Bijay Kumar Singh vs Amit Kumar Chamaria on 22 October, 2019

Equivalent citations: AIR 2019 SUPREME COURT 5461, 2019 (10) SCC 660, AIRONLINE 2019 SC 1291, (2019) 14 SCALE 277, (2019) 2 RENCR 689, 2019 (4) KLT SN 54 (SC), (2020) 1 ICC 664, (2020) 2 RENTLR 506

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Bench: Hemant Gupta, L. Nageswara Rao

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7849 OF 2019
(ARISING OUT OF SLP (C) NO.24280 OF 2019)
(DIARY NO. 22352 OF 2017)

BIJAY KUMAR SINGH & OTHERS .....APPELLANT(S)

VERSUS

AMIT KUMAR CHAMARIYA & OTHERS .....RESPONDENT(S)

WITH

CIVIL APPEAL NO. 7850 OF 2019
(ARISING OUT OF SLP (C) NO.24284 OF 2019)
(DIARY NO. 22504 OF 2017)

JUDGMENT

HEMANT GUPTA, J.

1. The challenge in the present appeals is to an order passed by the High Court of Calcutta on 13.05.2016 in two separate eviction petitions filed by the respondent herein against two tenants.

2. Learned Single Judge has set aside the order dated 10.08.2011 whereby an application filed by the appellant under Section 7(2) of the West Bengal Premises Tenancy Act, 19971 was allowed. 1 For short the "Act"

3. The brief facts leading to the present appeals are that the respondent filed an eviction petition against the appellants on the ground of non-payment of arrears of rent in respect of two shops alleging that initially, Sudama Singh was tenant on the monthly rent of Rs.45/- and Rs.25/- per month but now the rent payable is Rs.306/- and Rs.174/- per month. It is the case of the respondent that a Receiver was appointed in Money Execution Case No. 23/1961 and the said Receiver was discharged vide order dated 10.02.2009. The respondent demanded arrears of rent but since the amount of arrears at the rate of Rs.306/- per month was not paid, the petition for eviction was filed. The appellant did not deposit any rent but filed an application to determine the arrears of rent asserting that they have paid monthly rent up to the month of June 1993 to the Receiver. However, the Receiver has not informed the appellants as to the person authorised to collect rent, therefore, they could not pay it.

4. The learned Trial Court allowed the application, determined the arrears of rent and granted time to pay the arrears of rent so determined. The learned Single Bench set aside the order passed by the Trial Court as it chose to follow the order passed in CO 1941 of 2013, though another Coordinate Bench had taken a contrary view in CO 55 of 2014. Learned Single Judge found that in the order passed by Coordinate Bench in CO 55/2014, no lis was decided and that no principle was laid down which may give light to the learned Trial Court to decide the pending litigation. Therefore, the learned Single Judge, decided the matter on merits rather than referring it to the larger Bench for decision.

5. In this background, the argument of the learned counsel appearing for the appellant is that the High Court has not maintained judicial decorum and should have referred the matter to the larger Bench to decide the scope and ambit of Section 7(2) of the Act. We find that since a short question of law arises for consideration, therefore, without going into the question as to whether learned Single Judge should have referred the matter to the larger Bench or not, the question to be decided by this Court is to bring certainty in respect of scope of Section 7 of the Act.

6. Learned counsel for the appellant contends that the provisions of Section 7(2) of the Act are pari-materia to Section 17(2) of West Bengal Premises Tenancy Act, 19562 which was the subject matter of consideration in an earlier judgment of this Court reported as B.P. Khemka Pvt. Ltd. v. Birendra Kumar Bhowmick 3. Learned counsel for the appellant argued that the Limitation Act, 1963 would be applicable to seek condonation of delay in filing an application under Section 7(2) of the Act. The learned Counsel also placed reliance upon judgments reported as Shibu Chandra 2 for short the "1956 Act" 3 (1987) 2 SCC 407 Dhar v. Pasupati Nath Auddya 4 and Gaya Prasad Kar v. Subrata Kumar Banerjee5

