Molar Mal (Dead) Through L.Rs vs M/S. Kay Iron Works (P) Ltd on 14 March, 2000

Equivalent citations: AIR 2000 SUPREME COURT 1261, 2000 (4) SCC 285, 2000 AIR SCW 950, 2000 (2) SCALE 334, 2000 SCFBRC 142, 2000 ALL CJ 2 1614, (2000) 3 JT 122 (SC), 2000 (3) JT 122, 2000 (4) SRJ 130, 2000 (125) PUN LR 678, (2000) 2 PUN LR 678, (2000) 1 RENCJ 624, (2000) 1 RENCR 354, (2000) 3 LANDLR 64, (2000) 1 RENTLR 442, (2000) 3 ANDHLD 72, (2000) 2 SCALE 334, (2000) 2 SUPREME 284, (2000) WLC(SC)CVL 266, (2000) 2 CURCC 3, (2000) 1 CURLJ(CCR) 387

Bench: N.S.Hegde, S.S.M.Quadri

PETITIONER:
MOLAR MAL (DEAD) THROUGH L.RS.

Vs.

RESPONDENT:
M/S. KAY IRON WORKS (P) LTD.

DATE OF JUDGMENT: 14/03/2000

BENCH:
N.S.Hegde, S.S.M.Quadri

JUDGMENT:

SANTOSH HEGDE, J.

Respondent-landlord had filed an eviction petition before the Court of Rent Controller, Jagadhri in the year 1979 seeking eviction of the appellant herein from the petition scheduled land situated on Jagadhri Road, Yamuna Nagar under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the Act) claiming that the petition scheduled land is required by it for its personal use and occupation. As required under that Act it also contended that it is not occupying in the urban area of Yamuna Nagar any other rented land for the purpose of its business nor it has vacated any such rented land without sufficient cause after the commencement of the Act. It also alleged in the said petition that the premises already in its possession are not sufficient for its requirement. Appellant-tenant opposed the said petition on a number of grounds, primarily on the ground that the petition scheduled premises was not a rented land but was a building as contemplated under the Act and he also alleged that the landlord had not given material particulars in regard to its requirement of additional space. By an amendment of his objection, the

tenant further pleaded that the landlord had filed several other applications against other tenants alleging personal requirement and during the pendency of the eviction petition in question, it had obtained possession of building and land from three other tenants, hence, the landlords claim for his eviction is not bona fide. In its rejoinder petition, the landlord admitted that it had obtained possession of three premises through eviction proceedings and the same along with petition scheduled land was required for its extension of coal yard, the foundry and for storage of foundry material like sand, earth, fire wood, fire-bricks etc. The trial court framed the following issues for its consideration: - 1. Whether the applicant Company is a private limited company and whether Ram Avtar is a competent to file the present application for ejectment ? OPA. 2. Whether the property in dispute is a rented land and if so its effect ? OPA. 3. If issues No.2 is proved in the affirmative whether the applicant company requires the premises in dispute for its bonafide use and occupation ? OPA. 4. Whether the suit land is a non-residential building and as such the ground of ejectment for personal use is not available to the applicant ? OPP. 5. Relief. Additional issues framed on 15.10.1986 :- 4A. Whether the personal necessity of the applicant stands satisfied during the pendency of the present petition ? OPP.

