)(a). This is for the reason that there cannot be an Order passed under Section 23A on the ground under Section 12(1)(a), as the same is inapplicable. Thus, in such a Revision by a tenant against an Order under Section 23C, the presence of the words in Section 13, “for the period for which the tenant may have made default”, would not become an insuperable obstacle. In other words, in such a Revision, the law obliges the tenant to pay the rent for the period, which may include the period, into which, he may have fallen in arrears, before the filing of the Revision and also for subsequent periods. [Paras 34-36][334-A-D; 334-H; 335-A-D]
- G       *Ashok Service Centre and others v. State of Orissa*  
            (1983) 2 SCC 82 : [1983] 2 SCR 363 – referred to.
- H        1.8 If this is the position in respect of the manner in which Section 13 is intended to apply, even in a proceeding under Chapter IIIA, having regard to the wide words used in the newly

substituted avatar of Section 13, viz., "any Appeal or other proceeding by the tenant against any decree", the word "any" should be read harmoniously with any of the grounds referred to in Section 12, appearing earlier in Section 13. Thus, even in an Appeal or other proceeding, Section 13 would apply, despite there being no ground for eviction under Section 12(1)(a). The law was so enacted by substitution in 1983, so that during any litigation launched by the tenant against any Order of Eviction, the landlord is assured of the amount which is calculated at the rate of rent at which it was being paid. Section 13(2) takes care of the situation where there is a dispute relating to the amount of rent. We must notice that the Act also does contemplate the fixation of standard rent. Section 7 deals with standard rent. It contemplates an increased standard rent in case of a non-residential accommodation. Section 8 provides for lawful increase of standard rent in certain other cases. No doubt the respondent would point out that after an order or decree of eviction is passed no application may lie. Even accepting the same, nothing stands in the way of the rent being increased till then. Therefore, the Act, as a whole, contemplated payment of rent in the manner provided in the Act. If he fails to deposit the amount, the Appeal or proceeding launched by the tenant, would be imperilled and an adverse decision, resulting in eviction, could follow, unless the Court extended the time for payment of rent. Section 13(1) of the Act is a unique provision, the parallel of which in any other State Law, has not been pressed into service before us by the respondent. Section 15 of the Delhi Rent Control Act, 1958, pressed before us, does not bear resemblance to Section 13(1) of the Madhya Pradesh Act, after the substitution took place in the year 1983.

[Paras 37-39][335-E-H; 336-A-C]

1.9 The question would finally arise that in a Second Appeal, filed by the tenant, against whom an Order/Decree of Eviction is passed, on a ground, other than under Section 12(1)(a), even after the tenant complies with the requirement of Section 13 and deposits the rent, as was being paid, whether the Appellate Court, when approached by the appellants- tenants, seeking a stay of the execution of the Decree under Order XLI Rule 5 of the Code of Civil Procedure, 1908 (hereinafter referred to as, 'the Code',

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- A for short), they could be asked to deposit an amount representing a reasonable market value of the rent. Undoubtedly, in the Act, the definition of the word “tenant”, does not include a person against whom an Order or Decree of Eviction has been passed. In the said sense, the Act can be treated as similar to the Delhi Rent Control Act. In other words, with the Order/decree of Eviction being passed, the person who was tenant till that point of time, ceases to be the tenant. He would become an unauthorised occupant in the words of this Court in *Atma Ram Properties* (*supra*). The principle in *Atma Ram Properties* (*supra*), therefore, would apply unless Section 13 poses an obstacle in
- B the path of the Appellate Court directing the payment of the mesne profits by the appellants as a condition of stay of execution. In Section 13 of the Act the law giver has given a section heading ‘when a tenant can get benefit of protection against eviction’. It is thereafter that the provisions are enacted. Sub section 5 of
- C Section 13 relates only to a suit in which the ground of eviction is default of payment of rent. As far as Section 13 (6) is concerned it deals with a situation where the tenant fails to deposit or pay the amount under Section 13 of the Act. Prior to Section 13 being substituted in the year 1983 it contemplated that the court may strike out the defence against eviction and proceed with the
- D hearing of the suit. It was this provision which was interpreted in *Shyamcharan Sharma* (*supra*) to mean that the court still has a discretion and is empowered to grant extension of time to pay rent under Section 13. By virtue of the substitution in the year 1983 in Section 13 (6) in view of the addition of the words ‘appeal or proceeding as the case may be’, on the failure of the tenant to deposit or pay the amount as required by Section 13 the court is empowered to strike out the defence against eviction is made applicable to an appeal or proceeding by the tenant. An appeal and proceeding can be disposed off which essentially means that an Order of Eviction would ordinarily follow as the appeal or other
- E proceeding by the tenant is against an Order of Eviction which is already passed. [Paras 42, 44][339-C-E, H; 340-A-D]

*Atma ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*  
(2005) 1 SCC 705 : [2004] 6 Suppl. SCR 843 – relied  
on.

1.10 Now, as far as a suit for eviction based on ground other than Section 12(1)(a), viz., arrears of rent. Section 13 expressly does not provide as to what is to happen if the tenant complies with requirement of Section 13 as distinct from the failure of the tenant to comply with Section 13. In this case we are concerned with the former namely what would be the position if the tenant faithfully complies with the mandate of Section 13 and has deposited/ paid the amount. There is no express intention expressed by the law giver in this regard in Section 13. Therefore, this provision indicates that despite payment being made by the tenant of the amount in terms of Section 13 in a revision filed within the meaning of Section 23H an order of stay of eviction may still be necessary. In other words, ipso facto, the mere payment of the amount in terms of Section 13 would not shelter the tenant who has filed a revision referred to in Section 23H from being proceeded against in execution of the decree. The law giver has contemplated an order of stay being passed in Section 23F with the restraints regarding the duration of the stay order which has been declared therein. Thus, the payment of the amount mentioned in Section 13 in a Chapter III proceeding by itself may not result in a stay of the decree or Order of Eviction. [Paras 45, 47 and 48][340-D-E; G-H; 341-A-B]

1.11 In fact, in Section 13, as far as reference to rent is concerned, the words used are “an amount calculated at the rate of rent, at which it was paid”. The further expressions used are “a sum equivalent to rent at that rate”. These expressions are used to denote the amount payable by the person described as tenant, both before the Order of Eviction is passed and after the Order of Eviction, during the pendency of appeal or proceeding, as the case may be. We are making this observation for the reason that if the words “an amount calculated at the rate, at which, it was paid or a sum equivalent to the rent”, is understood as describing the amount, which is not the rent as such, but the amount, which, the person was obliged to pay as a tenant, after the Order of Eviction is passed, then, it could be said that, what is contemplated is that, the amount directed to be paid, is treated as not the rent as such, but the amount equivalent to the amount or an amount calculated at the rate of rent. Such an amount, being

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- A payable, may be reconcilable with the Order of Eviction, putting an end to the tenancy and erstwhile tenant becoming a person in illegal possession. But herein, we may notice that the same expression is used even for describing the amount payable during the pendency of proceeding under Section 12. In other words,
- B these words are applicable to describe the amount payable at all points of time, including the pendency of the suit, appeal or other proceedings. To make it even more clear, both, at the stage when landlord-tenant relationship exists and, at the stage, when following an Order of Eviction, going by the definition of ‘tenant’ in Section 2 of the Act, the erstwhile tenant would cease to be a
- C tenant, the amount payable in Section 13 is described in the similar manner. In fact, there is no case as such that the amount which is paid by the tenant in Section 13 is anything but the agreed rent. However, for reasons which follow, it will not advance the case of the appellants. As far as the aspect about the former tenant, even after the Order of Eviction being referred to as a tenant, even when he maintains an appeal against a Decree/Order of Eviction is concerned, we would think that it can be a legislative device to aptly describe the person in question devised by the Legislature. In this regard, the more important question is, whether after the Order of Eviction is passed, the erstwhile tenant would remain a
- E tenant in law. The tenant begins his innings ordinarily as a contractual tenant. In the case of a contractual tenant, upon the expiry of the lease, he is under the Transfer of Property Act and, in accordance with the contract, duty-bound to vacate the premises and deliver possession to the landlord. Failure on his part to do so, would expose him to an action for mesne profits, on the basis that his continuance after the period and contrary to the contract, would be wrongful. In the case of a statutory tenant, which, undoubtedly, the tenant was, the mere expiry of the contractual lease, does not result in the tenancy coming to an end under the laws relating to the statutory tenancy. It is with the
- G Order of Eviction, which is passed, that the erstwhile tenant ceases to be the tenant. After the Order of Eviction is passed, the law deprives the erstwhile tenant of his status of tenancy. The definition of ‘tenant’, accordingly, in Section 2(i) of the Act, is a legislative recognition of this position. Now, the Act enables the filing of appeal or other proceeding by the erstwhile tenant.
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The law prescribes the period of limitation. Does it mean that the possession of the erstwhile tenant or rather his occupation of the premises, after the Order of Eviction, is not wrongful? What will be the position, if he prefers an appeal, after a long delay and delay is condoned? Can it be said that during the period delay, at any rate, that the erstwhile tenant sheds his character as illegal occupant? We would think that with the passing of Decree or Order of Eviction, the erstwhile tenant, no longer, remains a tenant. He continues to occupy the premises, which, in law, is wrongful. Under the law, generally, continued occupation of a tenant, after the expiry of the lease, may not make him a trespasser, as his original entry was lawful. For the purpose of mesne profits, however, whether it be under the general law or under the Rent Statute, once, the tenancy itself comes to an end, which in the case of statutory tenancy occurs with the passing of the Order of Eviction and, in the case of the contractual tenancy, upon the expiry of the lease, the possession of the erstwhile tenant, indeed, becomes wrongful. The fact that the law permits the filing of an appeal or other proceeding, will not detract from the aforesaid position. This position is self-evident from the decision in Atma Ram (*supra*). The Judgment in Atma Ram (*supra*) makes it clear that the erstwhile statutory tenant would become an unauthorised occupant upon the passing of the Order by the original Forum. This Court has further held that fact that the Order of Eviction has been challenged in an appeal or revision and it is confirmed at a later point, will not enable the erstwhile tenant to contend that he would remain a tenant even after the Decree/Order of Eviction. [Paras 54-56][342-G-H; 343-A-H; 344-A-F]

1.12 Once this position at law is kept in mind, the impact of Section 13 of the Act, will become clear. We have already noticed that the actual protection, which is provided in Section 13 of the Act, as far as the cases we are concerned with, is contained in Section 13(6) of the Act. Upon the tenant, as described in Section 13, paying the amounts as provided therein, the tenant is allowed to, *inter alia*, prosecute the appeal or other proceeding. The failure to comply with Section 13, will result in the consequences, which are provided therein. Since, we are concerned here with the consequences of tenant acting in conformity of Section 13 of the

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- A Act, apart from noticing, what we have already indicated, we would examine, whether it has the effect, which is canvassed for by the appellants. We are of the view that even though Section 13 does refer to the erstwhile tenant as a tenant and it obliges him to deposit throughout the proceedings, the amounts, which can be treated as the rent being paid, which would be contractual rent or even the rent fixed as the standard rent, this does not, by itself, alter the effect of the Decree/Order of Eviction passed by the Court, by which, he stood deprived of the status of a tenant. The filing of an appeal or other proceeding by the tenant, does not make the Decree inexecutable. The preferring of an appeal or other proceeding, would not bring about a stay of the proceedings based on the Decree or Order of Eviction. The payment of the amounts under Section 13(1) or Section 13(2) of the Act, does not, by itself, bring about the stay of the Decree or Order of Eviction. The net result is, the principle in law and, as recognised in Section 2(i) of the Act, and, as interpreted in Atma Ram (*supra*), that with the passing of the Order of Eviction by the Court, the possession of erstwhile tenant, becoming wrongful, will apply. By making the payments, contemplated in Section 13(1) or Section 13(2) of the Act, the erstwhile tenant, who stood deprived of the status of a tenant, does not regain the said status
- E by mere reason of the fact that in Section 13 of the Act, he is referred to as the tenant. The position of the erstwhile tenant under the Act, going by the definition in Section 2(i) of the Act, will continue to hold the field, even after an appeal or other proceeding is maintained by him. Therefore, Section 13 of the Act, in our view, despite the unique provision contained therein, does not affect the position at law, which stands declared in Atma Ram (*supra*). Undoubtedly, in keeping with the view expressed by the larger Bench decisions of the High Court, which we have referred to, the Legislature wanted to ensure that even during the appeal filed by the tenant, *inter alia*, he would continue to pay the agreed rent. [Paras 57, 58][344-G-H; 345-A-F]