7. On the other hand, learned counsel for the respondent submitted that the judgments in B.P. Khemka, Shibhu Chandra Dhar and Gaya Prasad Kar deal with Section 17 of the 1956 Act, wherein, sub section (2A) empowers the court to extend the time specified in sub section (1) or sub section

(2). Sub section (2A) is an overriding provision starting with a non obstante clause. There is no such equivalent provision in the Act which was enacted while repealing the 1956 Act. It is argued that B. P. Khemka has been considered by a three Judge Bench judgment reported as Arjun Khiamal Makhijani Etc vs Jamnadas C. Tuliani & Ors. Etc 6 and distinguished the same in view of sub section (2A) of the 1956 Act.

8. In another three Judge Bench judgment reported as Nasiruddin and Ors. vs Sita Ram Agarwal7, it was held that in terms of clause (a) of sub-section (2A) of Section 17 of the 1956 Act, the requisite power to extend the time for deposit of rent on an application made by the tenant is without any restriction. It was further held that the question of application of Section 5 of the Limitation Act, 1963 would arise, if the appellant or the applicant satisfies the court that he had sufficient cause for not making the appeal or application within such period. Section 13(4) of the 4 (2002) 3 SCC 617 5 (2005) 8 SCC 14(3) 6 (1989) 4 SCC 612 7 (2003) 2 SCC 577 Rajasthan Premises (Control of Rent and Eviction) Act, 1950 8 provides that the tenant shall on the first date of hearing or, on or before such date, shall deposit in court or pay to the landlord in court from the date of such determination the amount so determined or within such further time not exceeding three months as may be extended by the Court. Thus, sub-section (4) itself provides for limitation of a specific period within which the deposit has to be made, which cannot exceed three months as extended by this Court. The deposit by the tenant within 15 days is not an application within the meaning of Section 5 of the Limitation Act, 1963. Since the deposit does not require any application, therefore, the provisions of Section 5 cannot be extended where the default takes place in complying with an order under sub-section (4) of Section 13 of the Act . It is thus contended that provisions of the Rajasthan Act are close to the language of Section 7 of the Act. Therefore, the Limitation Act is not applicable to seek condonation of delay in filing an application under Section 7(2) of the Act. It was held as under:

> "15. B.P. Khemka [(1987) 2 SCC 407 : AIR 1987 SC 1010] arose out of the West Bengal Premises Tenancy Act, 1956 (in short "the West Bengal Act"). In the said case the tenant committed default in payment of arrears of rent and the landlord brought a suit for eviction on the ground of default. While the suit was pending, the West Bengal Premises Tenancy (Amendment) Ordinance 6 of 1967, which was replaced by the West Bengal Premises Tenancy (Amendment) Act 30 of 1969 came to be promulgated with effect from 26-8-1967. The Act gave a retrospective effect

8 for short the "Rajasthan Act".

to the amendments by providing that the amendments made by Section 2 of the Ordinance shall have effect in respect of all suits including appeals which were pending at the date of commencement of the Ordinance. The amendments inter alia enabled tenants who were in default to apply to the court and pay the arrears of rent in instalments and thereby avert their eviction. In pursuance thereof, the tenant deposited the rent. However, he subsequently committed default in paying monthly rent. Consequently, the defence was struck off on the ground that in paying the rent for the months of September 1968 and March 1969, there had been a delay of 44 days and 6 days respectively, which was in contravention of Section 17(1) of the West Bengal Act.

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17. This Court in B.P. Khemka case [(1987) 2 SCC 407 : AIR 1987 SC 1010] while interpreting the provisions of sub- section (4) held that the proviso makes it clear that if the subsequent default is for a period of 4 months within a period of 12 months, the tenant can claim relief under the sub-section once again. Since the default was less than 40 days, this Court held that under the said proviso, the delay could be condoned."