Trial Court accepted the case of the landlord and ordered eviction of the appellant. In appeal, the Appellate Authority remanded the matter back to the Rent Controller for a fresh decision. This order of remand came to be challenged before the High Court and the High Court was pleased to accept this challenge and directed the appellate court to re-hear and decide the appeal itself. It, however, restricted the scope of re-hearing to be confined to Issue Nos. 3 and 4A only. On remand the Appellate Authority allowed the appeal of the tenant and decided the said issues in favour of the tenant. Being aggrieved by the order of the Appellate Authority, the landlord preferred a revision petition before the High Court which came to be allowed in favour of the landlord by the judgment of the High Court pronounced on 26th of May, 1998. The tenant preferred a review petition before the High Court alleging certain specific omissions in the judgment of the High Court and the said review petition being dismissed by an order of the High Court dated 3rd of July, 1998, the tenant has preferred the above noted civil appeal. Before us on behalf of the tenant Shri M.L.Verma, learned senior counsel has raised the following questions:- (i) That on the pleading as filed before the original authority, no eviction could have been ordered because the said pleading on behalf of the landlord did not contain material particulars as required under Rule 4 of the Haryana Urban (Control of Rent and Eviction) Rules (hereinafter referred to as the Rules); (ii) The High Court had interfered with the findings given by the Appellate Authority on questions of fact while deciding a revision petition filed by the landlord which it could not have done; (iii) The courts below failed to notice the proviso to Section 13(3)(i)(b) of the Act which creates an embargo on the landlord from seeking eviction of the appellant because of the fact the respondent-landlord had earlier obtained eviction of other tenants under the very same provision of law. On behalf of the landlord, Shri Parag Tripathi, learned senior counsel pointed out that Rule 4 of the Rules is not mandatory and is only directory even otherwise the combined reading of the eviction petition along with the averments in the rejoinder petition, a case of the landlord is clearly made out and necessary issues having been struck on this point and parties having led evidence on this point, there was sufficient material to decide the claim of the landlord and no prejudice has been caused to the appellant. Adverting to the second question, he contended that the power of the revisional court under the Act is much wider than the power conferred on the High Court under Section 115 of the Code of Civil Procedure,

therefore, the court, under Section 15 of the Act, has the jurisdiction to correct any illegality or impropriety committed by the Appellate Authority. In reply to the third point, he contended that the proviso relied upon by the appellant did not apply to the facts of the case. He also argued that this point of the applicability of the proviso was not raised specifically by the tenant and no issue has been framed in this regard. Therefore, he argues that the appellant should not be permitted to raise this question for the first time before this Court. We are not inclined to accept the first two points raised on behalf of the appellant before us. It is true in the original eviction petition all the material particulars of the requirement of the landlord were not mentioned in detail, but then in the rejoinder application all the necessary particulars are given by the landlord, notice of which the appellant had and the original authority had struck a proper issue on this question and parties understood each others case and led evidence on this issue, though Rule 4 of the Rules does require the landlord to give material particulars, this Court has held with reference to the same rule in the case of M/s. Rubber House vs. M/s. Excelsior Needle Industries Pvt. Ltd. (1989 2 SCC 413) that the said rule is not mandatory and is only directory. Therefore, the fact that the landlord did not give all the material particulars of his requirement in the first instance cannot be made a ground for rejection of the application. Similarly, we are of the opinion, on the facts and circumstances of this case, the argument of the tenant that the High Court exceeded in its jurisdiction by interfering on a finding of fact arrived at by the Appellate Authority is also to be rejected. It is to be noticed that under sub-section (6) of Section 15 of the Act, the High Court as a revisional authority has the power to call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order and is entitled to pass such order as it may deem fit. The power vested in the High Court under this provision of law is much wider than the power conferred on the High Court under Section 115 of the C.P.C. In the process of satisfying itself as to the legality or propriety of an impugned order, the High Court in a given case can go into the finding of fact arrived at by the courts below and, if found necessary, reverse such a finding of fact. Of course, this Court has in many cases cautioned that this power is not to be used as a revisional court in a routine manner but to be used only when the revisional court comes to the conclusion that the last court of fact has arrived at a conclusion which is not perverse or possible to be accepted on the materials placed before it. In other words, if the High Court comes to the conclusion that the finding of the first Appellate Court is based on no evidence then in a given case it is open to the High Court to interfere with such finding of fact. In the instant case, we are not convinced that the High Court has exceeded in its jurisdiction while allowing the revision of the landlord on this count. Therefore, this question urged on behalf of the appellant is also rejected. This leaves us to consider the third point raised on behalf of the appellant. The argument is based on the first proviso to Section 13(3)(i)(b) of the Act which reads as follows :