1.13 The erstwhile tenant, such as the appellants in these cases, despite making payment, in accordance with Section 13 of the Act, would not be protected from being evicted in terms of the Decree/Order of Eviction during the pendency of the appeal

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or proceeding. It is open to the appellant, inter alia, in challenging the Decree/Order of Eviction to seek stay of the Decree/Order of Eviction. It is then that the Appellate Court can exercise its powers under Order XLI Rule 5 of the CPC. We have found reinforcement in Section 23F of the Act falling in Chapter IIIA, which also contemplates Orders of Stay being passed, even though Section 13 has been made applicable by virtue of Section 23H. As regards the power of the Appellate Court, to grant a stay, it is clear that it is open to the Appellate Court, to impose such condition, as it thinks fit. It can issue directions, as held by this Court in Supermax International (*supra*). Once we proceed on the basis that with the Decree of Eviction being passed, the erstwhile tenant becomes an unauthorised occupant and he makes himself liable to pay mesne profits for his continued occupation, such an erstwhile tenant can, indeed, be called upon to pay mesne profits. Undoubtedly, there is power with the Appellate Court, in this regard. We have, no doubt, noticed the view taken by the larger Bench of the High Court (which, in fact, paved the way for the substitution of Section 13 in the year 1983) that the Court, after finding that Section 13, with which it was concerned, did not contemplate any duty on the part of the tenant to deposit the agreed rent, in an appeal filed by him, did observe that in such a scenario, it will be open to the landlord to execute the Decree and if the tenant files an application under Order XLI Rule 5 of the CPC, the tenant can be asked to deposit the rent. No doubt, the legislative intervention in 1983 through substitution of Section 13, may have been inspired by the judicial exposition and, therefore, one of the principles of interpretation being that the Legislature must be treated as having in mind the law as interpreted by the Court to be implemented, thus, it could be urged that when an application is filed under Order XLI Rule 5, even after the substitution of Section 13, when the tenant is called upon to deposit the agreed rent, then, even in the matter of imposing condition under Order XLI Rule 5, the tenant cannot be worse off than when Section 13 was in its earlier avatar. In other words, with the deposit of the agreed rent, there would be no occasion to deposit any further amount, even under Order XLI Rule 5. We must, however, bear in mind the fact that the law, as has been declared in Atma Ram (*supra*), and as has been

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- A followed in Supermax International (*supra*), in the manner already referred to. That is, with the Decree of Eviction being passed, the erstwhile statutory tenant becomes an unauthorised occupant. The fact that the law permits the defendant to file an appeal or to take other proceedings, will not clothe him with rights as a tenant.
- B The fact that the finality of the Decree of Eviction is attained at a later stage, will not be sufficient to extricate him from his position as an unauthorised occupant in the interregnum. This has the inevitable consequence that during such interregnum, the erstwhile tenant, being in the position of an unauthorised occupant, he becomes liable to pay mesne profits. Once this
- C position is clear, then, the necessary corollary is, even after the substitution of Section 13, it would be open to the Appellate Court to impose the condition that appellant seeking to contest the Decree of Eviction, shall deposit a reasonable sum, which is not to be limited to the agreed rent. This position is also better understood in the light of the plight of the landlords, who are forced to wait for long, the realisation of the fruits of the Decree for Eviction, which they have obtained. In fact, this aspect, as to the entitlement of the landlord for an amount in excess of the agreed rent, in the light of the Decree of Eviction, as such, was not considered by the larger Bench of the High Court. At any
- E rate, in the light of the Judgments of this Court, there cannot be any dispute about the principle that upon a Decree of Eviction being passed, the erstwhile tenant becomes an unauthorised occupant and remains one thereafter during the entire proceedings. The fact that there is power to fix standard rent cannot affect this position. In fact, the respondent would point out that after the eviction is ordered even the power to fix standard rent ceases as the tenancy comes to an end. [Paras 59-61][345-G-H; 346-A-H; 347-A-D]
- G 1.14 It is undoubtedly true that the existence of power under Order XLI Rule 5 of the CPC, is not to be confused with the exercise of its power by an Appellate Court. That there is power with the Appellate Court, may not enable it to Order any unreasonable amount or reach a windfall to the landlord. The power is to be exercised on a careful consideration of the facts of each case. It will include the quantum of agreed rent, which the
- H tenant is paying under Section 13 of the Act. It will consider

whether the said sum is the result of any fixation of standard rent. If so, what is the point of time, at which, the agreed rent was arrived at, the nature of the premises and all other relevant facts. It may include a case where the Appellate Court, on a perusal of the impugned Judgment, is convinced, *prima facie*, no doubt, that the Decree for Eviction is palpably insupportable, in which case, it may grant a stay, without calling upon the tenant to pay any sum in excess of amount fixed in Section 13 of the Act. We are unable to accept the appellants case that Section 13 of the Act, being a special law, the power under Order XLI Rule 5, cannot be exercised to direct deposit or payment of mesne profits. Compliance with Section 13 by the appellants, does not, as found by us, amount to a stay of the Decree for Eviction. The power of the Appellate Court to impose conditions for staying the Decree, cannot be confined by the dictate in Section 13 of the Act, to the appellants/tenants, to deposit the agreed rent, particularly, having regard to the time consumed in litigation and, more importantly, the impact of the Decree of Eviction, depriving the appellant of his status as a tenant. The upshot of the above discussion is that we reject the contention of the appellants that Section 13 of the Act will detract from the principle in *Atma Ram* (*supra*) and *Supermax International* (*supra*) being available to the cases under the Act. [Paras 62-64][347-E-H; 348-A-C]

1.15 Coming to the facts, the rent being paid for 100 square feet of non-residential accommodation by one of the appellants is Rs.622/-, fixed in 1975. In the other case, the rent canvassed by the appellant, as being the agreed rent, was a monthly rent of Rs.847/-, fixed in the year 1975. The premises in question is also non- residential and it consists of 150 square feet. There is no reference to the rent being fixed in proceedings for fixing the standard rent. The Suit was filed in the year 2009. The Decree for Eviction was passed in the year 2013. The First Appellate Court dismissed the appeal filed by the appellants on 25.03.2014. The Second Appeal was filed in the year 2014. The impugned Orders came to be passed on 17.03.2020 and 25.08.2021 at the stage of second appeal when two courts have found against the appellants. The amount has been fixed at Rs.18,000/- per month. The amount has been fixed on the basis of the Report submitted

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- A by the Rent Controlling Authority, who was asked to report regarding the market rate of the accommodation in question. The complaint of the appellant is that the Rent Controlling Authority has tendered its Report and, while doing so, adequate opportunity was not provided and the materials placed were not considered and that the amount is unreasonable. It is said to be based only on the Panchnama prepared by the Revenue Officer. The High Court has found that the premises are located in a famous commercial place and the rent of Rs.847/- per month was fixed in the year 1975. We do not think that the appellants should be permitted to challenge the quantum, once we have answered the legal issues flowing from Section 13, against the appellants. It would appear from the written submission that the appellants have deposited certain sums in execution of the orders. The appellants will be entitled to adjust the said amount in complying with the impugned orders. The amount of Rs.18000/- will subsume the amount paid/payable under Section 13 of the Act. Thus, in the facts of this case, we would think that the direction to pay the entire amount, may require modification. Equally, we are of the view that some time must be granted to deposit the amount. [Paras 65, 66 and 68][348-C-H; 349-E-F]
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E *State of Maharashtra v. M/s. Super Max International Pvt. Ltd. (2009) 9 SCC 772 : [2009] 13 SCR 801 – relied on.*

F *Shrimati Chander Kali Bai and others v. Shri Jagdish Singh Thakur and another (1977) 4 SCC 402 : [1978] 1 SCR 625; Shyamcharan Sharma v. Dharamdas (1980) 2 SCC 151 : [1980] 2 SCR 334; M/s. Frick India Ltd. v. Union of India and others 1990 (1) SCC 400 : [1989] 2 Suppl. SCR 570; Pushpa Devi and Others v. Milkhi Ram (Dead) by his Lrs. 1990 (2) SCC 134 : [1990] 1 SCR 278; Jamnalal and others v. Radheshyam (2000) 4 SCC 380 : [2000] 3 SCR 135; Satyawati Sharma (D) by Lrs. v. Union of India and another (2008) 5 SCC 287 : [2008] 6 SCR 566 – referred to.*

G *Mankunwar Bai and others v. Sunderlal Jain AIR 1978 MP 165 / 1979 ILR MP 676; S.S. Harishchandra Jain*

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*and others v. Dr. Captain Indersingh Bedi AIR 1977* A  
**MP 1991 – referred to.**

**Case law reference**

[2004] 6 Suppl. SCR 843	relied on	Para 4	
[2009] 13 SCR 801	relied on	Para 4	B
[1978] 1 SCR 625	referred to	Para 8	
[1980] 2 SCR 334	referred to	Para 9	
(1984) 3 SCC 111	referred to	Para 10	
[1989] 2 Suppl. SCR 570	referred to	Para 10	C
[1990] 1 SCR 278	referred to	Para 11	
[2000] 3 SCR 135	referred to	Para 12	
[2008] 3 SCR 243	referred to	Para 13	
[1983] 2 SCR 363	referred to	Para 35	D
[2008] 6 SCR 566	referred to	Para 41	

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.5996-5997 of 2021.

From the Judgment and Order dated 17.03.2020 and 25.08.2021 E of the High Court of Madhya Pradesh at Jabalpur in Second Appeal No.523 of 2014.

With

Civil Appeal Nos.5998-5999 of 2021.

Ms. Shobha Menon, Sr. Adv., Akshat Shrivastava, Advs. for the Appellant. F

Amit Sahni, Arjun Garg, Priyankush Jain, Shobhit Jain, Aakash Nandolia, Ms. Sagun Srivastava, Advs. for the Respondent.

The Judgment of the Court was delivered by

**K. M. JOSEPH, J.**

1. The appeals raise certain common questions apart from the respondent being common. Hence the common judgment. By the impugned orders passed in these cases, the High Court while allowing

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- A the application filed by appellants under Order XLI Rule 5 of the Code of Civil Procedure and applications for an appropriate direction to the appellants to pay mesne profits along with the regular monthly rent and damages filed by respondent, directed that the appellants shall pay the rent of suit shops at the rate of Rs.18000/- per month to the respondent from the date of decree passed by the lower Appellate Court till the disposal of the Second Appeals. The appellants were directed to pay the entire arrears of rent within a period of 2 months failing which the interim order of protection from eviction under the decree was to stand vacated.
- B 2. The Respondent is the landlady of the Appellants in both the appeals. In SLP (Civil) No. 14357-58 of 2021, the appellant was inducted as a tenant of an non-residential accommodation of 150 square feet for a monthly rent of Rs. 847/- in the year 1975. On 06.08.2009 the Respondent filed a suit under Section 12 (1)(a), (c), (f) and (h) of the Madhya Pradesh Accommodation Control Act, 1961,(hereinafter referred as ‘the Act’). Apart from eviction the respondent also sought a decree for mesne profit.
- C The trial court decreed the suit and ordered eviction under Section 12 (1)(f) and (h) of the Act. First Appeal filed by the appellant stood dismissed by judgment dated 25.03.2014. It is thereupon that the appellant filed a Second Appeal on 12.06.2014. He moved an application on 18.06.2014. An interim order against eviction was passed of stay from eviction.
- D Thereafter the respondent filed an application for Appropriate Directions as Reply to the application under Order 41 Rule 5 of CPC. The court directed on 25.04.2016, the Rent Control Authority to submit a report regarding the prevailing market rate of accommodation in question making it clear that the calling of such report did not mean that a decision was taken on the question whether direction could be issued on the application
- E filed by the respondent. On 16.09.2016 the Second Appeal came to be admitted. The interim order which was passed earlier came to be made absolute. The Rent Control Authority, it is alleged, without affording opportunity to the appellant, submitted a report which was prepared relying on the Panchnama of the Revenue Inspector. On 17.03.2020, the court proceeded to pass the impugned order directing the appellant to pay the mesne profit of Rs. 18000/- per month. It was the case of the appellant that he came to know about the order when the respondent moved an application for executing the order dated 17.03.2020 and an application for recall filed by the appellant of the order dated 17.03.2020 came to be dismissed.
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3. In the other appeal, the appellant was likewise inducted into a non-residential accommodation admeasuring 100 square feet on a monthly rent of Rs. 622/. Otherwise by the order impugned the appellant has asked to pay rent at the rate of Rs. 18,000/- per month.