9. The reliance is placed upon Monoj Lal Seal v. Octavious Tea & Industries Ltd9, E. Palanisamy v. Palanisamy10, and Balwant Singh v. Anand Kumar Sharma 11 as to when the statutory provisions can be said to be directory or mandatory . Learned counsel for the respondent referred to various orders passed by the Calcutta High Court, taking a view that non-deposit of arrears of rent will result in dismissal of the application under Section 7 of the Act.

10. We do not find any error in the order passed by the High Court. 9 (2015) 8 SCC 640 10 (2003) 1 SCC 123 11 (2003) 3 SCC 433 One of the grounds of the eviction in terms of the Section 6(1)(b) of the Act is default in payment of rent for three months within the period of twelve months, or for three rental periods within the period of three years where the rent is not payable monthly. It is Section 7 of the Act which provides for an opportunity to the tenant to make the payment of arrears of rent, to avoid an order of eviction on account of its non-payment. The relevant provisions of Section 7 of the Act read as under:

> "7. When a tenant can get the benefit of protection against eviction.—(1) (a) On a suit being instituted by the landlord for eviction on any of the grounds referred to in Section 6, the tenant shall, subject to the provisions of sub- section (2) of this section, pay to the landlord or deposit with the Civil Judge all arrears of rent, calculated at the rate at which it was last paid and upto the end of the month previous to that in which the payment is made together with interest at the rate of ten per cent per annum.
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> (b) Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the suit without the summons being served upon him, within one month of his appearance.
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> (c) The tenant shall thereafter continue to pay to the landlord or deposit with the Civil Judge month by month by the 15th of each succeeding month, a sum equivalent to the rent at that rate.
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> (2) If in any suit referred to in sub-section (1), there is any dispute as to the amount of the rent payable by the tenant, the tenant shall, within the time specified in that subsection, deposit with the Civil Judge the amount admitted by him to be due from him together with an application for determination of the rent payable. No such deposit shall be accepted unless it is accompanied by an application for determination of the rent payable. On receipt of the application, the Civil Judge shall, having regard to the rate at which rent was last paid and the period for which default

may have been made by the tenant, make, as soon as possible within a period not exceeding one year, an order specifying the amount, if any, due from the tenant and, thereupon, the tenant shall, within one month of the date of such order, pay to the landlord the amount so specified in the order:

Provided that having regard to the circumstances of the case an extension of time may be granted by the Civil Judge only once and the period of such extension shall not exceed two months.

(3) If the tenant fails to deposit or pay any amount referred to in sub-section (1) or sub-section (2) within the time specified therein or within such extended time as may be granted, the Civil Judge shall order the defence against delivery of possession to be struck out and shall proceed with the hearing of the suit.

(4) If the tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no order for delivery of possession of the premises to the landlord on the ground of default in payment of rent by the tenant, shall be made by the Civil Judge, but he may allow such cost as he may deem fit to the landlord:

Provided that the tenant shall not be entitled to any relief under this subsection if, having obtained such relief once in respect of the premises, he again makes default in payment of rent for four months within a period of twelve months or for three successive rental periods where rent is not payable monthly."

11. The Act has repealed the 1956 Act which had almost similar provisions as contained in Section 7(1) and 7(2) of the Act, but the material distinction is of sub sections (2A) and (2B) inserted by West Bengal Premises Tenancy (Amendment) Ordinance No. IV of 1967. This was replaced by West Bengal Premises Tenancy (Amendment) Act 30 of 1969 with effect from 26.08.1967, giving retrospective effect to the amendments which were made applicable to all suits, including appeals, which were pending before commencement of the Ordinance. Sub sections (2A) and (2B) so inserted read as thus:

"(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), on the application of the tenant, the Court may, by order,-

(a) extend the time specified in sub-section (1) or sub-section (2) for the deposit or payment of any amount referred to therein;

(b) having regard to the circumstances of the tenant as also of the landlord and the total sum inclusive of interest required to be deposited or paid under sub-section (1) on account of default in the payment of rent, permit the tenant to deposit or pay such sum in such instalments and by such dates as the Court may fix:

Provided that where payment is permitted by instalments such sum shall include all amounts calculated at the rate of rent for the period or default including the period subsequent thereto up to the end of the month previous to that in which the order under this sub-section is to be made with interest on any such amount calculated at the rate specified in sub-section (1) from the date when such amount was payable up to the date of such order.