> (b) in the case of rented land, if he requires it for his own use, is not occupying in the urban area concerned for the purpose of his business any other rented land and has not vacated such rented land without sufficient cause after the commencement of the 1949 Act;

Based on this proviso and relying upon the fact that before the eviction was ordered in this case, the landlord had obtained possession of three other rented lands through eviction petitions filed under Section 13(3)(i)(b) of the Act, it is contended, by virtue of the above proviso, that the landlord is

statutorily prevented from seeking eviction of the appellant from the tenanted land. Opposing this contention, the landlord raised a preliminary objection that this objection was not specifically raised before the courts below. Therefore, the appellant-tenant should not be permitted to raise it for the first time before this Court. We will first deal with the above objection of the landlord in regard to permitting the appellant-tenants to raise this question before us. It is true that in the written statement originally filed, the tenant did not raise this specific contention. However, by an amendment made to the written statement the tenant did plead that the landlord has obtained possession of three other rented lands measuring 18 x 45 from Atma Ram Jassa Ram; 16 x 40 from Sakhuja Trunk House and 10 x 40 from Kehar Singh and, as such, the application for ejectment is liable to be dismissed. The landlord has filed a rejoinder to this amended written statement wherein he contended that the three premises were got vacated by him and one of the grounds in those petition was personal necessity. He also contended that the premises were got vacated for extension of coal-yard as the open space in possession of the landlord was not sufficient to meet his requirement for stocking coal, and he has sought eviction of the tenant in the present case for extension of its foundry and for storage of foundry material. It is true that in spite of these pleadings, may be because of the fact that the tenant did not specifically invoke the proviso to Section 13(3)(i)(b), no issue was raised by the Rent Controller. Hence, the trial court did not advert to this question. Before the appellate authority, however, the tenant raised this specific objection which came to be rejected on the ground that these evictions were obtained after filing of the instant eviction petition, consequently, the proviso in question did not apply to the facts of the case. It is also contended that since the appellate authority dismissed the eviction petition, the tenant did not have an opportunity of challenging this finding before the High Court, but while defending the order of the appellate authority, a specific argument based on the said proviso was raised before the High Court but the High Court did not consider this argument in its correct perspective. Further, it was pointed out to us that in the review petition filed before the High Court, specific grounds were raised alleging that the argument based on the proviso was addressed and the court failed to consider the same, still the High Court while rejecting the review petition did not consider this point. In this background, we are convinced that the tenant did raise this question before the courts below which ought to have been considered by the courts below. Therefore, we deem it appropriate that the tenant be permitted to raise this question. On behalf of the landlord, it is next contended that the proviso does not apply to the facts of this case, since on the date of filing of the present eviction petition, the landlord had not obtained possession of any other tenanted premises. Subsequent possession obtained by it would not be an embargo for the landlord to claim possession of the present petition scheduled premises. Elaborating this argument on behalf of the landlord, it is contended if on the date of filing of the eviction petition, a landlord has not by then obtained possession of any other premises, then the proviso would not be a bar for the landlord to file an eviction petition and obtained possession of another premises, even though during the pendency of the petition, he obtains possession of other premises. The landlord wants us to give a literal meaning to the words entitled to apply again found in the proviso. If we give such a meaning to the words entitled to apply again without taking into consideration the object and scheme of the Act, the proviso may give an impression that the embargo incorporated in that proviso would be applicable only at the stage of filing of the eviction petition. But such an interpretation will run counter to the very scheme of the Act. It goes without saying that the Haryana Urban (Control of Rent and Eviction) Act, 1973 like any other similar Acts in other States in India is an enactment which