4. We heard the learned SeniorCounsel for the Appellant, Shrimati Shobha Menon and Shri Amit Sahni, learned Counsel for the Respondent. The contention raised by the appellant revolves around the proper interpretation to be placed on Section 13 of the Act. It is the complaint of the appellant that the High Court has not borne in mind that the present avatar of Section 13 was a product of a substitution effected in the year 1983. It is contended that the decisions of this court in Atma ram Properties (P) Ltd. v. Federal Motors (P) Ltd.<sup>1</sup>and State of Maharashtra v. M/s. Super Max International Pvt. Ltd.<sup>2</sup>, which related to the Delhi Rent Control Act and the provisions relating to Rent Control in Bombay respectively would not apply. This is for the reason that the cases arising within the state of Madhya Pradesh must be dealt with under Section 13 of the Act. Section 13 protects a tenant even during the pendency of an appeal against the order of eviction as long as he deposited the agreed rent. In this case thereis no dispute relating to the rent. *Per contra*,Shri Amit Sahni would point out that on a proper construction of the Section 13 of the Act along with the other relevant provisions, the conclusion is inevitable that the impugned order was fully justified.

5. Section 13 of the Act reads as follows: -

“13. When tenant can get benefit of protection against eviction. - [(1) On a suit or any other proceeding being instituted by a landlord on any of the grounds referred to in Section 12 or in any appeal or any other proceeding by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ of summons or notice of appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by the tenant, as the case may be, or within such further time as the Court may on an application made to it allow in this behalf, deposit in the Court or pay to the landlord, an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent

<sup>1</sup>(2005) 1 SCC 705

<sup>2</sup>(2009) 9 SCC 772

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- A thereto up to the end of the month previous to that in which the deposit or payment is made ; and shall thereafter continue to deposit or pay, month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding, as the case may be.
- B (2) If in any suit or proceeding referred to in sub-Section (1), there is any dispute as to the amount of rent payable by the tenant, the Court shall, on a plea made either by landlord or tenant in that behalf which shall be taken at the earliest opportunity during such suit or proceeding, fix a reasonable provisional rent, in relation to the accommodation, to be deposited or paid in accordance with the provisions of sub-Section (1) and no Court shall, save for reasons to be recorded in writing, entertain any plea on this account at any subsequent stage].
- C (3) If, in any proceeding referred to in sub-Section (1), there is any dispute as to the person or persons to whom the rent is payable, the Court may direct the tenant to deposit with the Court the amount payable by him under sub-Section (1) or sub-Section (2), and in such a case, no person shall be entitled to withdraw the amount in deposit until the Court decides the dispute and makes an order for payment of the same.
- D (4) If the Court is satisfied that any dispute referred to in sub-Section (3) has been raised by a tenant for reasons which are false or frivolous, the Court may order the defence against eviction to be struck out and proceed with the hearing of the suit.
- E (5) If a tenant makes deposit or payment as required by sub-section (1) or sub-Section (2), no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the Court may allow such cost as it may deem fit to the landlord.
- F [(6) If a tenant fails to deposit or pay any amount as required by this Section, the Court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit, appeal or proceeding, as the case may be.]"

(Emphasis supplied)

- G 6. It is to be noticed that Section 13 before being substituted in the  
H year 1983 read as follows: -

- “13. *When tenant can get benefit of protection against eviction.*—(1) On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 12, the tenant shall, within one month of the service of the writ of summons on him or within such further time as the court may, on an application made to it, allow in this behalf, deposit in the court or pay to the landlord an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate. A
- (2) If in any suit or proceeding referred to in sub-section (1), there is any dispute as to the amount of rent payable by the tenant, the court shall fix a reasonable provisional rent in relation to the accommodation to be deposited or paid in accordance with the provisions of sub-section (1) till the decision of the suit or appeal. B
- (3) If, in any proceeding referred to in sub-section (1), there is any dispute as to the person or persons to whom the rent is payable, the court may direct the tenant to deposit with the court the amount payable by him under sub-section (1) or sub-section (2), and in such a case, no person shall be entitled to withdraw the amount in deposit until the court decides the dispute and makes an order for payment of the same. C
- (4) If the court is satisfied that any dispute referred to in sub-section (3) has been raised by a tenant for reasons which are false or frivolous, the court may order the defence against eviction to be struck out and proceed with the hearing of the suit. D
- (5) If a tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no decree or order shall be made by the court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the court may allow such cost as it may deem fit to the landlord. E
- (6) If a tenant fails to deposit or pay any amount as required by this section, the court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit.” F
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- A 7. It is the further case of the landlady that the definition of the word tenant in the Act is identical with the definition of the word 'tenant' in Delhi Rent Control Act, in so far as it provides inter alia that upon the passing of an order of eviction the erstwhile tenant would cease to be a tenant. Therefore, on the principle enunciated in *Atma Ram Properties* (supra) and *M/s. Super Max* (supra) there can be no rationale or logic
- B to not extend the said principle and vouchsafe the same measure of justice to the landlady. He would further point out that what Section 13 actually provides is that the tenant must continue to pay the rent even during the pendency of the appeal. The actual protection against eviction however is provided when the ground for eviction is arrears of rent. In
- C this regard he drew support from Section 13(5). Section 13(5), he points out, protects a tenant, who is found to be in default of the payment of rent and an order of eviction is sought, (being protected) from eviction as long as he continues to pay the rent. As far as other grounds for eviction against a tenant being successfully pressed by the landlord culminating in an order of eviction being passed and upon an appeal being filed by
- D the tenant as he loses the status of a tenant going by the definition of the word of tenant when an order is passed under Order XLI Rule 5 of the CPC, the Appellate Court is fully justified in putting the appellants to terms by way of ordering of reasonable amount as rent as a condition for the grant of stay of eviction. He pointed out that Section 13(1) does
- E not use the word rent.

#### **THE CASE LAW RELIED UPON BY THE PARTIES**

- 8. In *Shrimati Chander Kali Bai and others v. Shri Jagdish Singh Thakur and another*<sup>3</sup>, the case arose under the act in question. The third contention of the appellants tenants against whom the first Appellate Court had decreed the suit, which was for eviction, arrears of rent and also for past and future damages was that the decree for damages could not be awarded from the date of the termination of contractual tenancy. It was contended that it could be awarded from the date of the Eviction Decree. This Court accepted the said contention based on the
- F definition of the word tenant in the Act. In regard to Section 13 of the Act as it stood prior to the substitution we notice the following discussion:-
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“9. Mrs Seth in support of her argument rightly pressed into service a few other provisions of the Act. Section 13(1) giving protection

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<sup>3</sup>(1977) 4 SCC 402

against eviction on the ground of default in payment of rent provides therein that even after the institution of the suit if he clears off the amount of rent due within a period specified in the section and thereafter “continue to deposit or pay, month by month, by the fifteenth of each succeeding month a sum equivalent to the rent at that rate” calculated at the rate of rent at which he was paying earlier, no decree for eviction can be passed. The conclusion is inevitable, therefore, that if a suit is filed on the ground of non-payment of rent after termination of the contractual tenancy, the tenant still continues to be a tenant liable to pay rent not only for the past period but in future also. In absence of a decree of eviction the person in occupation of the accommodation continues to be a tenant and is not liable to pay any damages as his occupation is not unauthorised or wrongful even after the termination of the contractual tenancy. In *Damadilal case*, Gupta, J. delivering the judgment of this Court has said at p. 653 (SCC p. 864) with reference to the definition of tenant in Section 2(i) of the Act:

“The definition makes a person continuing in possession after the determination of his tenancy a tenant unless a decree or order for eviction has been made against him, thus putting him on par with a person whose contractual tenancy still subsists. The incidents of such tenancy and a contractual tenancy must therefore be the same unless any provision of the Act conveyed a contrary intention. That under this Act such a tenant retains an interest in the premises, and not merely a personal right of occupation, will also appear from Section 14 which contains provisions restricting the tenant’s power of sub-letting.””

(Emphasis supplied)

9. In *Shyamcharan Sharma v. Dharamdas*<sup>4</sup>, a Bench of 3 learned Judges had occasion to deal with the impact of Section 13 prior to it being substituted in the year 1983. This Judgement is relied upon by the respondent landlady. It was a case, where a suit was filed for eviction on the ground of arrears of rent and bonafide requirement. The ground of bonafide did not appeal to any of the courts. As regards the ground of arrears of rent, the trial court protected the tenant under Section 12(3) of the Act. In appeal by the landlord, an application seeking condonation of delay in depositing rent month by month payable after the filing of the

<sup>4</sup>(1980) 2 SCC 151

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- A suit came to be rejected by the High Court holding that the court did not have power to extend the time. The respondent relied upon the following exposition.
- “4. It is true that in order to entitle a tenant to claim the protection of Section 12(3), the tenant has to make a payment or deposit as required by Section 13, that is to say, the arrears of rent should be paid or deposited within one month of the service of the writ of summons on the tenant or within such further time as may be allowed by the court, and should further deposit or pay every month by the 15th, a sum equivalent to the rent. It does not, however, follow that failure to pay or deposit a sum equivalent to the rent by the 15th of every month, subsequent to the filing of the suit for eviction, will entitle the landlord, straightway, to a decree for eviction. The consequences of the deposit or payment and non-payment or non-deposit are prescribed by sub-sections (5) and (6) of Section 13. Since there is a statutory provision expressly prescribing the consequence of non-deposit or non-payment of the rent, we must look to and be guided by that provision only to determine what shall follow. Section 13(6) does not clothe the landlord with an automatic right to a decree for eviction; nor does it visit the tenant with the penalty of a decree for eviction being straightway passed against him. Section 13(6) vests, in the court, the discretion to order the striking out of the defence against eviction. In other words, the court, having regard to all the circumstances of the case, may or may not strike out the defence. If Section 13 were to be construed as mandatory and not as vesting a discretion in the court, it might result in the situation that a tenant who has deposited the arrears of rent within the time stipulated by Section 13(1) but who fails to deposit thereafter the monthly rent on a single occasion for a cause beyond his control may have his defence struck out and be liable to summary eviction. We think that Section 13 quite clearly confers a discretion, on the court, to strike out or not to strike out the defence, if default is made in deposit or payment of rent as required by Section 13(1). If the court has the discretion not to strike out the defence of a tenant committing default in payment or deposit as required by Section 13(1), the court surely has the further discretion to condone the default and extend the time for payment or deposit. Such a discretion is a necessary implication of the discretion not to strike

out the defence. Another construction may lead, in some cases, to a perversion of the object of the Act, namely, "the adequate protection of the tenant". Section 12(3) entitles a tenant to claim protection against eviction on the ground specified in Section 12(1)(a) if the tenant makes payment or deposit as required by Section 13. On our construction of Section 13 that the court has the power to extend the time for payment or deposit, it must follow that payment or deposit within the extended time will entitle the tenant to claim the protection of Section 12(3). One of the arguments advanced before us was that there was no express provision for extension of time for deposit or payment of monthly rent subsequent to the filing of the suit whereas there was such express provision for payment or deposit of arrears of rent that had accrued before the filing of the suit. Obviously, express provision for extension of time for deposit or payment of rent falling due after the filing of the suit was not made in Section 13(1) as the consequence of non-payment was proposed to be dealt with by a separate sub-section, namely, Section 13(6). Express provision had to be made for extension of time for deposit or payment of rent that had accrued prior to the filing of the suit, since that would ordinarily be at a very early stage of the suit when a written statement might not be filed and there would, therefore, be no question of striking out the defence and, so, there would be no question of Section 13(6) covering the situation."