(2B) No application for extension of time for the deposit or payment of any amount under clause (a) of sub-section (2A) shall be entertained unless it is made before the expiry of the time specified therefor in sub-section (1) or sub-section (2), and no application for permission to pay in instalment under clause (b) of sub-section (2A) shall be entertained unless it is made before the expiry of the time specified in sub-section (1) for the deposit or payment of the amount due on account of default in the payment of rent."

12. This Court, while considering the above provisions of the 1956 Act in B.P. Khemka held as under:

"11. Since the Ordinance came to be replaced long after by the Act, Section 5 of the Ordinance was not reproduced in the Act because it had served its purpose. What is, however, of significance is that Section 5 of the Ordinance entitled the appellant to file an application under Section 17(2-A)(b), in the suit filed by the first respondent which was pending then. Unfortunately, the High Court has looked only into the Act and not the Ordinance and that is how Section 5 of the Ordinance has escaped its notice. When Section 17(2-A) and Section 5 of the Ordinance are read conjointly it may be seen that it was the intention of the legislature to extend the benefit of subsection (2-A) to all pending suits and appeals irrespective of the fact whether the time limit of one month prescribed under Section 17(1) had expired or not. No other construction is possible because any other construction would have the effect of rendering otiose Section 5 of the Ordinance.....

12. If it was the intention of the legislature to restrict the benefits given under Section 17(2-A) to only those tenants against whom suits had been filed within one month prior to the promulgation of the Ordinance, there was no necessity to give retrospectivity to sub-section (2-A) under Section 5 of the Ordinance. It has, therefore, to be held that all tenants against whom suits or appeals were pending on the date of the promulgation of the Ordinance were entitled to seek the benefit of Section 17(2-A) by filing an application within one month from the date of promulgation of the Ordinance. The High Court was, therefore, in error in holding that the application under Section 17(2-A)(a) was itself not maintainable. If the High Court's view is to be accepted it would then amount to asking the appellant to perform the impossible i.e. asking the appellant to file an application under Section 17(2-A)(b) which came into force on August 26, 1967 within one month from April 6, 1967 when the suit summons was served. Therefore the first question has to be answered in favour of the appellant. The resultant position would then be that insofar

as the payment of arrears for the period ending February 29, 1968 is concerned, the appellant had complied with the orders of the court under Section 17(2-A)(b) and was therefore entitled to claim the benefit of Section 17(4)."

13. The said judgment was followed in Shibu Chandra Dhar considering the 1956 Act. The judgment in Gaya Prasad Kar is also interpreting the provisions of the 1956 Act.

14. However, another three Judge Bench judgment in Arjun Khiamal while examining provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act,194712 considered the judgment reported as Vatan Mal v. Kailash Nath13, dealing with the Rajasthan Act, held that Section 13(a) of the Rajasthan Act was to confer benefits on all tenants against whom suits for eviction on 12 for short the "Bombay Act" 13 (1989) 3 SCC 79 the ground of default of payment of rent were pending. Such judgment was not found to be attracted in view of mandatory provisions contained in Section 12(3)(a) of the Bombay Act. The judgment in B.P. Khemka was found not to be of any assistance for the same reason.