controls the fixation of rent and evictions of the tenants from rented premises to which the Act is applicable. This Act controls the right of a landlord to seek eviction of tenanted premises, it restricts the right of a landlord to seek eviction on those grounds mentioned in the Act. As a matter of fact, a landlord can seek eviction only on the grounds enumerated under the Act and on no other grounds. This is clear from the language of Section 13(1) of the Act which in specific terms says that a tenant in possession of a building or rented land shall not be evicted therefrom except in accordance with the provisions of this Section. Section 13 enumerates various grounds on which a landlord can seek possession. This right is further restricted if the landlord has obtained possession of similar premises under the same provisions of law by the proviso. Now the question is whether the bar under the proviso is applicable only to the filing of an application or is it a bar on the right of the landlord. If the interpretation suggested by the landlord is accepted then the bar will be on the application by the landlord and not on his right to evict. This, in our opinion, will not be the correct interpretation of the proviso. A careful perusal of the various provisos found in sub-section (3) of Section 13 of the Act clearly shows that the Legislature intended to further restrict the right of a landlord to seek eviction under the clauses mentioned in that sub-section apart from the restrictions imposed in Section 13 of the Act. For example, if the landlord is seeking eviction of a tenant on the ground that the same is required for the use of his son then, in view of the proviso applicable to that sub-section, he can seek eviction of the premises only once. Similarly, if the landlord is seeking eviction for his own occupation under Section 13(3)(b) of the Act then by virtue of the proviso applicable to that sub-section, the landlord can seek such eviction only once in regard to the premises of the same nature. Therefore, in our opinion, the bar imposed by the proviso is in fact a bar on the right of the landlord to seek actual eviction and not confined to the filing of the application for eviction. On behalf of the landlord, it is contended that while interpreting a Statute the courts should apply the rule of literal construction and if it is so interpreted then the wordings of the proviso would show that the restriction imposed by the proviso is restricted to the stage of filing of the application for eviction only. We agree with this contention of the landlord that normally the courts will have to follow the rule of literal construction which rule enjoins the court to take the words as used by the Legislature and to give it the meaning which naturally implies. But, there is an exception to this rule. That exception comes into play when application of literal construction of the words in the Statute leads to absurdity, inconsistency or when it is shown that the legal context in which the words are used or by reading the Statute as a whole, it requires a different meaning. In our opinion, if the expression entitled to apply again is given its literal meaning, it would defeat the very object for which the Legislature has incorporated that proviso in the Act inasmuch as the object of that proviso can be defeated by a landlord who has more than one tenanted premises by filing multiple applications simultaneously for eviction and thereafter obtain possession of all those premises without the bar of the proviso being applicable to him. We are of the opinion that this could not have been the purpose for which the proviso is included in the Act. If such an interpretation is given then the various provisos found in clause (3) of Section 13 would become otiose and the very object of the enactment would be defeated. Any such interpretation, in our opinion, would lead to absurdity. Therefore, we have no hesitation in interpreting the proviso to mean that the restriction contemplated under that proviso extends even up to the stage when the court or the tribunal is considering the case of the landlord for actual eviction and is not confined to the stage of filing of eviction petition only. This takes us to the another limb of the landlords argument in regard to the applicability of the proviso. This argument of the landlord is based on two

judgments of the High Court of Punjab & Haryana in the cases of (i) Shri Brij Lal Puri & Anr. v. Smt. Muni Tandon alias Urmala (1979 1 Rent Law Reporter 58) (which case is followed by the High Court in Jagir Singh v. Jagdish Pal Sagar (1980 1 RLR 494). In Puris case (supra), rejecting the contention of the tenant based on the said proviso, the learned Single Judge of the High Court held thus :- A plain reading of the proviso mentioned above shows that a landlord after getting one building vacated, which can reasonably meet his needs, cannot get another building vacated. The proviso does not lay down that if the entire building, which is needed by a landlord for his personal use, is occupied by more than one tenants, he or she cannot take out eviction proceedings against the other tenant after having evicted one. The object of this proviso is that a landlord should not be allowed to seek unreasonable ejectments of tenants from independent buildings if he has already succeeded in evicting a tenant from a building which is sufficient for his personal occupation.