10. We must notice that the respondent landlady is obviously pressing the point that the purport of Section 13 cannot be divorced from the ground of eviction namely the tenant committing default in payment of rent before the suit or during the pendency of the proceeding. In Ram Murti vs. Bhola Nath and another<sup>5</sup>, this Court purported to follow the Judgment in Shyamcharan Sharma(supra). The case arose under the Delhi Rent Control Act. In short, the principle that emerges is that the court has power to extend the time to pay the defaulted rent instead of striking out the tenant's defence against eviction. The respondent relied on M/s. Frick India Ltd. v. Union of india and others<sup>6</sup> for the proposition that the heading of a section cannot control the meaning of the provision. This again we must notice is an attempt to persuade the court that it must not be overwhelmed by the heading of Section 13 which declares as follows:-

<sup>5</sup>(1984) 3 SCC 111

<sup>6</sup> 1990 (1) SCC 400

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A "When tenant can get benefit of protection against eviction".

11. In *Pushpa Devi and Others v. Milkhi Ram (Dead) by his Lrs.*<sup>7</sup>, which is relied upon by the appellants, this court laid emphasis on importance of contextual construction of a statue. We notice the following statements: -

B "18. It is true when a word has been defined in the interpretation clause, *prima facie* that definition governs wherever that word is used in the body of the statute unless the context requires otherwise. "The context" as pointed out in the book *Cross-Statutory Interpretation* (2nd edn. p. 48) "is both internal and external". The internal context requires the interpreter to situate the disputed words within the section of which they are part and in relation to the rest of the Act. The external context involves determining the meaning from ordinary linguistic usage (including any special technical meanings), from the purpose for which the provision was passed, and from the place of the provisions within the general scheme of statutory and common law rules and principles.

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19. The opening sentence in the definition of the section states "unless there is anything repugnant in the subject or context". In view of this qualification, the court has not only to look at the words but also to examine the context and collocation in the light of the object of the Act and the purpose for which a particular provision was made by the legislature."

12. In *Jamnalal and others v. Radheshyam*<sup>8</sup>, this court considered Section 13 again prior to it being substituted in the year 1983. We notice the following:

G "11. The scheme of Section 13 of the Act suggests that the provisions thereof are intended for the benefit of both the tenant as well as the landlord. While Section 13 affords protection to a defaulting tenant, willing to abide by the obligation to pay the rent regularly, against eviction on the ground of default in payment of rent, it also ensures payment of rent to the landlord, which he is entitled to receive for both the pre-litigation period as well as during the pendency of the litigation. A perusal of sub-section (1) of Section

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<sup>7</sup> 1990 (2) SCC 134

<sup>8</sup> (2000) 4 SCC 380

13 discloses that it imposes twin obligations on the tenant against whom a suit or proceeding is instituted on any of the grounds mentioned in sub-section (1) of Section 12. The first is that within one month of the service of the writ of summons on him or within such further time as the court may, on an application made to it, allow in this behalf, the tenant shall deposit in the court or pay to the landlord an amount, representing (a) arrears of rent for the period for which the tenant may have made default, and (b) rent for the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made, duly calculating the same at the rate of rent at which it was paid. And the second is payment/deposit of rent for the period thereafter, that is, future rent which he shall continue to deposit or pay, month by month, by the 15th of each succeeding month, at that rate. For the purpose of depositing the amount of rent, sub-section (1) refers to three periods in chronological order, i.e.,

(i) period for which arrears of rent are due, which is the subject-matter of notice of demand served on the tenant; D

(ii) period for which rent became due subsequent to the notice of demand till the date of deposit of rent in court; and

(iii) period for which rent will become due in future, after the date of deposit as aforementioned, till the decision of suit or appeal. E

The following illustration will help in elucidating the import of the provisions under consideration; if a tenant has last paid rent of tenanted premises, say, @ Rs 1000 for the month of January and did not pay for the months of February, March and April and notice of demand claiming arrears of rent for those months was served on him in May, the Act permits him to pay the arrears of rent within two months of service of demand, i.e., till the end of July. Assuming he has failed to do so and the landlord files the suit under Section 12(1)(a) of the Act of which writ of summons is served on the tenant on September 15, for his appearance in the court, he has the second opportunity to pay arrears of rent in court within one month of service of summons on him i.e. till October 14 or within such further time as the court may allow; but at that stage along with arrears of rent for the said months he has also to pay/deposit rent for the months from May to the end F

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- A of September. The second obligation of depositing the future rent continuously from month to month covers the period commencing from October and ending with the decision of suit or appeal. The arrears of rent and the future rent for each month, in the illustration, have to be calculated at the rate of Rs 1000.
- B 12. The above stated two obligations are independent of each other. Compliance with the second does not depend upon fulfilment of the first obligation. It is evident that Section 13(1) applies to institution of a suit on any of the grounds in clauses (a) to (p) of Section 12(1) and not merely to one under clause (a) — default in payment of rent. In cases under clauses other than (a), the tenants might have been paying the rent regularly and the question of payment/deposit of arrears of rent or rent for the period subsequent to service of summons, may not arise. Can then, based on the word “thereafter”, it be argued that there will be no liability to deposit future rent — the second obligation noted above. In our view such a contention will be defeating the object of the provision and will be impermissible. Having stated how the amount of rent payable by the tenant for the periods specified therein should be calculated and deposited, the provision imposes further obligation to deposit the rent month by month till the termination of the suit or proceedings. The word “thereafter” is merely indicative of the sequence of the second obligation to deposit the future rents; it is certainly not suggestive of the fact that if the first obligation for any reason cannot be complied with then the occasion to comply with the second obligation does not arise or that it automatically comes to an end. It would be unthinkable that that could be the intention of the legislature.”
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- G 13. In *Sobhagyalal and another v. Gopal Das Nikhra*<sup>9</sup>, this court had occasion to deal with Section 13 after it was substituted and in the form in which it arises for our consideration. It was a case where the tenant stood protected from eviction in the first round of litigation where the landlord set up the plea of arrears of rent. However, while the matter was pending before this court in SLP, the tenant had committed default in payment of rent. This led to a fresh proceeding for eviction. Noticing the embargo against a tenant availing the benefit of Section 12 (3) more than once, this court has laid down as follows: -

H <sup>9</sup>(2008) 3 SCC 788

“9. A landlord can seek ejectment of his tenant from the premises let out to him only on the ground(s) enumerated in Section 12 of the Act. Clause (a) of sub-section (1) of Section 12 of the Act authorises the landlord to seek ejectment of his tenant if he has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the service of notice demanding the arrears of rent. Sub-section (3) of Section 12 puts a caveat on the right of the landlord to get ejectment on the ground of arrears of rent if the tenant makes payment or deposit as required by Section 13. However, by virtue of the proviso to sub-section (3), the benefit given to the tenant, on compliance with the payment of rent as provided under Section 13, would be available to him only once in respect of that accommodation, but on default in the payment of rent in respect of same accommodation for three consecutive months he would not be entitled for protection by depositing the rent as provided under Section 13 in the subsequent proceedings initiated by the landlord for ejectment of the tenant on the ground of arrears of rent.

10. Section 13 of the Act requires that the tenant shall within one month of the service of writ of summons or notice of appeal or of any other proceeding deposit the rent when the proceedings are initiated by the landlord on any of the grounds referred to in Section 12 or within one month of institution of appeal or any other proceeding when taken by the tenant against any decree or order for his eviction. The period of one month given to the tenant for depositing the rent from the date of the summons or the notice of appeal or of any other proceeding could be extended by the court on an application made to it. The rent which is required to be deposited under the section can be in the court or it may be made over to the landlord. The section further requires that after the deposit of the arrears of rent the tenant shall continue to make deposit or pay month by month by 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding, as the case may be. Sub-section (5) of Section 13 provides that if the tenant makes deposit or payment as required by sub-section (1) or sub-section (2) no decree or order shall be made by the court for recovery of possession on the ground of default in the payment of rent by the tenant. Sub-section (6) gives an option to the landlord if the tenant does not

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- A deposit the rent or pay it to the landlord as required under Section 13 to move an application for the defence against eviction to be struck out. Sub-section (5) of Section 13 has no application in a case when the ejectment is not sought by the landlord on the ground of arrears of rent, but the suit is instituted by the landlord on any other ground(s) of Section 12 of the Act. Striking out of the defence of the tenant on an application moved by the landlord, is a provision applicable in the suit for ejectment on any of the grounds mentioned under Section 12 inclusive of under Section 12(1)(a) of the Act, whereas sub-section (5) of Section 13 would apply only when the suit is instituted for ejectment on the ground of arrears of rent under Section 12(1)(a) of the Act.
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11. From the aforesaid, it is clear that Section 12(3) of the Act provides for an exception to the general rule contained in Section 12(1)(a) that in the event tenant becomes a defaulter, he is liable to be evicted. From the proviso to Section 12(3) of the Act, it is clear that the protection given to the tenant is only one-time protection. Proviso appended to Section 12(3) controls the main provisions. The exemption contained in Section 12(3), thus, is not extended to the tenant who becomes a defaulter for more than once. In view of the aforesaid, we are of the opinion that once the tenant had availed the benefit of the proviso to Section 12(3) of the Act, the said benefit was not available to the tenant in committing a further default in payment of rent for three consecutive months.”
14. Respondent relies upon decision of the Full Bench in *Mankunwar Bai and others v. Sunderlal Jain*<sup>10</sup>. The question, which arose was, whether the tenant was obliged to pay time-barred rent under the first part of Section 13(1) of the Act. No doubt, the Court was dealing with Section 13 prior to substitution in 1983. The Court went on to hold that the tenant is not liable to deposit the time-barred arrears of rent, particularly having regard to the requirement in Section 12(1)(a) that the arrears of rent must be legally recoverable from the tenant. In the course of the said Judgment, the Court held that the expression, “*the period for which the tenant may have made default*”, as pointed out above, refers to the default under Section 12(1)(a).

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<sup>10</sup> AIR 1978 MP 165/ 1979 ILR MP 676

15. The definition of the word “tenant” in Section 2(i) undoubtedly does not include any person against whom an Order or Decree for Eviction has been made. It would not include even a tenant, against whom, an Order of Eviction has been made under Section 12(1)(a), which provides that default in payment of rent within two months of the demand for the arrears of rent, shall be a ground to evict. Section 13 on the other hand starts with the heading ‘when tenant can get the benefit of protection against eviction’. It is correct that the heading of a section cannot control the construction of the provision itself. The provision, as it unfolds under the heading, must be given the full meaning according to the principles of interpretation, which the court is persuaded to apply. The only area where the heading may be useful is when the provision is shrouded in ambiguity. The heading may shed some light, however, faint it may be.

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16. The provisions of Section 13, as it stood prior to substitution in the year 1983, did not embrace a situation where any Appeal or other proceeding was filed by a tenant. On the other hand, under the erstwhile *avatar*, the Law-Giver confined the provision to a situation where a Suit or proceeding was instituted by the landlord.