15. This Court in Nasiruddin also considered the question as to whether provisions of a statute being directory or mandatory would depend upon the language implied therein, and referred to a judgment reported as Union of India v. Philip Tiago De Gama14. This Court also examined the judgment in Shyamcharan Sharma v. Dharamdas15, wherein it was found that there is no restriction in M.P. Accommodation Control Act, 196116 to condone delay to deposit the arrears of rent, whereas, the discretion available to the court under the Rajasthan Act is limited. For the same reason, it was found that in terms of the Delhi Rent Control Act, 1958 17, the court has power to extend the time to deposit arrears of rent. This Court held as under:

"31. We may further notice that in Shibu Chandra Dhar v. Pasupati Nath Auddya [(2002) 3 SCC 617] which also arose out of the West Bengal Premises Tenancy Act, it was held that under sub-section (2-A) of Section 17 of the Act, the court has a power to extend the period for depositing the rent in the event of default by the tenant to deposit the rent within a stipulated time. This Court further held that if a court has no power to extend the time, then in 14 (1990) 1 SCC 277 15 (1980) 2 SCC 151 16 For short the "M.P. Act" 17 For short the "Delhi Act" cases of small default beyond the reason of the tenant, the time cannot be extended.

32. It is interesting to note that in Ganpat Ladha v. Sashikant Vishnu Shinde [(1978) 2 SCC 573 :

(1978) 3 SCR 198] this Court while interpreting similar provisions occurring in Section 12(3)(a) of the Bombay Rents, Hotel, Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Bombay Rent Act") held:

(SCC p. 580, para 11) "Section 12(3)(b) does not create any discretionary jurisdiction in the Court. It provides protection to the tenant on certain conditions and these conditions have to be strictly observed by the tenant who seeks the benefit of the section. If the statutory provisions do not go far enough to relieve the hardship of the tenant the remedy lies with the legislature. It is not in the hands of courts." Thus under the Bombay Rent Act only on certain grounds the court can exercise its discretionary power and not on other grounds."

16. While examining as to when the provision of a statute is to be treated as directory or mandatory, this Court held in Nasiruddin case that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences thereof are specified. It was held as under:

"37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

38. Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified.

In Sutherland's Statutory Construction, 3rd Edn., Vol. 3, at p. 107 it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision.

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40. Thus, on analysis of the aforesaid two decisions we find that wherever the special Act provides for extension of time or condonation of default, the court possesses the power therefor, but where the statute does not provide either for extension of time or to condone the default in depositing the rent within the stipulated period, the court does not have the power to do so.

41. In that view of the matter it must be held that in absence of such provisions in the present Act the Court did not have the power to either extend the period to deposit the rent or to condone the default in depositing the rent."

17. Further, a three Judge Bench of this Court in a judgment reported as Union of India and Others v. A. K. Pandey18 held as under:

> "15. The principle seems to be fairly well settled that prohibitive or negative words are ordinarily indicative of mandatory nature of the provision; although not conclusive. The Court has to examine carefully the purpose of such provision and the consequences that may follow from non-observance thereof. If the context does not show nor demands otherwise, the text of a statutory provision couched in a negative form ordinarily has to be read in the form of command. When the word "shall" is followed by prohibitive or negative words, the legislative intention of making the provision absolute, peremptory and imperative becomes loud and clear and ordinarily has to be inferred as such. There being nothing in the context otherwise, in our judgment, there has to be clear ninety-six hours' interval between the accused being charged for which he is to be tried and his arraignment and interval time in Rule 34 must be read as absolute. There is a purpose behind this provision: that purpose is that before the accused is called upon for trial, he must be given adequate time to give a cool thought to the charge or charges for which he is to be tried, decide about his defence and ask the authorities, if necessary, to take reasonable steps in procuring the attendance of his witnesses. He may even decide not to defend the charge(s) but before he decides his line of action, he must be given clear ninety-six hours."

18. The judgment in B.P. Khemka is in respect of a statute giving power to condone delay without any fetters. The amendments carried with retrospective effect inter alia enabled tenants who were in default to apply to the court and pay the arrears of rent in instalments and thereby avert their eviction. In pursuance of the amendments, the tenant deposited the rent. However, he subsequently committed default in paying monthly rent. 18 (2009) 10 SCC 552 Consequently, the defence was struck off on the ground that in paying the rent for the months of September 1968 and March 1969, there had been a delay of 44 days and 6 days respectively, which was in contravention of Section 17(1) of the West Bengal Act. This Court held that the proviso makes it clear that if the subsequent default is for a period of 4 months within a period of 12 months, the tenant can claim relief under the sub-section once again. Since the default was less than 40 days, this Court held that under the said proviso, the delay could be condoned. Provisions of M.P. Act and of Delhi Act are also similar.