Based on the above-cited two judgments of the High Court, it is contended that the landlord in the instant case is seeking eviction of a part of the premises owned by it which is leased to the present appellant. Eviction of the three other tenants referred to herein above was from the premises which are parts of the same premises, therefore, in view of the above judgment the bar under the proviso is not applicable. We find it difficult to accept this argument of the landlord also. From the language of the proviso we do not find any support for this argument of the appellant or to the conclusions arrived at by the High Court in the above-referred judgments. The proviso does not make any such distinction between a landlord seeking possession of the premises held by more than one tenant occupying the same building or the tenants occupying different independent buildings under the same landlord. As we have observed, the object of the proviso like any other provisions of the Act, is to further restrict the right of the landlord to seek eviction, if that be so, we do not find any justification in reading into the proviso something as conferring a larger right on the landlord to evict more than one tenant if those tenants are occupying different parts of the same premises. Therefore, we are of the opinion that the view expressed by the High Court in the above referred case does not lay down the correct law. Consequently, the argument of the landlord based on the said judgment is also rejected. It is next contended on behalf of the landlord that the decisions cited above have stood the test of time since 1978 onwards, if not earlier, because of which the law is so understood in that part of the country, therefore, we should not interfere with the ratio laid down by the High Court of Punjab & Haryana in those cases so as not to create uncertainty in judicial thinking. We are unable to accept this argument advanced on behalf of the landlord. When we find that the interpretation of the proviso by the High Court is wholly contrary to the object of the Statute, merely because it had remained to be the interpretation of the High Court for a considerable length of time, the same cannot be permitted to continue to be so when it is erroneous and it is so brought to our notice. We will be failing in our duty if we do not declare an erroneous interpretation of law by the High Court to be so, solely on the ground that it has stood the test of time. Since, in our opinion, in regard to the interpretation of the above proviso, no two views are possible, we are constrained to hold that the law declared by the Punjab & Haryana High Court with reference to the proviso is not the correct interpretation and hold that the said judgment is no more a good law. On behalf of the landlord, another argument based on equity was addressed before us giving various examples of the hardship that could be caused to the landlords by the interpretation we have now given to the said proviso. We do find that the proviso, as interpreted by us, may cause some hardship to the landlords in some cases but that is the intention of the Legislature which the courts

have to take to its logical end so long as it remains in the Statute book. Merely because a law causes hardship, it cannot be interpreted in a manner so as to defeat its object. We may notice at this stage that constitutional validity of the proviso is not in challenge before us, therefore, we will have to proceed on the footing that the proviso, as it stands, is intra vires and interpret the same as such. This leaves us to consider the last argument of the landlord that the applicability of this proviso being a mixed question of law and fact and there being no issues before the courts below, the same cannot be applied in abstract. We see force in this contention before refusing eviction based on the ground of the bar imposed by the proviso. The Court will have to come to the conclusion that the premises/land eviction whereof has been obtained by the landlord, belong to the same class of building or tenanted land. This finding of the Court will be dependent upon the facts which are not available on records of this case. The absence of this evidence will cause prejudice to the landlord if the said question is to be decided in these appeals. Though in the earlier part of this judgment, we have held that the parties in this case have pleaded the facts necessary for invoking the proviso, still since no issue has been framed on this point, the parties have not led evidence in regard to the nature of the building/land. Therefore, we agree with the argument of the landlord that in order to apply the proviso, certain factual matrix has to be established absence of which, in appropriate cases, might necessitate a remand to the trial court. On the peculiar facts of this case and taking into consideration the fact that this litigation has been going on since 1979 and there has already been one remand from the High Court to the appellate authority, we find it just and proper that we frame the following issue in regard to this point and remit the case to the trial court for the purpose of recording evidence and its decision: - Does the respondent prove that the applicant has obtained possession of other residential building or rented land of the same class under the provisions of sub-clause (i) of clause (b) of Section 13(3) of the Act so as to disentitle it to obtain possession of the petition scheduled premises ?

We direct the original authority, namely, the Court of the Rent Controller, Jagadhari, to allow the parties to adduce evidence, if necessary, to the limited extent of deciding the above issue framed by us. The Rent Controller, Jagadhari, shall decide the case within a period of three months from the date of receipt of a copy of this judgment. The appeals are, accordingly, allowed duly modifying the orders under appeal. No costs.