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17. We may notice that the majority of the Full Bench of the Madhya Pradesh High Court in a case in S.S. Harishchandra Jain and others v. Dr. Captain Indersingh Bedi<sup>11</sup>, took the view that Section 13 applied only to Suits. It was further held that the words, “other proceedings”, in the opening part of Section 13, is without meaning in both sub-Sections (1) and (2) of Section 13. It was further held that the object of Section 13 is to put a check on the unscrupulous tenant who would protract litigation without payment of rent. It was further held that in the tenant’s appeal, application of Section 13 was unnecessary because the landlord could execute the Decree and recover rent and if a stay was sought, condition of payment of rent could be imposed. This view came to be reiterated by a 7-Judges Bench in AIR 1978 MP 143 and the Court held as follows:

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“17. We answer the question referred to us in the negative. Agreeing with the dicta in *Harishchandra v. Indersingh*, 1977 MPLJ 417 : (AIR 1977 Madh Pra 199 (FB)), we hold that Section 13 of the M.P. Accommodation Control Act, 1961, does not apply,

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<sup>11</sup> AIR 1977 MP 199

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- A and no part of that section applies, to an appeal (whether the appeal be by the tenant or by the landlord) and that the law was correctly laid down in *Harishchandra's case* and it continues to be so because their Lordships' decision in *Radha Kishan v. Gopal Modi*, (1977) 2 SCC 656 : AIR 1977 SC 1217 is clearly distinguishable, the provisions of the Bihar Act being different from those of the Madhya Pradesh Act. Further, we say with respect that *Ratanchand v. Rajendra Kumar* (AIR 1970 Madh Pra 1 (FB)) (*supra*) did not lay down law correctly when it held that S. 13 applies to an appeal also."
- C 18. It is apparently, in the light of this view, which came to be pronounced on 14.01.1978, that the Legislature stepped in and substituted Section 13 by Act 27 of 1983.
- D 19. Let us first analyse the impact of Section 13, as it stood prior to its substitution in the year 1983. Section 12(1)(a) confers a right upon the landlord to seek eviction on the ground of the tenant falling into arrears of rent and remaining in arrears even after service of a notice of a demand. The default should persist for two months from the service of demand. The demand must relate to arrears of rent not barred by time. This is a ground available under Section 12(1)(a). It constitutes a cause of action for seeking eviction. However, Section 12(3) provided and
- E continues to provide that no Order for the Eviction of a tenant shall be made on the ground under Section 12(1)(a), if the tenant makes payment or deposit, as contemplated in Section 13. The *proviso* to Section 13, however, tabooed and continues to prohibit the invocation of the protection under Section 12(3) read with Section 13, more than once, in respect of any accommodation. The tenant, in other words, stands shielded from
- F eviction despite the availability of the ground under Section 12(1)(a), leading to an Eviction proceeding being filed. But, in respect of the same accommodation, in respect of which, the default took place, the tenant does not get insulated from eviction, if he defaults in payment of rent for the same accommodation for three consecutive months. This was the
- G protection, which was actually contemplated under Section 13, prior to Section 13 being substituted in the year 1983. Till 1983, thus, the protection could not be availed by any tenant on the ground of payment of rent by him during the proceeding for eviction or Appeal.
- H 20. After Section 13 was substituted in 1983, the legislative intent marks a shift. The tenant is obliged not only when a Suit or other

proceeding is filed by the landlord to deposit the amount in terms of Section 13, but he is compelled by law, even after an Order of Eviction has been passed against him and when he challenges the Decree or Order for Eviction by way of an Appeal or other proceeding, to deposit within one month of the institution of the Appeal or other proceeding the amount equal to the rent. He may also, on an application made to the court, deposit the amount or pay within such further time, as the court may allow. The amount, to be paid by the tenant, is to be calculated at the rate of the rent at which it was paid. So far, there is no controversy.

21. The conundrum is introduced by the following words in Section 13 “*for the period for which the tenant may have made default*”. It is here that the debate sharpens. The respondent-landlord would emphasise that the Law-Giver has only intended that the protection from eviction, on the ground of arrears of rent, would be applicable in an Appeal or other proceeding by the tenant against the Decree or Order for eviction on such ground. In other words, the interpretation, placed by the respondent, can be summed-up as follows. In a case, where there is a Suit filed by the landlord for eviction, invoking Section 12(1)(a), alleging that the tenant has fallen in arrears of rent and an Order of Eviction is passed, then, if a tenant were to appeal or file any other proceeding, in such a case, the tenant must deposit the amount of rent for the period, for which, the tenant may have made default. Not only must he make payment for the period of default, which led to the proceeding, but he must continue to pay or make deposit for the period subsequent thereto upto the end of the month previous to that in which the deposit or payment is made. The third limb also must be complied with by the tenant in an Appeal or other proceeding by him against the Decree or Order of Eviction, which is that during the pendency of the Appeal or other proceeding by him, he must continue to deposit or pay month-by-month, by the 15<sup>th</sup> of each succeeding month, the amount equivalent to the rent, at the rate of which, it was being paid till the decision is rendered in the Appeal or proceeding.

22. At this juncture, we may notice one of the salient features of the Act. Section 11A provides that Chapter III, in which Sections 12 and 13 appear, shall not apply to matters provided, especially in Chapter IIIA to a landlord defined in Section 23J. Section 23J defines “landlord”, for the purpose of Chapter IIIA, as retired Government Servant, widow, a divorced wife and physically handicapped person, *inter alia*. The

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- A proceeding is instituted under Chapter IIIA before the Rent Controlling Authority (hereinafter referred to as, ‘the Authority’). The grounds for eviction under Chapter IIIA are bonafide need for the residential and non-residential purposes. The ground of arrears of rent is conspicuous, it must be noticed by its absence in the proceeding under Chapter IIIA.
- B The right of the tenant is constrained by restrictions, as provided in Section 23C. He must obtain leave to contest. Section 23D provides for the procedure to be followed by the Authority to grant leave. Section 23E declares that no Appeal shall lie from any Order passed by the Authority. However, Section 23E(2) clothes the High Court with revisional jurisdiction both *suo motu* or an application by an aggrieved person.
- C Section 23F provides that the stay of operation of the Order of Eviction by the Authority or the High Court, shall not enure for a total period of more than six months. Section 23H is relevant and it reads as follows.

“Section 23H. Deposit of rent pending proceedings for eviction or for revision. - The provisions of Section 13 shall apply mutatis mutandis in respect of an application for recovery of possession of accommodation under Section 23-A and in respect of proceeding for revision under Section 23-E against final order by the Rent Controlling Authority under Section 23-C or under Section 23-D as they apply to a suit or proceeding instituted on any of the grounds referred to in Section 12:
- E Provided that no suit or proceeding for eviction of the tenant is pending before any Court at any of its stages in relation to the same accommodation.”
- F 23. As far as the proceedings, covered by the landlord, not falling in Section 23J, but falling under Section 2(b), which defines the word “landlord” is concerned, the Act contemplates the Authority being endowed with certain powers of a Civil Court under Section 29. An Appeal is provided to the District Judge or the Additional District Judge from every Order of the Authority. Another feature of the Act is that a Second Appeal lies under Section 32, on grounds, which may be described as being *parimateria* with Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as, ‘the CPC’, for short), as it stood prior to the amendment in the year 1977. The argument of the appellants is that the word “decree”, used in Section 13, is best appropriated to proceedings before the Authority under Section 12, by way of the Suit by the landlord defined under Section 2(b) and the decision rendered by
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the Appellate Authority and the High Court in further Second Appeal. The word “order”, according to the appellants, in Section 13, is apposite to describe the decision rendered under Chapter IIIA. We must indicate that Section 31, which provides for an Appeal to the District Judges or Additional District Judge, speaks about an Appeal being maintainable from every ‘Order’ of the Authority.

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24. However, it is apposite to notice that the Act was enacted in the year 1961. Section 12(1), which provides for grounds of eviction of tenants, provides that no Suit shall be filed in any Civil Court against the tenant for his eviction except on any of the grounds mentioned thereafter. Thus, it is not, as if, a Suit for Eviction in a Civil Court, is not maintainable. Section 28, however, provided for appointment of Authority. The Collector, with the previous approval of the State Government, can appoint an Officer not below the rank of Deputy Collector, to be the Rent Controlling Authority for the area in his jurisdiction. As already noticed, the said Authority was to have the same powers, as vested in a Civil Court, in regard to certain matters. Therefore, in an area, where there is no such Authority notified under Section 28, the Law-Giver contemplated a Suit before the Civil Court. It is in this context, apparently, that the law provided that Section 13 contemplates Decree being passed for eviction and protection under Section 13 being extended in an Appeal from such Decree. In fact, in the cases before us, the proceedings are suits, appeals under Section 96 of the CPC and second appeals under Section 100.

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25. What is, however, relevant from a reference to Chapter IIIA, which provides for eviction on the grounds of bonafide requirement, is that, vide Section 23H, Section 13 has been made applicable ‘*mutatis mutandis*’. Section 23H makes Section 13 applicable, not only in an application for recovery of possession under Section 23A, but it also is made applicable in respect of a proceeding for Revision under Section 23E against a Final Order by the Authority under Section 23C and Section 23D, as they apply to a proceeding instituted under Section 12. It must be noticed that Chapter IIIA was inserted vide the very same amendment (Act 27 of 1983), which also resulted in Section 13 being substituted. In other words, Section 13, as substituted, was intended to apply *mutatis mutandis*, undoubtedly, to a Revision maintained against a Final Order under Section 23C or Section 23D. Section 23C contemplates an Order of Eviction, being passed against the tenant, if the conditions in the said provision are satisfied. Section 23F also contemplates a stay being granted

- A by the High Court in a Revision under Section 23E of the Order of Eviction. Therefore, when Section 13 is made applicable to a Revision filed against an Order of Eviction under Section 23C, the Revision would be a Revision filed by the tenant, who has suffered an Order of Eviction under Section 23C. What is, however, more important is that, under the scheme of Chapter IIIA, that is the fast-track procedure, as it were, contemplated for the special categories of landlords falling under Section 23J, it provides only for bona fide requirement as the ground for seeking eviction. If eviction is sought, in other words, on the ground of arrears of rent, it may be open to the landlord to invoke the provisions of Section 12. The special right, however, to invoke the shorter and faster route to obtain an Order of Eviction, is available to the landlord, falling under Section 23J, only in respect of grounds of bona fide requirement. The relevance of this lies in concluding that, by the insertion of Chapter IIIA along with the substitution of Section 13, and by virtue of Section 23H, making Section 13 applicable even to the proceeding under Chapter IIIA, when an Order for Eviction is passed under Section 23C and the tenant challenges such an Order of Eviction by a Revision, he is expected to pay the amount, as provided in Section 13(1), during the pendency of the Revision.

26. No doubt, in a proceeding under Chapter IIIA, the Law-Giver has limited the operation of a Stay Order of Eviction to the total period of six months.

27. As already noticed, as far as a proceeding contemplated under Chapter III by the ordinary landlord is concerned, if we may use that expression, falling under Section 2(b), Section 13, as such, applies. We have only attempted to divine the impact of Section 23H, to find that, even in a proceeding by the special category of landlords, falling under Section 23J, and what is more, where eviction cannot be sought under Chapter IIIA, on the ground of arrears of rent, Section 13 applies even after the passing of the Order for Eviction, when the matter is pending in a Revision. This aspect helps to reveal the mind of the Legislature, and the ambiguity shrouding its real intention, is to some extent, effaced.

28. We may now proceed to finally interpret Section 13 as it is. Section 12(3) continues to grace the Statute Book. Thus, in a proceeding under Section 12(1)(a), *viz.*, a petition seeking eviction on the ground of arrears of rent, the Act protects the tenant by permitting him to deposit the amount in arrears, which constitutes a ground for seeking eviction, in

the first place, in the manner provided in Section 13. As explained by this Court in *Sobhagyamal* (supra), the tenant, in default of payment of rent, gets a new lease of life, despite the default being the ground for eviction, to ward off the passing of an Order of Eviction by virtue of Section 12(3). Undoubtedly, in order that Section 12(3) apply, not only must the tenant pay the amount in arrears, which is the basis for the application under Section 12(1)(a), but he must continue to pay the amounts, which are further mentioned in Section 13. Section 13(5), no doubt, again must be read along with Section 12(3). Section 13(5) interdicts the passing of the Decree or Order by the Court for recovery on the ground of default of payment of rent if compliance was made by the tenant of the requirement under Section 13(1) or Section 13(2). The Court is, however, authorised to allow costs. It is clear that Section 13(5) is totally inapplicable in the case where the ground of eviction is a ground other thanunder the one in Section 12(1)(a). In other words, Section 13(5) applies only in a case, where the landlord invokes default in payment of rent, as a ground for eviction. The argument of the respondent-landlord, therefore, is that this circumstance, alongwith the use of the words, “*for the period for which the tenant may have made default*”, in Section 13, would indicate that the protection from eviction, is not available unless the suit is made under Section 12(1)(a). To make it further clear, the argument is that the Legislature has articulated the intention to protect the tenant upon his paying the amount under Section 13 only *qua* the tenant sued for eviction on the ground of arrears of rent. The landlord further argues that Section 13(6) indicates that, if there is failure on the part of the tenant to pay or deposit the amount under Section 13, the Court is free to strike off the defence and proceed with the hearing of the matter. Section 13(6) has been interpreted by this Court, as noted by us earlier in *Shyamcharan Sharma* (supra). As held by this court, the Court has a discretion to condone the default in payment of rent and extend the time of payment of rent. Section 13(6) does not compel the Court to order eviction of a tenant, found in violation of Section 13. This view has also been followed in *Ram Murti* (supra), as well.