19. Sub section (1) of Section 7 of the Act relieves the tenant from the ejectment on the ground of non-payment of arrears of rent if he pays to the landlord or deposits it with the Civil Judge all arrears of rent, calculated at the rate at which it was last paid and up to the end of the month previous to that in which the payment is made together with interest at the rate of ten per cent per annum. Such payment or deposit shall be made within one month of the service of summons on the tenant or, where he appears in the suit without the summons being served upon him, within one month of his appearance.

20. Therefore, sub section (1) deals with the payment of arrears of rent when there is no dispute about the rate of rent or the period of arrears of rent. Sub section (2) of the Act comes into play if there is dispute as to the amount of rent including the period of arrears payable by the tenant. In that situation, the tenant is obliged to apply within time as specified in sub section (1) that is within one month of the receipt of summons or within one month of appearance before the court to deposit with the Civil Judge the amount admitted by him to be due. The tenant is also required to file an application for determination of the rent payable. Such deposit is not to be accepted, unless it is accompanied by an application for determination of rent payable. Therefore, sub section (2) of the Act requires two things, deposit of arrears of rent at the rate admitted to be due by the tenant along with an application for determination of the rent payable. If the two conditions are satisfied then only the Court having regard to the rate at which rent was last paid and for which tenant is in default, may make an order specifying the amount due. After such a determination the tenant is granted one month's time to pay to the landlord the amount which was specified. The proviso of the Act, limits the discretion of the court to extend the time for deposit of arrears of rent. The extension can be provided once and not exceeding two months.

21. Sub section (3) provides for consequences of non-payment of rent i.e. striking off the defence against the delivery of the possession and to proceed with the hearing of the suit. Such provision is materially different from sub sections (2A) and (2B) which was being examined by this Court in B.P. Khemka. Sub sections (2A) and (2B) of Section 17 of 1956 Act confer unfettered power on the court to extend the period of deposit of rent, which is circumscribed by the proviso of sub sections (2) and (3) of Section 7 of the Act. Therefore, the provisions of sub section (2) are mandatory and required to be scrupulously followed by the tenant, if the tenant has to avoid the eviction on account of non-payment of arrears of rent under Section 6 of the Act. There is an outer limit for extension of time to deposit of arrears of rent in terms of the proviso to sub section (2) of Section 7 of the Act. The consequences flowing from non-deposit of rent are contemplated under sub section (3) of Section 7 of the Act. Therefore, if the tenant fails to deposit admitted arrears of rent within one month of receipt of summons or within one month of appearance without summons and also fails to make an application for determination of the disputed amount of rate of rent and the period of arrears and the subsequent non-payment on determining of the arrears of rent, will entail the eviction of the tenant. Section 7 of the Act provides for a complete mechanism for avoiding eviction on the ground of arrears of rent, provided that the tenant takes steps as contemplated under sub section (2) of Section 7 of the Act and deposits the arrears of rent on determination of the disputed amount. The deposit of rent along with an application for determination of dispute is a pre-condition to avoid eviction on the ground of non-payment of arrears of rent. In view thereof, tenant will not be able to take recourse to Section 5 of the Limitation Act as it is not an application

alone which is required to be filed by the tenant but the tenant has to deposit admitted arrears of rent as well.

22. In view of the judgment in Nasiruddin, we do not find any error in the order passed by the learned Single Judge. The Trial Court shall proceed with the suit in accordance with law. The appeals are dismissed.

.....J. (L. NAGESWARA RAO) .....J. (HEMANT GUPTA) NEW DELHI;

OCTOBER 22, 2019.