29. The opening words of Section 13 provide that, on a Suit or any other proceeding, being instituted by a landlord on any of the grounds referred to in Section 12, the tenant is to deposit in Court or pay to the landlord, the amount equal to the rent. Can it, therefore, be contended that the words “*any of the grounds*”, referred to in Section 12, is to apply only to a situation where Suit or any other proceeding is instituted

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- A by the landlord? To expatiate, after the above opening words in Section 13, by virtue of the substitution effected by Act 27 of 1983, can it mean that the words “*or in an Appeal or in any other proceeding by a tenant against any Decree or Order for his eviction*”, is not to be read along with “*on of the grounds referred to in Section 12*”? To put it in a different manner, can it be said that the substituted provisions of Section 13 contemplated that the Appeal or any other proceeding by the tenant, must be in a proceeding instituted only under Section 12(1)(a), *i.e.*, on the ground of arrears of rent, for the reason that the construction of the provision, which consists of an elongated sentence to which meaning cannot be attached, except by bearing in mind the statutory duty of the tenant to deposit the amount for the period for which the tenant may have made default. In other words, if the words “*for the period for which the tenant may have made default*” is an indispensable requirement to apply Section 13, then the substituted provisions, extending the protection in an Appeal or other proceeding by a tenant, would be confined to a proceeding under Section 12(1)(a). In this regard, we may also look for any inkling available in Section 13 for the proposition that Section 13 is attracted in an Appeal or other proceeding by the tenant, on any of the grounds under Section 12. In this regard, in *Sobhagyamal* (supra), this Court, we may recapitulate, has held as follows:
- E “Striking out the defence of the tenant, on an application moved by the landlord, the provision applicable in the Suit for ejection on any of the grounds mentioned under Section 12, inclusive of under Section 12(1)(a) of the Act, whereas sub-Section (5) of Section 13 would apply only when the Suit is instated for ejection on the ground of arrears of rent under Section 12(1)(a) of the Act.”
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This would mean that Section 13 would apply even if the ground of eviction is not one under Section 12(1)(a).

- G 30. As we have already found, the words “Appeal or proceeding, as the case may be”, were inserted in sub-Section (6) of Section 13 by Act 27 of 1983. This was in keeping with the substitution effected in Section 13(1), whereby the words “*or in any Appeal or any other proceeding by a tenant, against any Decree or Order for his eviction*”, also came to be added. Therefore, the legislative history tends to indicate that Sections 13(1) and 13(2) are to apply in any Appeal or
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other proceeding against the Order or Decree of Eviction on any of the grounds under Section 12. A

31. Act 27 of 1983, inserted the words “*or in any Appeal or any other proceeding by a tenant against any Decree or Order for his eviction*”. The word “any” is intended to convey a wide meaning. The Decree of Eviction may be a Decree passed on any of the grounds. It need not be confined to a Decree passed under Section 12(1)(a). This is also to be understood in the context of the words “*on any of the grounds referred to in Section 12*”, being used, preceded by the words in a Suit or other proceeding instituted by the landlord. B

32. The problem persists in the form of the logical culmination of the command to the tenant in an Appeal or other proceeding, against any Decree of Eviction, to deposit the rent or pay for the period, for which the tenant may have made default. Undoubtedly, in the context of Section 12(1)(a) read with Section 12(3), the words “*for the period for which the tenant may have made default*”, is perfectly apposite. In other words, when Section 12(3) provides that no Decree shall be passed for eviction under Section 12(1)(a), if the tenant makes the deposit or payment of the amount of rent, under Section 13, it is intended to mean that, even if the tenant has invited the wrath of Section 12(1)(a), he would be protected under Section 12(3), if he complied with Section 13, made the deposit within a period of one month or the extended period of the service of summons and made further deposits/payment. C D E

33. However, Section 13 clearly is intended to apply in a Suit or proceeding instituted by the landlord on any other grounds under Section 12. If that be so, the words, “*for the period, for which, the tenant may have made default*”, may not apply, as the tenant may not be in default and no ground under Section 12(1)(a) may even be pleaded. Therefore, in such a proceeding by the landlord, the words, “*for the period, for which, the tenant may have made default*”, pales into insignificance and irrelevance. It would then mean that, in a proceeding under Section 12, which does not involve Section 12(1)a), or in other words, when there is no default within the meaning of Section 12(1)(a), the protection would be available to the tenant, only if, he makes a deposit or payment for the period during the pendency of the proceeding. In other words, throughout the proceeding by the landlord, on any of the grounds under Section 12, the tenant is obliged to deposit the amount of rent. The failure to do so, would attract Section 13(6) and it is open to the Court to strike off the defence and proceed further in the matter. F G H

- A        34. If that be so, in an Appeal or any other proceeding by the tenant against an Order of Eviction, which does not involve Section 12(1)(a), the intention of the Law-Giver appears to be that the tenant, so described, despite the Order of Eviction and the definition of the word “tenant” in Section 2(i), is obliged to pay or deposit the amount of rent under Section 13(1) or Section 13(2), as the case may be, in the manner provided, till the termination of the Appeal or proceeding.

- B        35. We may profitably appreciate the problem through the prism of Section 23H, which we have already adverted to. Section 23H was also inserted by Act 27 of 1983. Thereunder, the provisions of Section 13 is to apply *mutatis mutandis, inter alia*, in respect of a proceeding for Revision under Section 23E, against an Order of Eviction under Section 23C, as they apply to a Suit or a proceeding instituted on any of the grounds referred to in Section 12. The words “*mutatis mutandis*”, is a well-known legislative device, employed for the purpose of adaptation of a law in an altered context. We may only refer to the following D exposition in the Judgment of this Court Reported in *Ashok Service Centre and others v. State of Orissa*<sup>12</sup>:

- E        “17. ... Earl Jowitt’s *The Dictionary of English Law* (1959) defines ‘mutatis mutandis’ as ‘with the necessary changes in points of detail’. *Black’s Law Dictionary* (Revised 4th Edn., 1968) defines ‘mutatis mutandis’ as “with the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like. *Housman v. Waterhouse* [191 App Div 850 : 182 NYS 249, 251]. In *Bouvier’s Law Dictionary* (3rd Revision, Vol. II), the expression ‘mutatis mutandis’ is defined as “[T]he necessary changes. This is a phrase of frequent practical occurrence, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like”. Extension of an earlier Act ‘mutatis mutandis’ to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the thing changed, subject of course to express provisions made in the later Act. ...”

- F        36. It must be remembered that Section 13 contemplates proceedings under Section 12 and on any grounds thereunder. The impact

H        <sup>12</sup>(1983) 2 SCC 82

of Section 23H, applying Section 13 *mutatis mutandis*, is that, since Section 12 is inapplicable in a proceeding under Section 23A, wherein the grounds are only of bonafide requirement, as provided therein, Section 13, in its application under Section 23H, would mean that the proceeding by the landlord for eviction is on any of the grounds under Section 23A. Equally, in the application of Section 13 to the Revision by the tenant against an Order under Section 23C, the ground of eviction, can only be the ground under Section 23A. In other words, in its application to a proceeding under Chapter IIIA, in a Revision by the tenant against an Order of Eviction, Section 13 is intended to apply, even though, eviction is not based on the ground under Section 12(1)(a). This is for the reason that there cannot be an Order passed under Section 23A on the ground under Section 12(1)(a), as the same is inapplicable. Thus, in such a Revision by a tenant against an Order under Section 23C, the presence of the words in Section 13, “for the period for which the tenant may have made default”, would not become an insuperable obstacle. In other words, in such a Revision, the law obliges the tenant to pay the rent for the period, which may include the period, into which, he may have fallen in arrears, before the filing of the Revision and also for subsequent periods.

37. If this is the position in respect of the manner in which Section 13 is intended to apply, even in a proceeding under Chapter IIIA, having regard to the wide words used in the newly substituted *avatar* of Section 13, *viz.*, “any Appeal or other proceeding by the tenant against any decree”, the word “any” should be read harmoniously with any of the grounds referred to in Section 12, appearing earlier in Section 13. Thus, even in an Appeal or other proceeding, Section 13 would apply, despite there being no ground for eviction under Section 12(1)(a). The law was so enacted by substitution in 1983, so that during any litigation launched by the tenant against any Order of Eviction, the landlord is assured of the amount which is calculated at the rate of rent at which it was being paid. Section 13(2) takes care of the situation where there is a dispute relating to the amount of rent.

38. We must notice that the Act also does contemplate the fixation of standard rent. Section 7 deals with standard rent. It contemplates an increased standard rent in case of a non-residential accommodation. Section 8 provides for lawful increase of standard rent in certain other cases. No doubt the respondent would point out that after an order or decree of eviction is passed no application may lie. Even accepting the

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- A same, nothing stands in the way of the rent being increased till then. Therefore, the Act, as a whole, contemplated payment of rent in the manner provided in the Act. If he fails to deposit the amount, the Appeal or proceeding launched by the tenant, would be imperilled and an adverse decision, resulting in eviction, could follow, unless the Court extended the time for payment of rent.
- B 39. Section 13(1) of the Act is a unique provision, the parallel of which in any other State Law, has not been pressed into service before us by the respondent. Section 15 of the Delhi Rent Control Act, 1958, pressed before us, does not bear resemblance to Section 13(1) of the Madhya Pradesh Act, after the substitution took place in the year 1983.
- C **THE PRINCIPLE IN ATMA RAM PROPERTIES (P) LTD.  
V. FEDERAL MOTORS (P) LTD.**<sup>13</sup>

- D 40. The case arose under the Delhi Rent Control Act, 1958. An Order of Eviction was passed on the ground of illegal sub-letting. In the Appeal by the tenant, the Tribunal stayed the eviction subject to the tenant depositing Rs.15,000/- per month, in addition to the contractual rent. This direction was set aside by the High Court. This Court took note of the definition of the word “tenant” that it did not include the person against whom an Order or Decree of Eviction has been made. In this regard, we may notice that the definition of the word “tenant” in Section 2(i) of the Act, under which, the Appeals arise before us, also provides for a similar definition. We may notice, in this regard, paragraphs-17, 18 and 19 of *Atma Ram Properties* (supra):
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- F “17. In the Delhi Rent Control Act, 1958, the definition of a “tenant” is contained in clause (l) of Section 2. Tenant includes “any person continuing in possession after the termination of his tenancy” [Section 2(l)(ii)] and does not include “any person against whom an order or decree for eviction has been made” [Section 2(l)(A)]. This definition is identical with the definition of tenant dealt with by this Court in *Chander Kali Bai case* [(1977) 4 SCC 402]. The respondent tenant herein having suffered an order for eviction on 19-3-2001, his tenancy would be deemed to have come to an end with effect from that date and he shall become an unauthorised occupant. It would not make any difference if the order of eviction has been put in issue in appeal or revision and is
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<sup>13</sup> (2005) 1 SCC 705

confirmed by the superior forum at a latter date. The date of termination of tenancy would not be postponed by reference to the doctrine of merger.

18. That apart, it is to be noted that the appellate court while exercising jurisdiction under Order 41 Rule 5 of the Code did have power to put the appellant tenant on terms. The tenant having suffered an order for eviction must comply and vacate the premises. His right of appeal is statutory but his prayer for grant of stay is dealt with in exercise of equitable discretionary jurisdiction of the appellate court. While ordering stay the appellate court has to be alive to the fact that it is depriving the successful landlord of the fruits of the decree and is postponing the execution of the order for eviction. There is every justification for the appellate court to put the appellant tenant on terms and direct the appellant to compensate the landlord by payment of a reasonable amount which is not necessarily the same as the contractual rate of rent. In *Marshall Sons & Co. (I) Ltd. v. Sahi Oretans (P) Ltd.* [(1999) 2 SCC 325] this Court has held that once a decree for possession has been passed and execution is delayed depriving the judgment-creditor of the fruits of decree, it is necessary for the court to pass appropriate orders so that reasonable mesne profits which may be equivalent to the market rent is paid by a person who is holding over the property.

19. To sum up, our conclusions are:

(1) While passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and insofar as those proceedings are concerned. Such terms, needless to say, shall be reasonable.

(2) In case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (l) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination

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- A under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises.
- B The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.
- C (3) The doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date.”
- D 41. This Judgment has been followed by this Court in *State of Maharashtra and another v. Super Max International Private Limited and others*<sup>14</sup>. The case arose under the Bombay Rent Act. In fact, in the said case, the definition in Section 5(11) of the Bombay Act was not *parimateria* with the definition in the Delhi Rent Control Act and the Act in question. After an exhaustive survey of the case law, which included *Atma Ram Properties* (supra) and *Satyawati Sharma (D) by Lrs.v. Union of India and another*<sup>15</sup>, this court held as follows:
- E “73. In an appeal or revision, stay of execution of the decree(s) passed by the court(s) below cannot be asked for as of right. While admitting the appeal or revision, it is perfectly open to the court, to decline to grant any stay or to grant stay subject to some reasonable condition. In case stay is not granted or in case the order of stay remains inoperative for failure to satisfy the condition subject to which it is granted, the tenant in revision will not have the protection of any of the provisions under the Rent Act relied upon by Mr Lalit and in all likelihood would be evicted before the revision is finally decided. In the event the revision is allowed later on, the tenant’s remedy would be only by way of restitution.
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77. In the light of the discussions made above we hold that in an appeal or revision preferred by a tenant against an order or

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<sup>14</sup> (2009) 9 SCC 772

H <sup>15</sup> (2008) 5 SCC 287

decree of an eviction passed under the Rent Act it is open to the appellate or the Revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/decree is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.

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42. Therefore, the question would finally arise that in a Second Appeal, filed by the tenant, against whom an Order/Decree of Eviction is passed, on a ground, other than under Section 12(1)(a), even after the tenant complies with the requirement of Section 13 and deposits the rent, as was being paid, whether the Appellate Court, when approached by the appellants-tenants, seeking a stay of the execution of the Decree under Order XLI Rule 5 of the Code of Civil Procedure, 1908 (hereinafter referred to as, ‘the Code’, for short), they could be asked to deposit an amount representing a reasonable market value of the rent. Undoubtedly, in the Act, the definition of the word “tenant”, does not include a person against whom an Order or Decree of Eviction has been passed. In the said sense, the Act can be treated as similar to the Delhi Rent Control Act. In other words, with the Order/decree of Eviction being passed, the person who was tenant till that point of time, ceases to be the tenant. He would become an unauthorised occupant in the words of this Court in *Atma Ram Properties* (supra). The principle in *Atma Ram Properties* (supra), therefore, would apply unless Section 13 poses an obstacle in the path of the Appellate Court directing the payment of the mesne profits by the appellants as a condition of stay of execution.

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43. In this case, undoubtedly, appellants have invoked Order XLI Rule 5 of the CPC. It is in the said Application that the High Court has granted a stay, subject to the condition of payment of amount in a sum of Rs.18,000/- per month. The landlady filed an application seeking deposit of the rent which led to the stay being conditioned. This amount has been arrived at on the basis of the Report submitted by the Authority. Undoubtedly, the tenancy relates back to the year 1975. The rent canvassed by the appellants is Rs.872/- per month and Rs. 622/- per month.

44. In Section 13 of the Act the law giver has given a section heading ‘when a tenant can get benefit of protection against eviction’. It is thereafter that the provisions are enacted. Sub section 5 of Section 13

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- A relates only to a suit in which the ground of eviction is default of payment of rent. As far as Section 13 (6) is concerned it deals with a situation where the tenant fails to deposit or pay the amount under Section 13 of the Act. Prior to Section 13 being substituted in the year 1983 it contemplated that the court may strike out the defence against eviction and proceed with the hearing of the suit. It was this provision which was interpreted in *Shyamcharan Sharma* (supra) to mean that the court still has a discretion and is empowered to grant extension of time to pay rent under Section 13. By virtue of the substitution in the year 1983 in Section 13 (6) in view of the addition of the words ‘appeal or proceeding as the case maybe’, on the failure of the tenant to deposit or pay the amount as required by Section 13 the court is empowered to strike out the defence against eviction is made applicable to an appeal or proceeding by the tenant. An appeal and proceeding can be disposed off which essentially means that an Order of Eviction would ordinarily follow as the appeal or other proceeding by the tenant is against an Order of Eviction which is already passed.
- D 45. Now, as far as a suit for eviction based on ground other than Section 12(1)(a), *viz.*, arrears of rent. Section 13 expressly does not provide as to what is to happen if the tenant complies with requirement of Section 13 as distinct from the failure of the tenant to comply with Section 13. In this case we are concerned with the former namely what would be the position if the tenant faithfully complies with the mandate of Section 13 and has deposited/ paid the amount. There is no express intention expressed by the law giver in this regard in Section 13.
- F 46. In this regard it is again relevant to look at what the law giver is provided in Chapter IIIA. We say this for the reason that Section 13 has been applicable mutatis mutandis by virtue of Section 23H as we have already noticed. However, Section 23F provides as follows: -
  - G “Section 23F. Duration of stay. - The stay of the operation of the order of eviction passed by a Rent Controlling Authority or by the High Court shall not exceed for a total period of more than six months.”
- H 47. Therefore, this provision indicates that despite payment being made by the tenant of the amount in terms of Section 13 in a revision filed within the meaning of Section 23H an order of stay of eviction may still be necessary. In other words, *ipso facto*, the mere payment of the amount in terms of Section 13 would not shelter the tenant who has filed

a revision referred to in Section 23H from being proceeded against in execution of the decree. The law giver has contemplated an order of stay being passed in Section 23F with the restraints regarding the duration of the stay order which has been declared therein.

48. Thus, the payment of the amount mentioned in Section 13 in a Chapter III proceeding by itself may not result in a stay of the decree or Order of Eviction.

49. The further question would however arise that in an appeal filed by the tenant against the decree or Order of Eviction whether on a proper construction of Section 13 of the Act, whether the Appellate Court can impose any condition other than that of deposit of the amount which no doubt is the rent which was being paid. The other way to look at it which is what the landlady wants us to do is to import in the principle enunciated in *Atma Ram Properties* (supra).

50. We have already noticed the decision rendered by a bench of 5 learned Judges of the Madhya Pradesh High Court decided on 17.02.1977 in *S.S. Harischandra Jain and others* (supra), at a point of time when Section 13 was in its erstwhile form. The Court held, *inter alia*, as follows:

“(ix) In tenant’s appeal, application of Section 13 is unnecessary because the landlord can execute the decree and recover rent, and if, stay is sought, condition of payment of rent can be imposed. In case of landlord’s appeal against dismissal under Section 13 (5) the tenant will automatically deposit, and go on depositing, rent because of the deterrent in Section 12(3). In landlord’s appeal from dismissal on other ground, there is no special equity in his favour. In case of non-payment of rent his ordinary remedy of a suit for recovery of rent is available to him.

(xi) Section 13 is not a machinery for realisation of rent as an alternative to a, suit for recovery of rent. The object of Section 13 is to put a check on the unscrupulous tenant who would protract litigation without payment of rent. That purpose is served in the suit. But the enquiry is reversed when the suit is dismissed.”

(Emphasis supplied)

51. This view, as again noted, has been approved by the still larger bench of the High Court reported in AIR 1978 MP 143. Apparently,

- A these judgements led to the substitution of Section 13 in the year 1983 by way of the legislative intervention and in an appeal or other proceeding by the tenant against the decree or Order of Eviction the duty to pay rent came to be imported. Bearing in mind this legislative history which can be said to be in recognition of exposition of law by the High Court,
- B could it be said that the legislature contemplated the Appellate Court granting stay of the decree of eviction subject only to the condition that the amount which represented the rent which was being paid is paid as a condition.

52. As we have seen, the actual protection which is granted under

- C Section 13 of the Act, is what is provided in Section 13(6), in the cases at hand.

53. Does Section 13 have the effect of operating as a stay of the Decree for Eviction in its own right? The principal contention of the appellants is that the principle in *Atma Ram* (supra) that upon an Order of Eviction being passed, the erstwhile tenant ceases to be a tenant and

- D his possession becomes wrongful and, therefore, he can be called upon to deposit mesne profit, would not apply, having regard to the contents of Section 13 of the Act. This is for the reason that contrary to the definition of the word ‘tenant’ in Section 2(i), Section 13 reintroduces the concept of ‘tenant’, even after the Order of Eviction is passed and when the
- E erstwhile tenant seeks to maintain an appeal or other proceeding against the Decree or Order of Eviction. He is called upon, furthermore, to deposit the agreed rent. Once he is called upon to deposit the agreed rent and he is treated as a tenant by the Law Giver, by virtue of the unique provisions contained in Section 13(1) of the Act, the principle in *Atma Ram* (supra) would, therefore, not apply. In other words, despite
- F definition of ‘tenant’ in Section 2(i) of the Act, excluding a person against whom an Order of Eviction has been passed, he does not stand in the shoes of a person in wrongful possession, it is contended.

54. In fact, in Section 13, as far as reference to rent is concerned,

- G the words used are “an amount calculated at the rate of rent, at which it was paid”. The further expressions used are “*a sum equivalent to rent at that rate*”. These expressions are used to denote the amount payable by the person described as tenant, both before the Order of Eviction is passed and after the Order of Eviction, during the pendency of appeal or proceeding, as the case may be. We are making this observation for the
- H reason that if the words “*an amount calculated at the rate, at which,*

*it was paid or a sum equivalent to the rent*", is understood as describing the amount, which is not the rent as such, but the amount, which, the person was obliged to pay as a tenant, after the Order of Eviction is passed, then, it could be said that, what is contemplated is that, the amount directed to be paid, is treated as not the rent as such, but the amount equivalent to the amount or an amount calculated at the rate of rent. Such an amount, being payable, may be reconcilable with the Order of Eviction, putting an end to the tenancy and erstwhile tenant becoming a person in illegal possession. But herein, we may notice that the same expression is used even for describing the amount payable during the pendency of proceeding under Section 12. In other words, these words are applicable to describe the amount payable at all points of time, including the pendency of the suit, appeal or other proceedings. To make it even more clear, both, at the stage when landlord-tenant relationship exists and, at the stage, when following an Order of Eviction, going by the definition of 'tenant' in Section 2 of the Act, the erstwhile tenant would cease to be a tenant, the amount payable in Section 13 is described in the similar manner. In fact, there is no case as such that the amount which is paid by the tenant in Section 13 is anything but the agreed rent. However, for reasons which follow, it will not advance the case of the appellants.

55. As far as the aspect about the former tenant, even after the Order of Eviction being referred to as a tenant, even when he maintains an appeal against a Decree/Order of Eviction is concerned, we would think that it can be a legislative device to aptly describe the person in question devised by the Legislature. In this regard, the more important question is, whether after the Order of Eviction is passed, the erstwhile tenant would remain a tenant in law. The tenant begins his innings ordinarily as a contractual tenant. In the case of a contractual tenant, upon the expiry of the lease, he is under the Transfer of Property Act and, in accordance with the contract, duty-bound to vacate the premises and deliver possession to the landlord. Failure on his part to do so, would expose him to an action for mesne profits, on the basis that his continuance after the period and contrary to the contract, would be wrongful. In the case of a statutory tenant, which, undoubtedly, the tenant was, the mere expiry of the contractual lease, does not result in the tenancy coming to an end under the laws relating to the statutory tenancy. It is with the Order of Eviction, which is passed, that the erstwhile tenant ceases to be the tenant. After the Order of Eviction is passed, the law deprives the

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- A erstwhile tenant of his status of tenancy. The definition of 'tenant', accordingly, in Section 2(i) of the Act, is a legislative recognition of this position. Now, the Act enables the filing of appeal or other proceeding by the erstwhile tenant. The law prescribes the period of limitation. Does it mean that the possession of the erstwhile tenant or rather his occupation of the premises, after the Order of Eviction, is not wrongful? What will be the position, if he prefers an appeal, after a long delay and delay is condoned? Can it be said that during the period delay, at any rate, that the erstwhile tenant sheds his character as illegal occupant? We would think that with the passing of Decree or Order of Eviction, the erstwhile tenant, no longer, remains a tenant. He continues to occupy the premises,
- B which, in law, is wrongful. Under the law, generally, continued occupation of a tenant, after the expiry of the lease, may not make him a trespasser, as his original entry was lawful. For the purpose of mesne profits, however, whether it be under the general law or under the Rent Statute, once, the tenancy itself comes to an end, which in the case of statutory tenancy occurs with the passing of the Order of Eviction and, in the case of the contractual tenancy, upon the expiry of the lease, the possession of the erstwhile tenant, indeed, becomes wrongful. The fact that the law permits the filing of an appeal or other proceeding, will not detract from the aforesaid position.
- C 56. This position is self-evident from the decision in *Atma Ram* (supra). The Judgment in *Atma Ram* (supra) makes it clear that the erstwhile statutory tenant would become an unauthorised occupant upon the passing of the Order by the original Forum. This Court has further held that fact that the Order of Eviction has been challenged in an appeal or revision and it is confirmed at a later point, will not enable the erstwhile tenant to contend that he would remain a tenant even after the Decree/Order of Eviction.
- D 57. Once this position at law is kept in mind, the impact of Section 13 of the Act, will become clear. We have already noticed that the actual protection, which is provided in Section 13 of the Act, as far as the cases we are concerned with, is contained in Section 13(6) of the Act. Upon the tenant, as described in Section 13, paying the amounts as provided therein, the tenant is allowed to, *inter alia*, prosecute the appeal or other proceeding. The failure to comply with Section 13, will result in the consequences, which are provided therein. Since, we are concerned here with the consequences of tenant acting in conformity of Section 13
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of the Act, apart from noticing, what we have already indicated, we would examine, whether it has the effect, which is canvassed for by the appellants.

58. We are of the view that even though Section 13 does refer to the erstwhile tenant as a tenant and it obliges him to deposit throughout the proceedings, the amounts, which can be treated as the rent being paid, which would be contractual rent or even the rent fixed as the standard rent, this does not, by itself, alter the effect of the Decree/Order of Eviction passed by the Court, by which, he stood deprived of the status of a tenant. The filing of an appeal or other proceeding by the tenant, does not make the Decree inexecutable. The preferring of an appeal or other proceeding, would not bring about a stay of the proceedings based on the Decree or Order of Eviction. The payment of the amounts under Section 13(1) or Section 13(2) of the Act, does not, by itself, bring about the stay of the Decree or Order of Eviction. The net result is, the principle in law and, as recognised in Section 2(i) of the Act, and, as interpreted in *Atma Ram* (supra), that with the passing of the Order of Eviction by the Court, the possession of erstwhile tenant, becoming wrongful, will apply. By making the payments, contemplated in Section 13(1) or Section 13(2) of the Act, the erstwhile tenant, who stood deprived of the status of a tenant, does not regain the said status by mere reason of the fact that in Section 13 of the Act, he is referred to as the tenant. The position of the erstwhile tenant under the Act, going by the definition in Section 2(i) of the Act, will continue to hold the field, even after an appeal or other proceeding is maintained by him. Therefore, Section 13 of the Act, in our view, despite the unique provision contained therein, does not affect the position at law, which stands declared in *Atma Ram* (supra). Undoubtedly, in keeping with the view expressed by the larger Bench decisions of the High Court, which we have referred to, the Legislature wanted to ensure that even during the appeal filed by the tenant, *inter alia*, he would continue to pay the agreed rent.

59. The erstwhile tenant, such as the appellants in these cases, despite making payment, in accordance with Section 13 of the Act, would not be protected from being evicted in terms of the Decree/Order of Eviction during the pendency of the appeal or proceeding. It is open to the appellant, *inter alia*, in challenging the Decree/Order of Eviction to seek stay of the Decree/Order of Eviction. It is then that the Appellate Court can exercise its powers under Order XLI Rule 5 of the CPC.

- A        60. We have found reinforcement in Section 23F of the Act falling in Chapter IIIA, which also contemplates Orders of Stay being passed, even though Section 13 has been made applicable by virtue of Section 23H. As regards the power of the Appellate Court, to grant a stay, it is clear that it is open to the Appellate Court, to impose such condition, as it thinks fit. It can issue directions, as held by this Court in *Supermax International* (supra). Once we proceed on the basis that with the Decree of Eviction being passed, the erstwhile tenant becomes an unauthorised occupant and he makes himself liable to pay mesne profits for his continued occupation, such an erstwhile tenant can, indeed, be called upon to pay mesne profits. Undoubtedly, there is power with the Appellate Court, in this regard.

- B        61. We have, no doubt, noticed the view taken by the larger Bench of the High Court (which, in fact, paved the way for the substitution of Section 13 in the year 1983) that the Court, after finding that Section 13, with which it was concerned, did not contemplate any duty on the part of the tenant to deposit the agreed rent, in an appeal filed by him, did observe that in such a scenario, it will be open to the landlord to execute the Decree and if the tenant files an application under Order XLI Rule 5 of the CPC, the tenant can be asked to deposit the rent. No doubt, the legislative intervention in 1983 through substitution of Section 13, may have been inspired by the judicial exposition and, therefore, one of the principles of interpretation being that the Legislature must be treated as having in mind the law as interpreted by the Court to be implemented, thus, it could be urged that when an application is filed under Order XLI Rule 5, even after the substitution of Section 13, when the tenant is called upon to deposit the agreed rent, then, even in the matter of imposing condition under Order XLI Rule 5, the tenant cannot be worse off than when Section 13 was in its earlier *avatar*. In other words, with the deposit of the agreed rent, there would be no occasion to deposit any further amount, even under Order XLI Rule 5. We must, however, bear in mind the fact that the law, as has been declared in *Atma Ram* (supra), and as has been followed in *Supermax International* (supra), in the manner already referred to. That is, with the Decree of Eviction being passed, the erstwhile statutory tenant becomes an unauthorised occupant. The fact that the law permits the defendant to file an appeal or to take other proceedings, will not clothe him with rights as a tenant. The fact that the finality of the Decree of Eviction is attained at a later stage, will not be sufficient to extricate him from his position as an unauthorised

occupant in the interregnum. This has the inevitable consequence that during such interregnum, the erstwhile tenant, being in the position of an unauthorised occupant, he becomes liable to pay mesne profits. Once this position is clear, then, the necessary corollary is, even after the substitution of Section 13, it would be open to the Appellate Court to impose the condition that appellant seeking to contest the Decree of Eviction, shall deposit a reasonable sum, which is not to be limited to the agreed rent. This position is also better understood in the light of the plight of the landlords, who are forced to wait for long, the realisation of the fruits of the Decree for Eviction, which they have obtained. In fact, this aspect, as to the entitlement of the landlord for an amount in excess of the agreed rent, in the light of the Decree of Eviction, as such, was not considered by the larger Bench of the High Court. At any rate, in the light of the Judgments of this Court, there cannot be any dispute about the principle that upon a Decree of Eviction being passed, the erstwhile tenant becomes an unauthorised occupant and remains one thereafter during the entire proceedings. The fact that there is power to fix standard rent cannot affect this position. In fact, the respondent would point out that after the eviction is ordered even the power to fix standard rent ceases as the tenancy comes to an end.

62. It is undoubtedly true that the existence of power under Order XLI Rule 5 of the CPC, is not to be confused with the exercise of its power by an Appellate Court. That there is power with the Appellate Court, may not enable it to Order any unreasonable amount or reach a windfall to the landlord. The power is to be exercised on a careful consideration of the facts of each case. It will include the quantum of agreed rent, which the tenant is paying under Section 13 of the Act. It will consider whether the said sum is the result of any fixation of standard rent. If so, what is the point of time, at which, the agreed rent was arrived at, the nature of the premises and all other relevant facts. It may include a case where the Appellate Court, on a perusal of the impugned Judgment, is convinced, *prima facie*, no doubt, that the Decree for Eviction is palpably insupportable, in which case, it may grant a stay, without calling upon the tenant to pay any sum in excess of amount fixed in Section 13 of the Act.

63. We are unable to accept the appellants case that Section 13 of the Act, being a special law, the power under Order XLI Rule 5, cannot be exercised to direct deposit or payment of mesne profits.

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- A Compliance with Section 13 by the appellants, does not, as found by us, amount to a stay of the Decree for Eviction. The power of the Appellate Court to impose conditions for staying the Decree, cannot be confined by the dictate in Section 13 of the Act, to the appellants/tenants, to deposit the agreed rent, particularly, having regard to the time consumed in litigation and, more importantly, the impact of the Decree of Eviction, depriving the appellant of his status as a tenant.

64. The upshot of the above discussion is that we reject the contention of the appellants that Section 13 of the Act will detract from the principle in *Atma Ram* (supra) and *Supermax International* (supra) being available to the cases under the Act.

- C 65. Coming to the facts, the rent being paid for 100 square feet of non-residential accommodation by one of the appellants is Rs.622/-, fixed in 1975. In the other case, the rent canvassed by the appellant, as being the agreed rent, was a monthly rent of Rs.847/-, fixed in the year 1975.
- D The premises in question is also non-residential and it consists of 150 square feet. There is no reference to the rent being fixed in proceedings for fixing the standard rent. The Suit was filed in the year 2009. The Decree for Eviction was passed in the year 2013. The First Appellate Court dismissed the appeal filed by the appellants on 25.03.2014. The Second Appeal was filed in the year 2014. The impugned Orders came
- E to be passed on 17.03.2020 and 25.08.2021 at the stage of second appeal when two courts have found against the appellants. The amount has been fixed at Rs.18,000/- per month. The amount has been fixed on the basis of the Report submitted by the Rent Controlling Authority, who was asked to report regarding the market rate of the accommodation in question. The complaint of the appellant is that the Rent Controlling
- F Authority has tendered its Report and, while doing so, adequate opportunity was not provided and the materials placed were not considered and that the amount is unreasonable. It is said to be based only on the *Panchnama* prepared by the Revenue Officer. The High Court has found that the premises are located in a famous commercial place and the rent of Rs.847/- - per month was fixed in the year 1975.

66. We do not think that the appellants should be permitted to challenge the quantum, once we have answered the legal issues flowing from Section 13, against the appellants. It would appear from the written submission that the appellants have deposited certain sums in execution

- H of the orders. The appellants will be entitled to adjust the said amount in

complying with the impugned orders. The amount of Rs.18000/- will A  
subsume the amount paid/payable under Section 13 of the Act.

67. We may, however, notice the following views expressed by  
this Court in Supermax International (supra):

“79. Before concluding the decision one more question needs to B  
be addressed: what would be the position if the tenant’s appeal/  
revision is allowed and the eviction decree is set aside? In that  
event, naturally, the status quo ante would be restored and the  
tenant would be entitled to get back all the amounts that he was  
made to pay in excess of the contractual rent. That being the  
position, the amount fixed by the court over and above the  
contractual monthly rent, ordinarily, should not be directed to be  
paid to the landlord during the pendency of the appeal/revision.  
The deposited amount, along with the accrued interest, should  
only be paid after the final disposal to either side depending upon  
the result of the case.

80. In case for some reason the court finds it just and expedient C  
that the amount fixed by it should go to the landlord even while  
the matter is pending, it must be careful to direct payment to the  
landlord on terms so that in case the final decision goes in favour  
of the tenant the payment should be made to him without any  
undue delay or complications.” D

68. Thus, in the facts of this case, we would think that the direction E  
to pay the entire amount, may require modification. Equally, we are of  
the view that some time must be granted to deposit the amount.

69. Accordingly, in modification of the impugned Orders, we order F  
as follows:

- a. Appellants are granted five weeks to deposit the entire G  
amount in terms of the impugned orders after adjusting the  
amounts already deposited/paid on the basis of the orders  
of the execution court. The amounts will also subsume the  
amounts paid/payable under Section 13 of the Act.
- b. We further order that the respondent in the appeals shall be  
permitted to withdraw the rent at the rate of Rs.10,000/-  
per month from the amount which is deposited;

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A           c.     The respondent shall be permitted to withdraw at the rate of Rs.10,000/- per month from the amount to be deposited by the appellants, on such terms to be fixed by the High Court;

B           70. Save as aforesaid, we affirm the impugned Orders. The appeals are partly allowed as above. There will be no order as to costs.

Divya Pandey  
(Assisted by : Deepak Panwar, LCRA)

Appeals partly allowed.